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LIST OF FREQUENTLY USED ACRONYMS

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

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

FOREWORD

The 2008 National Trade Estimate Report on Foreign Trade Barriers (NTE) is the 23rd in an annual series that surveys significant foreign barriers to U.S. exports.

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

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

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

SCOPE AND COVERAGE

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

Trade barriers elude fixed definitions, but may be broadly defined as government laws, regulations, policies, or practices that either protect domestic products from foreign competition or artificially stimulate exports of particular domestic products. This report classifies foreign trade barriers into 10 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);
- Trade restrictions affecting electronic commerce (*e.g.*, tariff and nontariff measures, burdensome and discriminatory regulations and standards, and discriminatory taxation); and
- Other barriers (barriers that encompass more than one category, *e.g.*, bribery and corruption,² or that affect a single sector).

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

This report discusses the largest export markets for the United States, including: 57 nations, the European Union, Taiwan, Hong Kong, the Southern African Customs Union and one regional body. Some countries were excluded from this report due primarily to the relatively small size of their markets or the absence of major trade complaints from representatives of U.S. goods and services sectors. However, the omission of particular countries and barriers does not imply that they are not of concern to the United States. Based on an assessment of the evolving nature of U.S. trade and investment relationships in the various regions of the world, the section on Uzbekistan has been deleted from this year's NTE. U.S. exports to Uzbekistan fell consistently from 2003 through 2006. Our largest exports to Uzbekistan the last few years have been charitable goods for humanitarian relief. Overall, Uzbekistan accounts for less than 0.01 percent of U.S. exports.

In this Foreword, we are also providing an update on progress the Administration has made in reducing trade-related barriers to the export of greenhouse gas intensity reducing technologies (GHGIRTs), as called for by the Energy Policy Act of 2005 (Act). In October 2006, pursuant to section 1611 of the Act,³ USTR prepared a report that identified trade barriers that face U.S. exporters of GHGIRTs in the top 25 greenhouse gas (GHG) emitting developing countries and described the steps the United States is taking

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to reduce these and other barriers to trade.⁴ The Act also calls for USTR to report annually on progress made with respect to removing the barriers identified in the initial report. USTR submitted the first annual progress report in October 2007; this report, as well as the initial report, are available at <http://www.ustr.gov>. As noted in the October 2007 report, USTR will submit further annual progress reports as part of the NTE Report.

Since the October 2007 GHGIRT report, the United States, together with the European Communities (EC), have submitted a ground-breaking proposal as part of the WTO Doha Round negotiations to increase global trade in and use of environmental goods and services, including GHGIRTS. The proposal lays the foundation for an innovative new environmental goods and services agreement (EGSA) in the WTO and would include a commitment by all WTO Members to remove barriers to trade in a specific set of climate-friendly technologies. The initiative was prompted by President Bush's initiative earlier this year to seek an agreement with major economies on a new international climate agreement. The proposal underscores the importance of liberalizing trade in environmental goods and services in parallel by recognizing, for the first time, how the market works in this sector – how goods are bundled with services. For example, designing more energy efficient buildings can require consulting, design and construction services, as well as solar panels for heating.

The joint proposal seeks to eliminate tariff and nontariff barriers to environmental technologies and services on a global scale through a two-tiered approach: 1) A first-ever in the WTO agreement on worldwide elimination of tariffs on a specific list of climate friendly technologies recently identified by the World Bank; and 2) A higher level of commitment on the part of developed and the most advanced developing countries to eliminate barriers to trade across a broader range of other environmental technologies and an array of environment-friendly services. USTR will be working this year to advance this proposal and ensure that it is an integral part of the Doha round package of trade liberalization.

The United States is also continuing its efforts in APEC in connection with the initiative on environmental goods in APEC's Market Access Group (MAG), launched in 2007. The work is focused on building a better understanding throughout the APEC region of cutting edge environmental technologies and building momentum for trade liberalization in this important sector. This year, the United States is working with Canada and New Zealand to organize a second environmental goods and services workshop highlighting climate mitigation and adaptation technologies and services. We also hope to develop an APEC database of environmental goods and services that could be updated regularly and used for unilateral, bilateral/regional, or multilateral liberalization efforts.

The merchandise trade data contained in the NTE report are based on total U.S. exports, free alongside (f.a.s.)⁵ value, and general U.S. imports, customs value, as reported by the Bureau of the Census, Department of Commerce. (NOTE: These data are ranked according to size of export market in the Appendix). The services data are from the October 2007 issue of the Survey of Current Business (collected from the Bureau of Economic Analysis, Department of Commerce). The direct investment data are from the September 2007 issue of the Survey of Current Business (collected from the Bureau of Economic Analysis, Department of Commerce).

TRADE IMPACT ESTIMATES AND FOREIGN BARRIERS

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

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

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

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

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

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

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

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

In the context of trade actions brought under U.S. law, estimations of the impact of foreign practices on U.S. commerce are substantially more feasible. Trade actions under U.S. law are generally

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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 2008

Endnotes

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

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

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

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

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

The United States played a critical role in the successful conclusion of negotiations that produced the United Nations Convention against Corruption, the first global anti-corruption instrument. The Convention was opened for signature in December 2003, and is pending entry into force. The Convention requires countries to adopt such measures as may be necessary to criminalize fundamental anticorruption offenses, including bribery of domestic as well as foreign public officials. As of early March 2006, 141 countries, including the United States, have signed the Convention and 49 have ratified it.

In March 1996, countries in the Western Hemisphere concluded negotiation of the Inter-American Convention against Corruption (Inter-American Convention). The Inter-American Convention, a direct result of the Summit of the Americas Plan of Action, requires that parties criminalize bribery throughout the region. The Inter-American Convention entered into force in March 1997. The United States signed the Inter-American Convention on June 2, 1996 and deposited its instrument of ratification with the Organization of American States (OAS) on September 29, 2000. Twenty-eight of the thirty-three parties to the Inter-American Convention, including the United States, participate in a Follow-up Mechanism conducted under the auspices of the OAS to monitor implementation of the

Convention. The Inter-American Convention addresses a broad range of corrupt acts including domestic corruption and transnational bribery. Signatories agree to enact legislation making it a crime for individuals to offer bribes to public officials and for public officials to solicit and accept bribes, and to implement various preventive measures.

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

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

⁴ These 25 countries were identified in the Department of State’s 2006 “Report to Congress on Developing Country Emissions of Greenhouse Gases and Climate Change Technology Deployment.” They are: China; India; South Africa; Mexico; Brazil; Indonesia; Thailand; Kazakhstan; Malaysia; Egypt; Argentina; Venezuela; Uzbekistan; Pakistan; Nigeria; Algeria; Philippines; Iraq; Vietnam; Colombia; Chile; Libya; Turkmenistan; Bangladesh; and Azerbaijan.

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

ANGOLA

TRADE SUMMARY

The U.S. goods trade deficit with Angola was \$11.2 billion in 2007, an increase of \$1.1 billion from 2006. U.S. goods exports in 2007 were \$1.3 billion, down 17.4 percent from the previous year. Corresponding U.S. imports from Angola were \$12.5 billion, up 6.7 percent. Angola is currently the 67th largest export market for U.S. goods.

The stock of U.S. foreign direct investment (FDI) in Angola was \$1.1 billion in 2006 (latest data available), up from \$1.0 billion in 2005.

IMPORT BARRIERS

Tariffs and Nontariff Measures

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

A new customs code was implemented in January 2007. The new code covers all customs activity, follows the guidelines of the World Customs Organization (WCO), WTO, and SADC, and represents a major step in the reform and modernization of the Angolan customs service. The code brings much needed transparency and provides a legal basis for efficient methods of customs controls in areas such as risk analysis, post-import audit, and improved technology, such as scanners. It also gives Customs control of major strategic functions such as pre-shipment inspection.

Customs duties on six categories of goods range from 2 percent on raw materials necessary for the nation's development, up to 30 percent for items such as passenger automobiles. The 2006 simple average applied tariff rate was 7.2 percent. Besides the duties themselves, additional fees associated with importing include clearing costs (2 percent), value added tax (2 percent to 30 percent depending on the good), revenue stamps (0.5 percent), port charges (\$500 per 20 foot container or \$850 per 40 foot container), and port storage fees (free for the first 15 days, then \$20 per 20 foot container or \$40 per 40 foot container per day). The customs regime for the province of Cabinda (in effect since 2004) does not apply to the petroleum industry, passenger vehicles, alcoholic beverages, tobacco, or jewelry.

Tariff obligations for the oil industry are largely determined by individually negotiated contracts between international oil companies and the Angolan government. The December 2004 Petroleum Customs Law aimed to standardize tariff and customs obligations for the petroleum industry while protecting existing oil company rights and exemptions negotiated under prior contracts. Customs officials have interpreted the law as eliminating duty exemptions on items imported by oil companies that are not directly used as equipment in oil production. Oil companies are currently disputing this interpretation.

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Customs Barriers

Angola is a member of the WCO and signed a Letter of Intent to implement the WCO Framework in October 2005. Administration of the customs service has improved in the last few years but import delays remain a barrier to economic growth. Importers commonly face ship waiting times of up to 40 days outside the Port of Luanda. Once cleared, shipping containers may be physically inaccessible because they are behind other containers.

Under Decree 41/06 (effective August 16, 2006), mandatory pre-shipment inspections apply only to the export to Angola of certain goods listed in the regulations or defined in the future by the Ministries of Finance, Agriculture, Health, Commerce, and Industry.

The importation of certain goods into Angola requires an import license issued by the Ministry of Trade. The import license is renewable annually and covers all shipments of the authorized good or category of goods imported by the licensed importer. Some goods also require additional, specific authorization from various government ministries, which can delay the customs clearance process. Goods that require special authorization include the following: pharmaceutical substances and saccharine and derived products (Ministry of Health); radios, transmitters, receivers, and other devices (Ministry of Post and Telecommunications); weapons, ammunition, fireworks, and explosives (Ministry of Interior); plants, roots, bulbs, microbial cultures, buds, fruits, seeds, and crates and other packages containing these products (Ministry of Agriculture); fiscal or postal stamps (Ministry of Post and Telecommunications); poisonous and toxic substances and drugs (Ministries of Agriculture, Industry, and Health); and samples or other goods imported to be given away (Customs).

Required customs paperwork includes the “Documento Unico” (single document) for the calculation of customs duties, proof of ownership of the good, bill of lading, commercial invoice, packing list, and specific shipment documents verifying the right to import or export the product. Any shipment of goods equal to or exceeding \$1,000 requires a clearing agent. The number of clearing agents has increased from 55 in 2006 to 162 in 2007, but competition among clearing agents has not brought down fees, which often range between 1 percent and 2 percent of declared value.

STANDARDS, TESTING, LABELING, AND CERTIFICATION

Angola has adopted SADC guidelines on biotechnology, which prohibit imports of transgenic grain or seed until regulatory systems governing biotechnology have been developed. Since 2005, Angola has required the Ministry of Agriculture to approve agricultural imports that might contain transgenic material, and importers must present documents certifying that their goods do not include transgenic products. Transgenic products can be imported for food aid, but must be milled or sterilized to render the grain incapable of germinating upon arrival in the country. Biotechnology imports for scientific research will be subject to regulations and controls to be established by the Ministry of Agriculture. Angola has only one well-equipped food testing laboratory and laboratory workers have limited technical expertise.

GOVERNMENT PROCUREMENT

Angola is not a signatory to the WTO Agreement on Government Procurement. The government may advertise tenders in local and international publications 15 days to 90 days before the tenders are due. Bidders request tender documents from the procuring ministry, department, or agency for a nonrefundable fee, and then submit their completed tenders, with a security deposit, to the procuring ministry. However,

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the tendering process often lacks transparency. Information about some government projects and tenders is not often readily available from the procuring agencies, and potential bidders must spend considerable time on research. Under the Promotion of Angolan Private Entrepreneurs Law, the government gives Angolan companies preferential treatment in tendering for goods, services, and public works contracts.

INTELLECTUAL PROPERTY RIGHTS (IPR) PROTECTION

Although Angolan law provides basic intellectual property rights protection and the National Assembly is working to strengthen existing legislation and enforcement, protection is currently weak due to a lack of enforcement capacity. The Ministry of Industry protects trademarks, patents, and designs under Law 3/92. The Ministry of Culture administers Law 4/90, protecting authorship, literary, and artistic rights.

Angola is a party to the World Intellectual Property Organization (WIPO) Convention, as well as the Paris Convention for the Protection of Industrial Property and the Patent Cooperation Treaty, which entered into force in late 2007.

INVESTMENT BARRIERS

Angola's laws and regulations neither support direct investment outside of the petroleum sector nor provide sufficient protection to foreign investors. Smaller, nonextractive firms tend to have a harder time conducting business in Angola than larger, multinational corporations engaged in extractive industries. In 2003, the Angolan government replaced the 1994 Foreign Investment Law with the Law on Private Investment (Law 11/03). The law lays out the general parameters, benefits, and obligations for foreign investment in Angola. It encourages foreign investment by providing equal treatment for domestic and foreign investors, offering fiscal and customs incentives, and simplifying the investment application process. However, it is vague on repatriation of profits and includes only weak legal safeguards to protect foreign investors. For example, several foreign construction companies abruptly lost their quarrying rights in 2007. Many provisions of the law are subordinate to other sectoral legislation, allowing other government ministries to override some of the protections and incentives offered by the investment law.

Angolan law has no provisions for international arbitration and requires that any investment dispute be resolved in Angolan courts. Angola has not ratified major international arbitration treaties. The World Bank's "Doing Business in 2008" survey estimates that commercial contract enforcement – measured by the amount of time elapsed between filing of a complaint and receipt of restitution – generally takes more than 1,000 days in Angola. A voluntary arbitration law that provides the legal framework for speedier, nonjudicial resolution of disputes has been drafted but has not yet been approved.

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

Although the new investment law is part of an overall effort by the Angolan government to create a more investor-friendly environment, many laws governing the economy have vague provisions that permit wide interpretation and inconsistent application by the government across sectors. Investments in the

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petroleum, diamond, and financial sectors continue to be governed by specific legislation. Foreign investors can set up fully-owned subsidiaries in many sectors, but frequently they are strongly encouraged, though not formally required, to take on local partners.

Obtaining the proper permits and business licenses to operate in Angola is time-consuming and adds to the cost of investment. The World Bank “Doing Business in 2008” report identified Angola as one of the five worst countries (out of 178) in terms of the time required to start a business. It takes an average of 119 days to register a business compared to a regional average of 56 days. According to the 2003 investment law, ANIP and the Council of Ministers should take no more than 2 months to approve a contract with an investor, but in practice this process normally takes considerably longer. After contract approval, the company must register and file documentation with the relevant government ministries.

The one-stop shop, or “Guiché Unico,” established in 2003, was aimed at simplifying the process of registering a company by unifying under one roof the procedures required by various government ministries. However, the “Guiché Unico” lacks authority over the government ministries that must approve licenses, permits, and other requirements, and thus has had little success in expediting company registration. Representatives of several ministries staff the Guiché, but their ministries are still learning how to coordinate their work. The two most time-consuming steps are obtaining certification from the Notary Public and publication of the company name and statutes in the *Diário da República*, the national gazette managed by the National Press. The government has brought the registration time down to 3 weeks, but the certification and publication phases take months.

The government is gradually implementing local content legislation for the petroleum sector, originally promulgated in November 2003 (Order 127/03 of the Ministry of Petroleum). The legislation will require many foreign oil services companies currently supplying the petroleum sector to form joint-venture partnerships with local companies on any new ventures. Foreign companies providing goods and services not requiring heavy capital investment and with a basic, medium, or higher level of nonspecialized expertise, may only operate as contractors to Angolan companies. They may participate only in association with Angolan companies through joint ventures if their activities require a medium level of capital investment and a higher level of expertise.

OTHER BARRIERS

Corruption

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

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

Investors have at times experienced harassment, political interference, and pressure to sell their investments or form ventures with powerful local interests. In some cases, these practices have involved

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individuals with powerful positions within the government who exert pressure directly or through the established bureaucracy. As a result, some investors have experienced significant delays in payments for government contracts and delays in obtaining the proper permits or approval of projects. In general, the Angolan government has avoided expropriation of foreign-owned assets during the last decade and has upheld contractual obligations when disputes emerged into public view.

Neglected Infrastructure

Angola's badly damaged and neglected infrastructure substantially increases the cost of doing business for investors. Poor roads, destroyed bridges, and mined secondary routes raise transportation costs. The country is in the process of rebuilding its communications, energy, transportation, and road infrastructure, but the three main railroads will not be fully restored by the end of 2007. Domestic and international communications are improving, but communication networks are oversubscribed in the provinces and sometimes in Luanda, and coverage can be spotty. Frequent interruptions plague water and power supplies, while power surges can damage electronic equipment. Increased overhead for investors includes outlays for security services, back-up electrical generators, and cisterns. Rebuilding infrastructure is a major policy objective of the Angolan government, however. In 2007 the government budgeted \$7.5 billion for restoration of public infrastructure to address these deficiencies.

ARAB LEAGUE

The impact of the Arab League boycott of commercial ties with Israel on U.S. trade and investment in the Middle East and North Africa varies from country to country. While it remains a serious barrier for U.S. firms attempting to export from Israel to some countries in the region, the boycott has virtually no effect on U.S. trade and investment in most Arab League countries. The 22 Arab League members include the Palestinian Authority and the following states: Algeria, Comoros, Djibouti, Egypt, Iraq, Jordan, Lebanon, Libya, Mauritania, Morocco, Somalia, Sudan, Syria, Tunisia, Yemen, and the Gulf Cooperation Council (GCC) countries (Bahrain, Kuwait, Oman, Qatar, Saudi Arabia, and the United Arab Emirates).

The United States has long opposed the Arab League boycott through both words and action. U.S. Government officials have repeatedly urged Arab League member states to end enforcement of the boycott. Many agencies play a role in this effort: the Department of State and the National Security Council take the lead in raising U.S. concerns with political leaders in Arab League member states. The Departments of Commerce and the Treasury, along with the United States Trade Representative, monitor boycott policies and practices of Arab League member states and, aided by U.S. embassies, attempt to lend advocacy support to firms facing boycott-related pressures from host country officials. Under U.S. antiboycott legislation enacted in 1978, U.S. firms are prohibited from responding to any request for information that is designed to determine compliance with the boycott and are required to report receipt of any such request to the U.S. Department of Commerce's Office of Antiboycott Compliance (OAC). Part of U.S. officials' efforts thus involves noting for host country officials the persistence of illegal boycott requests and those requests' impact on both U.S. firms and on the countries' ability to expand trade and investment ties with the United States.

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

While the legal structure of the boycott in the Arab League itself has remained unchanged, enforcement of the boycott remains the responsibility of individual member states, and enforcement efforts vary widely from country to country. Some member governments of the Arab League have consistently maintained that only the Arab League as a whole can revoke the boycott. Other member governments support the view that adherence to the boycott is a matter of national discretion, and a number of states have taken steps to dismantle various aspects of it. Attendance by Arab League member governments of periodic meetings of the CBO is inconsistent; the U.S. Government has indicated on numerous occasions (including prior to the most recent CBO meeting in November 2007) to Arab League members that attendance at these meetings is not conducive to improving trade and investment ties, either with the United States or within the region. A number of governments have responded that they only send representatives to CBO meetings in an observer capacity.

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

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

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

There are no specific laws on the books in Yemen regarding the boycott; however, Yemen is implementing its 1995 governmental decision to renounce observance of the secondary and tertiary aspects of the boycott. Yemen remains a participant in annual meetings of the CBO in Damascus. The government of Yemen does not have an official boycott enforcement office, though Yemen enforces the primary aspect of the boycott of goods and services produced in Israel.

Under the current Lebanese cabinet, Lebanon views the boycott as a matter of national discretion. Lebanon is enforcing the primary but not the secondary or tertiary boycotts. The cabinet has repeatedly voted not to include the CBO's suggested new items on its national list, and in fact has been discretely removing items placed on the list by prior cabinets, according to government contacts. Lebanon advised they would not participate in the 2007 CBO meeting in Damascus.

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

Bahrain does not have any restrictions on trade with U.S. companies that have relations with Israeli companies. Outdated tender documents in Bahrain have occasionally referred to the secondary and tertiary aspects of the boycott, but such instances have been remedied quickly. Bahrain's Ministry of Finance circulated a memorandum to all Bahraini Ministries in September 2005, reminding them that the secondary and tertiary boycotts are no longer in place and to remove any boycott language, including that relating to the primary boycott, from government tenders and contracts. The government of Bahrain has

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stated publicly that it recognizes the need to dismantle the primary aspect of the boycott and is taking steps to do so. In September 2005, Bahrain closed down its boycott office, the only governmental entity responsible for enforcing the boycott. The U.S. Government has received assurances from the government of Bahrain that it is committed to ending the boycott. Bahrain is fully committed to complying with WTO requirements on trade relations with other WTO Members, and Bahrain has no restrictions on U.S. companies trading with Israel or doing business in Israel, regardless of their ownership or relations with Israeli companies. Bahrain reportedly did not attend the November 2007 CBO meeting in Damascus. Israeli-labeled products are reported to be found occasionally in the Bahraini market. There are no entities present in Bahrain for the purpose of promoting trade with Israel.

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

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

In April 1996, Qatar and Israel agreed to exchange trade representation offices. The Israeli trade office opened in May 1996 and remains open. Qatar does not have any boycott laws on the books and does not enforce the Arab League boycott, although it does usually send an embassy employee to observe the CBO meetings in Damascus. According to October 2007 information, there is officially about \$2 million in trade between the two countries. Real trade, however, may be as much as four times higher (*i.e.*, up to about \$5 million) via third countries, and includes Israeli exports of agricultural goods. Some Qatari government tender documents still include outdated boycott language. This documentation can only be changed by decree from the Minister of Finance; however, U.S. engagement with the Ministry on this issue has revealed that the government is reluctant to make further changes, absent a peace agreement with Israel. Qatari policy permits the entry of Israeli business travelers who obtain a visa in advance. Such persons still sometimes encounter difficulties obtaining visas, though this can usually be resolved by the local trade office working with its contacts at a higher level.

In accordance with the 1994 GCC decision, Saudi Arabia modified its 1962 law imposing a boycott on Israel so that the secondary and tertiary boycotts were terminated and are no longer enforced in the Kingdom. In light of its accession to the WTO in 2005, the Saudi government re-issued the original directive confirming that these two aspects of the boycotts are not to be applied in Saudi Arabia. The Ministry of Commerce and Industry (MOCI) established an office to address any reports of boycott violations, and that office appears to take its responsibility in this regard seriously. The MOCI met with the Commerce Department's OAC in September 2005 and February 2006 to discuss methods for ensuring

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Saudi commercial documents and tenders are in compliance with antiboycott regulations. The OAC's list of reported boycott violations in Saudi Arabia over the last few years has decreased dramatically and the reported violations appear to reflect out-of-date language in recycled commercial and tender documents. Saudi companies have been willing to void or revise that language when they are notified of its use. Saudi Arabia is obligated to apply WTO commitments to all current members, including Israel.

In accordance with the 1994 GCC decision, the United Arab Emirates (UAE) does not implement the secondary and tertiary aspects of the boycott. The UAE has not renounced the primary boycott; however, the degree to which the government enforces the primary aspect of the boycott is unclear. U.S. firms continue to face boycott requests in the UAE as a result of administrative and bureaucratic inefficiencies. The U.S. embassy and other U.S. officials have had success in working with the UAE to resolve boycott issues. The UAE continues to take steps to eliminate prohibited boycott requests. The government has issued a series of circulars to public and private companies explaining that enforcement of the secondary and tertiary aspects of the boycott is a violation of Emirati policy. The Ministry of Economy recently sent a new letter to all entities mentioned by the United States asking them to amend relevant documents to include boycott-free language agreed to by the UAE and Department of Commerce officials. The Emirati authorities report that compliance with these requests has been high and is ongoing. The Ministry of Economy also reports it is following up the letter campaign with periodic checks of entities' compliance efforts.

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

ARGENTINA

TRADE SUMMARY

The U.S. goods trade surplus with Argentina was \$1.4 billion in 2007, an increase of \$563 million from \$797 million in 2006. U.S. goods exports in 2007 were \$5.9 billion, up 22.6 percent from the previous year. Corresponding U.S. imports from Argentina were \$4.5 billion, up 13.0 percent. Argentina is currently the 33rd largest export market for U.S. goods.

U.S. exports of private commercial services (*i.e.*, excluding military and government) to Argentina were \$2.2 billion in 2006 (latest data available), and U.S. imports were \$1.0 billion. Sales of services in Argentina by majority U.S.-owned affiliates were \$2.9 billion in 2005 (latest data available), while sales of services in the United States by majority Australia-owned firms were \$25 million.

The stock of U.S. foreign direct investment (FDI) in Argentina was \$13.1 billion in 2006 (latest data available), up from \$11.0 billion in 2005. U.S. FDI in Argentina is concentrated largely in the nonbank holding companies, manufacturing, and finance sectors.

IMPORT POLICIES

Tariffs

Argentina's import tariffs range from 0 percent to 35 percent, with an average applied tariff rate of 14 percent in 2007. Argentina is a member of MERCOSUR, a customs union formed in 1991 and comprised of Argentina, Brazil, Paraguay, and Uruguay. MERCOSUR common external tariff (CET) averages 13.6 percent and ranges from 0 percent to 20 percent *ad valorem*, with a limited number of country-specific exceptions. Currently, Argentina maintains exceptions to the CET on capital goods (for which the CET is 14 percent but for which Argentina allows duty free entry), computing and telecommunications goods and an additional diversified group of 100 products. Tariffs may be imposed by each MERCOSUR member on products imported from outside the region which transit one or more MERCOSUR member nations before reaching their final destination. Full CET product coverage, which would result in duty free movement within MERCOSUR, was originally scheduled for implementation in 2006, but has been deferred until 2009.

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

Nontariff Barriers

A number of new procedures and requirements imposed by the government of Argentina in July 2007 and August 2007 could make importing U.S. products and products from third country U.S. affiliates more difficult. Customs Resolution 52 restricts the ports-of-entry for numerous goods, including sensitive goods classified in 20 Harmonized Tariff Schedule (HTS) chapters (*e.g.* textiles, shoes, electrical machinery, metal and certain other manufactured goods, and watches). Partial limitations on ports-of-entry are applied to plastic household goods, leather cases and apparel, porcelain and ceramic tableware and ornaments, household glass goods, imitation

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jewelry, household appliances, pots and pans, computers, car parts, motorcycles and parts, bicycles and parts, lamps, and toys. The government of Argentina has listed products limited to certain ports-of-entry, and the ports-of-entry applicable to those products available at <http://www.infoleg.gov.ar/infolegInternet/anexos/130000-134999/131847/norma.htm>.

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

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

A number of U.S. companies with operations in Argentina have expressed concern that this combination of enhanced inspection, port-of-entry restrictions, reference price measures, and consularization requirements could delay and make more costly imports from their third country affiliates.

Since 2005, the government of Argentina has solicited private sector companies to negotiate and abide by sector-specific voluntary price caps aimed at limiting price increases on key components of the consumer price index (CPI), especially in the basic consumption basket. Sectors in which voluntary price accords have been negotiated include a variety of foodstuffs, personal hygiene and cleaning products, and pharmaceuticals. Gasoline and diesel fuel prices have been controlled by government pressure and government-promoted boycotts and the government has, with some exceptions, largely frozen public utility electricity, natural gas, water, and sewage taxes since 2002.

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

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

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

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

Customs Procedures

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

EXPORT POLICIES

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

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

Along with applying high export taxes, the government of Argentina requires export certificates for major commodities before an export sale can be shipped. This process has been used to control the quantity of goods exported, thereby manipulating domestic supply. Prior to the increases in export taxes in November 2007, the export registration process was closed for soybeans, corn, and wheat. Currently, registrations are open for soybeans with tighter restrictions on maximum shipment periods (150 days) than were previously allowed. Although registrations were opened for wheat in November 2007, significant crop damage prompted the government to

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re-close the registrations until late December 2007 in attempts to bolster the domestic supply. The export registration process for corn remains closed.

Export taxes on beef, as well as restrictions on beef exports, have been applied with the aim of increasing local supply and avoiding further increases in domestic beef prices. The government of Argentina suspended beef exports for 180 days beginning in March 2006, except for beef exports to the European Union under the Hilton quota program and beef exports guaranteed under bilateral agreements. Export taxes originally imposed in 2002 on boned cuts and heat-processed beef were increased from 5 percent to 15 percent. Starting in June 2006, the government began to ease the ban, establishing a cap (set by Resolutions 935 and 2104 in 2006, and 1420 in 2007) for monthly beef exports, until December 2007, of half of the monthly average of total export volumes during 2005. The limit was extended until March 31, 2008, pursuant to Resolution 24 of 2007, which also established that the government will allow exports of at least 40,000 tons per month.

Exporters may claim reimbursement for some domestically paid taxes, including value added tax (VAT) reimbursements. The average non-VAT export reimbursement rate is 5.2 percent of export value. The government eliminated some non-VAT reimbursements for food products (including milk and dairy products, and vegetable oils) in 2005 to influence domestic prices of those goods, and reinstated some in 2006.

STANDARDS, TESTING, LABELING, AND CERTIFICATION

The government of Argentina banned import of all products of ruminant origin, including beef and lamb, from the United States after a case of Bovine Spongiform Encephalopathy (BSE) was discovered in Washington State in December 2003. The government of Argentina continues to ban imports of all beef and beef products from animals of all ages from the United States. World Organization for Animal Health (OIE) guidelines provide for scientifically-based conditions under which all beef and beef products from animals of any age can be safely traded. In May 2007, the OIE classified the United States as controlled risk for BSE. Argentina has not made any changes to bring its import requirements for beef and beef products from the United States since December 2003. The United States continues to engage with the relevant Argentine government agencies on the issue. The United States continues to engage with the relevant Argentine government agencies to open its market for all beef and beef products from the United States on the basis of the OIE guidelines and the OIE's classification of the United States as controlled risk for BSE. In August 2006, Argentina issued Resolution 315, in which it adopted OIE-consistent import requirements with regard to BSE for dairy products, bovine semen and embryos, hides and skins, and other similar products. Under OIE guidelines all these products are considered safe to trade from any country regardless of its BSE risk status.

Although Argentina accepts imports of some poultry products, including day-old chicks, Argentina continues to delay issuance of health certificates that would allow the resumption of imports of poultry meat and products from the United States. Argentina has banned imports of U.S. poultry products since 2002 as a result of an outbreak of Exotic Newcastle Disease.

In 2002, Resolution 816 established a framework for all agricultural product imports overseen by the Argentine Animal and Plant Inspection and Food Safety Agency (SENASA). This resolution authorizes SENASA to inspect those processing/packing plants that intend to export to Argentina. In 2006 and 2007, SENASA requested several plant inspections prior to issuance of

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import permits. The United States is currently seeking SENASA recognition of equivalency for the U.S system, rather than undergoing plant-by-plant inspections.

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

Regulations that require product testing can be cumbersome and costly for small and medium-sized U.S. companies. Argentina's certificate of origin regulations require separate certificates for each of the countries involved in manufacturing the various components of a final product.

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

INTELLECTUAL PROPERTY RIGHTS (IPR) PROTECTION

Argentina's lack of adequate and effective intellectual property protection remains a concern for the United States. Argentina has been on the Special 301 Priority Watch List since 1996. Although cooperation has improved between Argentina's enforcement authorities and the U.S. copyright industry, and the Argentine Customs authority has taken steps to improve enforcement, the United States encourages stronger IPR enforcement actions to combat the widespread availability of pirated and counterfeit products. Civil damages are nondeterrent and in criminal cases the judiciary is reluctant to impose deterrent penalties, such as prison sentences.

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

Inadequate border controls further contribute to the regional circulation of pirated goods. Law 25986, passed in December 2004, prohibits the import or export of merchandise which violates intellectual property rights. However, Argentine customs authorities are still unable to detain merchandise based on the presumption of a violation, as regulations to implement this law have never been issued. In March 2007, the Executive branch proposed a modification to Law 25986 which would limit such intervention to copyrights and trademarks. This proposal has been

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approved by some congressional committees, but has not yet been considered by either full chamber of Congress.

Patents

The National Intellectual Property Institute (INPI) started to grant pharmaceutical patents in October 2000. Although issuance of pharmaceutical patents has been slow since that time, INPI took a number of steps to reduce the backlog, including the implementation in 2005 of fast-track procedures and opportunities in 2005 and 2007 for companies to prioritize their patent applications before INPI. The United States remains concerned about the lack of protection for the safety and efficacy data developed by pharmaceutical companies and required to be submitted to ANMAT (the Argentine equivalent of the U.S. Food and Drug Administration) for the approval of pharmaceutical products. Argentina amended its patent law in December 2003, as required by a May 2002 agreement between Argentina and the United States. The intention of the amendment was to provide protections for process patents and to ensure that preliminary injunctions were available in intellectual property court proceedings. However, the injunctive relief process has thus far been too slow to be an effective deterrent to patent.

Copyrights

Argentina's copyright laws generally provide good protection, but copyright piracy remains a significant problem. Argentina ratified the World Intellectual Property Organization (WIPO) Copyright Treaty and the WIPO Performances and Phonograms Treaty in 1999, though some implementation issues remain. The government has yet to fully comply with an agreement with the U.S. private sector to eliminate unlicensed software used in government offices.

Enforcement of copyrights on recorded music, videos, books and computer software remains inconsistent. The International Intellectual Property Alliance estimates that the trade losses in 2007 were \$310.7 million, an increase from \$268 million in 2006.

Biotechnology

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

SERVICES BARRIERS

Argentina enacted broad liberalization in the services sector as part of its economic reform program in the 1990s, but some barriers still exist. In addition, restrictions regarding the showing, printing and dubbing of films add cost to U.S. exports, as does the practice of charging *ad valorem* customs duties on U.S. exports based on the estimated value of the copyrights in Argentina rather than solely on the value of the physical materials being imported, which is the

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WTO standard. In practice, companies temporarily import one copy of a film and produce multiples copies locally, which they claim increases the cost of exporting movies to Argentina.

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

Insurance

In general, commercial presence of foreign insurance firms is permitted under the same conditions required for local firms. Law 20091, however, establishes that the branches or agencies of foreign insurance firms will be authorized to perform insurance activities in Argentina only if there is reciprocity in the respective countries' laws. Argentine residents cannot acquire life, medical, or patrimony insurance abroad and foreign suppliers cannot publicize their services within Argentina.

There is also a restriction on foreign insurance firms insuring goods owned or used by the national, provincial, or municipal governments, independent agencies, and people or firms that were granted concessions. The insurance for such goods has to be engaged with local firms.

GOVERNMENT PROCUREMENT

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

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

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

INVESTMENT BARRIERS

Brazil and Argentina's common automotive policy (Bilateral Automobile Pact), introduced in 2002 and modified in 2004 and 2006, significantly restricts bilateral trade in automobiles and automotive parts (Brazil may export tariff-free to Argentina up to \$195 of automotive products for every \$100 of the same it imports from Argentina). There is substantial U.S. investment in automobile manufacturing in Argentina, as well as significant imports of cars by U.S. companies from their U.S. affiliates in Brazil. These U.S. firms have optimized their regional production, in some cases through substantial investment in new Argentine production facilities, in line with evolving Bilateral Automobile Pact restrictions.

FOREIGN TRADE BARRIERS

Exchange and Capital Controls

Hard currency export earnings, both from goods and services, must be cleared in the local foreign exchange market, with some exceptions. Time limits to fulfill this obligation range from approximately 180 days to 480 days for goods (depending on the goods involved) and 135 working days for services. For certain capital goods and situations where Argentine exports receive long-term financing not exceeding 6 years, Argentina exporters face more liberal time limits. The maximum foreign exchange clearance allowed for hydrocarbons exports is 30 percent of total revenues. There is no maximum for exports of certain minerals, re-exports of some temporary imports, and exports to Argentine foreign trade zones. Foreign currency earned through exports may be used for some foreign debt payments.

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

The Ministry of Economy implemented Decree 616 through resolutions in 2005 and 2006 which imposed more restrictive controls on the following classes of inbound investments: inflows of foreign funds from private sector debt (excluding foreign trade and initial stock and bond issues); inflows for most fiduciary funds; inflows of nonresident funds that are destined for the holding of Argentine pesos or the purchase of private sector financial instruments (excluding foreign direct investment and the primary issuance of stocks and bonds); and investments in public sector securities purchased in the secondary market. These inflows are subject to three restrictions: (a) they may not be transferred out of the country for 365 days after their entry; (b) proceeds from foreign exchange transactions involving these investments must be paid into an account in the local financial system; and (c) 30 percent of the amount of such transactions must be deposited in a local financial entity for 365 days in an account that must be denominated in dollars and pay no interest. As of September 2006, a deposit is not required for capital inflows aimed to finance energy infrastructure works. Violations are subject to criminal prosecution. In October 2007, the Central Bank introduced new control measures, banning all foreign entities from participating in Central Bank initial public offerings; however, foreign firms may still trade Central Bank debt instruments on the secondary market.

Bilateral Investment Treaty

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

ELECTRONIC COMMERCE

Argentina has a legal framework for digital signatures. The Digital Signature Law 25506 of 2001 was implemented by Presidential Decrees 2628 of 2002 and 724 of June 2006. Argentina has accepted digital signatures since early 2004, but requires that they are verified by a certified licensor. According to the U.S. private sector, this has facilitated transactions and its use has increased rapidly.

Since 2006, Decree 724 has allowed the Argentina government agencies to act as certified licensors and to issue certificates for government officials or private individuals, establishing conditions for use of digital signatures between public organizations and the community. The Decree also eliminated the requirement that each entity with the authority to certify digital signatures be backed by liability insurance. Argentina does not allow the use of electronically produced air waybills, limiting their ability to speed up customs processing and the growth of electronic commerce transactions.

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

FOREIGN TRADE BARRIERS

AUSTRALIA

TRADE SUMMARY

The U.S. goods trade surplus with Australia was \$10.6 billion in 2007, an increase of \$1.0 billion from \$9.6 billion in 2006. U.S. goods exports in 2007 were \$19.2 billion, up 8.0 percent from the previous year. Corresponding U.S. imports from Australia were \$8.6 billion, up 5.0 percent. Australia is currently the 15th largest export market for U.S. goods.

U.S. exports of private commercial services (*i.e.*, excluding military and government) to Australia were \$9.1 billion in 2006 (latest data available), and U.S. imports were \$4.8 billion. Sales of services in Australia by majority U.S.-owned affiliates were \$18.7 billion in 2005 (latest data available), while sales of services in the United States by majority Australia-owned firms were \$4.9 billion.

The stock of U.S. foreign direct investment (FDI) in Australia was \$122.6 billion in 2006 (latest data available), up from \$115.6 billion in 2005. U.S. FDI in Australia is concentrated largely in the nonbank holding companies, manufacturing, mining, and finance sectors.

FREE TRADE AGREEMENT (FTA)

The United States and Australia concluded a free trade agreement (FTA) in May 2004, which entered into force on January 1, 2005. Since then, the U.S. and Australian governments have met annually to address issues that have arisen under the FTA. Since the FTA entered into force, trade in goods and services as well as foreign direct investment have continued to expand.

In addition to an FTA with the United States, Australia has a long standing Closer Economic Relations Agreement with New Zealand, FTAs with Thailand and Singapore, and is currently negotiating FTAs with Japan, China, Malaysia, the Association of South East Asian Nations (ASEAN) (along with New Zealand), and the Gulf States. Australia has expressed interest in pursuing FTAs with Mexico and Korea.

IMPORT POLICIES

Tariffs

Under the FTA, more than 99 percent of U.S. exports of manufactured goods and 100 percent of U.S. food and agricultural exports to Australia are now duty free. The Parties will also eliminate tariffs in the automotive sector in 2009 and within the next 7 years on textiles. Several working groups have been established under the FTA to facilitate further liberalization of services trade.

STANDARDS, TESTING, LABELING, AND CERTIFICATION

Sanitary and Phytosanitary Measures (SPS)

The Australian government maintains a regime for the application of SPS measures that effectively bans or severely restricts imports of many agricultural products. However, in the FTA the Parties created a new mechanism for scientific cooperation between U.S. and Australian SPS authorities in an effort to resolve specific bilateral animal and plant health issues. This mechanism facilitates cooperation at the earliest appropriate point in each country's regulatory process where it affects trade between the two countries.

FOREIGN TRADE BARRIERS

Biotechnology

Australia has a substantial risk assessment-based regulatory framework for dealings with biotechnology. Foods derived by the use of biotechnology must be assessed, determined to be safe, and be approved before being sold for human consumption. Imported foods using biotechnology can be offered for sale in Australia only after being assessed by the Food Standards Australia New Zealand (FSANZ) and being listed in the Food Standards Code. All foods with biotechnology content of over 1 percent must receive prior approval and be labeled. Meeting these biotechnology food labeling requirements can be onerous for manufacturers and others in the supply chain, particularly for processed food, which accounts for a large share of U.S. agricultural exports.

While the Australian federal government is supportive of biotechnology, a number of states have invoked moratoria on biotechnology plantings, which is slowing the commercialization and adoption of the technology in Australia. In November 2007, Victoria and New South Wales announced they would not renew their moratoria and all other moratoria are up for review in 2008.

To date, biotechnology cotton, carnations, and canola varieties are the only agricultural crops approved for commercial release into the environment. For genetically modified crops that have not received regulatory approval in Australia, U.S. export opportunities are restricted. For the United States, the commercial impact of this constraint is most pronounced for feed grain, *e.g.*, whole corn and soybeans.

GOVERNMENT PROCUREMENT

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

INTELLECTUAL PROPERTY RIGHTS (IPR) PROTECTION

Australia is a member of the World Intellectual Property Organization (WIPO) and is a party to most multilateral IPR agreements, including: the Paris Convention for the Protection of Industrial Property; the Berne Convention for the Protection of Literary and Artistic Works; the Universal Copyright Convention; the Rome Convention for the Protection of Performers, Producers of Phonograms, and Broadcasting Organizations; and the Patent Cooperation Treaty. Consistent with its FTA obligation, Australia became a party to the 1996 WIPO Copyright Treaty and Performances and Phonograms Treaty in July 2007.

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

The Australian government continues to prohibit the parallel importation of legitimate copies of films, but an estimated 20 percent of the digital video discs (DVDs) in Australia are illegal parallel imports. Locally

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replicated recordable DVDs (DVD-Rs), videocassettes copied from video compact discs (VCDs) and DVDs, illegally parallel-imported DVDs, and pirated VCDs continue to be the major challenge to Australia's otherwise low rate of piracy of audio-visual materials. Pirate DVDs imported from Asia also are an emerging problem.

As a result of commitments it made in the FTA, Australia now provides copyright protection for the life of the author plus 70 years (where the term of protection is measured by a person's life), or 70 years (where the term of protection is not measured by a person's life, *i.e.*, for corporate works). It also clarified that the right to reproduce literary and artistic works, recordings, and performances encompasses temporary copies, an important principle in the digital realm. Australia also is implementing its FTA commitments regarding the liability of Internet service providers in connection with copyright infringements that take place over their networks.

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

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

SERVICES BARRIERS

Telecommunications

The Australian government is now a minority shareholder in Telstra with a 17 percent share, helping reduce concerns about the government's conflicting roles as both regulator and owner of the dominant operator. However, Australia has not addressed continuing concerns about foreign equity limits in Telstra, which remain capped at 35 percent. U.S. industry remains concerned about the ability of Telstra to abuse its monopoly power and its aggressive use of litigation to delay regulatory outcomes. Alleged abuses include delays in making an acceptable public offer for access to its network and inflated pricing of wholesale services such as leased lines and interconnection with both its fixed and mobile network. Up to 40 disputes with competitors over access to Telstra's network are reportedly subject to ongoing regulatory or judicial proceedings. In 2006, the Australian government rejected a proposal by Telstra to significantly raise certain network access rates, but final decisions on such rates and the access Telstra will provide when it introduces its "Next Generation Network" over the next 3 years to 5 years remain to be resolved. The United States will continue monitoring developments to ensure that Telstra's

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introduction of a new network architecture does not undermine the ability of competitors to obtain reasonable access to services and customers where Telstra is dominant.

Audiovisual Trade Barriers

The Australian Communications and Media Authority Content Standards require that 55 percent of all free-to-air television programming broadcast between 6:00 A.M. and midnight be of Australian origin with specific minimum annual sub-quotas for Australian (adult) drama, documentary, and children's programs. Also, at least 80 percent of total commercial television advertising during that same period must be Australian produced. Australia's Broadcasting Services Amendment Act requires pay television channels with significant drama programming to spend 10 percent (with flexibility, under certain circumstances to increase this up to 20 percent allowed under the FTA) of their programming budget on new Australian drama programs. Australian radio industry quotas require that up to 25 percent of all music broadcast between 6:00 A.M. and midnight be "predominantly" Australian in origin/performance. The FTA allowed existing restrictions to remain, but limits or prohibits their extension to other media or means of transmission. In September 2007, the Australian government reduced local (as opposed to "Australian") content requirements for rural radio stations from 4.5 hours per day to 3; for license areas with populations under 30,000, the requirement is 30 minutes.

Media

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

INVESTMENT BARRIERS

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

OTHER BARRIERS

Agriculture

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

FOREIGN TRADE BARRIERS

poultry meat. In December 2007 the government of New Zealand requested the establishment of a WTO dispute panel to review Australia's import conditions for New Zealand apples. Many of the same issues raised in the New Zealand complaint will apply to the outstanding U.S. request to Australia for access of Pacific Northwest apples. In October 2007, the Australian government self-initiated a global safeguard investigation on imports of frozen pork meat. An accelerated report issued in December 2007 by Australia's safeguards authority found no basis to apply provisional safeguard measures, given its preliminary findings that there was no clear evidence that increased imports have caused or are threatening to cause serious injury to the domestic industry, and that factors other than increased imports appear to be more important causes of any such injury. A final report is expected in spring 2008.

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

Commodity Boards and Agricultural Support

While Australian government intervention in the agricultural production sector is limited, wheat is exported through statutory marketing arrangements. The Australian Wheat Board (AWB) currently holds the monopoly export rights for all bulk wheat exported from Australia. In January 2006, the Cole inquiry, set up by the Australian government, began hearings on allegations of improprieties by AWB in connection with the U.N. Oil-For-Food Program. The final report of the Cole inquiry was made public in November 2006 and concluded that some AWB officials were aware of inappropriate payments. In response, in June 2007, Parliament passed the Wheat Marketing Amendment Bill implementing the changes to Australia's wheat marketing that were announced by then Prime Minister Howard in May 2007. AWB International (AWB (I)) will manage and export the 2007/08 wheat crop. Growers have until March 1, 2008 to establish a new entity to manage the single desk. If growers are unable to meet this deadline, the government of Australia will propose other wheat marketing arrangements that could include deregulation. The Agriculture Minister's veto over bulk exports has been extended until June 30, 2008. The Wheat Export Authority's (WEA) consent for exports of bagged and containerized wheat is no longer required. The U.S. Government will continue to closely monitor this issue.

Textile Clothing and Footwear (TCF) Sector Support

The Australian government provides assistance to the TCF industry through tariff protection as well as significant budgetary assistance. In 2005 under terms of the 2004 Customs Tariff Amendment (Textile, Clothing and Footwear post-2005 Arrangements) Act, TCF tariffs were reduced from 25 percent to 17.5 percent on imports of clothing, and certain other finished textiles goods; from 15 percent to 10 percent on imports of cotton sheeting, fabrics, footwear, and carpet; and from 10 percent to 7.5 percent on imports of sleeping bags, table linen, and footwear parts. TCF tariffs are scheduled to remain at their new rates until 2010 when they will be reduced to 5 percent until 2015. For apparel and certain finished textile goods, the tariff will be reduced to 10 percent in 2010, and then to 5 percent in 2015.

Automotive Sector Support

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

Pharmaceuticals

The FTA includes commitments on transparency and addresses regulatory concerns in addition to establishing an independent review process for innovative medicines. The Parties also established a Medicines Working Group that has helped facilitate a constructive dialogue between the United States and Australia on health policy issues.

In November 2006, the Australian government announced a major reform to the pricing of pharmaceutical products listed on its Pharmaceutical Benefits Scheme (PBS), its national drug formulary. Under the plan, beginning August 1, 2007, different pricing arrangements apply to drugs for which there is only a single brand listed and those for which there are multiple brands. Over time the Australian government intends to move to a system of price disclosure where the actual price at which the medicine is being sold will become the price the government pays.

Blood Plasma Products and Fractionation

Foreign companies face substantial barriers to the provision of blood plasma products in the Australian market. While foreign blood products may be approved for sale in Australia, the monopoly contract granted by the Australian government to an Australian company makes it virtually impossible for foreign firms to sell their products in Australia except to fill shortages or provide products not otherwise available in Australia. In late 2006, Australia completed a review, required under the FTA, of its arrangements for the supply of blood fractionation services. The United States raised concerns about whether the review's recommendation that Australia not pursue overseas fractionation of blood plasma products adequately considered the significant potential cost savings from introducing competition in the provision of blood fractionation services. Although the Australian government recommended that states adopt the tendering process prescribed in the Government Procurement chapter of the FTA, state health ministers, in March 2007, decided to keep the current monopoly arrangement.

BAHRAIN

TRADE SUMMARY

The U.S. goods trade deficit with Bahrain was \$35 million in 2007, a decrease of \$123 million from \$158 million in 2006. U.S. exports in 2007 were \$591 million, up 24.6 percent from the previous year. U.S. imports from Bahrain were \$626 million, down 1.0 percent over the corresponding period. Bahrain is currently the 86th largest export market for U.S. goods.

The stock of U.S. foreign direct investment in Bahrain was \$107 million in 2006 (latest data available), down from \$179 million in 2005.

IMPORT POLICIES

Upon entry into force of the United States-Bahrain Free Trade Agreement (FTA) in August 2006, 100 percent of bilateral trade in consumer and industrial products became duty free immediately. Bahrain will phase out tariffs on the remaining handful of agricultural product lines within 9 years from 2006. Textiles and apparel trade is duty free, promoting new opportunities for U.S. and Bahraini fiber, yarn, fabric and apparel manufacturing. Generally, to benefit from preferential tariffs under the FTA, textiles and apparel must be made from either U.S. or Bahraini yarn and fabric. The FTA provides a temporary transitional allowance for textiles and apparel that do not meet these requirements in order to assist U.S. and Bahraini producers in developing and expanding business contacts.

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

STANDARDS, TESTING, LABELING, AND CERTIFICATION

Standards

As part of the GCC Customs Union, the six Member States are working toward unifying their standards and conformity assessment systems. However, each Member State currently continues to apply either its own standard or a GCC standard, causing confusion among some U.S. businesses. GCC Member States do not consistently notify measures to WTO Members or the WTO Committees on Sanitary and Phytosanitary Measures (SPS) and Technical Barriers to Trade (TBT) or allow WTO Members an opportunity to provide comments.

The GCC Standards Committee has recently approved two new standards that will replace existing standards for the labeling and expiration periods of food products. While the new standards appear to attempt to incorporate international guidelines and address some longstanding issues, particularly in relation to expiration periods, some requirements that have previously complicated the import process remain. All Member States are expected to adopt these two standards as national standards in order to implement them.

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The GCC shelf life standard establishes mandatory expiration periods for 22 perishable products or product categories such as chilled meats, chilled offal, fresh dairy products, baby foods, fruit juices, and table eggs. This standard also establishes voluntary expiration periods for a range of frozen and processed products. Manufacturers have the option of using the actual expiry period in lieu of the voluntary expiration periods established in the standard. The standard also exempts a number of products from expiration periods including salt, white sugar, dried legumes, dried vegetables, spices and certain condiments, tea, rice, vinegar, and fresh fruits and vegetables, including potatoes that have not been peeled or cut.

The new standards eliminate the long standing requirement that at least one-half of a product's shelf life be valid when a product reaches the port of entry. However, they would still require both a production date and an expiration date on nonperishable food items, forcing U.S. producers to re-label products exported to the GCC, thereby leading to increased costs. The new standards appear inconsistent with international standards (*e.g.*, the standards do not appear to reflect Codex guidelines) and do not appear to have a clear scientific basis. The United States has outlined its specific concerns with these standards and has established a dialogue between U.S. and GCC technical experts to discuss a possible resolution of the concerns raised.

In May and October 2007, respectively, Bahrain and Oman notified WTO Members of recently proposed procedures meant to harmonize food safety import requirements for all GCC Member States. The United States and other WTO Members provided comments outlining significant concerns with the procedures, which, as currently drafted, create unnecessary obstacles to trade and would substantially disrupt food exports to GCC Member States from its trading partners. The GCC Member States are reportedly developing a response to these comments, and the United States has established a dialogue between U.S. and GCC technical experts to discuss the procedures and potential amendments to address the concerns raised.

Bahrain generally follows international or GCC standards, and the development of standards in Bahrain is based on the following principles: (a) no unique Bahraini standard is to be developed if there is an identical draft GCC standard in the process of being developed; and (b) developing new Bahraini standards must not create trade barriers. The total number of GCC standards adopted as Bahraini standards currently stands at 1,020. Bahrain mandates compliance with 320 of those standards, whereas the rest remain voluntary. There are also approximately 434 draft GCC standards under development, including a revised vehicle identification number location requirement that has elicited concern from at least one U.S. manufacturer; the Bahraini Ministry of Industry and Commerce has been responsive and has pledged to carefully weigh these concerns.

Conformity Assessment

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

FOREIGN TRADE BARRIERS

GOVERNMENT PROCUREMENT

The Tender Board plays an important role in ensuring a transparent bidding process, which the Government of Bahrain recognizes as vital to attracting foreign investment. The Tender Board awarded tenders worth \$694 million in 2006, an increase of 24 percent over 2005. The FTA requires procuring entities in Bahrain to conduct procurements covered by the FTA in a fair, transparent, and nondiscriminatory manner.

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

INTELLECTUAL PROPERTY RIGHTS (IPR) PROTECTION

In the FTA, Bahrain commits to provide strong IPR protection and enforcement. Bahrain has launched public awareness campaigns to equate IP piracy with theft and to combat television satellite cable piracy.

In order to implement its FTA obligations, Bahrain passed several key pieces of IPR legislation. These laws improve protection and enforcement in the areas of copyrights, trademarks, and patents. Implementing regulations supporting these laws have also been enacted. Bahrain joined the World Intellectual Property Organization (WIPO) Copyright Treaty and the WIPO Performances and Phonograms Treaty in December 2005.

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

INVESTMENT BARRIERS

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

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

In 2006, the Cabinet passed an edict opening ownership of "free hold" properties now being constructed throughout the Kingdom. The edict was specific that all nationalities may own commercial or investment (though not residential) properties.

FOREIGN TRADE BARRIERS

In an attempt to streamline licensing and approval procedures, the Ministry of Commerce opened the Bahrain Investors Center (BIC) in October 2004 for both local and foreign companies seeking to register in Bahrain. According to Ministry of Commerce officials, 80 percent of all licenses can be processed and verified within approximately 24 hours, an additional 10 percent within 5 working days, and the remaining 10 percent, involved in environmental, power, health and other important utilities, and services, are processed separately and issued on a case-by-case basis.

BOLIVIA

TRADE SUMMARY

The U.S. goods trade deficit with Bolivia was \$85 million in 2007, a decrease of \$62 million from \$147 million in 2006. U.S. goods exports in 2007 were \$278 million, up 29.0 percent from the previous year. Corresponding U.S. imports from Bolivia were \$363 million, up 0.1 percent. Bolivia is currently the 106th largest export market for U.S. goods.

The stock of U.S. foreign direct investment in Bolivia was \$172 million in 2006 (latest data available), down from \$218 million in 2005.

IMPORT POLICIES

Tariffs

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

Nontariff Measures

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

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

STANDARDS, TESTING, LABELING, AND CERTIFICATION

Bolivia's National Animal and Plant Health and Food Safety Service (Servicio Nacional de Sanidad Agropecuaria e Inocuidad/SENASAG) appears to apply some standards differently to third countries than to fellow Andean Community members. Bolivia continues to ban U.S. beef and beef products through Bovine Spongiform Encephalopathy (BSE) related restrictions, despite the fact that in May 2007, the World Organization for Animal Health (OIE) classified the United States as a controlled risk country for BSE. This classification clarifies that U.S. beef and beef products are safe to trade, provided that the appropriate specified risk materials are removed.

GOVERNMENT PROCUREMENT

Government expenditures account for a significant portion of Bolivia's GDP. The central government, sub-central governments (state and municipal levels), and other public entities

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remain important buyers of machinery, equipment, materials, and other goods and services. In an effort to encourage local production, the Bolivian government changed its procurement and contracting of service rules in July 2007 (Supreme Decree 2729190, dated July 11, 2007). Government procurements under \$1 million in value must be awarded to Bolivian producers, except for material and services that are not produced in Bolivia. Importers of foreign goods can participate in these procurements only when locally manufactured products and service providers are unavailable or when the Bolivian government fails to award a contract to a domestic supplier. The government can call for international bids.

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

INTELLECTUAL PROPERTY RIGHTS (IPR) PROTECTION

In 1999, the Bolivian government established the National Intellectual Property Rights Service (SENAPI) to oversee IPR issues. The organization initiated a USAID supported restructuring process in early 2003, but that process was not completed. The current head of SENAPI, appointed by President Evo Morales, has declared a “revolution” in SENAPI, and currently the office seems to be focused on the registration of traditional knowledge.

The 1992 Copyright Law recognizes copyright infringement as a public offense and the 2001 Bolivian Criminal Procedures Code provides for the criminal prosecution of IPR violations. However, IPR protection remains insufficient and ineffective. Despite the prosecution of a criminal case in 2003, enforcement efforts are sporadic and largely ineffective. As a result, Bolivia remains on the U.S. Trade Representative’s Special 301 Watch List. Video, music, and software piracy rates are among the highest in Latin America.

Patents and Trademarks

Supreme Decree number 29004, issued in January 2007, establishes a “Prior Announcement” requirement for pharmaceutical patents to allow the government, with the input of various interest groups, to determine whether a pharmaceutical patent would “interfere with the right to health and access to medicines.” This additional step in the patent process increases delays, raises questions of confidentiality of proprietary information, and adds an unclear “social good” element to the patent process.

Enforcement

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

INVESTMENT BARRIERS

The 1990 Investment Law opened Bolivia’s economy to foreign investment. The Investment law provides for equal treatment of foreign firms and guarantees the unimpeded repatriation of

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profits, the free convertibility of currency, and the right to international arbitration in all sectors. In-kind transfers are not allowed. Companies must follow the Bolivian commercial code to close down operations and repatriate their capital. The Bolivian government is still discussing a bankruptcy law and modification to its commercial code.

In the mid-1990s, the Bolivian government implemented its “capitalization” (privatization) program. The program differed from traditional privatizations in that the funds committed by foreign investors: (a) could only be used to acquire a 50 percent maximum equity share in former state owned companies; and (b) were directed to the company’s investments.

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

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

In May 2005, the Government of Bolivia adopted Hydrocarbons Law 3058, which required investors to convert to new contracts (production sharing contracts) within 180 days, imposed an additional 32 percent tax on production, and required producers to relinquish all hydrocarbons to the state, losing ownership of production at the wellhead and greatly reducing the value of company assets. Companies are no longer free to commercialize their own products. Instead, they must sell all hydrocarbons through YPFB, which charges a service fee. Companies must satisfy the domestic market before exporting, and they must contend with artificially low domestic prices set by the Bolivian hydrocarbons regulator.

On May 1, 2006, the administration of President Evo Morales enacted another Supreme Decree (SD 28701) under which petroleum companies had to pay an additional temporary 32 percent tax on over production. This new charge was rescinded following the signing of new contracts, but companies complain that they are also being forced to sell natural gas and crude locally at below-market prices, with the companies absorbing losses. Moreover, as of February 2008, the state of disorganization and lack of institutional capacity at YPFB is significantly hindering the ability of production companies to realize additional investments.

Outside the hydrocarbons sector, foreign investors face few legal restrictions, although a possible change to the mining code could require all companies to enter into joint ventures with the state mining company, COMIBOL.

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BRAZIL

TRADE SUMMARY

The U.S. goods trade deficit with Brazil was \$1.0 billion in 2007, a decrease of \$6.1 billion from \$7.1 billion in 2006. U.S. goods exports in 2007 were \$24.6 billion, up 28.1 percent from the previous year. Corresponding U.S. imports from Brazil were \$25.6 billion, down 2.8 percent. Brazil is currently the 13th largest export market for U.S. goods.

U.S. exports of private commercial services (*i.e.*, excluding military and government) to Brazil were \$7.6 billion in 2006 (latest data available), and U.S. imports were \$2.8 billion. Sales of services in Brazil by majority U.S.-owned affiliates were \$10.7 billion in 2005 (latest data available), while sales of services in the United States by majority Brazil-owned firms were \$540 million.

The stock of U.S. foreign direct investment (FDI) in Brazil was \$32.6 billion in 2006 (latest data available), up from \$29.6 billion in 2005. U.S. FDI in Brazil is concentrated largely in the manufacturing, nonbank holding companies, finance, mining, and banking sectors.

IMPORT POLICIES

Tariffs

Brazil's import tariffs range from 0 percent to 35 percent, with an average applied tariff rate of 11.46 percent in 2007. Brazil is a member of MERCOSUR, a customs union formed in 1991 and comprised of Argentina, Brazil, Paraguay, and Uruguay. MERCOSUR's common external tariff (CET) averages 13.6 percent and ranges from 0 percent to 20 percent *ad valorem*, with a limited number of country specific exceptions. Currently, Brazil maintains 100 exceptions to the CET. Tariffs may be imposed by each MERCOSUR member on products imported from outside the region which transit at least one MERCOSUR member before reaching their final destination. Full CET product coverage, which would result in duty free movement within MERCOSUR, was originally scheduled for implementation in 2006, but has been deferred until 2009.

Nontariff Barriers

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

Brazil has one safeguard measure in place against grated coconut. A number of imports are prohibited, including foreign blood products and all used consumer goods such as machinery, automobiles, clothing, refurbished medical equipment, and tires. A 25 percent merchant marine tax on long distance freight at Brazilian ports puts U.S. agricultural products at a competitive disadvantage to MERCOSUR products. Brazil applies a 60 percent flat import tax on most manufactured retail goods imported via mail and express shipment by individuals that go through a simplified customs clearance procedure called RTS (simplified tax regime). Goods with a value of over \$3,000 cannot be imported using this regime.

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Import Licensing/Customs Valuation

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

U.S. companies continue to complain of onerous and burdensome documentation requirements, which are required before certain types of goods can enter Brazil - even on a temporary basis. For example, the Ministry of Health's regulatory agency, ANVISA, must approve product registrations for imported pharmaceuticals, medical devices, health and fitness equipment, cosmetics, and processed food products. Currently, the registration process at ANVISA takes about 3 months to 6 months for new versions of existing products, but can take over 6 months to register products new to the market. Registration of pharmaceutical products can take over 1 year, since ANVISA requires that a full battery of clinical testing be performed in Brazil, regardless of whether or not the drug already has FDA approval.

ANVISA implemented a regulation late in 2007 (Regulation 185) to comply with federal legislation (Law 10742 of 2003). This regulation requires companies to submit economic information (some of it proprietary) including projected worldwide pricing intentions, in order to register medical devices. Attempts by industry representatives to challenge this new requirement have been unsuccessful thus far, and no new devices have been registered since it was established. Implementation of such import measures not only delays entry of state-of-the-art U.S. pharmaceutical and medical products into the Brazilian market; it also renders it impossible for U.S. companies to demonstrate new-to-market goods at industry trade shows.

The United States has raised a concern with Brazil that the state of Rio de Janeiro administers the ICMS tax (a value added tax collected by individual states) in a way that provides a preferential tax advantage to a Brazilian soda ash supplier located within the state.

STANDARDS, TESTING, LABELING, AND CERTIFICATION

Sanitary and Phytosanitary Measures

While some progress has been made in the area of sanitary and phytosanitary measures, significant issues remain that restrict U.S. agricultural and food exports. For example, due to concerns about Bovine Spongiform Encephalopathy (BSE), Brazil restricts U.S. beef imports despite World Organization for Animal Health (OIE) guidelines which specify that trade in all U.S. beef and beef products, with the exception of certain specified risk materials (SRMs), is safe. Brazil continues to prohibit the import of poultry and poultry products from the United States. Scientific justifications for these restrictions have

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not been provided. Brazil's ban on wheat from the States of Washington, Oregon, Idaho, California, Nevada, and Arizona due to phytosanitary concerns remains in place. The ban continues to adversely affect U.S. agricultural exports.

Biotechnology

Law 11460 on March 21, 2007, amended several provisions of Brazil's first Biosafety Bill (Law 11105 of 2005). These amendments were intended to smooth the approval process for biotechnology products in Brazil. However, despite changes made in the procedures of the National Technical Commission on Biosafety (CTNBio) to approve individual biotechnology products (from requiring a two thirds vote to a simple majority), nearly all new approvals are subject to court injunctions. The requests for such injunctions are filed by anti-biotechnology groups inside and outside the government to stop approval of individual biotechnology products.

GOVERNMENT PROCUREMENT

Law 8666 of 1993, which covers most government procurement other than informatics and telecommunications, requires nondiscriminatory treatment of all bidders regardless of the origin of the product or service. However, the Law's implementing regulations allow consideration of nonprice factors, giving preferences to certain goods produced in Brazil and stipulating local content requirements for eligibility for fiscal benefits. Decree 1070 of 1994, which regulates the procurement of information technology goods and services, requires federal agencies and parastatal entities to give preferences to locally produced computer products based on a complicated and nontransparent price/technology matrix. However, Brazil permits foreign companies that have established legal entities in Brazil to compete for procurement-related multilateral development bank loans and opens selected procurements to international tenders.

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

EXPORT SUBSIDIES

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

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

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support the purchase of domestic over imported equipment and machinery. These programs can be used for financing capacity expansions and equipment purchases in industries such as steel and agriculture.

Brazil's Special Regime for the Information Technology Exportation Platform (REPES) introduced in 2005 suspends PIS and COFINS taxes on goods and services imported by companies that commit to export software and information technology services to the extent that those exports account for over 80 percent of their annual gross income. The MP's Special Regime for the Acquisition of Capital Goods by Exporting Enterprises (RECAP) suspends these same taxes on new machines, instruments and equipment imported by companies that commit for a period of at least 3 years to export goods and services such that they account for at least 80 percent of their overall gross income during that time.

INTELLECTUAL PROPERTY RIGHTS (IPR) PROTECTION

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

Patents and Trademarks

The United States has raised concerns regarding Brazil's Law 10196 of 2001, which includes a requirement that National Health Surveillance Agency (ANVISA) approval be obtained prior to the issuance of a pharmaceutical patent. The implementation of this requirement is nontransparent and has contributed to an ongoing backlog in the issuance of patents. The United States is also concerned that this requirement singles out one particular product category for a set of procedural requirements, raising questions in connection with Article 27 of the WTO Agreement on Trade Related Intellectual Property Rights (TRIPS Agreement).

On May 4, 2007 Brazil issued a compulsory license for Merck Sharp & Dohme's anti-retroviral drug efavirenz (brand name: Stocrin) used in treating HIV/AIDS patients. The United States has urged Brazil, in advancing its national public health objectives, to engage in transparent and open discussions with patent holders and other stakeholders, in order to achieve good public health outcomes while preserving the incentive to innovate by protecting intellectual property.

Although Brazil's patent backlog remains high, estimated at between 130,000 and 150,000 applications, the national patent office has taken concrete steps to streamline processing, including an upgrade of its outdated computer system. Over the past 2 years it has increased the number of patent examiners over 200 percent and has plans to further increase the number of examiners from the current level of 255 to 360 full time examiners by the end of 2008, at the same time increasing median salaries 50 percent to retain experienced employees. By the end of 2008, INPI expects to increase its patent processing capacity from the current 20,000 applications per year to 30,000 per year. The government estimates that by the end of 2009, new patent applications will be adjudicated within 4 years, which would represent the end of the backlog. Brazil has also raised trademark approvals almost six-fold since 2003. In mid-2006, the National Institute of Industrial Property (INPI) instituted a new system of streamlined, paperless processing for trademarks. According to INPI, as a result of the new system, new trademark applications are now being initially processed within a maximum time frame of 12 months. The U.S. Patent and Trademark Office is working with INPI to help that agency in its modernization efforts.

The United States is also concerned about Brazil's protection against unfair commercial use of data generated in connection with obtaining marketing approval for pharmaceutical products. Law 10603 of

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2002 on data confidentiality covers pharmaceuticals for veterinary use, fertilizers, agro-toxins, and their components and related products. The law does not cover pharmaceuticals for human use. If a human use pharmaceutical product is not commercialized within 2 years of the date of sanitary registration, third parties may request use of the data for registration purposes.

Copyrights

Brazil is not a party to the World Intellectual Property Organization Treaties on Copyright, and Performances and Phonograms.

Despite recent enforcement gains, piracy remains a serious problem. The International Intellectual Property Alliance (IIPA) estimates losses due to piracy of copyrighted materials in Brazil totaled at least \$849.6 million in 2007.

SERVICES BARRIERS

Audio Visual Services

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

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

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

Brazil also requires that 100 percent of all films and television shows be printed locally. Importation of color prints for the theatrical and television markets is prohibited. Theatrical screen quotas for local films exist. Quotas on domestic titles for home video distributors, while not currently enforced, present another potential hindrance to commerce.

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Express Delivery Services

Brazil's customs service is in the process of switching to an automated express delivery clearance system, which will significantly reduce customs clearance times for express packages once it is implemented. Customs originally expected to complete implementation of the system by the end of 2007; however, a revised schedule now calls for completion in the first quarter of 2008. After implementation of this system is complete, customs has plans to redraft express delivery regulations to remove some of the current restrictions on express delivery.

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

Financial Services

On January 15, 2007, Brazil published Complementary Law 126, eliminating the previous state monopoly on reinsurance, which had been in place since 1939. Previously the domain of the government controlled Brazilian Institute of Reinsurance (IRB), the regulation of co-insurance, reinsurance and retrocession transactions, and their intermediation will be handled by the National Private Insurance Council (CNSP) with oversight from the insurance supervisory body, the Brazilian Private Insurance Superintendence (SUSEP). The IRB will continue operating in the market only as a local reinsurer.

Complementary Law 126 authorizes three different types of reinsurance companies to operate in Brazil:

- local reinsurers: reinsurers with registered offices in Brazil and incorporated for the sole purpose of conducting reinsurance and retrocession transactions;
- "admitted" reinsurers: reinsurers with registered offices abroad and with a representative office in Brazil, which, in compliance with the requirements of the Complementary Law and the rules applicable to reinsurance and retrocession activities, have registered as such with SUSEP for the conduct of reinsurance and retrocession transactions; and,
- "eventual" reinsurers: foreign reinsurance companies with registered offices abroad that do not have a representative office in Brazil, which, upon compliance with the requirements established in the Complementary Law and with the rules applicable to reinsurance and retrocession activities, have registered as such with SUSEP to conduct reinsurance and retrocession transactions.

INVESTMENT BARRIERS

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

FOREIGN TRADE BARRIERS

CAMBODIA

TRADE SUMMARY

The U.S. goods trade deficit with Cambodia was \$2.3 billion in 2007, an increase of \$211 million from \$2.1 billion in 2006. U.S. goods exports in 2007 were \$139 million, up 86.4 percent from the previous year. Corresponding U.S. imports from Cambodia were \$2.5 billion, up 12.6 percent. Cambodia is currently the 130th largest export market for U.S. goods.

The stock of U.S. foreign direct investment in Cambodia was \$1 million in 2006 (latest data available), the same as in 2005.

In 2007, the United States and Cambodia held consultations under their Trade and Investment Framework Agreement (TIFA) signed in 2006. This dialogue is intended to promote greater trade and investment between the two countries, and help monitor and support Cambodia's efforts to implement its WTO commitments, as well as to provide a forum to address bilateral trade issues and coordinate on regional and multilateral issues.

IMPORT POLICIES

Tariffs

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

Nontariff Barriers

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

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

Foreign Exchange System: Although the Riel is the official currency of Cambodia, the economy is heavily dollarized. Most commercial transactions are conducted in dollars. Under the Exchange Law of 1997, foreign direct investors are allowed to purchase foreign currencies freely through the banking system. The law specifically states that there shall be no restrictions on foreign exchange operations, but the transactions must be conducted by authorized intermediaries, *i.e.*, lawfully established banks in Cambodia.

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Customs: As part of its WTO accession commitments, Cambodia is obligated to fully implement the WTO Customs Valuation Agreement by January 2009. Cambodia is in the process of reforming its customs regime through a 5 year (2003–2008) reform and modernization program to streamline and improve the effectiveness of customs operations and to facilitate trade. With assistance from the International Monetary Fund (IMF), a new Law on Customs, based on the Kyoto Convention on the Simplification and Harmonization of Customs Procedures, was adopted in July 2007. The law requires implementing regulations which the Cambodian government has not yet issued.

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

Taxation: Cambodia levies a 10 percent Value Added Tax (VAT) on goods and services. In theory, the VAT is to be applied to all goods and services, but to date, the Cambodian government has only imposed the VAT on major companies. It is in the process of expanding the base to which the VAT is applied. The corporate tax rate is within the range of 20 percent to 30 percent, depending on the nature of business. The Cambodian government also applies a withholding tax of 14 percent on dividends, royalties, rents, and interest.

STANDARDS, TESTING, LABELLING, AND CERTIFICATION

Cambodia is working on the establishment of standards and other technical measures based on international standards, guidelines, and recommendations. Under Cambodia's Law on Standards, passed in 2007, the Institute of Standards in Cambodia (ISC) has been created within the Ministry of Industry, Mines, and Energy as a central authority to develop and certify national standards for products, commodities, materials, services, and practices and operations.

The responsibility for establishing industrial standards and certifications currently resides with the Department of Industrial Standards of Cambodia in the Ministry of Industry, Mines, and Energy, and will become part of the ISC in the future. The Department has been designated as the enquiry point for WTO Technical Barriers to Trade (TBT) matters and as the agency responsible for notifications and publications required by the WTO TBT Agreement. The Ministry of Health is charged with prescribing standards, quality control, and distribution and labeling requirements for medicines, but this responsibility will also be brought under the ISC in the future.

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

The "Ministerial Regulation on Measures against Food Products Devoid of Appropriate Label" requires detailed labeling of food products that are distributed in Cambodia. For many products, the regulation requires labels, instructions, and warnings in the Khmer language.

Cambodia was provided a transition period until January 2007 to fully implement the WTO TBT Agreement and was given until January 2008 to fully implement the SPS Agreement. Cambodia

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implemented a risk management strategy for inspection of imported and exported goods in late 2006. The United States and Cambodia discussed progress being made to implement these commitments during TIFA consultations in 2007 and the United States will continue to work with Cambodia to ensure full implementation of these Agreements.

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

GOVERNMENT PROCUREMENT

Cambodia is not a signatory to the WTO Agreement on Government Procurement. Cambodia's government procurement regime is governed by a 1995 sub-decree. The sub-decree requires that all international purchases over 200 million Riel (\$50,000) for civil work and 100 million Riel (\$25,000) for goods be made through public tender.

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

INTELLECTUAL PROPERTY RIGHTS (IPR) PROTECTION

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

Cambodia is making progress in implementing the WTO Trade-Related Aspects of Intellectual Property Rights (TRIPS) Agreement, but comprehensive enforcement remains problematic. The 1996 U.S.-Cambodia Bilateral Trade Agreement (BTA) contained a broad range of IPR obligations that the Cambodian government is phasing in. Cambodia has not yet passed legislation to implement commitments undertaken in the BTA in the areas of encrypted satellite signals, semiconductor layout designs, and trade secrets. The U.S. Government intends to continue work with Cambodia through the TIFA dialogue to ensure full implementation of its WTO and BTA commitments on IPR.

Trademarks

In 2002, Cambodia adopted the Law Concerning Marks, Trade Names, and Acts of Unfair Competition to implement its TRIPS obligations. The Law provides for specific penalties for trademark violations, including jail sentences and fines for counterfeiting registered trademarks. It also contains detailed procedures for registering trademarks, invalidating and removing trademarks, and licensing of trademarks.

The Ministry of Commerce maintains an effective trademark registration system, registering more than 30,000 trademarks (over 5,500 for U.S. companies) under the terms of a 1991 sub-decree, and has proven cooperative in preventing the unauthorized registration of U.S.-owned trademarks in Cambodia. The Ministry has also taken effective action against trademark infringement in several cases since 1998, and has ordered local firms to stop the unauthorized use of well-known trademarks.

FOREIGN TRADE BARRIERS

Patents and Industrial Designs

Cambodia has a very small industrial base and infringement of patents and industrial designs is not yet commercially significant. The Law on the Protection of Patents and Industrial Designs provides for the filing, registration, and protection of patents, utility model certificates, and industrial designs. The Ministry of Industry, Mines, and Energy has also issued a sub-decree on granting patents and registering industrial designs.

Copyrights

Cambodia enacted a copyright law in January 2003. Responsibility for copyrights and related rights is shared between the Ministry of Culture, which handles phonograms, compact discs (CDs), and other recordings and the Ministry of Information, which deals with printed materials. Although Cambodia is not a major center for the production or export of pirated CDs, videos, and other copyrighted materials, these products are widely available in Cambodian markets. Pirated computer programs, digital video discs (DVDs), and music CDs are widely used throughout the country. The U.S. Government will continue to work with Cambodia under the TIFA to address this issue.

SERVICES BARRIERS

Legal Services

Under the GATS, Cambodia agreed to allow foreign lawyers to supply legal services with regard to foreign law and international law. It also agreed to allow them to supply certain legal services with regard to Cambodia's law in "commercial association" with Cambodian law firms. The commitment defines "commercial association" as any type of commercial arrangement, without any requirement as to corporate form. Efforts to limit foreign lawyers to 49 percent ownership of any law firm have failed, but highlight the need to make explicit in regulations that there are no equity limitations on the practice of foreign and international law by foreign enterprises, and that there are no equity limitations on the formation of "commercial associations" under which foreigners may practice certain legal services with regard to Cambodia's law.

Telecommunications Services

Private participation (including foreign) in mobile services, electronic mail, electronic data interchange, and code and protocol conversion are allowed and national treatment is accorded to foreign suppliers of these services. Multiple mobile operators are currently operating in Cambodia. In addition, Cambodia is committed to permitting licensed suppliers of mobile communications services to choose which technology to use for such services.

Cross border supply for fixed line voice telephone services, circuit switched data transmission, and private leased circuit services are provided exclusively by government owned Telecom Cambodia. A draft Law on Telecommunications that would eliminate Telecom Cambodia's exclusivity in fixed-line services is awaiting approval at the National Assembly. The legislation would permit foreign equity participation in basic operations and seeks to facilitate the creation of an independent regulatory body.

FOREIGN TRADE BARRIERS

INVESTMENT BARRIERS

Cambodia has one of the most liberal investment laws in the region, but potential investors say they are often deterred by excessive bureaucracy and corruption. The World Economic Forum's 2007 competitiveness survey ranked Cambodia 110 out of 131 countries surveyed, lower than 103 out of 125 the previous year, but up from 112 out of 117 in 2005. The World Bank-International Finance Corporation in 2008 also ranked Cambodia near the bottom of the list, 145 out of 178, on business climate.

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

ELECTRONIC COMMERCE

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

OTHER BARRIERS

Corruption and Governance

Corruption: Corruption is a significant concern for foreign businesses and investors. In 2007, Transparency International ranked Cambodia 162 out of 180 countries it surveyed. Both foreign and local businesses have identified corruption in Cambodia as a major obstacle to business and a deterrent to FDI. Cambodia undertook efforts to draft and enact anti-corruption legislation in 2004. To date, however, the law remains in draft form and has been delayed by the pending revision of the penal code, which may be passed by early 2008.

Judicial and Legal Framework: Cambodia's legal framework is incomplete and unevenly enforced. Many business-related draft laws are still pending. The judicial system is often arbitrary and subject to corruption. Many Cambodian and foreign business representatives perceive the court system to be unreliable and susceptible to external political and commercial influence, which constitutes one of the most serious legal risks that investors face. To address this, the Cambodian government has announced plans to establish a commercial court in 2009 and may establish other specialized courts like a labor court and a juvenile court. Most commercial disputes are currently resolved by negotiations facilitated by the Ministry of Commerce, Cambodian Chamber of Commerce, and other concerned institutions.

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

FOREIGN TRADE BARRIERS

CAMEROON

TRADE SUMMARY

The U.S. goods trade deficit with Cameroon was \$164 million in 2007, an increase of \$11 million from \$153 million in 2006. U.S. goods exports in 2007 were \$133 million, up 10.7 percent from the previous year. Corresponding U.S. imports from Cameroon were \$297 million, up 8.8 percent. Cameroon is currently the 131st largest export market for U.S. goods.

The stock of U.S. foreign direct investment (FDI) in Cameroon was \$231 million in 2006 (latest data available), up from \$99 million in 2005.

IMPORT POLICIES

Tariffs

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

CEMAC's common external tariff (CET) simple average is 18 percent. The CET has four tariff rates: 5 percent for essential goods, 10 percent for raw materials and capital goods, 20 percent for intermediate goods, and 30 percent for consumer goods. There are additional fees assessed on imports that vary according to the nature of the item, the quantity of the particular item in the shipment, and even the mode of transport. As a result, average customs charges are much higher than the official tariff rates would suggest.

Nontariff Measures

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

Documentation of bank transactions is required if the value of the imported goods exceeds CFA 2 million (approximately \$4,500). Pre-shipment inspection certificates require a "clean report of findings" from the customs collection contractor. For certain imports, such as used clothing, certificates of noninfestation are also required. A service fee of CFA 25,000 (approximately \$56) is required for imported second-hand automobiles.

Cameroon engages in some questionable customs valuation practices, including assessing duties on its own estimated cost of production, rather than based on the transaction value of the goods or another customs valuation methodology set forth in the WTO Customs Valuation Agreement, for three commonly

FOREIGN TRADE BARRIERS

subsidized goods -- beet sugar, flour, and metal rebar. Duties on all other goods are assessed on the basis of the transaction value posted on the commercial invoice. The government has contracted with the Swiss company Societe Générale de Surveillance to issue importation declarations prior to loading at the port of origin.

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

STANDARDS, TESTING, LABELING, AND CERTIFICATION

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

GOVERNMENT PROCUREMENT

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

INTELLECTUAL PROPERTY RIGHTS (IPR) PROTECTION

Cameroon is a party to the World Intellectual Property Organization Convention, the Paris Convention for the Protection of Industrial Property, the Berne Convention for the Protection of Literary and Artistic Works, the Patent Cooperation Treaty and the Singapore Treaty on the Law of Trademarks. IPR enforcement is problematic due to corruption within enforcement agencies, the lack of resources dedicated to IPR enforcement and a general lack of awareness of IPRs. A few companies have complained of piracy but have found little practical legal recourse to enforce their IPR. Cameroonian artists' organizations have publicly complained about lax enforcement of copyright and related rights and have generated substantial public discussion on the importance of protecting IPR through vocal campaigns highlighting the damaging effect of widespread music piracy.

SERVICES BARRIERS

Telecommunications

Cameroon has eliminated many restrictions on foreign trade in services and is gradually privatizing its telecommunications sector. Two mobile telephone firms, South African MTN and French Orange, currently operate in Cameroon, and state-owned phone operator CAMTEL has launched a mobile service. Initial efforts to privatize CAMTEL collapsed in 2006 when the two top bidders withdrew their offers. The government has indicated that it still intends to privatize CAMTEL, but as of the end of 2007 the government had yet to indicate its next steps. A number of companies are now moving into local Very

FOREIGN TRADE BARRIERS

Small Aperture Terminal (VSAT) systems for data transmission, international telephone service and Internet access. The Cameroon Telecommunications Regulatory Board regulates the sector and issues licenses for new companies to operate.

Insurance

Foreign firms are not permitted to establish 100 percent foreign-owned subsidiaries. Participation in the market must be with a local partner. There are several foreign insurance companies (including one U.S. firm) operating in Cameroon with Cameroonian partners.

INVESTMENT BARRIERS

Despite a number of recent government initiatives, Cameroon's investment climate remains challenging. The World Bank's "Doing Business in 2008" report ranked Cameroon in the bottom 25 countries out of 178 countries surveyed in terms of the overall ease of doing business, with particularly poor performance in the ease of starting a business, paying taxes, and enforcing contracts.

Capital movements between CEMAC members and third countries are permitted, provided that proper supporting documentation is available and prior notification is given to the exchange control authority. With respect to inward or outward foreign direct investment, investors are required to declare to the Ministry of Finance transactions above CFA100 million (approximately \$225,000), and they must provide such notification within 30 days of the realization of the relevant transaction. The Bank of Central African States' decision to continue monitoring outward transfers, combined with its cumbersome payment system, has led many to conclude that controls on transfers remain in force.

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

OTHER BARRIERS

Problems with energy supply have been a major concern of the Cameroonian government and international financial institutions. The IMF and the World Bank, in particular, feel that the lack of a dependable supply of energy has limited foreign direct investment. These institutions are encouraging stakeholders in the sector to improve capacity as quickly as possible.

Corruption is a significant concern for foreign businesses and investors and appears to be pervasive throughout the public and business sectors. The judicial system, characterized by long delays and understaffing in the areas of financial and commercial law, has imposed major additional expenses on some U.S. companies operating in Cameroon. Many foreign business representatives perceive the court system to be unreliable and susceptible to external political and commercial influence, which constitutes one of the most serious legal risks that investors face. Cameroon ratified the United Nations Convention against Corruption in February 2006, but has yet to implement most of its provisions.

U.S. companies have expressed concern that the Ministry of Labor has made it more difficult for investors to sell their assets in Cameroon by requiring companies involved in share sales to make termination-of-contract payouts to contractual employees even when the contracts in question are being assumed by new owners. The issue appears to arise only when the divesting investors are foreign. This issue has been under review by the Cameroonian government the past 2 years but has not yet been resolved.

FOREIGN TRADE BARRIERS

CANADA

TRADE SUMMARY

The U.S. goods trade deficit with Canada was \$64.2 billion in 2007, a decrease of \$7.6 billion from \$71.8 billion in 2006. U.S. goods exports in 2007 were \$248.9 billion, up 7.9 percent from the previous year. Corresponding U.S. imports from Canada were \$313.1 billion, up 3.5 percent. Canada is currently the largest export market for U.S. goods.

U.S. exports of private commercial services (*i.e.*, excluding military and government) to Canada were \$39.3 billion in 2006 (latest data available), and U.S. imports were \$23.5 billion. Sales of services in Canada by majority U.S.-owned affiliates were \$55.7 billion in 2005 (latest data available), while sales of services in the United States by majority Canada-owned firms were \$40.1 billion.

The stock of U.S. foreign direct investment (FDI) in Canada was \$246.5 billion in 2006 (latest data available), up from \$233.5 billion in 2005. U.S. FDI in Canada is concentrated largely in the manufacturing, finance, and mining sectors.

A Trading Relationship Based on Free Trade

The United States and Canada conduct the world's largest bilateral trade relationship, with total merchandise trade (exports and imports) exceeding \$533.7 billion in 2006. The North American Free Trade Agreement (NAFTA) entered into force on January 1, 1994, replacing the United States-Canada Free Trade Agreement, which was implemented in 1989. Under the NAFTA, the United States and Canada progressively eliminated tariff and nontariff barriers to trade in goods; improved access for services trade; established rules on investment; strengthened protection of intellectual property rights; and created an effective dispute settlement mechanism. Under the terms of the NAFTA, Canada eliminated tariffs on all remaining industrial and most agricultural products imported from the United States on January 1, 1998. The NAFTA is accompanied by supplemental agreements that provide for cooperation to enhance and enforce labor standards and to encourage environmentally friendly practices and bolster environmental protection in North America.

IMPORT POLICIES

Agricultural Supply Management

Canada's dairy, chicken, turkey, and egg industries are regulated by supply management systems. Canada's supply management regime involves the establishment of production quotas as well as producer marketing boards to regulate the supply and prices farmers receive for their poultry, turkey, eggs, and milk products. Canada's supply management regime severely limits the ability of U.S. producers to increase exports to Canada above the tariff-rate quota levels and inflates prices Canadians pay for dairy and poultry products. The United States continues to press for the elimination of this trade barrier in the WTO Doha Round agricultural negotiations.

Over the last year, Canada announced two measures concerning dairy that the United States views as indicative of possible future trade barriers. On April 11, 2007, Canada, pursuant to GATT Article XXVIII, notified the WTO that it intended to modify through renegotiation its concessions in its tariff schedule with respect to certain milk protein substances. In addition, on December 26, 2007, the

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Canadian Food Inspection Agency published new proposed compositional standards for cheese. United States dairy producers and processors are quite concerned about the highly prescriptive nature of these proposed compositional standards for cheese, which may likely operate as new technical barriers to trade and significantly reduce U.S. access to the Canadian market. Moreover, Canada continues to maintain a prohibitive tariff of 245 percent on U.S. exports of breaded cheese sticks.

Ministerial Exemptions

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

Progress was made in 2007 with the implementation of the Technical Arrangement Concerning Trade in Potatoes between the United States and Canada. This arrangement will provide U.S. potato producers with predictable access to Canadian Ministerial exemptions to import potatoes. The Arrangement, when fully implemented in Year 3, will allow a 60-day forward contract between U.S. growers and Canadian processors to serve as sufficient evidence of a shortage in Canadian potatoes. In addition to addressing U.S. concerns about Canada's procedures for granting Ministerial exemptions for potatoes, the Arrangement will phase in quality inspections for potatoes at destination and will phase out spot-check inspections along the northeastern Canadian border crossing. The United States will initiate a rulemaking to allow some Canadian specialty potatoes that do not currently meet U.S. quality standards for size to enter the U.S. market.

Restrictions on U.S. Grain Exports

Canada's varietal controls limit U.S. access to Canada's grain market. Canada requires that each variety of grain be registered and be visually distinguishable based on a system of Kernel Visual Distinguishability (KVD) requirements. Since U.S. varieties may not be visually distinct, they are not registered in Canada. As a result, U.S. wheat, regardless of quality, is sold in Canada as "feed" wheat at sharp price discounts compared to Canadian varieties. In June 2006, the Canada Grains Commission announced its intention to make changes to western Canadian wheat classes to include the removal of KVD registration requirements from minor wheat classes, as well as the creation of a new General Purpose wheat class, effective August 1, 2008. The KVD requirements for the higher quality wheat, Canada Western Red Spring and Canada Western Amber Durum, will remain. While these policy changes are a step in the right direction, they only open the door to varietal registration in Canada of lower priced, nonmilling U.S. wheat varieties typically used for feed and industrial end-uses (*i.e.*, biofuels).

On June 5, 2007, the Canadian Federal Court of Appeal upheld the Canadian International Trade Tribunal's decision that U.S. grain corn imports are not causing injury and are not threatening to cause injury to Canadian growers.

Personal Duty Exemption

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

Wine and Spirits

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

The Canadian Wheat Board and State Trading Enterprises (STEs)

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

STANDARDS, TESTING, LABELING, AND CERTIFICATION

Restrictions on Fortification of Foods

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

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

Restrictions on Container Sizes

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

has asked Canada to abolish the container size requirements for baby food jars as it did in 2001 when Canada abolished container size requirements for prepared mustard. In 2007, the government of Canada rejected a request by some companies to test market alternative container sizes in Canada claiming it would be a disruption to trade.

SOFTWOOD LUMBER

The Softwood Lumber Agreement (SLA) was signed on September 12, 2006, and entered into force on October 12, 2006. Pursuant to a settlement of litigation, the U.S. Department of Commerce revoked the antidumping and countervailing duty orders on imports of softwood lumber from Canada. (The settlement ended a large portion of the litigation over trade in softwood lumber.) Upon revocation of the orders, U.S. Customs and Border Protection ceased collecting cash deposits and returned previously collected deposits with interest to the importers of record.

The SLA provides for unrestricted trade in softwood lumber in favorable market conditions. When the lumber market is soft, Canadian exporting provinces can choose either to collect an export tax that ranges from 5 percent to 15 percent as prices fall or to collect lower export taxes and limit export volumes. The SLA also includes provisions to address potential Canadian import surges, provide for effective dispute settlement, and monitor administration of the Agreement through the establishment of a Softwood Lumber Committee. The Committee met in February 2007 and October 2007, during which the United States and Canada discussed a range of SLA implementation issues and Canadian provincial assistance programs for softwood lumber industries.

On March 30, 2007, the United States requested formal consultations with Canada to resolve concerns regarding Canada's implementation of the export measures, in particular the operation of the Agreement's surge mechanism and quota volumes, as well as several federal and provincial assistance programs that benefit the Canadian softwood lumber industry. After formal consultations failed to resolve these concerns, the United States requested international arbitration under the terms of the Agreement on August 13, 2007, challenging Canada's implementation of the import surge mechanism and quota volumes. On March 4, 2008, the arbitral tribunal agreed with the United States that Canada violated the SLA by failing to properly adjust the quota volumes of the Eastern Canadian provinces in the first 6 months of 2007. However, the tribunal did not find that the same adjustment applies to British Columbia and Alberta.

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

Technology Partnership Canada

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

FOREIGN TRADE BARRIERS

In 2006, Canada's Minister of Industry closed the program to new TPC applicants except for the aerospace and defense sectors. The government announced increased transparency and accountability requirements for all future projects to be funded under the TPC with the aim of better ensuring company compliance with the terms of their TPC contribution agreements. These new contractual requirements are designed to provide the government with more leverage to act on any breaches of the contribution agreements and will also allow the Minister of Industry to publish the amount of each repayment made by recipient companies that have received investments under the improved agreement. However, these efforts to promote transparency do not remove the potential for trade distortions caused by the TPC and other programs. Of particular concern to U.S. industry is a December 2007 news report that government aid may be used to support the launch of a new class of Bombardier "C Series" regional jets and to support the development of more efficient aircraft engines. The United States continues to monitor this program as well as certain Quebec provincial programs.

GOVERNMENT PROCUREMENT

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

INTELLECTUAL PROPERTY RIGHTS (IPR) PROTECTION

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

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

U.S. intellectual property owners are concerned about Canada's weak border measures and general enforcement efforts. The lack of *ex officio* authority for Canadian Customs officers makes it difficult for them to seize shipments of counterfeit goods. To perform a civil seizure of a shipment under the Customs Act, the rights holder must obtain a court order, which requires detailed information on the shipment. The

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

Camcording

In June 2007, Canada enacted Bill C-59 which makes unauthorized camcording of theatrically exhibited motion pictures a federal criminal offense. Industry reports that this new law has had a deterrent effect. Since the new law was enacted, several individuals have been arrested and are awaiting trial.

Pharmaceuticals

The U.S. pharmaceutical industry is concerned over recent judicial and administrative developments that are putting a number of patents and products at risk before relevant patent protections expire. The U.S. pharmaceutical industry has also raised concerns about the pricing of patented medicines in Canada and encourages Canada and the Patented Medicine Prices Review Board to move towards a more market-based review system.

SERVICES BARRIERS

Audiovisual and Communications Services

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

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

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

The CRTC also requires that the English and French television networks operated by the Canadian Broadcasting Corporation not show popular foreign feature movies between 7 P.M. and 11 P.M. The only non-Canadian films that may be broadcast during that time must have been released in theaters at least two years previously and not be listed in the top 100 of Variety Magazine's top grossing films for at least the previous 10 years.

FOREIGN TRADE BARRIERS

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

Radiocommunication Act

A concern of Canada's legitimate television industries is the spread of unauthorized use of satellite television services. Industry findings, extrapolated on a national basis, have estimated that between 520,000 to 700,000 households within cabled areas use unauthorized satellite services. Any survey of the incidence of satellite signal theft outside cabled areas would add to these numbers.

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

Telecommunications Services

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

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

Barriers to U.S. Film Exports

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

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

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

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

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

INVESTMENT BARRIERS

General Establishment Restrictions

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

Investment Canada Act (ICA)

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

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

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

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

Publishing Policy

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

Film Industry Investment

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

CHILE

TRADE SUMMARY

The U.S. goods trade deficit with Chile was \$692 million in 2007, a decrease of \$2.1 billion from \$2.8 billion in 2006. U.S. goods exports in 2007 were \$8.3 billion, up 22.5 percent from the previous year. Corresponding U.S. imports from Chile were \$9.0 billion, down 5.9 percent. Chile is currently the 28th largest export market for U.S. goods.

U.S. exports of private commercial services (*i.e.*, excluding military and government) to Chile were \$1.5 billion in 2006 (latest data available), and U.S. imports were \$781 million. Sales of services in Chile by majority U.S.-owned affiliates were \$4.3 billion in 2005 (latest data available), while sales of services in the United States by majority Chile-owned firms were not available in 2005 (\$2 million in 2003).

The stock of U.S. foreign direct investment (FDI) in Chile was \$10.2 billion in 2006 (latest data available), up from \$9.6 billion in 2005. U.S. FDI in Chile is concentrated largely in the finance, manufacturing, banking, and mining sectors.

IMPORT POLICIES

Tariffs

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

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

Import Controls

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

Export Policies

Chile currently provides a simplified duty drawback program for nontraditional exports that reimburses firms a percentage of the value of the items they export. Companies purchasing capital equipment can borrow up to 73 percent of the amount of the customs duties that would normally be paid on such

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equipment if it were not used exclusively for exporting. If the capital equipment is imported, it must carry a minimum value of \$3,813. For imported vehicles to be used in an export business, such vehicles must have a minimum value of \$4,830. Another export promotion measure lets all exporters defer import duties for up to 7 years on imported capital equipment or receive an equivalent subsidy for domestically-produced capital goods.

In accordance with its commitments under the FTA, Chile is eliminating, over a transition period, the use of duty drawback and duty deferral for imports that are incorporated into any goods exported to the United States. Full drawback rights are allowed for the first 8 years from entry into force of the FTA. Beginning with year 9, the amount of drawback allowed is reduced until it reaches zero by year 12. However, the Chilean Congress is currently reviewing a bill that will continue providing support to small and medium sized enterprises (SMEs) and increases the funds available for credit financing of their exports. In 2007, the Chilean government approved \$90 million for the program.

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

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

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

Export Controls

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

Nontariff Barriers

Chile maintains a complex price band system for wheat, wheat flour, and sugar that will be phased out by 2016 under the FTA for imports from the United States. The price band system was created in 1985 and is intended to guarantee a minimum and maximum price for the covered commodities. When certain cost, insurance, and freight (CIF) prices (as calculated by Chilean authorities) fall below the set minimum

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price, a special tax is added to the tariff rate to raise the price to the minimum price. The government sets a minimum import price that is normally higher than both international and Chilean domestic prices. Beginning in 2008, the minimum price will be adjusted downward by 2 percent a year, until 2014, when Chile's President will evaluate whether to continue the price band system or eliminate it prior to the 2016 FTA obligation. Mixtures (*e.g.*, high fructose corn syrup) containing more than 65 percent sugar content are now subject to the sugar price band system.

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

STANDARDS, TESTING, LABELING, AND CERTIFICATION

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

In December 2003, Chile closed its market to all U.S. beef and beef products due to the detection of a case of Bovine Spongiform Encephalopathy (BSE) in Washington State. In July 2005, Chile agreed to partially re-open the market for U.S. deboned beef from animals under 30 months of age. World Organization for Animal Health (OIE) guidelines provide for scientifically-based conditions under which all beef and beef products from animals of any age can be safely traded. In May 2007, the OIE classified the United States as controlled risk for BSE. The United States will continue to work with Chile to achieve a full re-opening of Chile's market to beef and beef products from the United States, in line with OIE guidelines and the OIE's classification of the United States as controlled risk status for BSE through the use of established fora.

According to the Chilean Ministry of Health, all pork slaughtered in Chile must be tested for trichinae or cold treated. Pork meat for export to Chile from the United States is usually cold treated for destruction of trichinae, since testing for trichinae is not cost effective nor a common practice in the United States. In October 2007, Chile carried out an audit of the U.S. poultry system. On November 8, 2007, Chile published a resolution that allows U.S. exports of day-old chicks and hatching eggs into its market. In December 2007, Chile announced that the U.S. poultry system was recognized as equivalent, which will allow for the importation of U.S. poultry and poultry products into Chile. Final arrangements are being negotiated by the parties to finalize terms of the agreement.

Importers of all food products must file a request for a "Certificate of Use and Disposal," and the government collects microbiological, dietetic, chemical, and physical analyses and samples. The requirement for repeated reviews and sampling of previously approved imported products does not achieve a good balance between cost and effectiveness. With a risk-based testing system, or even random testing, it would be possible to achieve nearly the same level of public health protection at a reduced cost.

GOVERNMENT PROCUREMENT

Each government entity in Chile generally conducts its own procurement. Chile's law requires public bids for large purchases, although procurement by negotiation is permitted in certain cases. Foreign and local bidders in government tenders must register with the Chilean Bureau of Government Procurement. They must also post a bank or guaranteed bond, usually equivalent to 10 percent of the total bid, to ensure

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compliance with specifications and delivery dates. Through the Information System for Procurements and Public Contracts for the Public Sector (<http://www.chilecompras.cl>), any interested supplier may offer products or services and register as a potential supplier in government procurement, free of charge.

The FTA requires procuring entities to use fair and transparent procurement procedures, including advance notice of purchases and timely and effective bid review procedures for procurement covered by the Agreement. It also includes nondiscriminatory provisions that require Chilean entities covered by the FTA to allow U.S. suppliers to participate in their procurement on the same basis as Chilean suppliers. The FTA covers the procurement of most Chilean central government entities, 13 regional governments, 11 ports and airports, and more than 340 municipalities.

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

INTELLECTUAL PROPERTY RIGHTS (IPR) PROTECTION

Concerns about the weakening of protection and enforcement of intellectual property in Chile were reflected in the January 2007 decision to place Chile on the Special 301 Priority Watch List. There are substantive deficiencies in Chile's IPR laws and regulations, as well as overall inadequate IPR enforcement. The predominant concerns involve patent and test data protection in the pharmaceutical sector and copyright piracy of movies, music, and software.

The United States will continue to work with Chile to improve enforcement and ensure full implementation of the FTA.

Patents, Data Protection, and Trademarks

Chile's protection of pharmaceutical patents and clinical test data continues to suffer from important deficiencies. Chile has yet to establish a consistently effective and transparent system to address the concerns of patent holders, who report that Chile has authorized the marketing of patent-infringing pharmaceutical products. The United States remains concerned as well about reports that Chile has inappropriately relied on undisclosed test and other data submitted in connection with the approval of innovative drug products in order to approve generic versions of these drugs.

Chile's Trademark Law is generally in line with international standards. However, legislation bringing Chile's law fully into compliance with its FTA obligations is still pending. Some U.S. trademark holders have complained of inadequate enforcement of trademark rights in Chile.

Copyrights

The United States is concerned by an apparent lack of commitment to enforcement and prosecution of intellectual property theft of copyrighted goods. Despite active enforcement efforts by the police, piracy of computer software and video and music recordings remains widespread. Attempts to enforce copyrights in Chile have met with considerable delays in the courts and lenient punishments. According to the International Intellectual Property Alliance, estimated losses due to the piracy of copyrighted materials in Chile totaled \$127.6 million in 2007.

FOREIGN TRADE BARRIERS

Chile made two sets of amendments to its copyright law in 2003, one to implement the WTO Agreement on Trade-Related Aspects of Intellectual Property obligations and one to implement its FTA obligations. Additional draft amendments are pending in the Chilean Congress.

SERVICES BARRIERS

Chile's relatively open services trade and investment regime stands in contrast to its moderately limited commitments under the GATS. In particular, Chile maintains a "horizontal" limitation, applying to all sectors in its GATS schedule, under which authorization for foreign investment in services industries may be contingent upon a number of factors, including employment generation, use of local inputs, and compensation. This restriction undermines the commercial value and predictability of Chile's GATS commitments. Commitments in services under the FTA cover both cross-border supply of services and the right to invest. Market access commitments apply across a wide range of sectors, including computer and related services, telecommunications, audiovisual services, construction and engineering, tourism, advertising, express delivery, professional services, distribution services, adult education and training services, and environmental services.

Financial Services

During its WTO financial services negotiations, Chile made commitments in banking services and in most securities and other financial services. However, Chile's WTO Commitment Schedule in the securities sector did not include asset fund management (mutual funds, investment funds, foreign capital investment funds, and pension funds). Foreign insurance companies already established in Chile operate with unlimited access to the Chilean market. Foreign-based insurance companies cannot offer or contract insurance policies in Chile directly or through intermediaries.

Under the FTA, banking, insurance, securities, and related services operate in a more open, competitive, and transparent market than previously. U.S. insurance firms have the right to establish subsidiaries, branches, or joint ventures in all insurance sectors with only limited exceptions. U.S. banks and securities firms are allowed to establish branches and subsidiaries, provide the same range of services as domestic banks, and may invest in local firms without restriction, except under very limited circumstances. U.S. financial institutions can offer financial services to citizens participating in Chile's privatized voluntary social saving plans. Chile now allows U.S.-based firms to offer cross-border services to Chileans in areas such as financial information, data processing, and financial advisory services, with limited exceptions.

INVESTMENT BARRIERS

Foreign direct investment is subject to *pro forma* screening by the government. The Foreign Investment Committee (FIC) of the Ministry of Economy reviews all foreign investment and sets the terms and conditions for all contracts involving foreign direct investment. FIC approval is required for investment projects: with a value over \$5 million; in sectors or activities normally developed by the government and/or supplied by public services; involving the mass media; and/or by foreign governments or foreign public entities.

Foreign investment projects worth more than \$5 million are entitled to the benefits and guarantees of Decree Law (D.L.) 600, under which the FIC signs a separate contract with each investor. That contract stipulates the time period of the investment's implementation. Under D.L. 600, profits from an investment may be repatriated immediately, but no original capital may be repatriated for 1 year.

FOREIGN TRADE BARRIERS

Foreign investors in Chile may own up to 100 percent of an enterprise and there is no time limit on ownership. Foreign investors have access to all sectors of the economy with limited exceptions in coastal trade, air transportation, and the mass media. Chile permits investment in the fishing sector to the extent that an investor's home country reciprocally permits Chilean nationals to invest in that sector. Investors domiciled abroad may bring foreign currency into Chile under Chapter 14 of the Foreign Exchange Regulations of the Central Bank. This allows the investor to sell foreign currency freely through the formal or informal exchange market.

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

The United States and Chile allow transfers both into and out of their territories related with an investment to be carried out freely and without delay. These transfers should be made in a currency of wide usage and at the exchange rate observed in the market at the time of the transfer. However, under the FTA, Chile may establish restrictions on payments or transfers associated with speculative or short-term investments in the event of a financial or economic crisis, for a period of up to 1 year. During this time, the investor would not be able to invoke the conflict resolution system in force under the FTA for dealing with investor-state disputes.

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

CHINA

TRADE SUMMARY

The U.S. goods trade deficit with China was \$256.3 billion in 2007, an increase of \$23.7 billion from \$232.6 billion in 2006. U.S. goods exports in 2007 were \$65.2 billion, up 18.2 percent from the previous year. Corresponding U.S. imports from China were \$321.5 billion, up 11.7 percent. China is currently the third largest export market for U.S. goods.

U.S. exports of private commercial services (*i.e.*, excluding military and government) to China were \$10.9 billion in 2006 (latest data available), and U.S. imports were \$7.2 billion. Sales of services in China by majority U.S.-owned affiliates were \$5.5 billion in 2005 (latest data available), while sales of services in the United States by majority China-owned firms were \$324 million.

The stock of U.S. foreign direct investment (FDI) in China was \$22.2 billion in 2006 (latest data available), up from \$17.0 billion in 2005. U.S. FDI in China is concentrated largely in the manufacturing, wholesale trade, and nonbank holding companies sectors.

When China acceded to the World Trade Organization (WTO) on December 11, 2001, it committed to implement a set of sweeping reforms over time that required it to lower trade barriers in virtually every sector of the economy, provide national treatment and improved market access to goods and services imported from the United States and other WTO Members, and protect intellectual property rights (IPR). Six years later, the deadlines for almost all of China's commitments have passed and China is no longer a new WTO Member. Accordingly, the United States has been working to hold China fully accountable as a mature member of the international trading system, placing a strong emphasis on China's adherence to WTO rules.

Prodded by the United States and other WTO Members since acceding to the WTO, China has taken many impressive steps to reform its economy, making progress in implementing a broad set of commitments that required it to reduce tariff rates, eliminate nontariff barriers, provide national treatment and improved market access to goods and services imported from the United States and other WTO Members, improve transparency and protect IPR. Although not complete in every respect, China's implementation of its WTO commitments has led to significant increases in U.S.-China trade, including U.S. exports to China, while deepening China's integration into the international trading system and facilitating and strengthening the rule of law and economic reforms that China began nearly three decades ago. However, more still needs to be done.

In 2007, U.S. industry began to focus less on the implementation of specific commitments that China made upon entering the WTO and more on China's shortcomings in observing basic obligations of WTO membership, as well as on Chinese policies and practices that undermine previously implemented commitments. At the root of many of these problems is China's continued pursuit of problematic industrial policies that rely on excessive Chinese government intervention in the market through an array of trade distorting measures. This government intervention, evident in many areas of China's economy, is a reflection of China's historic yet unfinished transition from a centrally planned economy to a free-market economy governed by rule of law.

During the 15 years of negotiations leading up to China's WTO accession, the United States and other WTO Members worked hard to address concerns created by China's historic economic structure. Given

FOREIGN TRADE BARRIERS

the state's large role in China's economy, the United States and other WTO Members carefully negotiated conditions for China's WTO accession that would, when implemented, lead to significantly reduced levels of government intervention in the market and significantly fewer distortions in trade flows. Through the first few years after China's accession to the WTO, China made noteworthy progress in adopting economic reforms that facilitated its transition toward a market economy. However, beginning in 2006 and continuing throughout 2007, progress toward further market liberalization began to slow. It became clear that some Chinese government agencies and officials have not yet fully embraced key WTO principles of market access, nondiscrimination, and transparency. Differences in views and approaches between China's central government and China's provincial and local governments also have continued to frustrate economic reform efforts, while China's difficulties in generating a commitment to the rule of law have exacerbated this situation.

In 2007, the United States intensified its frank bilateral engagement with China. The United States also took enforcement actions at the WTO in key areas where dialogue had not resolved our WTO-related concerns.

The United States brought three new WTO cases against China in 2007. In the first one, the United States challenged several prohibited subsidy programs benefiting a wide cross-section of China's manufactured goods. Constructive engagement during the dispute settlement process facilitated the resolution of this case, as the United States and China were able to reach agreement in November 2007 on the elimination of all of the prohibited subsidies at issue by January 1, 2008. The United States also filed a challenge to key aspects of China's IPR enforcement regime, along with a challenge to market access restrictions affecting the importation and distribution of copyright-intensive products such as theatrical films, DVDs, music, books, and journals. Each of these three WTO cases involves fundamental WTO obligations, as does the WTO case filed by the United States in 2006 challenging China's use of prohibited local content requirements in the automotive sector.

While pursuing these multilateral enforcement initiatives, the United States also pursued intensified, focused, bilateral dialogue with China. Working together, the United States and China pursued a set of formal and informal bilateral dialogues and meetings, including numerous working groups and plenary meetings under the auspices of the United States-China Joint Commission on Commerce and Trade (JCCT) and the United States-China Strategic Economic Dialogue (SED) launched in December 2006. Through these avenues, the United States sought resolutions to particular pressing trade issues and encouraged China to accelerate its movement away from reliance on government intervention and toward full institutionalization of market mechanisms. This bilateral engagement produced near-term results in several areas in 2007, including the suspension of overly burdensome testing and certification requirements for medical devices, the granting of biotechnology safety certificate approvals, increased insurance market access, expansion of the scope of permitted business for foreign banks and securities companies, and a new civil aviation agreement. On other pressing trade issues, the United States and China continue to work together in search of pragmatic solutions.

However, despite extensive dialogue, Chinese policies and practices in several areas continued to cause particular concern for the United States and U.S. industry in 2007, particularly in light of China's WTO commitments, as is detailed below and in the 2007 USTR Report to Congress on China's WTO Compliance. First, the lack of effective IPR enforcement remains a major challenge, as counterfeiting and piracy in China remain at unacceptably high levels and cause serious economic harm to U.S. businesses across the economy. Second, in a number of sectors, China has continued resorting to industrial policies that limit market access for non-Chinese origin goods and foreign service providers, and that offer substantial government resources to support Chinese industries and increase exports. Third,

FOREIGN TRADE BARRIERS

arbitrary practices by Chinese customs and quarantine officials can delay or halt shipments of agricultural products into China, while sanitary and phytosanitary (SPS) standards with questionable scientific bases and a lack of transparency in regulatory regime frequently cause confusion for traders in agricultural commodities. Fourth, while improvements have been made in some areas, in others such as banking, insurance, telecommunications, construction and engineering, legal, and other services, Chinese regulatory authorities continue to frustrate efforts of U.S. providers to achieve their full market potential in China through the lack of transparency in its regulatory process and overly burdensome licensing and operating requirements. China has also imposed new restrictions on foreign providers of financial information services and it so far has failed to open up its market to foreign credit card companies. Fifth, transparency remains a core concern across industry sectors, as many of China's regulatory regimes continue to lack the necessary transparency, frustrating efforts of foreign and domestic businesses to achieve the full potential benefits of China's WTO accession.

Overall, while China has a significantly more open and competitive economy than 30 years ago, and China's WTO accession has led to the removal of many trade barriers, there are barriers to trade that have yet to be dismantled. The central government continues to implement industrial policies that protect a number of uncompetitive or emerging sectors of the economy from foreign competition. In many sectors, import barriers, opaque and inconsistently applied legal provisions and limitations on foreign direct investment, often combine to make it difficult for foreign firms to operate in China. In addition, some ministries, agencies, and government-sponsored trade associations have renewed efforts to erect new technical barriers to trade. Meanwhile, many provincial governments at times have strongly resisted reforms that would eliminate sheltered markets for local enterprises or reduce jobs and revenues in their jurisdictions, although they have also supported market access for other foreign investors that do not pose a threat to local vested interests.

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

IMPORT BARRIERS

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

FOREIGN TRADE BARRIERS

Trading Rights

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

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

In its Protocol of Accession to the WTO, China committed to substantial liberalization in the area of trading rights. Specifically, China committed to eliminate its system of examination and approval of trading rights and to make full trading rights automatically available to all Chinese enterprises, Chinese-foreign joint ventures, wholly foreign-owned enterprises and foreign individuals, including sole proprietorships within 3 years of its accession, or by December 11, 2004, which was the same deadline for China to eliminate most restrictions in the area of distribution services. China further committed to expand the availability of trading rights pursuant to an agreed schedule during the first 3 years of its WTO membership.

Although China did not fully adhere to the agreed phase-in schedule in some instances, it put in place a registration system implementing the required liberalization of trading rights, both for Chinese enterprises and for Chinese-foreign joint ventures, wholly foreign-owned enterprises and foreign individuals, including sole proprietorships. This liberalization is reflected in China's revised Foreign Trade Law, issued in April 2004. It provides for trading rights to be automatically available through a registration process for all domestic and foreign entities and individuals, effective July 1, 2004, almost 6 months ahead of the scheduled full liberalization required by China's Protocol of Accession to the WTO. In June 2004, MOFCOM issued implementing rules establishing the procedures for registering as a foreign trade operator. U.S. companies have reported few problems with the new trading rights registration process.

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

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

Meanwhile, however, China has not yet given foreign entities trading rights for the importation of copyright-intensive products such as theatrical films, DVDs, music, books, and journals. Under the terms of China's Protocol of Accession to the WTO, China's trading rights commitments appear to apply fully to these products, as they are not among the products for which China reserved the right to engage in state trading. As a result, trading rights for these products should have been automatically available to all Chinese enterprises, Chinese-foreign joint ventures, wholly foreign-owned enterprises, and foreign individuals as of December 11, 2004. Nevertheless, China continues to wholly reserve the right to import these products to state trading enterprises. As a result, in April, 2007, the United States filed a request for WTO dispute settlement consultations with China concerning market access restrictions in China on copyright-intensive products such as theatrical films, DVDs, music, books, and journals. The WTO panel was established in late November 2007 and the European Communities (EC), Japan, Korea, Taiwan, and Australia have joined as third parties.

Import Substitution Policies

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

Income Tax Preferences

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

Automotive Parts

Before China's WTO accession, China's automobile industrial policy offered significant advantages for foreign-invested factories using high levels of local content. In 2001, in anticipation of China's new obligations as a WTO Member, the State Economic and Trade Commission (SETC) issued Bulletin Number 13, which provided that the preferential policy for automobile localization rates would be cancelled upon China's WTO accession. However, U.S. automobile manufacturers reported that some local government officials continued to require local content and cited the old automobile industrial policy's standards. China also committed to issue a revised automotive industrial policy within 2 years of its WTO accession, or by December 11, 2003, but missed this deadline. In May 2004, China issued a new automobile industrial policy. It included provisions discouraging the importation of automotive parts

and encouraging the use of domestic technology. It also required new automobile and automobile engine plants to include substantial investment in research and development facilities, even though China expressly committed in its Protocol of Accession to the WTO not to condition investment rights or approvals on the conduct of research and development in China.

In 2005, China began to issue measures implementing the new automobile industrial policy. One measure that generated strong criticism from the United States, the EU, Japan, and Canada was the *Measures on the Importation of Parts for Entire Automobiles*, which was issued by the National Development and Reform Commission (NDRC) in February 2005 and became effective in April 2005. These rules impose charges that unfairly discriminate against imported automotive parts and discourage automobile manufacturers in China from using imported automotive parts in the assembly of vehicles. Specifically, the rules require all vehicle manufacturers in China that use imported parts to register with China's Customs Administration and provide specific information about each vehicle they assemble, including a list of the imported and domestic parts to be used, and the value and supplier of each part. If the number or value of imported parts in an assembled vehicle exceeds specified thresholds, the regulations imposed on each of the imported parts a charge equal to the tariff on complete automobiles (typically 25 percent) rather than the tariff applicable to automotive parts (typically 10 percent). These rules appear to be inconsistent with several WTO provisions, including Article III of GATT 1994 and Article II of the Agreement on Trade-Related Investment Measures, as well as the commitment in China's Protocol of Accession to the WTO to eliminate all local content requirements relating to importation. In March and April 2006, the United States, the EU, and Canada initiated dispute settlement against China by filing formal WTO consultations requests. Joint consultations were held in May 2006. However, these consultations did not lead to an agreed resolution. In September 2006, the United States, the EC and Canada filed requests for the establishment of a panel to hear the dispute. Since a dispute settlement panel was established in October 2006, the panel has issued a confidential interim report and is expected to issue its final report by spring or early summer 2008.

Steel

China issued a new Steel and Iron Industry Development Policy (Policy) in July 2005. Although many aspects of this new policy have not yet been implemented, it still includes a host of objectives and guidelines that raise serious concerns. For example, this policy requires that foreign enterprises seeking to invest in Chinese iron and steel enterprises possess proprietary technology or intellectual property in the processing of steel. Given that foreign investors are not allowed to have a controlling share in steel and iron enterprises in China, this requirement would seem to constitute a *de facto* technology transfer requirement, calling into question China's implementation of its Protocol of Accession to the WTO commitment not to condition investment rights or approvals on the transfer of technology. This policy also appears to discriminate against foreign equipment and technology imports. Like other measures, this policy encourages the use of local content by calling for a variety of government financial support for steel and iron projects utilizing newly developed domestic equipment. Even more troubling, however, it calls for the use of domestically produced steel manufacturing equipment and domestic technologies whenever domestic suppliers exist, calling into question China's implementation of its Protocol of Accession to the WTO commitment not to condition the right of investment or importation on whether competing domestic suppliers exist. While the steel policy has been in place, China's steel production has grown from 356 million metric tons (MT) in 2005 to about 490 million MT in 2007, while imports of steel products have declined. China also became a major net exporter, with approximately 50 million MT of steel net exports in 2007.

The Policy is troubling because it attempts to dictate industry outcomes and involves the government in making decisions that should be made by the marketplace. It prescribes the number and size of steel producers in China, where they will be located, the types of products that will and will not be produced, and the technology that will be used. This high degree of government direction and decision-making regarding the allocation of resources into and out of China's steel industry raises concerns not only because of the commitment that China made in its Protocol of Accession to the WTO that the government would not influence, directly or indirectly, commercial decisions on the part of state-owned or state-invested enterprises, but also more generally because it represents another significant example of China reverting to a reliance on government management of market outcomes instead of moving toward a reliance on market mechanisms. Indeed, it is precisely that type of regressive approach that is at the root of many of the United States' WTO concerns.

Semiconductors

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

Fertilizer

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

Telecommunications Equipment

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

Tariffs and Other Import Charges

Under the terms of its WTO accession, China committed to substantial annual reductions in its tariff rates, with most of them taking place within 5 years of China's WTO accession. The largest reductions took place in 2002, immediately after China acceded to the WTO, when the overall average tariff rate fell from over 15 percent to 12 percent. By 2006, China's average bound rate had fallen to 10 percent.

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

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

China completed its timely implementation of another significant tariff initiative, the WTO's Chemical Tariff Harmonization Agreement, in 2005. The United States exported \$8.3 billion in chemicals during 2007, an increase of more than 28 percent over 2006

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

U.S. exports of some bulk agricultural commodities have increased dramatically in recent years, and continue to perform strongly, especially soybeans and cotton. Exports of soybeans rose to more than \$4.1 billion in 2007, a 62 percent increase over the previous year. Cotton exports in 2007 remained strong at \$1.5 billion, though decreasing from a record \$2.1 billion in 2006. Exports of forestry products such as lumber also continued to perform strongly, increasing by 5 percent over 2006, to reach \$575 million in 2007. Fish and seafood exports rose 21 percent to \$533 million in 2007, a new record. Meanwhile, exports of consumer-oriented agricultural products increased by 45 percent to \$1.1 billion in 2007.

Overall, China's tariff reductions have increased market access for U.S. exporters in a range of industries, as China continued the process of reducing tariffs on goods of greatest importance to U.S. industry from a base average of 25 percent (in 1997) to 7 percent over a period of 5 years, starting on January 1, 2002. It made similar reductions throughout the agricultural sector. These tariff changes contributed to another significant increase in overall U.S. exports, which rose approximately 18 percent in 2007 compared to 2006.

Tariff Classification

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

Customs Valuation

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

More than 4 years later, China has still not uniformly implemented these various measures. U.S. exporters continue to report that they are encountering valuation problems at many ports. According to U.S. exporters, even though the 2002 regulations and 2003 implementing rules provide that imported goods normally should be valued on the basis of their transaction price, meaning the price the importer actually paid, many Chinese customs officials are still improperly using "reference pricing," which usually results in a higher dutiable value. For example, imports of wood products are often subjected to reference pricing. In addition, some of China's customs officials are reportedly not applying the provisions in the 2002 regulations and 2003 implementing rules as they relate to software royalties and license fees. Following their pre-WTO accession practice, these officials are still automatically adding royalties and license fees to the dutiable value (for example, when an imported personal computer includes pre-installed software) even though China's 2003 implementing rules expressly direct them to add those fees only if they are import-related and a condition of sale for the goods being valued.

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

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

Border Trade

China's border trade policy continues to generate Most Favored Nation (MFN) and other concerns. China provides preferential import duty and VAT treatment to certain products, often from Russia, apparently even when those products are not confined to frontier traffic as envisioned by Article XXIV of GATT 1994. China addressed some of these concerns in 2003 when it eliminated preferential treatment

for boric acid and 19 other products. Nonetheless, it appears that large operators are still able to take advantage of border trade policies to import bulk shipments across China's land borders into its interior at preferential rates. In addition, U.S. industry reports that China continues to use border trade policies to provide preferential treatment for Russian timber imports, to the detriment of U.S. timber exporters.

Antidumping, Countervailing Duty, and Safeguard Measures

Since acceding to the WTO, China has emerged as a significant user of antidumping measures. At the end of 2007, China had a total of 97 final antidumping measures in place (some of which pre-date China's membership in the WTO) affecting imports from 18 countries and regions, and seven antidumping investigations in progress. In 2007, China initiated four new investigations, although none of them involved U.S. products. Chemical products remain the most frequent target of Chinese antidumping actions.

MOFCOM's predecessor agencies – MOFTEC and SETC – issued most of the rules and regulations MOFCOM uses to conduct its antidumping investigations. While these measures generally represent good faith efforts to implement the relevant WTO commitments and to improve China's pre-WTO accession measures, they also contain vague language, have gaps in areas of practice and allow inordinate discretion. Meanwhile, China's handling of antidumping investigations and reviews continues to raise concerns in key areas such as transparency and procedural fairness. Concerns with transparency, including access to information, are especially acute with regard to the injury portion of investigations. To date, China has not initiated a countervailing duty investigation. China's only safeguard measure was removed at the end of 2003 after being in place for less than 2 years.

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

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

Nontariff Barriers

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

Six years after China's WTO accession, many U.S. industries complain that they face significant nontariff barriers to trade, which are discussed in more detail in various sections below. These barriers include, for example, regulations that set high thresholds for entry into service sectors such as banking, insurance, and

telecommunications, selective and unwarranted inspection requirements for agricultural imports, and the use of questionable SPS measures to control import volumes. Many U.S. industries have also complained that China manipulates technical regulations and standards to favor domestic industries.

Import Quotas

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

Tariff-Rate Quotas

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

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

For the first 2 years after China's WTO accession, China's implementation of its TRQ systems generated numerous complaints from foreign suppliers, with the most serious problems being a lack of transparency, subdivisions of the TRQ, small allocation sizes, and burdensome licensing procedures. Repeated engagement by U.S. officials led to regulatory and operational changes by the National Development and Reform Commission (NDRC) for shipments beginning January 1, 2004. Key changes included the elimination of separate allocations for general trade and processing trade, the elimination of certain unnecessary licensing requirements, and the creation of a new mechanism for identifying allocation recipients. In 2004, improvements in NDRC's TRQ administration became evident, although transparency continued to be problematic for some of the commodities subject to TRQs.

While NDRC was implementing the systemic changes in 2004, exports of some bulk agricultural commodities from the United States showed substantial increases, largely due to market conditions. In particular, despite some continuing problems with NDRC's handling of the cotton TRQs, U.S. cotton exports totaled a record \$1.4 billion in both 2004 and 2005, followed by a record of \$2.1 billion in 2006.

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U.S. cotton exports to China decreased slightly but remained strong in 2007, totaling \$1.5 billion. In addition, U.S. wheat exports totaled \$495 million in 2004, as the TRQ allocations for wheat did not appear to act as a limiting factor, but declined significantly to \$79 million in 2005 and then to \$23 million in 2006 and \$6 million in 2007. The drop in U.S. wheat exports was due to higher production and lower prices in China, which reduced China's overall import demand.

Meanwhile, the administration of China's TRQ system for fertilizer, handled by the State Economic and Trade Commission (SETC) and subsequently MOFCOM, has suffered from systemic problems since China's WTO accession. By 2007, this system was still operating with insufficient transparency and administrative guidance still seemed to be affecting how the allocated quota was used. U.S. fertilizer exports to China have declined throughout the post-WTO accession period, due in part to continuing problems with MOFCOM's administration of the fertilizer TRQ system and in part to increasing subsidization and resulting overcapacity of China's domestic fertilizer industry. U.S. fertilizer exports to China decreased from \$676 million in 2002 to \$355 million in 2005. In 2006, U.S. fertilizer exports to China declined sharply again, totaling \$232 million for the year.

In October 2006, perhaps in an attempt by the central authorities to constrain provincial and local efforts to build further unneeded capacity, the Tariff Policy Commission of the State Council announced a temporary reduction of the in-quota tariff rate for fertilizer from 4 percent to 1 percent, effective November 2006. Although it was initially anticipated that U.S. fertilizer exports to China might increase following this reduction and the scheduled phase in of foreign enterprises' rights to engage in wholesale and retail distribution of fertilizer within China, U.S. fertilizer exports sharply declined again in 2007. The data for January through September 2007 showed a decline of 48 percent, totaling \$97 million compared to \$232 million during the same period in 2006.

Import Licenses

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

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

China is the world's largest importer of iron ore, accounting for approximately 50 percent of global iron ore imports. Increasing global steel production, led by Chinese growth, has contributed to significant price increases for iron ore over the past several years. In May 2005, after Chinese steel producers negotiated contracts with major foreign iron ore suppliers, the Chinese government began imposing new

import licensing procedures for iron ore without prior WTO notification. Even though the WTO's Import Licensing Agreement calls for import licensing procedures that do not have a restrictive effect on trade, China reportedly restricted licenses to 48 traders and 70 steel producers and has not made public a list of the qualified enterprises or the qualifying criteria used. While the Chinese government maintained that it did not impose any qualifying criteria, it did acknowledge that two organizations affiliated with the Chinese government – the China Steel Industry Association and the Commercial Chamber for Metals, Minerals and Chemicals Importers and Exporters – had been discussing a set of rules regarding qualifying criteria such as production capacity and trade performance. In 2007, China further reduced the number of licensed traders from 48 to 42 and reportedly instituted further restrictions on qualifying criteria for iron ore import licenses, including tighter limitations on the size of the enterprises eligible to import iron ore and shipment sizes.

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

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

Some improvements were made to the QIP system in 2004 following repeated U.S. engagement, both bilaterally and at the WTO. In June 2004, AQSIQ issued Decree 73, the Items on Handling the Review and Approval for Entry Animal and Plant Quarantine, which extended the period of validity for QIPs from 3 months to 6 months. AQSIQ also began issuing QIPs more frequently within the established time limits. Nevertheless, a great deal of uncertainty remains even with the extended period of validity, because a QIP still locks purchasers into a very narrow period to purchase, transport and discharge cargos or containers before the QIP's expiration, and because AQSIQ continues to administer the QIP system in a seemingly arbitrary manner.

Little improvement in the QIP system has taken place over the last 3 years, and in 2007, traders continued to be concerned that the rules and regulations of the QIP system remain available as an administrative tool to limit the quantity of imports. However, traders remain hesitant to press AQSIQ for change because they would risk reprisals. Many of them would at least like AQSIQ to eliminate the quantity requirements that it unofficially places on QIPs. These quantity requirements have been used often by AQSIQ during peak harvest periods to limit the flow of commodity imports. Eliminating this requirement would help to ensure that QIPs do not interfere with the market.

In 2004, China implemented regulations requiring foreign scrap suppliers to register with AQSIQ (see "Scrap Recycling" section below). According to AQSIQ, the registration serves to prevent disreputable foreign scrap suppliers from sending sub-standard or illegal scrap and waste to China. The application process has been opaque, with foreign companies experiencing significant delays in receiving notification

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from AQSIQ. In 2007, the 3-year license expired for many foreign scrap suppliers, and AQSIQ required them to renew their licenses in a process that lacked transparency and predictability.

INTERNAL POLICIES

Taxation

Income Taxes

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

In order to narrow the widening urban-rural income gap, the Central Committee of the Communist Party of China and the State Council issued Document No. 1 of 2004, which instructed the governments at all levels to gradually reduce the agricultural tax rate of 8.4 percent until it was completely eliminated in January 2006, along with the removal of all taxes on special farm produce except for tobacco. In order to relieve the tax burden on lower and middle-income earners, the National People's Congress in December 2007 adopted an amendment that raised the threshold for income tax collection to approximately \$3,300 annually from approximately \$2,630. This move is expected to reduce the Chinese Government's revenues by more than \$4 billion annually.

Foreign investors, including those who have used investment as an entry point to the Chinese domestic market, have benefited from investment incentives such as tax holidays and grace periods, which allow them to reduce substantially their tax burden. Domestic enterprises have long resented rebates and other tax benefits enjoyed by foreign invested firms and these benefits are gradually being phased out. Until the end of 2007, domestic and foreign invested companies in China had been subject to an income tax rate of 33 percent, but because of various tax waivers and incentives most domestic enterprises paid 24 percent and most foreign businesses paid 15 percent.

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

To move up the value chain and steer the economy away from low-skilled, labor-intensive manufacturing, China passed a new unified *Corporate Income Tax Law* in March 2007 that eliminated many of the tax incentives typically available to foreign invested enterprises. The change took effect on January 1, 2008 and introduces a unified 25 percent corporate tax rate replacing the split between domestic and foreign invested enterprise rates. The Chinese government announced it would phase in the uniform tax rates over a 5 year period during which foreign invested enterprises will see their tax rates increase from 15 percent in 2007, to 18 percent in 2008, 20 percent in 2009, 22 percent in 2010, 24 percent in 2011, and 25 percent in 2012. The law includes two exceptions to the new 25 percent flat rate: one states that income tax rates for small businesses with small profits will be 20 percent, and the other allows qualified high technology companies registered in special economic zones to be exempt from income taxes for the first 2

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years for any earnings booked within the recognized zones, after which those earnings will be assessed at 12.5 percent. Additional incentives are available for venture capital and for investments in resource and water conservation, environmental protection, and work safety. Current preferential tax treatment will apply to investments in agriculture, forestry, animal husbandry, fisheries, and infrastructure. The tax changes will likely result in narrower profit margins for foreign invested enterprises in China. The law may also result in a reduction in measured foreign direct investment, as it will close a “round-tripping” loophole in which money from China is sent overseas and brought back to China as “foreign investment” to take advantage of preferential tax treatment policies.

Value Added Taxes (VAT)

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

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

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

In 2007, China implemented two additional significant changes to its VAT rebates in an attempt to control overexpansion of production capacity in particular sectors: (1) rebates were reduced on 2,268 commodities (37 percent of all export categories) likely to trigger trade disputes; and (2) VAT refunds were eliminated for 533 other products which were either resource intensive or heavily polluting in the

manufacturing process. Exports affected by the partial rebate reduction include: textiles, apparel, shoes, hats, paper products, goods made from plastic and rubber, and furniture. The rebate rates for these products dropped from 13 percent to 17 percent to 5 percent to 11 percent. Exports affected by the VAT refund elimination include: leather, chlorine, dyes and other chemical products, certain industrial chemicals (not including refined chemical products), some fertilizers, metal carbide and activated carbon products, certain lumber and single use wooden products, unalloyed aluminum poles and other nonferrous metal processed goods, segmented ships, and nonmechanical boats. These products had export VAT rebate rates between 5 percent and 13 percent. These adjustments follow VAT rebate adjustments implemented in November 2006 and April 2007 on a wide range of semi-finished and finished steel products, as part of an effort to discourage unneeded creation of production capacity for these products in China. Despite these efforts, however, overall Chinese exports of steel products in 2007 increased significantly over 2006 levels. Moreover, since these export VAT rebate reductions did not target all steel products, there appeared to be a shift in Chinese steel production and exports of steel products for which full export VAT rebates were still available, as discussed below in the section on export duties. China's exports of these value added steel products to the U.S. market increased significantly during 2006 and 2007.

Another significant change to China's VAT policy in 2007 was the elimination of the VAT rebate for 84 grain and oilseed products, ranging from 5 percent to 17 percent. The impetus behind the elimination apparently stems from concerns over food security and inflationary pressures on domestic prices.

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

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

Consumption Taxes

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

STANDARDS, TESTING, LABELING, AND CERTIFICATION

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

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

In January 2002, China began the task of aligning its standards system with international practice with AQSIQ's issuance of rules designed to facilitate China's use and adoption of international standards. In 2003, China also pledged to begin implementation of the Asia Pacific Economic Cooperation (APEC) conformity assessment Mutual Recognition Arrangement for Telecommunications Equipment. However, China does not appear to have taken any concrete steps. Moreover, the narrow definition of what China views as an international standard continues to be an issue of concern. China subsequently embarked on the task of reviewing all of its existing 21,000 technical regulations to determine their continuing relevance and consistency with international standards. In November 2005, China reported that as of October 2005 it had nullified 1,416 national standards as a result of this review. China has since continued its review of existing standards and technical regulations, but has not provided an update on its progress.

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

FOREIGN TRADE BARRIERS

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

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

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

Conformity Assessment Procedures

CNCA's new compulsory product certification system took effect in August 2003. Under this system, there is now one safety mark – the China Compulsory Certification (CCC) mark – issued for both Chinese and foreign products. The CCC mark is now required for more than 130 product categories, such as electrical machinery, information technology equipment, household appliances, and their components. In 2007, as in prior years, U.S. companies continued to complain that the regulations lack clarity regarding the products that require a CCC mark. They also have reported that China is applying the CCC mark requirements inconsistently and that many domestic products required by CNCA's regulations to have the CCC mark are still being sold without it. U.S. companies in some sectors also complained that CCC certification requirements and procedures remain difficult, time consuming, onerous, and costly. For example, the procedures subject manufacturing facilities to on site inspection by CNCA or its designee and require the manufacturing facilities to bear the cost of the inspection. In addition, small and medium sized U.S. companies without a presence in China find it particularly burdensome to apply for CCC mark exemptions, such as for replacement and re-export, because China requires the applications to be done in person in the Beijing offices of CNCA. China also continues to require the CCC mark for products that would no longer seem to warrant mandatory certification, such as low risk products and components.

To date, CNCA has accredited well over 100 Chinese enterprises to test and certify for purposes of the CCC mark. Despite China's commitment that qualifying minority, foreign-owned (upon China's

accession to the WTO), and majority foreign-owned (2 years later) joint venture conformity assessment bodies would be eligible for accreditation and would be accorded national treatment, China so far has not accredited any foreign invested conformity assessment bodies. As a result, exporters to China are often required to submit their products to Chinese laboratories for duplicative tests that have already been performed abroad, resulting in greater expense and a longer time to market. One U.S. based conformity assessment body has entered into a Memorandum of Understanding (MOU) with China allowing it to conduct follow-up inspections (but not primary inspections) of manufacturing facilities that make products for export to China requiring the CCC mark. However, China has not been willing to grant similar rights to other U.S. based conformity assessment bodies, claiming that it is only allowing one MOU per country, the rationale for which has not been explained. Many U.S. testing labs, as well as the U.S. exporters that rely on their services, find China's foreign accreditation requirements for CCC mark certification unwarranted and overly restrictive.

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

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

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

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

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

in the International Organization for Standardization (ISO) and International Electrotechnical Commission's (IEC) Joint Technical Committee 1 (ISO/IEC JTC1). In 2006, following balloting of ISO/IEC JTC1 members, the proposed WAPI amendment did not get enough votes to be accepted as an international standard.

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

Third generation (3G) Telecommunications Standards

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

In 2005, China's regulators continued to take steps to promote the TD-SCDMA standard. It also became evident that China's regulators had not ceased their attempts to influence negotiations on royalty payments, both for this technology, and the two other 3G technologies, all of which incorporate intellectual property owned by foreign companies. More recently, in February 2006, China declared TD-SCDMA to be a "national standard" for 3G telecommunications, raising concerns among U.S. and other foreign telecommunications service providers that Chinese mobile telecommunications operators will face Chinese government pressure when deciding what technology to employ in their networks. As a result, the United States again raised the issue of technology neutrality in connection with the April 2006 JCCT meeting. At that meeting, China restated its April 2004 JCCT commitment to technology neutrality for 3G standards, agreeing to ensure that mobile telecommunications operators would be allowed to make their own choices as to which standard to adopt. China also agreed to issue licenses for all technologies employing 3G standards in a technologically neutral manner that does not advantage one standard over others. To date, China has not issued any 3G licenses to any firm, foreign or domestic, yet its test market for the TD-SCDMA standard continues to expand, with central government approval if not direction, involving infrastructure investments specific to technologies based on this standard worth billions of dollars.

Proposed Mandatory Certification for Information Technology Products

In August 2007, China notified to the WTO TBT Committee a series of 13 proposed regulations mandating that various information technology products be certified for information security functions. The proposed regulations appear to require certification to Chinese national standards for information security, which may be different from international standards used in the global market. It is also unclear

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

These proposed regulations generated immediate concerns for the United States and U.S. industry, in part because of past actions that China has taken in this area, including China's issuance of mandatory encryption standards for Wi-Fi technologies in 2003 (discussed above) and rules that China issued in 1999 requiring the registration of a wide range of hardware and software products containing encryption technology. The United States will continue to press China on this issue in 2008 to ensure that any regulations China develops in the information security area are consistent with WTO obligations to ensure that technical regulations and conformity assessment procedures are no more trade-restrictive than necessary to fulfill a legitimate objective.

Mobile Telephone Battery Standards

In July 2007, U.S. industry became aware that China's Ministry of Information Industry (MII) was developing a standard that would specify requirements for the size, electrical performance, safety performance and labeling of mobile telephone batteries. MII released a draft of this standard to U.S. industry in September 2007.

Although the draft battery standard on its face is voluntary, the United States and U.S. industry are concerned that it will be integrated into a technical regulation, such as MII's type-approval scheme or the CCC mark program, thereby making compliance mandatory. This result would be problematic because the draft standard appears to diverge from international standards. In addition, it would significantly hamper mobile telephone innovation by focusing on the design of the battery rather than its performance, and it would appear to have the opposite effect of MII's stated justification of promoting consumer convenience and reducing electronic waste. In late 2007 and early 2008, Chinese authorities appear to be taking these concerns seriously, but the United States will continue to monitor this issue.

Chemical Registration

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

U.S. industry notes that a number of applications have been pending well beyond the 120 day time limit set forth in the regulation. U.S. industry also complains of shifting requirements and implementation of those requirements. For example, China recently expanded eco-toxicity testing requirements to mandate

that certain ecological toxicity testing, particularly fish ecological toxicity and biodegradation studies, be carried out in one of six SEPA-accredited laboratories in China. These accredited laboratories have all been established since mid-2004 in response to the September 2003 regulation, and U.S. industry fears that if inexperience leads one of these new laboratories to declare a product unsafe, it could affect sales globally. China's lack of a low volume exemption, meaning an exemption where trade in a given chemical falls below an annual volume threshold, also appears to hinder the importation of U.S. chemicals, particularly for high value specialty chemicals sold in small quantities.

Toxic Chemicals

In December 2005, SEPA and the General Administration on Customs issued the Circular on the Highly Restricted Import/Export Toxic Chemicals List 5 days before it entered into force. In response to U.S. complaints that the notice period was too short, SEPA provided a transition period until June 2006 during which the regulation was apparently not enforced against shipments of chemicals imported from the United States. China subsequently notified the measure to the WTO TBT Committee in June 2006, with no opportunity for comment and no transition period. In addition to these problems, U.S. industry has expressed concerns about excessive fees required to register chemical products, as well as a lack of clarity on the scope of coverage of the measure.

Hazardous Substances

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

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

China RoHS is similar to a pre-existing European Union measure (EU RoHS Directive). However, China RoHS differs from the EU RoHS Directive in several ways, including a different scope of products, unique requirements for labeling and marking across a wide range of electronic information products and, with respect to a yet undetermined range of products, a requirement for CCC mark as an indication that the product has been tested and certified for the absence of the restricted substances.

The China RoHS scheme has created substantial concern for U.S. and other foreign companies in several ways. These companies have expressed concerns about the justification for, and the burdensome nature of, China's labeling and marking requirements for a long list of products. Additionally, the issue of how China's labeling and marking requirements will be applied to products containing many electronic information product components has not been adequately addressed by Chinese regulators, nor have the mandated labeling and marking requirements been notified to the WTO TBT Committee for review and comment. Companies have also expressed concern about China's plans to require an in-country testing and certification process using the CCC mark system for a range of products that China has yet to

identify. The planned requirement would ban the sale and import of products that exceed the maximum concentration value allowed for the hazardous substances.

Scrap Recycling

Scrap exports from the United States to China exceeded \$6.2 billion in 2007, making scrap one of the United States' largest exports to China by value. In late 2003, China's AQSIQ issued a notice requiring overseas scrap material exporters to register with AQSIQ. The stated purpose of the new requirement was to better monitor the entry of scrap shipments into China reportedly due to high occurrences of receiving dangerous waste and illegal material in past shipments from overseas. It was not until May 2004 that AQSIQ issued the implementing rules. These rules established registration procedures, including an application deadline of July 2004, and set substantive requirements. In response to U.S. and other WTO Members' concerns that the application period was too short, AQSIQ extended the application deadline to August 2004, allowed companies who submitted incomplete applications to supplement required documents and extended the new requirement's effective date from November 2004 to January 2005.

In 2004, AQSIQ made public on its website the names of overseas exporters approved to ship scrap to China in two postings, the first in mid-October and the second at the end of December, only days before the new registration would take effect. In total, about 85 percent of worldwide applicants were granted approval, including hundreds of U.S. exporters. AQSIQ indicated that it would notify applicants that were not approved and that these exporters would be able to apply again 6 months after receiving notice of their rejection.

In July 2005, AQSIQ posted Bulletin No. 103/2005 on its website, announcing the resumption of the review and approval of registration applications for scrap imports. According to the bulletin, as of August 2005, scrap suppliers must wait 3 years to reapply for registration if they are denied eligibility. A December 2005 AQSIQ notice reported that an additional 260 company registrations had been approved, including 55 U.S. companies.

Since Bulletin No. 103/2005 was published, U.S. scrap exporters continue to experience problems in 2007 related to inconsistent and unexplained rejections of licenses, confusing requirements imposed with little or no notice, and rejections of shipments at the point of entry. The United States is also encountering problems as a result of pre-shipment inspection requirements imposed by the Chinese authorities and conducted by Chinese-authorized inspectors at the shipment origin point. EPA is working with AQSIQ to address information exchange on requirements, testing, training, certification programs, protocols, and other procedures related to exports to the United States.

Scrap Waste

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

for the items subject to restricted import procedures. EPA is working with AQSIQ to address information exchange on requirements, testing, training, certification programs, protocols, and other procedures related to exports to the United States.

Medical Devices

AQSIQ issued Decree 95 - the *Administrative Measures on Examination and Supervision of Imported Medical Devices* - in June 2007, with an effective date of December 2007. Decree 95 was a significant measure that would have imposed an onerous examination and supervision regime on imported medical devices, introducing additional testing and inspection redundancy to the certification schemes administered by China's State Food and Drug Administration and in some cases, CNCA. China issued Decree 95 in final form without notifying the proposed Decree 95 to the WTO's TBT Committee or giving WTO Members an opportunity to comment. The United States, working closely with U.S. industry, raised these concerns in meetings with AQSIQ and MOFCOM during the run-up to the December 2007 JCCT meeting, and AQSIQ on November 30, 2007, issued a notice suspending implementation of Decree 95. During the JCCT meeting, China also agreed to eliminate remaining redundancies in its testing and certification requirements for imported medical devices.

Patents Used in Chinese National Standards

In late 2004, concerns arose following the SAC's issuance of a draft measure – the *Interim Regulations for National Standards Relating to Patents* – and public statements by key Chinese government officials that appeared to contemplate compulsory licensing of patented technologies that are used for national standards in China. Standards organizations have varying patent policies depending upon the nature of the standards organizations. Accredited standards developing organizations typically require disclosure of intellectual property in the standards developing process, and support “reasonable and nondiscriminatory” (RAND) policies, requiring that right holders make any intellectual property incorporated in the standards developed within the organizations available to all interested parties on RAND terms. Typically, licensing terms are then negotiated between the right holder and parties interested in implementing the standards. Although the initial draft of this measure did not expressly call for compulsory licensing and subsequent drafts have not been released for public comment, public statements by key Chinese government officials have generated U.S. industry concern that the final version of the measure may require foreign enterprises to share their patented technologies on a royalty-free basis in exchange for the opportunity to participate in developing standards. While the current status of this measure is unclear, the United States has urged China to circulate an updated draft for public comment and will closely monitor developments in this area in 2008. In 2006, the Chinese Electronic Standardization Institute (CESI), a Chinese government institution, released draft intellectual property policy rules for standards-setting organizations (SSOs). These draft rules envisage Chinese government involvement in standard-setting processes, including a requirement that SSOs obtain government approval for patent claims. Such government involvement could be exercised in a way that impacts upon private party transactions. This could raise concerns under certain circumstances. The United States is following China's treatment of intellectual property in SSOs, including the development and finalization of CESI's rules. The United States also understands that China is developing a new standardization law in 2008. Reportedly, a draft of that law has been circulated among China's ministries and is undergoing vigorous debate before the State Council.

Distilled Spirits Standards

China notified a proposed revision of its distilled spirits standard in August 2006, after several years of bilateral engagement and discussions at the WTO during meetings of the TBT Committee. This proposed revision was welcomed by U.S. industry, as it would eliminate the requirement for tolerance levels of superior alcohols, or fusel oil, and bring China's standard in line with international norms. China issued this same standard in final form and began implementing it in 2007.

Sanitary and Phytosanitary (SPS) Measures

China made little progress in 2007 to resolve high profile issues such as its current import suspension of U.S.-origin beef, beef products, and live cattle related to Bovine Spongiform Encephalopathy (BSE); its avian influenza-related import suspension on poultry and poultry products from seven U.S. states; and its apparent failure to adopt a science based approach for its position on tolerances for pathogens and residues.

China's apparent lack of scientific evidence and transparency for its SPS measures remained a problem in 2007. For example, China failed to notify to the WTO numerous SPS measures, resulting in three specific measures that were adopted without the benefit of comments from other interested WTO Members. In 2006, China failed to notify 22 measures to the SPS Committee, and did not notify them in 2007. In some cases, it is not clear whether the adopted measures were based on sufficient scientific evidence, and/or may raise national treatment concerns. U.S. engagement with China at the WTO and bilaterally, including through the provision of technical assistance, has helped to improve China's compliance with WTO transparency obligations. At the same time, however, various U.S. agricultural exports continue to be subjected to entry, inspection, and labeling requirements that were not notified or face import bans that appear to be maintained without sufficient scientific evidence. In particular, the year 2007 saw a significant increase in problems regarding market access for U.S. meat and poultry products, resulting in the delisting of several U.S. plants for export to China. The most problematic of China's SPS measures are described below.

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

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

To date, China still has not provided any scientific justification for continuing to maintain its ban, nor has it identified any of the administrative and regulatory steps necessary to lift the ban, even though the OIE has determined that the United States is a controlled risk country for BSE. The OIE provides for conditions under which trade in all beef and beef products from animals of any age can be safely traded and the United States expects China to provide access to U.S. beef and beef products in accordance with the OIE guidelines. Although China sent a technical team to the United States in October 2005, this visit did not advance a resolution of the impasse. At the April 2006 JCCT meeting, China agreed to conditionally reopen the Chinese market to U.S. beef, subject to the negotiation and finalization of an import protocol. Jointly negotiated protocols, and accompanying export certificates, are normal measures necessary for the export of any livestock products from the United States to China or other trading

partners. At the end of June 2006, after three inconclusive rounds of negotiations, China's food safety regulators unilaterally announced a limited market opening, restricted to the entry of U.S. deboned beef from animals 30 months of age or less. One month later, they followed up that announcement with an announcement of 22 onerous entry conditions, many of which were unrelated to BSE. In May 2007, Vice Premier Wu Yi offered to open China's market to deboned and bone-in beef from animals 30 months or less, although the remaining onerous entry conditions were unchanged. These unilateral announcements had no practical effect, because, as with any trading partners seeking to engage in livestock trade, the United States and China would have had to agree on language for actual export safety certificates before the trade could resume. Since then, the United States has pressed China to reconsider its position and to negotiate an appropriate protocol in light of China's WTO SPS Agreement obligations and relevant OIE guidelines.

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

Avian Influenza (AI)

In February 2004, China imposed a nationwide ban on U.S. poultry in response to cases of low-pathogenic AI (LPAI) found in Delaware. China maintained this import suspension when highly pathogenic AI (HPAI) was subsequently detected in Texas later that month. Throughout 2004, the United States provided technical information to China on the AI situation in the United States, and in August 2004 a high-level Chinese delegation conducted a review of the status of HPAI eradication efforts in the United States. In December 2004, China lifted its nationwide ban on U.S. poultry, but has continued to impose a state ban whenever LPAI was detected in an individual state. As of February 2008, poultry exports to China are banned from Connecticut, Rhode Island, Nebraska, New York, Pennsylvania, Virginia, and West Virginia. Additionally, China bans the importation of U.S. origin poultry products that are transshipped through states where low pathogenic notifiable avian influenza (LPNAI) has been detected. The OIE modified the AI chapter in 2006 to incorporate two types of notifiable LPAI. Prior to 2006, only HPAI was notifiable.

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

Zero Tolerance for Pathogens and Animal Drug Residues

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

As of the JCCT meeting in December 2007, 15 U.S. pork and poultry plants had been delisted by China for alleged violations of zero tolerance standards for pathogens or detection of certain chemical residues. Despite extensive technical and political engagement to explain the U.S. approach to regulation of pathogens and residues, China has been reluctant to change its policies that resulted in the delisting of the U.S. plants. During the JCCT meeting in December 2007, China agreed to allow six U.S. pork processing facilities to resume exports to China, but these plants must still meet China's residue requirements, which are not feasible for much of the U.S. pork industry and do not appear to be based on scientific principles.

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

Food Additive Standards

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

Biotechnology Regulations

In January 2002, the Ministry of Agriculture (MOA) issued new rules implementing June 2001 regulations on agricultural biotechnology safety, testing, and labeling. The product most affected by

these rules was soybeans, while corn and other commodities were also potentially affected. However, the rules did not provide adequate time for completion of required safety assessments before their effective date of March 20, 2002. In response to U.S. interventions, China issued interim rules, which allowed trade to continue while authorities carried out safety assessments of biotechnology products. These interim rules were extended twice and were set to expire in April 2004. In December 2003 talks, MOA officials promised that approval of Round-up Ready soybeans would be completed at least 60 days before expiration of the interim rules in order to prevent any trade disruption. China followed through on this promise and approved Round-up Ready soybeans, along with two cotton events and two corn events, in February 2004. Two months later, China issued final safety certificates for four additional corn events and seven canola events. China issued a formal safety certificate for another corn event later in 2004, leaving only one corn event still awaiting final approval. During the July 2005 JCCT meeting, MOA issued the final safety certificate for the remaining corn event. All of the approvals made in 2004 and 2005 were for 3 year renewable safety certificates. In January 2007, MOA renewed safety certificates for all of the events that had originally been approved 3 years earlier.

In early 2007, MOA issued and implemented some troubling new regulations without circulating them for public comment in advance or consulting with relevant stakeholders, including the United States and U.S. industry. For example, in January 2007, MOA added a new requirement that biotechnology seed companies turn over key intellectual property as part of the application process when seeking safety certificates. In March 2007, MOA halted a pilot program, which had been developed over 2 years of bilateral discussions, aimed at allowing the review of products under development in the United States prior to completion of the U.S. approval process. As a result, the MOA approval process would only begin after the completion of the U.S. approval process. This means that even if the MOA approval process proceeds quickly, trade may still be disrupted, as importers will need time to apply for vessel based safety certificates and Quarantine Inspection Permits, both of which require valid safety certificates for biotechnology products and can take up to 30 working days. At the JCCT meeting in December 2007, in response to U.S. engagement, China agreed to eliminate the requirement that technology companies submit viable biotechnology seeds for the development of testing methodology when applying for import registration.

Despite some progress in China's maturing regulatory and legal systems for biotechnology products, potential disruptions to trade arise due to limited timelines for submission of products, asynchronous approvals, the lack of clarity on assessment requirements for stacked (multiple trait) products and, at times, duplicative testing requirements.

Food Labeling

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

The distilled spirits industry is concerned that China will require its products to comply with all existing food labeling requirements. The industry believes that some of these requirements are inappropriate. For example, China requires distilled spirits product labels to include a bottling date. According to accepted international practice relating to wines and spirits, however, the date of manufacture (production or

bottling date) is not required. Because many spirits products consist of a blend of spirits that are aged for varying periods, a single “date of manufacture” is often not possible to specify, would not represent the actual age of the product and would confuse consumers regarding the actual age of the product. China also requires the labels of distilled spirits products to include a list of ingredients, even though the original ingredients (*e.g.*, corn, wheat, rye, and barley) are completely transformed and are no longer present after distillation. Furthermore, China maintains typeface specifications and translation requirements that may raise questions regarding consistency with international standards.

EXPORT REGULATION

Export Duties, Licenses, and Quotas

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

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

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

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

China’s state planners also attempt to manage the export of many intermediate and downstream products, often by raising or lowering the VAT rebate available upon export and sometimes by imposing or retracting export duties. These practices have caused tremendous disruption, uncertainty, and unfairness in the markets for particular products.

Sometimes the objective of these adjustments is to make larger quantities of a product available domestically at lower prices than the rest of the world. For example, China decided in 2006 to eliminate the 13 percent VAT rebate available on the export of refined metal lead and then, in 2007, imposed a duty

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of 10 percent on refined metal lead exports. These actions caused a steep decline in China's exports of this intermediate product and have contributed to a sharp rise in world prices, which have gone from approximately \$1,300 per MT at the time of China's elimination of the export VAT rebate in 2006 to approximately \$3,200 per MT in recent months. Meanwhile, Chinese domestic prices have reportedly declined because of China's captive refined metal lead production, giving China's downstream producers a substantial competitive advantage over foreign downstream producers.

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

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

Export Subsidies

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

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

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

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

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

INTELLECTUAL PROPERTY RIGHTS (IPR) PROTECTION

With its acceptance of the TRIPS Agreement, China accepted obligations to adhere to generally accepted international norms to protect and enforce the IPR held by U.S. and other foreign companies and individuals in China. Specifically, the TRIPS Agreement sets minimum standards of protection for copyrights and neighboring rights, trademarks, geographical indications, industrial designs, patents, integrated circuit layout designs, and undisclosed information. Minimum standards are also established by the TRIPS Agreement for IPR enforcement in administrative and civil actions and, in regard to copyright piracy and trademark counterfeiting, in criminal actions and actions at the border. The TRIPS Agreement additionally requires that, with very limited exceptions, WTO Members provide national and Most Favored Nation (MFN) treatment to the nationals of other WTO Members with regard to the protection and enforcement of IPR.

Since its accession to the WTO, China has overhauled its legal regime and put in place a comprehensive set of laws and regulations aimed at protecting the IPR of domestic and foreign entities in China. At the same time, some key improvements in China's legal framework are still needed, and China has continued to demonstrate little success in actually enforcing its laws and regulations to provide deterrence in the face of the challenges created by widespread counterfeiting, piracy and other forms of infringement. As a result, in 2007, the United States' bilateral efforts with China continued to focus on obtaining improvements to multiple aspects of China's system of IPR protection and enforcement so that significant reductions in IPR infringement in China could be realized and sustained over time.

Several weaknesses in all aspects of China's enforcement system—criminal, civil, and administrative—contribute to China's poor IPR enforcement record. For example, one major weakness is China's chronic

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underutilization of deterrent criminal remedies. In particular, legal measures in China that establish high thresholds for criminal prosecution and/or conviction preclude criminal penalties for many instances of commercial scale counterfeiting and piracy, create a “safe harbor” for pirates and counterfeiters and raise concerns that China may not be complying with its obligations under the TRIPS Agreement. Other procedural burdens, such as an inability to investigate based on suspicion of criminality also weaken the criminal IPR system.

The United States is seeking to resolve its concern about excessive legal thresholds for criminal prosecution, along with concerns regarding border enforcement and deficiencies in the legal protections for copyrights where works do not have China’s censorship approval, in a WTO dispute that it filed in April 2007. Viewed as a whole, the case focuses on deficiencies in China's legal regime for protecting and enforcing copyrights and trademarks on a wide range of products.

An exacerbating factor here is China’s maintenance of import and distribution restrictions for measures affecting certain types of legitimate copyright-intensive products, such as theatrical films, digital video discs, music, books and journals, as well as related foreign service suppliers. These restrictions inadvertently help to ensure that infringing products continue to dominate those sectors within China. As discussed above in the sections on Trading Rights and Distribution Services, the United States is addressing these restrictions in another WTO dispute filed in April 2007.

China’s leaders began to demonstrate a willingness to address U.S. concerns in October 2003 when a new IPR Leading Group was formed, signaling a more focused and sustained effort by China to tackle the IPR enforcement problem. Many officials in China, led by President Hu Jintao, Premier Wen Jiabao, and Vice Premier Wu Yi, continued to voice China’s commitment to protecting IPR in subsequent years and work hard to make it a reality. They allocated substantial resources to the effort and attempted to improve not only public awareness but also training and coordination among the numerous Chinese government entities involved in IPR enforcement while simultaneously fighting local protectionism and corruption. Sustained involvement by China’s leaders is critical if China is to deliver on the IPR commitments that it made at the April 2004, July 2005, April 2006, and December 2007 JCCT meetings, including China’s core commitment to significantly reduce IPR infringement levels across the country.

As previously reported, building on earlier engagement with China, the United States conducted an out-of-cycle review under the Special 301 provisions of U.S. trade law in 2006 and 2007. This review involved a systematic evaluation of China’s entire IPR enforcement regime and concluded in April 2007 with the Administration’s elevation of China to the Special 301 “Priority Watch” list and the creation of a comprehensive strategy for addressing China’s ineffective IPR enforcement regime, which included the possible use of WTO mechanisms, as appropriate.

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

Meanwhile, in October 2005, the United States submitted a request to China under Article 63.3 of the TRIPS Agreement, as did both Japan and Switzerland, seeking more transparency on IPR infringement levels and enforcement activities in China, with the objective of obtaining a better basis for assessing the effectiveness of China's efforts to improve IPR enforcement since China's accession to the WTO. However, despite the United States' extensive efforts to follow up on its Article 63.3 request bilaterally, China provided only limited information in response, hampering the United States' ability to evaluate whether China is taking all necessary steps to address the rampant IPR infringement found throughout China.

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

Since the April 2006 JCCT meeting, China has made some progress in implementing its commitments, but its progress has been slower than in the past. One bright spot appears to be China's implementation of the new rules requiring computers to be pre-installed with licensed operating system software, as U.S. industry continues to be pleased with the results of that effort. China's Supreme People's Court and Supreme People's Procuratorate also issued a new judicial interpretation in April 2007 that lowered the volume threshold for criminal prosecution and conviction with respect to certain acts of copyright and related rights infringement.

In 2007, the United States continued to use bilateral discussions to encourage China to improve its IPR enforcement regime. These discussions focused on concrete steps that China could take to improve its legal protections and enforcement efforts. When it was clear, however, that these efforts at dialogue would yield insufficient progress, the United States filed the two IPR-related WTO disputes in April 2007. Later that month, USTR issued its Special 301 report, which left China on the Priority Watch List and subject to Section 306 monitoring. USTR's report was informed by a special review conducted in 2006 and 2007 to examine the adequacy and effectiveness of IPR protection and enforcement at the provincial government level. As the Special 301 report explains, the provincial review revealed strengths, weaknesses, and inconsistencies in and among China's provinces. After filing of the two WTO disputes and the issuance of the Special 301 report, the United States continued to seek ways to work together with China to improve China's IPR enforcement regime. These efforts yielded some results, such as the signing of a Memorandum on Cooperation in IPR Enforcement between the two countries' customs authorities. However, after the United States filed the IP related WTO disputes, there has been limited cooperation from China on IPR related issues, despite the fact that the issues at the heart of the disputes involve specific legal deficiencies that could not be resolved through dialogue.

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At the December 2007 JCCT meeting, China reported on steps it has taken since the previous JCCT meeting in April 2006 to improve protection of IPR in China, including accession to the WIPO Internet treaties, a crackdown on the sale of computers not pre-loaded with legitimate software, enforcement efforts against counterfeit textbooks and teaching materials, and joint enforcement raids conducted by the U.S. Federal Bureau of Investigation and Chinese security agencies. China and the United States agreed to exchange information on customs seizures of counterfeit goods in order to further focus China's enforcement resources on companies exporting such goods. China agreed to strengthen enforcement of laws against company name misuse, a practice in which some Chinese companies have registered legitimate U.S. trademarks and trade names without legal authority to do so. The two sides also agreed to cooperate on case-by-case enforcement against such company name misuse. In addition, China agreed to eliminate the requirement to submit viable bioengineered seeds for testing, a policy change which reduces the possibility of illegal copying of patented agricultural materials.

At the SED meeting in May 2007, the United States and China agreed to Principles and Outcomes for Strengthening Innovation Cooperation (SED Principles and Outcomes), including a decision to "jointly host a seminar on the innovation ecosystem in 2007 that would gather experts to discuss and share experiences on both sides regarding the critical elements of developing an environment conducive to technological innovation." To realize this commitment, the two governments co-hosted an Innovation Conference on December 10, 2007 in Beijing. At this meeting, both sides reaffirmed that innovation is best fostered where there is effective rule of law, and where governments pursue market-oriented policies that encourage merit-based competition, entrepreneurship, commercialization of new technologies, and flexibility for users and producers in choosing among competing technologies. Both sides also confirmed the essential role of a robust intellectual property protection and enforcement regime in supporting an innovation ecosystem.

Legal Framework

In most respects, China's framework of laws, regulations, and implementing rules on IPR remains largely satisfactory. However, reforms are needed in a few key areas, such as further improvement of China's measures for copyright protection on the Internet following the notable achievement of China's accession to the WIPO Internet treaties. In particular, more work is needed at both the national level and the provincial level to meet the challenges of Internet piracy and fully implement the WIPO Internet treaties in the face of the rapid growth of the Internet. Right holders have also pointed to a number of continuing deficiencies in China's criminal measures. Most notably, as discussed above, China's high thresholds for criminal prosecution and/or conviction raise concerns with respect to China's compliance with its obligations under the TRIPS Agreement.

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

Since 2003, China has periodically issued new IPR measures. The U.S. Government has reviewed these measures through bilateral discussions and subsequent TRIPS Council reviews. Encouragingly, China has also become more willing to circulate proposed measures for public comment and to discuss proposed measures with interested trading partners and stakeholders. For example, the United States and U.S. right holders provided written comments to China on several drafts of regulations for the protection of copyrights on information networks.

In 2007, China announced a new Action Plan for revising its legal regime in order to better protect IPR. Among other things, this Action Plan sets out China's intentions for revising various laws and other measures, including the Patent Law, the Trademark Law, and related measures. China subsequently released new versions of both the Patent Law and the Trademark Law for public comment. Since then, the United States has been assessing the potential ramifications of the contemplated revisions for U.S. right holders. The United States and U.S. industry groups have also submitted written comments at various stages in the drafting of the proposed laws and regulations, along with invitations to continue dialogue on these important pieces of legislation. It is expected that the release in 2008 of the National IPR Strategy will further guide the drafting of these and other IPR related laws and regulations.

China has also been working on other proposed legal measures that could have significant implications for the IPR of foreign right holders. In particular, China issued an Antimonopoly Law in August 2007 and is considering rules relating to the treatment of IPR by standards setting organizations. The United States has been carefully monitoring these efforts and raised concerns with particular aspects of these proposals, both in bilateral meetings and at the WTO during the annual transitional reviews before the TRIPS Council and the TBT Committee.

The United States, meanwhile, has repeatedly urged China to pursue additional legislative and regulatory changes, using both bilateral meetings and the annual transitional reviews before the TRIPS Council. The focus of the United States' efforts is to persuade China to improve its legal regime in certain critical areas, such as criminal, civil, and administrative IPR enforcement and legislative and regulatory reform. For example, obstacles that have been noted in the area of criminal enforcement include China's high thresholds for prosecution and/or conviction; the lack of criminal liability for certain acts of copyright infringement; the requirement that certain IPR infringement be done with a profit-making purpose in order to be subject to criminal liability; the requirement that a counterfeit trademark must be identical to a legitimate trademark in order for criminal liability to be triggered; and the absence of minimum, proportional sentences and clear standards for initiation of police investigations in cases where there is a reasonable suspicion of criminal activity. At the same time, the United States has also been pressing China to consider a variety of improvements to its administrative and civil enforcement regimes. While some of these issues may not raise specific WTO concerns, all of them will continue to detract from China's enforcement efforts until addressed.

In the Action Plan issued in April 2007, China undertook to "study and further improve" its December 2004 judicial interpretation on the handling of criminal IPR cases and to consider a variety of other steps that could potentially improve the legal framework for criminal, civil, and administrative IPR enforcement. China's Supreme People's Court and Supreme People's Procuratorate also jointly issued a new judicial interpretation that appeared to resolve one issue in a prior judicial interpretation related to China's problematic thresholds, namely, the problem that China's criminal law appeared to provide for the prosecution and/or conviction of unauthorized reproduction of certain copyrighted works only when accompanied by unauthorized distribution. At the same time, however, Chinese government officials have given no indication whether the study and improvement foreseen in the 2007 Action Plan will lead to the reduction or elimination of China's criminal thresholds—a key concern in light of China's

obligations under the TRIPS Agreement. The United States has included this issue in its WTO dispute challenging apparent deficiencies in China's IPR enforcement regime.

The United States has also sought improvements in China's copyright protection in the context of electronic information networks since the April 2004 JCCT meeting. China took an important step at the time of that meeting when the National Copyright Administration (NCA) issued the *Measures for Administrative Protection of Copyright on the Internet*. In advance of the July 2005 JCCT meeting, the United States urged China to accede to the WIPO Internet treaties and to fully harmonize its regulations and implementing rules with them. Accession to these treaties is not required under WTO rules, but they incorporate important international norms for providing copyright protection over the Internet. These treaties have been ratified by many developed and developing countries since they entered into force in 2002. In the case of China, this type of copyright protection is especially important in light of its rapidly increasing number of Internet users, many of whom increasingly have broadband access. At the July 2005 JCCT meeting, the United States obtained China's commitment to submit the legislative package necessary for China's accession to the WIPO Internet treaties to the National People's Congress by June 2006. In June of 2007, China acceded to the WIPO Internet Treaties. China has also moved forward with the harmonization of some of its regulations and implementing rules in 2005 and 2006. In May 2006, for example, the State Council adopted an important Internet related regulation, the *Regulations on the Protection of Copyright over Information Networks*, which went into effect in July 2006. Overall, this regulation represents a welcome step, demonstrating China's determination to improve protection of electronic data. This regulation is not comprehensive, however. A number of gaps remain to be filled for China to meet the challenges of Internet piracy and fully implement the WIPO Internet treaties.

With respect to software piracy, China issued new rules in advance of the 2006 JCCT meeting that require computers to be pre-installed with licensed operating system software and government agencies to purchase only computers satisfying this requirement. Combined with ongoing implementation of previous JCCT commitments on software piracy, it is hoped that these rules will contribute to significant further reductions in industry losses due to software piracy. According to the U.S. software industry, China's software piracy rate has dropped 10 percentage points in the last 3 years, and the legitimate software market grew to nearly \$1.2 billion in 2006 – an increase of over 350 percent since 2003. Achieving sustained reductions in end-user software piracy, however, will require more enforcement by China's authorities, followed by high profile publicity of fines and other remedies imposed.

In the customs area, the United States is encouraged by the Customs Administration's increased efforts to provide effective enforcement against counterfeit and pirated goods destined for export and the Customs Administration's agreement in 2007 to cooperate with U.S. customs authorities to fight exports of counterfeit and pirated goods. Nevertheless, the United States remains concerned about various aspects of the *Regulations on the Customs Protection of Intellectual Property Rights*, issued by the State Council in December 2003, and the Customs Administration's May 2004 implementing rules. These measures were intended to improve border enforcement, by simplifying the process for right holders to secure effective enforcement at the border and strengthening fines and punishments. Disposal of confiscated goods remains a problem under the implementing rules, which, among other concerns, appear in some circumstances to mandate auction of seized products following removal of infringing features, rather than destruction or disposal outside of commerce. The United States raised the customs border enforcement measures as part of its April 2007 WTO case challenging deficiencies in China's IPR enforcement regime. There also continue to be problems in referring customs violations to criminal prosecutions.

The United States also remains concerned about a variety of weaknesses in China's legal framework that do not effectively deter, and may even encourage, certain types of infringing activity, such as the

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“squatting” of foreign company names, designs, and trademarks; the theft of trade secrets; the registration of other companies’ trademarks as design patents and vice versa; the use of falsified or misleading license documents or company documentation to create the appearance of legitimacy in counterfeiting operations; and false indications of geographic origin of products. In 2007, the United States continued to discuss these and other problems with China and seek solutions for them. In a positive development, the State Administration of Industry and Commerce (SAIC) announced in August 2007 that it was launching a 6 month campaign targeting the unauthorized use of well-known trademarks and company names in the enterprise registration process. In addition, the State Intellectual Property Office (SIPO) has taken steps to punish patent agents who are involved in “squatting” on the designs or inventions of others.

In the pharmaceutical sector, the United States continues to make measured progress in working with China to address a range of concerns. At the JCCT meeting in December 2007, the two sides noted the signing of a Memorandum of Agreement between the U.S. Department of Health and Human Services and China’s State Food and Drug Administration on active pharmaceutical ingredients (APIs). Beyond this, China agreed in the JCCT to address specific loopholes in its regulation of bulk chemicals used as APIs. Cooperation with industry on many criminal pharmaceutical counterfeiting cases has also reportedly improved. However, a lack of clarity in laws involving generic drug patent infringement appears to be contributing to the continued growth of drug counterfeiting, with corresponding health and safety problems. The United States has concerns about the extent to which China provides adequate protection against unfair commercial use for data generated to obtain marketing approval. The United States also has concerns regarding the limited progress towards patent term restoration to compensate for delays in regulatory approval, and the continuing lack of effective legal mechanisms to resolve patent disputes prior to marketing approval of pharmaceutical products.

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

Enforcement

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

Despite repeated antipiracy campaigns in China and an increasing number of civil IPR cases in Chinese courts, overall piracy and counterfeiting levels in China remained unacceptably high in 2007. IPR infringement continued to affect products, brands, and technologies from a wide range of industries, including films, music and sound recordings, publishing, business and entertainment software, pharmaceuticals, chemicals, information technology, apparel, athletic footwear, textile fabrics and floor coverings, consumer goods, food and beverages, electrical equipment, automotive parts and industrial products, among many others. Furthermore, limitations on the operations of trade associations

representing foreign right holders in China, including restrictions on the number of employees, hamper the ability of those organizations to assist right holders with effectively using China's legal system to support IPR enforcement.

U.S. industry estimates that levels of piracy in China across all lines of copyright business ranged between 80 percent and 95 percent based on data for 2007, which indicates little or no overall improvement over 2006. Trade in pirated optical discs continues to thrive, supplied by both licensed and unlicensed factories and by smugglers. Small retail shops continue to be the major commercial outlets for pirated movies and music (and a variety of counterfeit goods), and roaming vendors offering cheap pirated discs continue to be visible in major cities across China. As a result of a sustained campaign by municipal management authorities and others, some reduction in street sales of pirated goods in well-trafficked areas has been noted. Piracy of books and journals and end user piracy of business software also remain key concerns, although improvements have been seen in business software piracy rates, as discussed above, and there were some positive developments in fighting university textbook piracy. In addition, Internet piracy is increasing, as is piracy over enclosed networks such as those of universities. The NCA also began to undertake campaigns to combat Internet piracy and additional steps may occur in advance of the Olympics.

Although China made a commitment at the July 2005 JCCT meeting to take aggressive action against movie piracy, including enhanced enforcement for titles not yet authorized for distribution, right holders have monitored China's efforts and report little meaningful improvement in piracy of pre-release titles in several major cities. For that reason, the lack of copyright protection for works that have not been approved for release in China is one of the issues raised in the U.S. WTO case challenging deficiencies in China's IPR enforcement regime.

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

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

As in prior years, the United States worked with central, provincial, and local government officials in China in 2007 in a determined and sustained effort to improve China's IPR enforcement, with a particular emphasis on the need for dramatically increased utilization of criminal remedies as well as the need to improve the effectiveness of civil and administrative enforcement mechanisms. A variety of U.S.

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agencies held regular bilateral discussions with their Chinese counterparts and have conducted numerous technical assistance programs for central, provincial, and local government officials on international IPR standards, IPR enforcement methods, and other rule of law issues. USTR also completed its special provincial government-level review in 2007, and the results revealed IPR enforcement strengths and weaknesses in key locations. In addition, the United States Embassy organized another annual roundtable meeting in China designed to bring together U.S. and Chinese government and industry officials. The United States also continued to urge China to use the IPR Working Group created at the April 2004 JCCT meeting to address outstanding issues required to make needed changes, although China demonstrated reluctance to pursue this avenue of cooperation after the United States filed two IPR-related WTO disputes in April 2007.

The United States' efforts have also benefited from cooperation with other WTO Members seeking improvements in China's IPR enforcement, both on the ground in China and at the WTO during meetings of the TRIPS Council. For example, the United States, Japan, and Switzerland made coordinated requests under Article 63.3 of the TRIPS Agreement in order to obtain more information about IPR infringement levels and enforcement activities in China and provide a better basis for assessing the effectiveness of China's efforts to improve IPR enforcement since China's accession to the WTO. In addition, the United States and the EC have increased coordination and information sharing on a range of China IPR issues over the last year. The United States also works with APEC members, including China, to develop regional best practices on IPR protection and enforcement. In addition, several WTO Members requested third party status in one or both of the United States' April 2007 IPR related WTO cases against China, underscoring the significance of these disputes.

The United States has also continued to pursue a comprehensive initiative to combat the enormous global trade in counterfeit and pirated goods, including exports of infringing goods from China to the United States and the rest of the world. This initiative, the Strategy Targeting Organized Piracy (STOP!), is a U.S. Government-wide effort to stop fakes at the U.S. border, to empower U.S. businesses to secure and enforce their IPR in overseas markets, to expose international counterfeiters and pirates, to keep global supply chains free of infringing goods, to dismantle criminal enterprises that steal U.S. intellectual property and to reach out to like-minded U.S. trading partners in order to build an international coalition to stop counterfeiting and piracy worldwide. China's share of infringing goods seized at the U.S. border stood at 80 percent in fiscal year 2007, according to data from U.S. customs authorities.

China is making genuine efforts to improve IPR enforcement. U.S. industry has confirmed that some of China's special campaigns, such as the "Mountain Eagle" campaign against trademark infringement crimes that ended in 2006, have in fact resulted in increased arrests and seizures of infringing materials, although the disposition of seized goods and the outcomes of criminal cases remain largely obscured by a lack of transparency. The 2007 Action Plan, which China stated at the JCCT meeting in December 2007 was 80 percent complete, announced that China would launch more special crackdown efforts with regard to various IPR infringement problems. The United States has urged China to use its implementation of such efforts as an opportunity to tackle emerging enforcement challenges, particularly the sale of pirated and counterfeit goods on the Internet. In addition, the United States has suggested that China use this opportunity to examine the potential benefits of specialized national IPR courts and prosecutors, providing quality trademark examinations by maintaining relative examination and faster adjudications for administrative opposition and cancellation proceedings, and ensuring that the resources available to local administrative, police, and judicial authorities charged with protecting and enforcing IPR are adequate to the task.

Nevertheless, despite its many positive efforts to improve IPR enforcement, China pursues other policies that continue to impede effective enforcement. These policies led the United States to resort to the WTO dispute settlement mechanism in 2007, over the claims discussed above. At the same time, other changes are needed on the market access side. As discussed above, China maintains market access barriers, such as import and distribution restrictions, which discourage and delay the introduction of numerous types of legitimate foreign products into China's market. These barriers create additional incentives for infringement of copyrighted products like theatrical films, DVDs, music, books, and journals and inevitably lead consumers to the black market, again compounding the severe problems already faced by China's enforcement authorities.

SERVICES BARRIERS

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

However, many challenges remain in securing the benefits of China's services commitments. While China continued to keep pace nominally with the openings required by its Protocol of Accession to the WTO, it also continued to maintain or erect terms of entry in some sectors that were so high or cumbersome as to prevent or discourage foreign suppliers from gaining market access. For example, excessive and often discriminatory capital requirements continued to restrict market entry for foreign suppliers in many sectors, such as telecommunications, construction, and insurance. In other sectors, such as construction services, problematic measures appear to be taking away previously acquired market access rights.

Meanwhile, the Administrative Licensing Law, which took effect in July 2004, has increased transparency in the licensing process, while reducing procedural obstacles and strengthening the legal environment for domestic and foreign enterprises. As a result, the licensing process in many sectors continued to proceed in a regular fashion in 2007, although concerns about unfair discrimination, lack of transparency and delays in licensing remained in key sectors, including financial services, express delivery services, and telecommunications.

Insurance Services

While some progress has been made in transparency and market access, U.S. insurance companies seeking to serve the China market continue to report a number of problems. For example, U.S. and other foreign companies have had difficulty expanding their operations once they have established them in China. China's insurance regulator (CIRC) does not allow foreign life and non-life insurance subsidiaries established in China to apply for and receive multiple, concurrent approvals to expand their operations through internal branches. Foreign companies are limited to consecutive (one-by-one) approvals. In contrast, Chinese insurers do seem to receive such multiple, concurrent approvals. U.S. insurers also are concerned that CIRC imposes additional capital requirements for each additional internal branch beyond the \$200 million registered capital required for each insurers' initial establishment as a subsidiary.

U.S. insurance companies also seek flexibility regarding CIRC's requirements relating to the ability of insurance companies to manage their assets directly and to invest their foreign exchange overseas. U.S.

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companies also seek credit from CIRC for their global operations, both in terms of meeting “seasoning” requirements and demonstrating an adequate asset base.

In addition, as China continues to grow its overseas investments, political risk insurance will become of greater importance to Chinese companies. However, China does not currently allow the private sector to compete with Sinosure (the Chinese Overseas Investment Company) in providing such insurance products.

U.S. companies also are concerned regarding information that China’s postal operator (China Post) may have been granted a license to supply insurance through its existing network of Post facilities. Such a license may have the effect of impeding competition from the private sector, depending on China Post’s scope of operations and how it will be regulated. Finally, with regard to the reinsurance sector, China’s regulations on the Administration of Insurance Business issued by CIRC in 2005 may require insurance companies that are seeking reinsurance to provide right of first refusal to insurance companies established in China.

U.S. insurance companies seek for China to liberalize its equity restrictions to allow foreign life insurers to establish wholly foreign-owned subsidiaries (they are currently capped at 50 percent joint-ventures) and to expand the scope of brokerage products that can be offered. U.S. insurance companies also would like China to liberalize its third party automobile and related transport insurance regime—China currently closes this type of “statutory” insurance to foreign participation.

Private Pensions—Enterprise Annuities

Several U.S. and foreign companies have found it very difficult to obtain a license to participate in China’s market for “enterprise annuities” services (private pensions similar to U.S. 401ks), which will grow in importance as China develops alternatives to China’s underfunded social security system. China recently opened up a new window for considering license applications but at the close of that process, China licensed only one foreign joint-venture to provide one component of such services. The United States remains very concerned that China’s process for licensing in this sector is not transparent, imposes quotas on the number of licenses granted (rather than approving all qualified suppliers), appears to be discriminatory, and does not allow for a bundled license to cover the various components of enterprise annuities services.

Banking Services

In its Protocol of Accession to the WTO, China committed to a 5 year phase-in for banking services by foreign banks. Immediately upon its accession, China allowed U.S. and other foreign banks to conduct foreign currency business without any market access or national treatment limitations and to conduct domestic currency business with foreign-invested enterprises and foreign individuals, subject to certain geographic restrictions. Two years after accession, foreign banks were allowed to conduct domestic currency business with Chinese enterprises, also subject to certain geographic restrictions, which were lifted gradually over the following 3 years. Prior to the fifth year after accession, the China Banking Regulatory Commission (CBRC) issued new rules to allow foreign banks to conduct domestic currency business with Chinese individuals without any geographic restrictions. China also committed to provide financial leasing services at the same time that Chinese banks were permitted to do so.

By the end of September 2006, 260 foreign banks, including a number of U.S. banks, reportedly had branches or representative offices in China, although only major banks have had enough resources to

enter the retail domestic currency business. By the end of 2006, the total assets of foreign banks in China reportedly had reached \$123 billion, representing approximately 2.1 percent of total banking assets in China. In some coastal cities, the amount was higher. For example, in Shanghai, foreign banks' assets reportedly represented 14.02 percent of total banking assets at the end of 2005.

The 5 year phase-in period for banking services by foreign banks ended on December 11, 2006. In November 2006, the State Council issued the Regulations for the Administration of Foreign-Funded Banks as a way to allow foreign banks to compete in all lines of banking business on the same terms as domestic banks. These regulations, however, required foreign banks to incorporate locally. Moreover, the regulations mandate that only foreign-funded banks that have had a representative office in China for 2 years and that have total assets exceeding \$10 billion can apply to incorporate in China. After incorporating, moreover, these banks only become eligible to offer full domestic currency services to Chinese individuals if they can demonstrate that they have operated in China for 3 years and have had 2 consecutive years of profits. Foreign banks seeking to operate in China through branches instead of through subsidiaries saw some relaxation of prior restrictions, but not enough to effectively allow them to compete in the retail domestic currency business. Specifically, foreign bank branches can continue to take deposits from, and make loans to, Chinese enterprises in domestic currency, but they can only take domestic currency deposits of RMB1 million (\$133,000) or more from Chinese individuals and cannot make any domestic currency loans to Chinese individuals. Foreign bank branches also cannot issue domestic currency credit cards to Chinese enterprises or Chinese individuals.

Throughout the drafting process for the regulations, the China Banking Regulatory Commission (CBRC) demonstrated uncommon transparency and allowed domestic banks, foreign banks, and foreign governments to comment. The CBRC addressed many of the key U.S. concerns with early drafts, particularly by allowing transition periods to meet prudential standards for foreign banks choosing to convert to local subsidiaries. In addition, the CBRC fulfilled its commitment to process applications for foreign bank branches to convert to local subsidiaries within 3 months after receipt. To date, five foreign banks have received approval to convert to subsidiaries. However, Chinese regulators have not approved their applications to issue local currency debit and credit cards, nor given them the ability to trade or underwrite commercial paper or long-term listed RMB bonds. (See section on credit cards below). At the SED meeting in December 2007, China agreed to allow locally incorporated foreign banks to issue RMB financial bonds (traded on the interbank market). This is a welcomed move that provides an alternative RMB fundraising method compared to retail deposits and borrowing from foreign affiliates.

A remaining area of concern involves the establishment of Chinese-foreign joint venture banks. China continues to follow a 2003 regulation that defines a "Chinese bank" as one that has less than 25 percent foreign ownership, with no single foreign investor having over 19.9 percent (the so-called 20/25 rule). China draws a distinction between domestic and foreign companies through different regulatory rules and mechanisms. Under this bifurcated regulatory structure, if a Chinese bank were to sell over 25 percent of its shares to foreign investors, it would be classified as a foreign bank and fall under separate rules, which would reduce its permitted scope of business. While the November 2006 State Council regulations virtually eliminate any significant differences in rules for locally-incorporated foreign banks and domestic Chinese banks, the possibility of increasing foreign stakes in Chinese banks above the 25 percent threshold—thus falling under the regulatory scrutiny for foreign banks—and continuing the full range of banking business has not been tested. At the SED meeting in December 2007, the CBRC provided details on a timeframe for a study of foreign participation in China's banking sector, which is part of its regular policy assessment mechanism. A draft report will be completed in the first quarter of 2008 and the whole process will be completed by December 31, 2008. By that time, based on the policy assessment's conclusions, the CBRC will make policy recommendations on foreign equity participation.

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Securities Services

In December 2005, China instituted a moratorium on foreign investment in the securities sector, claiming the need to better regulate domestic companies and further develop the sector. In December 2007, as follow-up to an SED commitment, China announced that it had lifted the moratorium on the securities sector, and several foreign firms have begun discussions with potential joint venture partners. However, China continues to apply the 33 percent foreign equity limit on the sector that is included in its GATS Services Schedule (as well as a 49 percent foreign equity limit for the asset management sector). China announced at the December 2007 SED meeting that the China Securities Regulatory Commission will conduct an assessment of foreign participation in China's securities market and make a recommendation on whether foreign equity limits can be raised.

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

Financial Information Services

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

China does not appear to have an independent regulator for financial information services. Xinhua News Agency, the Chinese state news agency, appears to be not only the regulator of, but also a competitor to foreign financial information service providers in China.

In September 2006, Xinhua issued the *Administrative Measures on News and Information Release by Foreign News Agencies* within China. These regulations preclude foreign providers of financial information services from contracting directly with, or providing financial information services directly to, domestic Chinese clients. Instead, foreign financial information service providers would have to operate through a Xinhua-designated agent, and the one agent designated to date is a Xinhua affiliate. These new restrictions do not apply to domestic financial information service providers and, in addition, contrast with the rights previously enjoyed by foreign information service providers since well before China's accession to the WTO in December 2001.

In response to complaints from the United States and the European Union, China's Premier publicly promised in September 2006 that the new rules would not change how foreign financial information service providers did business in China. Shortly thereafter, Xinhua told foreign financial information service providers that the new rules would not be applied to them until after an implementing measure was issued; however, Xinhua subsequently required foreign financial information service providers to conclude agreements with the Xinhua affiliate before renewing their annual licenses. Foreign financial information service providers have continued to operate, but without renewed licenses. In March 2008, the United States filed a request for WTO dispute settlement consultations with China concerning China's restrictions on financial information services. The European Union has filed a similar request.

Credit Cards

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

However, the United States remains concerned that China has not yet issued regulations to allow foreign companies to operate electronic payment systems for single brand, RMB denominated credit cards. China Union Pay is the sole authorized provider of electronic payment services in China. The United States has continued to raise this issue with China since July 2006, in the SED, JCCT, and other fora, without progress. The People’s Bank of China is reportedly drafting implementing regulations but has not provided any timetable for completing this task nor any assurances that the regulations will open up the electronic payments industry to foreign competition.

Wholesaling Services and Commission Agents’ Services

MOFCOM’s 2006 *Notice on Entrusting National Economic and Technological Development Zones with the Authority to Approve Foreign-Funded Distribution Firms and International Forwarding Agents* solved a number of problems regarding China’s regime for licensing providers of wholesaling services. With the issuance of that measure, MOFCOM devolved the right to grant distribution licenses from the central authorities to provincial level authorities, making the application and approval process more efficient and less time-consuming, although some technical challenges remain with regard to, for example, manufacturing enterprises seeking to expand the scope of their business to include distribution activities.

However, the U.S. wholesale industry is still facing certain barriers. U.S. industry remains seriously concerned about continuing restrictions on the rights of foreign enterprises to engage in wholesale (and retail) distribution of books, newspapers, periodicals, electronic publications, and audio and video products. Some measures, such as the April 2004 distribution services regulations, purport to allow foreign enterprises to engage in wholesale (and retail) distribution of these products. However, a host of other measures appear to impose market access or national treatment limitations, such as the July 2005 *Several Opinions on Canvassing Foreign Investment into the Cultural Sector* issued jointly by the Ministry of Culture, the State Administration of Radio, Film, and Television, General Administration of Press and Publication (GAPP), National Development and Reform Commission (NDRC), and the Ministry of Commerce; NDRC’s updated November 2007 *Catalogue for the Guidance of Foreign Investment Industries*; the *Provisions on the Administration of the Publication Market*, issued by GAPP in June 2004; the *Rule on Management of Foreign-Invested Book, Magazine and Newspaper Distribution Enterprises*, issued by GAPP and MOFTEC in March 2003; and the *Administrative Regulations on Electronic Publications*, issued by GAPP in December 1997. Under these measures, for some of the products at issue, distribution is limited to Chinese state-owned enterprises. For others, only Chinese-foreign joint ventures with minority foreign ownership are permitted to engage in distribution or foreign enterprises face restrictive requirements not imposed on domestic enterprises. After negotiations on this issue bore no fruit, the United States in April 2007 filed a WTO dispute on measures affecting trading rights, distribution of, and distribution services for certain publications and audio-visual entertainment products.

In addition, while U.S. industry has generally welcomed China's measures to govern distribution of automobiles by foreign enterprises (*Implementing Rules for the Administration of Brand-Specific Automobile Dealerships*, jointly issued by MOFCOM, the NDRC, and SAIC in February 2005; NDRC's *Rules for Auto External Marks* in November 2005; MOFCOM's *Implementing Rules for the Evaluation of Eligibility of Auto General Distributors and Brand-specific Dealers* in January 2006), they do contain some restrictions on foreign enterprises that are not in all cases required of domestic enterprises.

In addition, since China began allowing the acceptance of applications from foreign pharmaceutical companies for wholesale distribution licenses in the second half of 2005, U.S. and other foreign pharmaceutical companies have been able to obtain wholesale distribution licenses under the April 2004 distribution services regulations and the SFDA's *Rules on the Management of Drug Business Licenses*. However, it appears that some provincial-level authorities have not yet begun issuing these licenses because of uncertainty generated by the provision in the April 2004 distribution services regulations indicating that MOFCOM would issue separate regulations covering pharmaceuticals. The United States continues to engage the Chinese regulatory authorities in these areas as part of an effort to promote comprehensive reform of China's healthcare system and to reduce unnecessary trade barriers.

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

Finally, in early December 2006, China issued the *Measures for the Administration of the Market for Crude Oil and the Measures for the Administration of the Market for Refined Oil Products*. However, these regulations impose high thresholds and other potential impediments on foreign enterprises seeking to enter the wholesale distribution sector, such as requirements relating to levels of storage capacity, pipelines, rail lines, docks, and supply contracts. These requirements appear designed to maintain the monopolies enjoyed by state-owned China National Petroleum Corporation and China Petrochemical Corporation. The United States is working with U.S. industry to assess China's implementation of the regulations on wholesale distribution of crude oil and processed oil.

Retailing Services

Although MOFCOM's issuance of the *Notice on Entrusting National Economic and Technological Development Zones with the Authority to Approve Foreign-Funded Distribution Firms and International Forwarding Agents* in February 2006 vastly improved China's regime for licensing retail services providers, U.S. industry is still facing certain barriers.

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

In addition, the U.S. retail industry is increasingly concerned about other extra burdens that it faces, in comparison to domestic retailers, when attempting to expand their operations in China. For example, the licensing process for a foreign retailer seeking to establish a new store begins with a MOFCOM process, which is multi layered and slow moving, requiring approvals at the local, provincial, and central government levels. Only after the MOFCOM process is completed can the foreign retailer obtain an actual license from SAIC. In contrast, domestic retailers can quickly obtain licenses directly from SAIC. In addition, domestic retailers do not need to satisfy substantive requirements that are imposed on foreign companies, such as an additional minimum capital requirement for each new store or, as discussed above, a requirement that the location city for the new store have an urban commercial network plan in place.

Franchising Services

Starting on May 1, 2007, the *Regulations on the Administration of Commercial Franchises*, promulgated by the State Council, and the *Administrative Rules on Commercial Franchise Filing* and the *Administrative Rules on Commercial Franchising – Information Disclosure*, both issued by MOFCOM, replaced 2005 MOFCOM Measures that were of concern to U.S. industry. The new laws have significantly changed the Chinese legal landscape for franchising and should contribute to a much more accessible market for international franchisors. The new laws greatly relax an earlier rule that severely restricted eligibility to offer franchises in China. In addition, compared to the 2005 MOFCOM Measures, the new laws make it clear that they also apply to the cross border franchise business. Unlike the 2005 MOFCOM Measures, the franchisor is not required to bear joint and several liability for the quality of products provided by its designated suppliers. The new law imposes a filing requirement on franchisors and failure to comply with that requirement could result in penalties, including orders for rectification and fines and public criticism. However, failure to file with the Chinese government will not lead to the concerned franchisor losing its legal capacity to sell franchises in China. Finally, the new law provides the franchisee the ability to rescind the franchise contract if the franchisor conceals relevant information or provides false information. The government also reserves the authority to request additional disclosures from franchisors.

Sales Away From a Fixed Location

In 2005, the Chinese authorities issued the measures designed to implement China's direct selling commitments – the *Measures for the Administration of Direct Selling* and the *Regulations on the Administration of Anti-Pyramid Sales Scams*. These measures contain several problematic provisions. For example, one provision outlaws the standard industry practice of paying compensation based on team sales, where upstream personnel are compensated based on downstream sales. In addition, the measures contain a cap limiting the amount of compensation based on sales revenue to 30 percent, which inhibits direct selling companies from employing compensation as a tool to motivate their sales representatives. Other problematic provisions include onerous and vague requirements to establish fixed location “service centers” in each urban district where direct sellers operate; a 3 year experience requirement that only applies to foreign enterprises; restrictions on the cross-border supply of direct selling services; limitations on product categories permitted for direct sales; and high capital requirements that may limit smaller direct sellers' access to the market. The measures also impose burdensome education and certification requirements for salespersons and trainers, forbidding foreigners from working in either capacity.

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

Under the 2005 measures, a direct selling company must receive approvals from both MOFCOM and SAIC before beginning operations. MOFCOM had approved 18 licenses to Chinese and foreign companies by the end of 2007; other license requests are in various stages of the process. Despite this progress, the MOFCOM licensing process has been characterized by a lack of transparency and significant delays. The 2005 measures establish a 90-day license approval process, but most of the MOFCOM approvals took between 4 months and 11 months. The scope of licenses approved by MOFCOM has also been limited, with many companies finding it difficult to obtain approvals to conduct direct selling in more than one province in China. At times, the SAIC's role in the approval process has been problematic.

Express Delivery Services

Although several foreign, including U.S., express delivery companies are expanding their operations in China, a number of aspects of China's postal and express delivery regime continue to cause concerns. U.S. concerns break down into two main areas: transparency or the ability to comment on draft laws and regulations before they enter into force; and ensuring that the substance of any such legal instruments does not discriminate against foreign companies and is not overly burdensome.

Regarding transparency, the industry was not given sufficient time to review or comment on the latest draft of the Postal Law (the ninth draft) on new "Express Delivery Standards" issued in September 2007 or on other related postal and express documents.

The United States is concerned that the ninth draft of the Postal Law includes language that could severely limit the ability of private express delivery firms to operate in China by reserving delivery of certain letters to China Post and other documents to China Post and Chinese domestic express delivery companies. The draft, which has not been made public, may also include an unfair imposition of a universal postal services tax that would be extended beyond the postal realm to private sector express providers.

The new Express Delivery Standards also may negatively affect foreign express delivery providers. In most economies express delivery is not regulated directly. In contrast, the Chinese standards cover many operational issues including many commercial decisions such as weight, transit time, and personnel requirements that would normally remain within the purview of individual companies in the marketplace. China has affirmed that such standards are voluntary but there is concern that they could become mandatory under law or in practice. Industry also is concerned that many provinces are establishing industry associations with certain regulatory powers.

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

Construction, Engineering, Architectural, and Contracting Services

In September 2002, the Ministry of Construction and the Ministry of Foreign Trade and Economic Cooperation (now MOFCOM) issued the *Rules on Administration of Foreign-Invested Construction Enterprises* (known as Decree 113) and *Rules on the Administration of Foreign-Invested Construction Engineering and Design Enterprises* (known as Decree 114). Decrees 113 and 114 create concerns for foreign firms by imposing new and more restrictive conditions than existed prior to China's WTO

accession, when they were permitted to work in China on a project-by-project basis pursuant to Ministry of Construction rules. These Decrees for the first time require foreign-invested enterprises to incorporate in China, and they impose high minimum registered capital requirements and technical personnel staff requirements that are difficult for many foreign-invested enterprises to satisfy. Decree 113 also limits the scope of projects (in terms of size and scale) permitted to foreign-invested enterprises in comparison with the rights enjoyed by domestic companies.

Regarding Decree 113, the United States has urged China to broaden the scope of projects that can be undertaken. The United States also is asking China to reduce its minimum capital requirements and/or consider bonding and other guarantee arrangements in lieu of minimum capital. Although China issued implementing rules for Decree 114 in late 2006 that address some of the concerns of foreign construction engineering and design enterprises, other aspects of these rules are troubling. For example, the United States is asking China to consider the experience of parent and affiliated firms when considering qualifications to carry out certain “grades” of projects. The United States also is asking that the Decree 114 implementing rules be made permanent.

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

Logistics Services

China has multiple agencies overseeing each mode of transportation that results in overlapping jurisdictions, multiple sets of approval requirements, and opaque or conflicting regulations, all of which hinders market access. Among the government bodies with some responsibility for this sector are the Ministry of Communications (MOC), Ministry of Railways, MOFCOM, Customs, the State Post Bureau, and the Civil Aviation authorities. China is giving some consideration to consolidating such regulatory authority.

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

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

Aviation and Maritime Services

Robust bilateral engagement with China through multiple rounds of negotiations between January and May 2007—under the auspices of the SED—yielded an amended bilateral air services agreement that was signed in July 2007. The new agreement will bring significant economic benefits to the U.S. aviation industry, passengers, shippers, and local communities. It is an important step to facilitate trade, investment, tourism, and cultural exchanges between the U.S. and China. It allows for significantly

expanded air service between the United States and China. The agreement will add 12 new daily passenger flights that U.S. carriers may operate to the Chinese gateway cities of Beijing, Shanghai, and Guangzhou through 2012, more than doubling the number of flights currently operating. The new agreement also provides for unlimited cargo flights to any point in China and allows an unlimited number of U.S. cargo carriers to serve the market as of 2011. Finally, it will also increase the available opportunities for U.S. carriers to code-share on other U.S. carriers' flights to China, and it commits the U.S. and China to launch Open Skies negotiations in 2010.

In 2003, China took steps to liberalize the maritime services sector. The United States and China signed a far-reaching, 5 year bilateral maritime agreement, which gave U.S. registered companies the legal flexibility to perform an extensive range of additional shipping and logistics activities in China. U.S. shipping and container transport services companies, along with their subsidiaries, affiliates and joint ventures are also able to establish branch offices in China without geographic limitation. Under the framework of the 2003 agreement, the United States and China have annual consultations. The first annual consultations were held in Washington, DC in March 2006 and the second round was held in Shanghai in November 2007.

Telecommunications

In addition to market access commitments in the WTO, which came into full effect in 2007, China also accepted key pro-competitive regulatory principles from the WTO Reference Paper. As a result, China became obligated among other things to separate the regulatory and operating functions of MII (which had been both the telecommunications regulatory agency in China and the operator of China Telecom) and to implement its regulations in an impartial manner. While the formal separation of regulator and operator has occurred, evidence of continued MII influence over operational decisions of the telecommunications operators (*e.g.*, relating to personnel, corporate organization, allocation of spectrum and standards) suggests that regulatory independence may be far from complete. In addition, while shares are not directly held by MII, the government maintains a controlling stake in all major basic telecommunications operators, creating a potential conflict of interest between the government's role as regulator (and guarantor of trade commitments) and owner of these companies.

China also became obligated to ensure transparency in licensing and the allocation of spectrum and interconnection with major suppliers on reasonable, transparent, and nondiscriminatory terms and conditions and at cost-based rates as well as to maintain measure to prevent anticompetitive behavior. There is concern that China may be lagging in implementing these commitments, however. For example, with respect to anticompetitive behavior, both Chinese authorities and the two major fixed line operators have confirmed that the operators entered into an agreement to limit competing in each others' home territory. Although the governmental role in promoting such arrangements is unclear, the regulator has spoken favorably about the benefits of this agreement as reducing "unhealthy" competition. In terms of China's obligation to ensure the public availability of interconnection agreements, there is no sign that major suppliers in China have made their interconnection arrangements public.

With limited foreign participation in the market, it has been difficult to assess China's compliance with its regulatory commitments. For example, 5 years after China indicated that it would license advanced wireless services, it has yet to make any specific plans public. The lack of foreign participation in the telecommunications sector, however, is indicative of a licensing regime that has generally, with few exceptions, not been conducive to foreign investment.

China's *Regulations on Foreign-Invested Telecommunications Enterprises* went into effect in January 2002. These regulations define registered-capital requirements, equity caps, requirements for Chinese and foreign partners, and licensing procedures. The regulations stipulate that foreign-invested telecommunications enterprises can undertake either basic or value added telecommunications services. Foreign ownership may not exceed 49 percent in the case of basic telecommunications services (excluding wireless paging) and 50 percent in the case of value added services (including wireless paging, which is otherwise categorized as a basic service). While China committed to giving foreign applicants freedom to choose potential joint venture partners, it appears that MII may be interpreting requirements regarding technical qualifications to effectively exclude all but incumbent operators, foreclosing additional competition in the market. For foreign operators interested in offering international services, requirements to use a gateway operated by a state-owned operator appear excessive and unjustified. The capitalization requirement established for new entrants, which exceeds \$260 million, is another major impediment to market access. There appears to be no justification for such a requirement, particularly for companies interested in leasing, rather than building facilities, while specific licensing terms for resale-based operators do not appear to exist. Meanwhile, MII continues to process applications very slowly for the few foreign-invested telecommunications enterprises that have attempted to satisfy MII's licensing requirements. The results have been predictable: no new joint ventures appear to have been formed in the basic telecommunications sector since China introduced the January 2002 regulations and foreign investment has taken the form of minority stakes in existing operators.

China's categorization of services as either basic or value added services remains confusing with clear negative effects on foreign service suppliers. For example, China classifies certain private network services ("IP-VPN" services) as value added when offered domestically, but as basic (and thus subject to lower foreign equity limits) when offered internationally.

Only limited progress has been made in opening the market for value added services to foreign participation for services such as Internet access, search, and Internet-delivered content services, in part due to governmental sensitivities regarding anything related to information. MII announced moves toward convergence in voice, video, and data services in 2000, but China considers information content sensitive, so foreign companies face significant barriers in the Internet services sector. New rules regarding sectors where foreign investment is subject to specific limitations (a revised investment "catalog") appeared in November 2007. The communications sector appears to be one sector particularly affected by these new rules but their implementation remains unclear.

The United States is aware that MII has issued 11 value added services licenses to foreign invested enterprises, including licenses to three U.S. companies. Although more foreign companies are registering ".com.cn" websites in China, these sites are still often blocked, which hinders companies' abilities to maintain a stable Internet presence. (Many plain ".com" sites servicing global audiences also report periodic blocking in China, also a significant trade concern). The requirement that Internet service providers (ISPs) must provide user login information and transaction records to authorities upon request, without clear guidelines as to the circumstances and situations that warrant such actions, raises concerns about consumer privacy and prevention of data misuse.

In 2004, China reduced its foreign equity investment limitation to 50 percent for ISP and Internet content providers (ICPs) in accordance with the timetable to which it agreed in its Protocol of Accession to the WTO (the same timetable to which it agreed for value added services). However, ICPs must still win the approval of MII and/or local telecommunications administrations depending on the geographic coverage of their services before they can receive foreign capital, cooperate with foreign businesses, or attempt domestic or overseas stock listings. Their services, including even simple commercial websites, are also

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subject to excessive capitalization requirements (approximately \$1 million) that appear to bear little relation to any legitimate licensing goals.

In 2004, a draft of the long awaited Telecommunications Law began to circulate among Chinese ministries and agencies. If China takes the initiative, this law could be a vehicle for addressing existing market access barriers and other problematic aspects of China's current telecommunications regime. The current status and content of this legislation is unclear, despite repeated U.S. efforts to obtain this information, and formal comments submitted in 2005.

Meanwhile, even though China committed in its Protocol of Accession to the WTO that further liberalization of this sector would be discussed in the current round of WTO negotiations, China has yet to make an improved services offer. Since the combination of modest commitments and weak implementation in this sector in China has so far failed to facilitate effective market entry for foreign firms, further liberalization, bound through the current round of WTO negotiations, appears critical to improving market access prospects for this sector.

At the April 2006 JCCT meeting, and again at the December 2007 JCCT meetings, China committed to lowering registered capital requirements for telecommunications service providers. In a November 2007 meeting of the JCCT Telecom Working Group, China said requirements would be lowered "a large amount," and that such a measure was in the final stages of approval in the State Council Legislative Affairs Office, but gave no indication of what specific reduction was proposed and when it might take effect. China's continued imposition of excessive capital requirements, taken together with MII's reclassification of certain value added services as basic services and MII's slow license application process, result in formidable barriers to market entry for foreign enterprises.

On-Line Services

China operates the world's most comprehensive and technologically advanced Internet filtering regime, which affects a broad range of commercial activity conducted via the Internet. Chinese authorities routinely filter Internet traffic entering China, focusing primarily on the content they deem objectionable on political, social, or religious grounds. In 2002, China lifted filters on most major western news sites. Nevertheless, since then, foreign news websites have periodically been blocked, as happened, for example, for several weeks during the 16th National Congress of the Communist Party of China in 2003. More generally, according to a Harvard University study published in 2002, China had still blocked 19,032 sites on multiple occasions. This study was updated in 2005, and identified routinely blocked sites that relate to Taiwan, the Falungong spiritual movement, Tibet, the Tiananmen Square incident and Chinese opposition political parties. The updated study also identified routinely blocked sites that relate to various political topics including "boycott," "human rights," "pro-democracy," and "opposition."

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

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

Audio-Visual Services

China's desire to protect the revenues earned by the state-owned audiovisual and print media importers and distributors, and China's concerns about politically sensitive materials, result in continued restrictions on foreign providers of audiovisual services. Importation and distribution of sound recordings, videos, films, and television remain highly restricted. Inconsistent and subjective application of censorship regulations further impedes market growth for foreign providers. China's large black market for foreign digital video discs and other home entertainment video products continues to grow because these market access restrictions create a demand for pirated goods in the absence of legitimately licensed home or theatrical entertainment.

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

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

In addition to censorship reviews by Chinese authorities, which can delay the arrival of imported foreign films on Chinese movie screens, the Chinese government has historically decreed "black-out periods" which no new revenue-sharing blockbuster foreign films may be released in order to prevent competition with Chinese films being released during the same period. Banning the release of new foreign titles during peak seasons creates not only a detrimental affect on theatrical revenues but also contributes to

increased piracy, as pirates meet immediate consumer demand for foreign titles by offering illegal downloads through the Internet, on pirate optical discs, and pirate video-on-demand channels.

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

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

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

Investment in China's audiovisual sector is highly restricted. For video distribution companies and cinemas, joint ventures or cooperative firms must have at least RMB5 million (\$688,000) of registered capital and foreign capital cannot make up more than 49 percent of the total share, except in certain cities where cinema investment is capped at 75 percent. For television production, joint ventures, or cooperative firms must have a minimum capital requirement of RMB 2 million (\$275,000) and foreign capital is capped at 49 percent. In February 2005, SARFT issued a circular placing further restrictions on foreign partners and requiring two-thirds of the programs of a joint venture or cooperative firm to have Chinese themes.

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

Tourism and Travel Services

In December 2007, the United States and China signed a memorandum of understanding (MOU) to facilitate Chinese group leisure travel to the United States and the marketing in China of U.S. destinations. However, foreign travel and tourism firms in China are still restricted from competing under the same conditions as Chinese firms. For example, wholly-foreign owned enterprises and Chinese-foreign joint ventures continue to be restricted in selling outbound airline tickets. In addition, China requires all travel agents and airlines to connect into China's nationally owned and operated computer

reservation system when booking airline tickets. China also continues to apply an annual sales requirement on foreign travel agencies, although there are no such requirements for domestic agencies.

Education and Training Services

China faces a shortage of qualified teachers and clearly needs educators in inland regions. However, the Ministry of Education (MOE) continues to restrict participation by foreign educators and trainers. China permits only nonprofit educational activities that do not compete with the MOE-supervised 9 years of compulsory education, thereby inhibiting much-needed foreign investment in the education sector. China also bans foreign companies and organizations from offering educational services via satellite networks.

The MOE's *Implementing Rules for China-Foreign Cooperative Education Projects (2004)* limit foreign educators' participation to certain activities, including education offering academic certificates, supplementary education, and pre-school education. These activities cannot take the form of activities at actual educational institutions.

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

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

Legal Services

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

As part of its Protocol of Accession to the WTO, China agreed to lift quantitative and geographical restrictions on the establishment of representative offices by foreign law firms within 1 year after accession. In addition, foreign representative offices are to be able to engage in profit-making business, to advise clients on foreign legal matters and to provide information on the impact of the Chinese legal environment, among other things. They also are to be able to maintain long-term "entrustment" relationships with Chinese law firms and to instruct lawyers in the Chinese law firm as agreed between the two law firms.

The State Council issued the *Regulations on the Administration of Foreign Law Firm Representative Offices* in December 2001, and the Ministry of Justice (MOJ) issued implementing rules in July 2002. While these measures removed some market access barriers, they also generated concern among foreign law firms doing business in China. In many areas, these measures are ambiguous. For example, the measures appear to create an economic needs test for foreign law firms wanting to establish offices in China, which could raise concerns regarding China's compliance with its GATS commitments. The measures also seem to take an overly restrictive view of the types of legal services that foreign law firms may provide. In addition, the procedures for establishing a new office or an additional office are unnecessarily time-consuming. For example, a foreign law firm may not establish an additional

representative office until its most recently established representative office has been in practice for 3 consecutive years. Foreign attorneys also may not take China's bar examination, and they may not hire registered members of the Chinese bar as attorneys, thus prohibiting them from providing advice on Chinese law to clients.

Although a number of U.S. and other foreign law firms have been able to open a second office in China, little progress has been made on the other problematic aspects of these measures, particularly the economic needs test, the unreasonable restrictions on the types of legal services that can be provided and the unnecessary delays that must be endured when seeking to establish new offices. Additionally, foreign law firms are placed at a considerable disadvantage even after they are established in China. A foreign firm's area of practice is severely restricted while domestic firms do not face similar restrictions. While domestic firms are only taxed as partnerships, foreign firms are subject to taxes at both the firm and individual levels. They are also not permitted to repatriate profits earned, since as representative offices, they are not permitted to convert profits in RMB into foreign currency. Furthermore, new foreign representatives must go through a lengthy approval process that can take more than 1 year, during which they must leave the country monthly to file for a renewal visa. Finally, the MOJ refuses to fully license Chinese attorneys that work in foreign firms and prohibits foreign law firms from providing advice on Chinese law even if they hire qualified Chinese lawyers, thus preventing foreign law firms from participating fully in China's legal market.

INVESTMENT BARRIERS

The volume of foreign investment in China remained high in 2006 despite the introduction of significant new investment barriers. According to the United Nations Conference on Trade and Development, China received \$72.4 billion in FDI in 2006. China was the world's third-largest investment destination, after the United States and the United Kingdom. Foreign investors also continued to earn high rates of return in 2007, indicating that China remains an attractive market in which to invest despite the continuing challenges of doing business there. The World Bank Doing Business Report 2008 gave China a global ranking for "ease of doing business" of 83, an improvement of 9 spots from the previous year's report. In 2007, investors continued to complain of a lack of transparency, inconsistently enforced laws and regulations, weak intellectual property protection, corruption, a lack of transparency, and an unreliable legal system incapable of enforcing contracts and judgments.

China's leadership has repeatedly affirmed its commitment to further open China to foreign investment, including a strong statement at the JCCT meeting in December 2007 in which China reiterated its commitment to open investment and to the principle of nondiscrimination in investment regulation. However, there is rising concern that recent steps China has taken may increasingly discriminate against foreign investment. For example, the State Assets Supervision and Administration Commission (SASAC) in December 2006 issued the *Guiding Opinion Concerning the Advancement of Adjustments of State Capital and the Restructuring of State-Owned Enterprises*. Statements accompanying its release identified an expansive list of sectors deemed critical to the national economy including "pillar" industries such as equipment manufacturing, automotive, electronic information, construction, iron and steel, nonferrous metal, chemical, survey and design, and science and technology industries. SASAC committed to restrict foreign participation in these sectors by preventing further foreign investment in state-owned enterprises operating in these sectors. Furthermore, vague new language about economic security in China's *Provision on the Mergers and Acquisitions of Domestic Enterprises by Foreign Investors* adopted in 2006 that includes terms such as "national economic security" and "critical industries" raises concerns that such language could forebode increased protectionist policies. The *Foreign Investment Catalogue* issued in November 2007, further suggests China's investment policies

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may be becoming more selective in encouraging foreign investment, actively targeting higher value added sectors (including high technology research and development, advanced manufacturing, energy efficiency, and modern agriculture and services) rather than basic manufacturing. It also appears that China is seeking to spread the benefits of foreign investment beyond China's comparatively wealthy coastal area by encouraging multinational businesses to establish regional headquarters and operations in Central, Western, and Northeast China.

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

Investment Requirements

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

Although China has revised many laws and regulations to conform to its WTO investment commitments, some of the revised laws and regulations continue to "encourage" technology transfer, without formally requiring it. U.S. companies remain concerned that this "encouragement" in practice can amount to a "requirement" in many cases, particularly in light of the high degree of discretion provided to Chinese government officials when reviewing investment applications. Similarly, some laws and regulations "encourage" exportation or the use of local content. Moreover, according to U.S. companies, some Chinese government officials in 2007 – even in the absence of encouraging language in a law or regulation – still consider factors such as export performance and local content when deciding whether to approve an investment or to recommend approval of a loan from a Chinese policy bank, which is often essential to the success of an investment project. The United States and other WTO Members, including the EC and Japan, have raised concerns in this area during the annual transitional reviews conducted by the TRIMS Committee.

Investment Guidelines

Foreign Investment Catalogue

China's foreign investment objectives are primarily defined through its Foreign Investment Catalogue, which is revised every few years and was most recently updated in November 2007. The new Catalogue promulgated by the NDRC and MOFCOM, with State Council approval, took effect December 1, 2007.

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While lists of encouraged and restricted sectors grew substantially, China did not meaningfully expand market access in sectors that are United States priorities, such as telecommunications and finance. Instead, the bulk of new encouraged items are in the nonmetallic mineral products and general machinery and special equipment manufacturing sectors, especially products that limit pollution or increase energy efficiency. Even in these sectors, the Catalogue often confines foreign investors to minority stakes. New restricted sectors of potential United States concern include bio-fuel production, soy crushing, and rare earth processing. New blanket prohibitions on foreign investment in movie production, news websites, audio visual, and Internet services appear similar to previous measures; as our WTO dispute on market access for copyright intensive industries demonstrates, these measures also raise WTO concerns. The Catalogue reiterates China's encouragement of foreign investment in business services outsourcing. Among positive developments, the Catalogue encourages foreign investment in highway cargo transport and modern logistics, and no longer encourages investment in projects whose products are wholly exported.

Administrative Measures to Restrict Investment

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

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

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

the acquisition of Chinese companies, a change that could facilitate foreign investment in China. MOFCOM officials have indicated that the new Antimonopoly Law, set to come into effect August 1, 2008, will supersede the 2006 rules with respect to the antimonopoly review of mergers and acquisitions.

In November 2006, the NDRC released a 5 Year Plan on foreign investment, which promised greater scrutiny over foreign capital utilization. The plan calls for the realization of a “fundamental shift” from “quantity” to “quality” in foreign investment during the period from 2006 to 2010. The state’s focus would change from shoring up domestic capital and foreign exchange shortfalls to introducing advanced technology, management expertise, and talent. In addition, more attention would be paid to ecology, the environment, and energy efficiency. The plan also demands tighter tax supervision of foreign enterprises, and it seeks to restrict foreign firms’ acquisition of “dragon head” enterprises to prevent the “emergence or expansion of foreign capital monopolies,” to protect national economic security and to prevent the “abuse of intellectual property.”

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

In 2007, China also continued to employ various sector-specific measures designed to impose new requirements on foreign investors. Measures affecting foreign investment in the automotive and steel sectors are discussed above in the section on import substitution policies. In August 2007, after several years of development, China issued its *Antimonopoly Law*, which is scheduled to become effective in August 2008. Although the final version of the law contained many improvements over drafts that had been previously circulated, some provisions are of concern. For example, one provision provides for the protection of the lawful operations of state-owned enterprises and government monopolies in industries deemed nationally important. At present, it is not clear how China will implement this policy. As China works on implementing measures, the United States has been urging China not to use its *Antimonopoly Law* to enforce industrial policy objectives. The United States has also specifically pressed China to ensure that any implementing measures do not create disguised or unreasonable barriers to trade and do not provide less favorable treatment to foreign goods and services or foreign investors and their investments.

Other Investment Issues

Venture Capital and Private Equity

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

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

China in September 2006 also implemented regulations that made it more difficult to list on foreign stock exchanges, but at the same time facilitated listing on the domestic A-share market. Though private equity investors have had success in listing in the A-shares market, these investors face a 3 year lock up period during which they may not cash in on their listed holdings.

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

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

Holding Companies

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

China has begun to open its domestic equity markets to investments from foreign firms. Through the Qualified Foreign Institutional Investor (QFII) program, foreign securities firms may apply for QFII status, which permits limited access to the RMB-denominated A-share market. As of October 2007, China had granted QFII status to 52 foreign entities, with total quotas allotted totaling \$9.9 billion. The Chinese government committed during the May 2007 SED meeting to announce an expansion of the quota to \$30 billion, and did so on December 11, 2007.

Access to Capital Markets

Foreign-invested firms in China are often unable to access domestic and international stock markets, to sell corporate bonds and equity, or to engage in normal merger, acquisition, and divestment activity.

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

GOVERNMENT PROCUREMENT

China is not a signatory to the WTO Agreement on Government Procurement (GPA). In accordance with its commitment upon accession to the WTO, China became an observer to the WTO Committee on Government Procurement in February 2002. China also committed, in its Protocol of Accession to the WTO, to initiate negotiations for accession to the GPA "as soon as possible." Following sustained U.S. engagement, China committed at the April 2006 JCCT meeting to initiate GPA negotiations by no later than the end of December 2007. China submitted its application for accession and initial offer of coverage on December 28, 2007.

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

In 2002, China adopted a Government Procurement Law (GPL), which became effective in 2003. This law directs central and sub-central government entities to give priority to "local" goods and services, with limited exceptions. The GPL does not cover tendering and bidding for public works projects, which represent at least one-half of China's government procurement market. Those projects are subject to China's 2000 Bidding and Tendering Law.

China has issued various regulations and other measures implementing the GPL and the Bidding and Tendering Law. For the GPL, these include the *Measures on the Administration of Bidding for Government-Procured Goods and Services* (2004), which set out detailed procedures for the solicitation, submission, and evaluation of bids in government procurement of goods and services and help to clarify the scope and coverage of the GPL. Implementation rules for the GPL and the *Bidding and Tendering Law* are being developed. MOF also issued several sets of measures relating to the announcement of government procurements, the catalog of centralized procurement, and the handling of complaints by suppliers relating to government procurement.

Concerns with the application of domestic preferences in government procurement have arisen repeatedly. In 2003, U.S. companies raised concerns that implementing rules on government software procurement being drafted by MOF would mandate that central and local governments – the largest purchasers of software in China – purchase only software developed in China to the extent possible. In response, the United States expressed its concerns to the Chinese government. At the July 2005 JCCT meeting, China took note of the United States' strong concerns and indicated that it would indefinitely suspend drafting implementing rules on government software procurement.

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In 2005, China issued a measure that required preferences for products incorporating the WAPI standards in government procurement (see discussion above in the Standards, Technical Regulations, and Conformity Assessment Procedures section.) In 2006, the State Council issued China's Medium-to-Long-Term Science and Technology Master Plan. The NDRC and other ministries and agencies are in charge of developing regulations to implement this strategy, which includes preferences for the purchase of domestic goods as an important industrial policy tool. On August 13, 2007, the NDRC issued provisional rules for government-supported electronic government projects, which became effective on September 1, 2007, that mandate priority purchasing of domestic goods and services in national electronic government projects. The most recent preferential measures, which were adopted at the end of December 2007, govern the government procurement of imported products (Administrative Measures on the Government Procurement of Imported Products) and of indigenous innovation products developed by domestic enterprises or research institutions (Administrative Measures for Government Procurement on Initial Procurement and Initial Procurement and Ordering of Indigenous Innovation Products). The United States is concerned that these various regulations may unfairly discriminate against U.S. firms and is closely monitoring developments.

ELECTRONIC COMMERCE

China has experienced dramatic growth in Internet usage since 1999. According to the 20th Internet survey recently published by the China Internet Network Information Center (CNNIC), the number of Internet users in China reached approximately 210 million at the end of 2007, representing an increase of 53 percent over the previous year. Falling personal computer prices and the arrival of devices tailored for the Chinese market will further expand Internet access.

China has also experienced a dramatic increase in the number of domain names established. By the end of 2007, there were more than nine million domain names registered under “.cn,” representing a five fold increase over the previous year. CNNIC also reported that by the end of 2007, there were 73 million blogs in China, representing a dramatically growing source of online interaction. However, despite these developments, CNNIC reported that only 28 percent of surveyed Chinese Internet users frequently use the Internet for online shopping services. China is experiencing the rapid development of online businesses such as search engines, network education, online advertisements, audio-video service, paid electronic mail, short message, online job searches, Internet consulting, electronic trading, and online gaming.

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

A number of technical problems also inhibit the growth of electronic commerce in China. Rates charged by government-approved Internet service providers make Internet access expensive for most Chinese citizens. Slow connection speeds are another problem, although this is changing quickly as broadband connections become more readily available. By the end of 2006, nearly 76 percent of China's Internet users had broadband connections, representing an increase of 18 percentage points over 2005, and China

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Telecom is now reportedly the world's largest digital subscriber line, or DSL operator. There are now 104 million broadband subscribers in China. China surpassed Japan in 2004 as the country with the second most broadband lines after the United States. At the same time, Internet penetration remains relatively low in China, and there is a large urban/rural divide in penetration rates (the urban penetration rate is six times higher than the rural penetration rate as of July 2006), so there is still significant room for growth.

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

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

ANTICOMPETITIVE PRACTICES

Competition Policy Laws and Regulations

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

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

More troubling are efforts by government authorities at all levels in China to regulate competition with specific firms, often state-owned enterprises. Official statements often suggest that these efforts are tied primarily to employment concerns. However, the ultimate beneficiaries of the resulting protectionist measures are often unclear. In addition, local governments frequently enact rules that restrict

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interprovincial trade. Since the central government has difficulty enforcing its own competition policy measures at the local level, these local government rules continue to restrict market access for certain imported products, raise production costs, and limit market opportunities for foreign-invested enterprises.

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

Measures Restricting Inward Investment

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

As discussed above in the Investment Barriers section, these policies include the State Council's June 2006 *Opinions on the Revitalization of the Industrial Machinery Manufacturing Industries*, which calls for China to expand the market share of domestic companies in 16 equipment manufacturing industries. In August 2006, the Ministry of Commerce and five other agencies issued revised rules for foreign mergers and acquisitions, which, among other things, establish a vague "national economic security" basis for rejecting proposed transactions as well as an antimonopoly review for foreign transactions. In November 2006, the NDRC issued a 5 Year Plan on foreign investment that seeks to restrict foreign acquisitions of leading Chinese enterprises, prevent the emergence of foreign capital monopolies, protect industrial security, and prevent abuse of intellectual property. In December 2006, SASAC published an expansive list of "critical economic sectors" in which China should restrict foreign participation. Finally, the Foreign Investment Catalogue issued in November 2007 suggests China's policies toward inward investment may be more selective, actively targeting higher value added sectors (including high technology research and development, advanced manufacturing, energy efficiency, and modern agriculture and services) rather than basic manufacturing.

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

OTHER BARRIERS

Transparency

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

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

In late 2002, China designated the *China Foreign Economic and Trade Gazette* as the official journal for publishing trade-related measures. Published by MOFCOM, it came out on a trial basis in October 2002 and as an official publication in January 2003. In March 2006, the State Council issued a notice directing all central, provincial, and local government entities to begin sending copies of all of their trade-related measures to MOFCOM for immediate publication in the MOFCOM Gazette. The United States has been monitoring the effectiveness of this notice, both to assess whether all government entities regularly publish their trade-related measures in the MOFCOM Gazette and whether all types of measures are being published. So far, adherence to the State Council's notice is far from complete.

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

At the December 2007 SED meeting, the United States and China agreed to build upon their international obligations on transparency, including their APEC and WTO commitments. For its part, China agreed, when possible, to publish proposed trade-related measures in advance, and to provide interested parties a reasonable opportunity to comment on them. China further agreed to publish final trade-related measures in its official journal before implementation or enforcement.

Legal Framework

Laws and Regulations

Laws and regulations in China tend to be more general and ambiguous than in other countries. While this approach allows the Chinese authorities to apply laws and regulations flexibly, it also results in

inconsistency and confusion in application. Companies often have difficulty determining whether their activities contravene a particular law or regulation.

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

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

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

Commercial Dispute Resolution

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

At the same time, the Chinese government is moving to establish consistent and reliable mechanisms for dispute resolution through the adoption of improved codes of ethics for judges and lawyers and increased emphasis on the consistent and predictable application of laws. The Judges' Law, issued by the Standing Committee of the National People's Congress in 1995, requires judges to have degrees in law or in other subjects where they have acquired specialized legal knowledge, and permits judges appointed before the law's implementation who do not meet these standards to undergo necessary training. In 1999, the Supreme People's Court began requiring judges to be appointed based on merit and educational background and experience, rather than through politics or favoritism. In 2002, the Supreme People's

Court issued rules designating certain higher level courts to hear cases involving administrative agency decisions relating to international trade in goods or services or IPR. According to the Supreme People's Court, China's more experienced judges sit on the designated courts, and the geographic area under the jurisdiction of each of these designated courts has been broadened in an attempt to minimize local protectionism. The rules provide that foreign or Chinese enterprises and individuals may bring cases in the designated courts raising challenges under the Administrative Litigation Law to decisions made by China's administrative agencies relating to international trade matters. The rules also state that when there is more than one reasonable interpretation of a law or regulation, the courts should choose an interpretation that is consistent with the provisions of international agreements to which China has committed, such as the WTO rules.

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

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

Labor Issues

In recent years, China has expanded the scope of its national labor laws and regulations. In 2007, the National People's Congress passed the Labor Contract Law, which is meant to clarify the rights and obligations of workers and employers and to promote better labor relations by making it more difficult for employers to summarily dismiss workers, and the Employment Promotion Law, which, among other things, expands the definition of illegal discrimination. Even with these changes, China does not adhere to certain internationally recognized labor standards with respect to freedom of association and the right to engage in collective bargaining. There are many reports indicating that China does not effectively enforce its labor laws and regulations concerning such issues as minimum wages, hours of work, occupational safety and health, and participation in social insurance programs. There are also persistent concerns about the use of forced prison labor and an increasing incidence of child labor.

The Chinese government is slowly developing a national pension system, unemployment insurance, medical insurance, and workplace injury insurance systems that require substantial employer contributions. These systems are still rudimentary and characterized by serious funding shortfalls, in part due to widespread noncompliance among domestic firms. A Chinese government audit report published in November 2006 revealed that more than RMB7 billion (\$875 million) of China's RMB2 trillion (\$250 billion) social security funds had been misappropriated. These insurance programs serve mainly urban residents. Rural residents and migrant workers, who make up the bulk of the work force, enjoy minimal social insurance coverage. This revelation has made social security the primary concern for many Chinese citizens, according to a subsequent survey.

The cost of labor is low but rising in much of China. The existence of a large pool of surplus rural workers, many of whom seek work in urban areas, has kept wage growth for unskilled workers low, but wages for skilled workers are rising rapidly. Some companies offering substandard wages and working conditions have experienced shortages of unskilled labor. Where competition for workers is intense and

the supply is limited, as in the case of technical, managerial, and professional staff in China's coastal areas, wages are rising rapidly. Restrictions on labor mobility distort labor costs. China is gradually easing restrictions under the country's household registration system, which has traditionally limited the movement of workers within the country, in part due to the recognition that labor mobility is essential to the continued growth of the economy. Reportedly, wages for many migrant workers, especially construction workers, are often not paid on a monthly basis as required by China's national labor laws and regulations. These workers also remain vulnerable to wage arrearages.

A growing number of Chinese firms are embracing the concept of corporate social responsibility, and the government actively encourages this trend. In 2005, for example, the China National Textile and Apparel Council established the Committee for the Promotion of Corporate Social Accountability System for Chinese Textile Enterprises corporate social responsibility standard to promote among Chinese textile and apparel firms. The standards are based on relevant Chinese legislation and regulations and reference international practices, but do not include references to freedom of association.

Corruption

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

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

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

Land Issues

China's constitution specifies that all land is owned in common by all the people. In practice, agricultural collectives, under the firm control of local Communist Party chairmen, distribute agricultural land to the rural poor, while city governments distribute land for residential and industrial use. The State and

collectives can either “grant” or “allocate” land use rights to enterprises in return for the payment of fees. Enterprises granted land-use rights are guaranteed compensation if the State asserts eminent domain over the land, while those with allocated rights are not. Granted land-use rights cost more, not surprisingly, than allocated rights. However, the law does not define standards for compensation when eminent domain supersedes granted land-use rights. This situation creates considerable uncertainty when foreign investors are ordered to vacate. The absence of public hearings on planned public projects, moreover, can give affected parties, including foreign investors, little advance warning.

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

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

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

COLOMBIA

TRADE SUMMARY

The U.S. goods trade deficit with Colombia was \$880 million in 2007, a decrease of \$1.7 billion from \$2.6 billion in 2006. U.S. goods exports in 2007 were \$8.6 billion, up 27.6 percent from the previous year. Corresponding U.S. imports from Colombia were \$9.4 billion, up 1.9 percent. Colombia is currently the 26th largest export market for U.S. goods.

The stock of U.S. foreign direct investment (FDI) in Colombia was \$4.9 billion in 2006 (latest data available), up from \$4.2 billion in 2005. U.S. FDI in Colombia is concentrated largely in the mining, manufacturing, and wholesale trade sectors.

United States-Colombia Trade Promotion Agreement (CTPA)

The CTPA was signed on November 22, 2006. Colombia's Congress approved the CTPA and a protocol of amendment in 2007, and the Agreement is undergoing a constitutionally mandated court review. The United States is seeking congressional approval of the CTPA in 2008.

IMPORT POLICIES

Tariffs

Since the 1990s, Colombia has reduced customs duties and eliminated many nontariff barriers. Most duties have been consolidated into three tariff levels: 0 percent to 5 percent on capital goods, industrial goods, and raw materials not produced in Colombia; 10 percent on manufactured goods, with some exceptions; and 15 percent to 20 percent on consumer and "sensitive" goods. Exceptions include automobiles, which are subject to a 35 percent tariff, and agricultural products, which fall under a variable "price-band" import duty system. The price band system includes 14 product groups and covers 154 tariff lines, which at times results in duties exceeding 100 percent for important U.S. exports to Colombia, including corn, wheat, rice, soybeans, pork, poultry, cheeses, and powdered milk. This system also negatively affects U.S. access for products such as dry pet food made from corn. By contrast, processed food imports from Chile and members of the Andean Community (Peru, Ecuador, Bolivia, and Venezuela) enter duty free.

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

In addition, over 80 percent of U.S. exports of consumer and industrial products to Colombia will become duty free immediately under the CTPA, with remaining tariffs phased-out over 10 years. Colombia agreed

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to join the World Trade Organization (WTO) Information Technology Agreement, removing tariffs and addressing nontariff barriers to information technology products.

Nontariff Measures

Nontariff barriers include discretionary import licensing, which has been used to restrict imports of milk powder and poultry parts. The CTPA provides that no Party may adopt or maintain a measure that is inconsistent with the WTO Import Licensing Agreement, which should address this issue. The Colombian government maintains tariff-rate quotas for rice, yellow corn, white corn, and cotton, and a requirement to purchase local production in order to import under the tariff-rate quota. Under the CTPA, the government of Colombia committed to ensuring that access to a CTPA TRQ in-quota quantity will not be conditioned on the purchase of domestic production.

Colombia does not permit the importation of used clothing. Certain importers of used goods may apply for licenses to bring products into Colombia under limited circumstances. Industry reports that, in practice, approval is not granted, resulting in the effective prohibition of these imports.

Colombia restricts the importation of used goods and treats remanufactured goods as used goods. Under the CTPA, Colombia affirmed that it would not adopt or maintain prohibitions or restrictions on trade in remanufactured goods, and that certain existing prohibitions on trade in used goods would not apply to remanufactured goods. This will provide significant new export and investment opportunities for firms involved in remanufactured products such as machinery, computers, cellular phones, and other devices.

Colombia assesses a consumption tax on beverage alcohol through a system of specific rates per degree (percentage point) of alcohol strength. Arbitrary breakpoints have the effect of applying a lower tax rate to domestically produced spirits and therefore create a barrier for imported distilled spirits. Under the CTPA, Colombia committed to eliminate this element of the excise tax for imports of distilled spirits within 4 years of entry into force of the agreement. Additionally, Colombia committed to eliminate practices that have restricted the ability of U.S. distilled spirits companies to conduct business in Colombia.

STANDARDS, TESTING, LABELING, AND CERTIFICATION

In 2006, the United States and Colombia formalized their recognition of the equivalence of the U.S. meat and poultry inspection systems. However, in 2007, Colombia implemented sanitary certificate requirements with respect to the importation of U.S. poultry products that have prohibited entry of certain heat-treated poultry products from the United States. Work toward agreement on the specific contents of U.S. sanitary certificates accompanying U.S. poultry and poultry products to Colombia is ongoing.

The government of Colombia is currently reviewing and updating import requirements, including sanitary and phytosanitary standards as part of its efforts to become more consistent in applying and enforcing them. The National Institute for the Surveillance of Food and Medicines (INVIMA) was given greater food safety regulatory responsibilities, effective August 1, 2007. As a result, INVIMA has published new standards for food safety and sanitary requirements for slaughter plants, meat processing facilities, and for the storage, transportation, and sale of meat and meat products. In addition, several new INVIMA resolutions were published on standards for maximum residue levels, production, and processing standards, and import requirements for food and meat products. Thus far, with one important exception, INVIMA has not implemented many of the new food safety standards, as it continues to organize its inspection and enforcement staff.

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Since August 2007, INVIMA has been applying a zero tolerance policy for salmonella on meat imports, which has led to the rejection of several U.S. mechanically deboned poultry meat shipments. At the same time, the Ministry of Agriculture and its sanitary and phytosanitary regulatory agency, the Colombian Agricultural Institute (ICA), published new import requirements for poultry and poultry products. These requirements appear to be inconsistent with certain international standards, and U.S. officials are working with ICA to resolve these issues. As a result of ICA's policy change, U.S. exports of select poultry products such as poultry meal and processed egg products have been disrupted and/or stopped.

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

In August 2006, the U.S. and Colombian governments agreed on the contents of sanitary certificates to accompany shipments to Colombia of U.S. beef and beef products for human consumption. In October 2006, Colombia implemented this agreement, thereby reopening its market to U.S. beef and beef products for human consumption, except high risk materials, when accompanied by a sanitary certificate issued by the U.S. Department of Agriculture's Food Safety and Inspection Service (FSIS), consistent with international standards. Restrictions remain with respect to trade in live cattle.

U.S. companies continue to confront problems selling nutritional supplements in Colombia because of the lack of legislation establishing clear parameters for sanitary registration. Colombia does not have a specific classification for nutritional supplements. Colombia issued Decree 3249 of September 18, 2006, on diet supplements, but is currently in the process of revising it.

GOVERNMENT PROCUREMENT

In July 2007, the Colombian government enacted Law 1150/07 that amends its government procurement procedures by modifying the selection process, requiring the publication of more information about government procurements, and setting aside small contracts (up to approximately \$150,000) for Colombian small and mid-sized companies. The new law also provides for the establishment of the Colombian Electronic Government Procurement System (SECOP), which will integrate all public procurement-related national systems and constitute the official means for publication of all public procurement information, including notices of procurement and contracts awards. It will also include electronic reverse auctions and electronic purchasing systems (framework agreements). The new reforms came into force in January 2008. All local or foreign suppliers (domiciled or incorporated in Colombia) must be registered in the National Registry of Suppliers in order to be awarded a public contract, although this requirement may be waived for foreign suppliers not domiciled or incorporated in Colombia.

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

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EXPORT SUBSIDIES

The Colombian government has established free zones to promote industries through special customs, tax, and foreign exchange regimes. The users of free zones are exempt from import tariffs and value added tax on imports. The income tax applied in these zones is 15 percent. The zones also have access to special credit lines offered by Colombia's foreign trade bank (Bancoldex). The aim is to promote competitiveness, employment, good business practices, and technology development, as well as attract foreign and new capital investment. A 2007 decree (4051/07) established the following requirements: minimum equity of \$5 million to set up a free zone; minimum area of 20 hectares; adequate infrastructure; at least five industrial users of goods and/or services; and minimum total new investment of \$10 million. Eleven free zones have received approval from the Trade Ministry to date.

In 2007, the Ministry of Agriculture allocated \$72.5 million for a subsidies program for banana and flower producers to improve phytosanitary controls and hedge against the appreciation of the Colombian peso, which appreciated 13 percent between January 2007 and November 2007. To be eligible for the subsidy, the producers must maintain their employee base.

In addition to incentives, the differential import tariff for transitory crops has benefited products such as white corn (45 percent) and powdered milk (50 percent).

INTELLECTUAL PROPERTY RIGHTS (IPR) PROTECTION

Colombian agencies that administer IPR – the Superintendence of Industry and Commerce (SIC), the Colombian Agricultural Institute (ICA), the Ministry of Social Protection, and the Ministry of Justice – are historically understaffed and under funded. Extensive backlogs exist in the granting of patents, copyrights, and trademarks.

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

Patents and Trademarks

The patent regime in Colombia provides for a 20 year protection period for patents and 10 year term for industrial designs; protection is also provided for new plant varieties. However, U.S. companies are concerned that the government of Colombia does not provide patent protection for new uses of previously known or patented products. By decree, the Colombian government has improved protection of confidential data for pharmaceutical and agro-chemical products.

Enforcement

Enforcement of IPR has been weak and ineffective. Certain infractions are considered criminal offenses and perpetrators can be sentenced to prison and/or fined, but judges rarely impose those penalties. The Colombian government has made a concerted effort in recent years to enforce its intellectual property laws. Coordination between the Colombian government and the private sector is good, resulting in greater

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enforcement activities, such as raids and arrests. Despite these improvements, intellectual property industry representatives report that the rate of intellectual property enforcement is still a major concern.

SERVICES BARRIERS

The telecommunications, auditing, and energy sectors are generally open to participation by foreign companies. Some restrictions, such as economic needs tests and residency requirements, still remain in sectors such as accounting, tourism, legal services, insurance, distribution services, advertising, and data processing. The provision of legal services is limited to law firms licensed under Colombian law. Foreign law firms can operate in Colombia only by forming a joint venture with a Colombian law firm and operating under the licenses of the Colombian lawyers in the firm. Colombia permits 100 percent foreign ownership of insurance firm subsidiaries. It does not, however, allow foreign insurance companies to establish local branch offices. Insurance companies must maintain a commercial presence in order to sell policies other than those for international travel or reinsurance. Colombia denies market access to foreign maritime insurers.

International banking institutions are required to maintain a commercial presence in Colombia through subsidiary offices and therefore, must comply with the same capital and other requirements as local financial institutions. Colombian legislation has limits on the operation of banks and other financial institutions by separating fiduciary, investment banking, commercial loans, leasing, and insurance services from banking services. Current legislation (Law 389 of 1997) permits banking institutions to develop such activities in the same location, but the management of such services must be separate. Colombian legislation permits 100 percent foreign ownership in financial services, although the use of foreign personnel in the financial services sector remains limited to administrators, legal representatives, and technicians. Industry experts estimate that the elimination of trade barriers in the financial services sector could create up to \$500 million in opportunities for U.S. firms.

Under the CTPA, Colombia will accord substantial market access across its entire services regime, subject to a limited number of exceptions. Colombia agreed to remove and to limit specific barriers. For example, Colombia will phase-in several liberalizations in financial services, such as allowing branching by banks and insurance companies and allowing the sale of international maritime shipping and commercial aviation insurance within 4 years of entry into force of the Agreement. Under the Agreement, mutual funds and pension funds will be allowed to use portfolio managers in the United States.

Transborder transportation services are restricted in Colombia. Land cargo transportation must be provided by Colombian citizens or legal residents with commercial presence in the country and licensed by the Ministry of Transportation. Colombia's law permits international companies to provide cabotage services (*i.e.*, transport between two points within Colombian territory) "only when there is no national capacity to provide the service." The Ministry of Foreign Trade reserves the right to impose restrictions on foreign vessels of those nations that impose reserve requirements on Colombian vessels. Under the terms of the CTPA, Colombia committed to allow 100 percent foreign ownership of land cargo transportation enterprises in Colombia. The Agreement removes the Ministry of Foreign Trade's right to impose cargo reservation restrictions on U.S. flagged vessels.

Additionally, Colombia committed in the CTPA to allow companies in most sectors to hire managers and other professionals of their choice, free from nationality restrictions, including those applying to engineers and architects. Colombia also committed to remove onerous restrictions applying to agency relationships affecting the sale of goods. Some restrictions that remain under the CTPA are those requiring residency in the accounting and tourist sectors.

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Telecommunications

The Colombian government is planning in the near future to transform the Ministry of Communications into the Ministry of Technologies, Information, and Communications in order to adapt to the evolution of the audiovisual and telecommunication industries. In 2007, Colombia took the positive step of reducing a significant barrier to entry into the international long distance market by reducing the licensing fee for this service from approximately \$150 million dollars to a fee equivalent to three minimum wages (about \$650), plus a fee of 3 percent of the operators' revenues. However, other barriers to entry remain, including a commercial presence requirement and economic needs tests. However, the parameters that determine an "economic needs test" are not clearly established. In addition, lack of transparency in the interconnection and trunk access policies and guidelines applied by the regulatory authority further limit competition for the provision of local, long distance, and mobile services.

Most other restrictions on foreign participation in telecommunications services have been lifted. Colombia currently permits 100 percent foreign ownership of telecommunications providers. The U.S. trunking company Avantel is now interconnected directly with mobile companies Comcel and Movistar and U.S. companies can obtain the right to interconnect with Colombian dominant suppliers' fixed networks at nondiscriminatory and cost-based rates. Under the CTPA, U.S. firms will be able to lease lines from Colombian telecommunications networks on nondiscriminatory terms and re-sell most telecommunications services of Colombian suppliers to build a customer base.

INVESTMENT BARRIERS

Foreign investment in Colombia is granted national treatment, and 100 percent foreign ownership is permitted in most sectors. Exceptions exist for national security, broadcasting, and the disposal of hazardous waste. Investment screening has been eliminated, and the registration requirements that still exist are generally formalities. All foreign investment must be registered with the Central Bank's foreign exchange office within 3 months in order to ensure the right to repatriate profits and remittances. The Colombian government tax reform package enacted in late 2006 eliminated the 7 percent tax on remittances. Investors, domestic or foreign, are required to obtain a license from the Superintendent of Companies and register with the local chamber of commerce.

Colombian television broadcast laws (Law 182/95 and Law 375/96) impose several restrictions on foreign investment. For example, foreign investors must be actively engaged in television operations in their home country, and their investments must involve a transfer of technology or know how. There is a cap of 40 percent on foreign investment in television network and programming companies.

In recent years, the Colombian government has liberalized its hydrocarbons industry to promote discovery and exploitation. The royalties scale was changed, private companies are allowed 100 percent control of exploration and production projects, and the parastatal Ecopetrol was restructured to compete with private sector companies. In 2007, Ecopetrol auctioned shares to the public totaling a 10.1 percent stake in the company.

Colombia agreed to strong protections for U.S. investors in the CTPA. When it enters into force, the Agreement will establish a stable legal framework for U.S. investors operating in Colombia. All forms of investment will be protected under the CTPA. U.S. investors will enjoy in almost all circumstances the right to establish, acquire, and operate investments in Colombia on an equal footing with local investors.

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The CTPA's investor protections will also be backed by a transparent, binding investor-state arbitration mechanism.

COSTA RICA

TRADE SUMMARY

The U.S. goods trade surplus with Costa Rica was \$638 million in 2007, an increase of \$349 million from 2006. U.S. goods exports in 2007 were \$4.6 billion, up 10.9 percent. U.S. imports from Costa Rica over the corresponding period were \$3.9 billion, up 2.6 percent. Costa Rica is currently the 36th largest export market for U.S. goods.

The stock of U.S. foreign direct investment (FDI) in Costa Rica was \$1.6 billion in 2006 (latest data available), up from \$1.3 billion in 2005. U.S. FDI in Costa Rica is concentrated largely in the manufacturing and wholesale trade sectors.

IMPORT POLICIES

Free Trade Agreement

On August 5, 2004, the United States signed the Dominican Republic–United States–Central America Free Trade Agreement (CAFTA-DR or Agreement) with five Central American countries (Costa Rica, El Salvador, Guatemala, Honduras, and Nicaragua) and the Dominican Republic.

During 2006, the Agreement entered into force for the United States, El Salvador, Guatemala, Honduras, and Nicaragua. The CAFTA-DR entered into force for the Dominican Republic on March 1, 2007. Costa Rica approved the CAFTA-DR through a national referendum on October 7, 2007, but the Agreement has not entered into force for Costa Rica as it has not yet completed the process of adopting implementing legislation and regulations.

In 2007, the Parties agreed to amend several textile related provisions of the CAFTA-DR, in particular, changing the rules of origin to require the use of U.S. or regional pocket bag fabric in originating apparel. The textile amendments have not entered into force.

Under the Agreement, the Parties remove barriers to trade and investment in the region, which will strengthen regional economic integration. The CAFTA-DR also includes important disciplines relating to: customs administration and trade facilitation, technical barriers to trade, government procurement, investment, telecommunications, electronic commerce, intellectual property rights, transparency, and labor and environmental protection.

Tariffs

As a member of the Central American Common Market (CACM), Costa Rica agreed in 1995 to reduce its common external tariff to a maximum of 15 percent.

When the CAFTA-DR enters into force with respect to Costa Rica, about 80 percent of U.S. industrial and consumer goods will enter Costa Rica duty free immediately, with the remaining tariffs on these goods (including tariffs on distilled spirits) phased out over 10 years. Nearly all textile and apparel goods that meet the Agreement's rules of origin will enter duty free and quota free immediately, promoting new opportunities for U.S. and regional fiber, yarn, fabric, and apparel manufacturing companies.

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Most tariffs on agricultural products range from 1 percent to 15 percent. However, selected agricultural commodities currently are protected by tariffs that significantly exceed the 15 percent CACM common external tariff ceiling. These commodities include: frozen french fries (40 percent), fresh potatoes (46 percent), dairy products (40 percent to 65 percent), and poultry products (up to 150 percent). When the Agreement enters into force, more than half of U.S. agricultural exports to Costa Rica will be duty free immediately. Costa Rica will eliminate its remaining tariffs on virtually all agricultural products within 15 years (17 years for chicken leg quarters and 20 years for rice and dairy products). For the certain products, tariff-rate quotas (TRQs) will permit some immediate duty free access for specified quantities during the tariff phase out period, with the duty free amounts expanding during that period. Costa Rica will liberalize trade in fresh potatoes and onions through expansion of an existing TRQ, rather than by tariff reductions.

The Parties will also improve transparency and efficiency in administering customs procedures, including application of the Agreement's rules of origin. Under the CAFTA-DR, Costa Rica has committed to ensure greater certainty and fairness in the administration of these procedures, and all the CAFTA-DR countries agreed to share information to combat illegal transshipment of goods.

Nontariff Measures

The establishment of an electronic, "one-stop," import-export window in year 2000 and other more recent improvements has reduced the time required for customs processing in Costa Rica. Nonetheless, procedures remain complex and bureaucratic.

STANDARDS, TESTING, LABELING, AND CERTIFICATION

Under current regulations, the Ministry of Health must test and register domestically produced or imported pharmaceuticals, feeds, chemicals, and cosmetics before they can be sold in Costa Rica. Domestic products are often not subjected to analysis due to a lack of adequate laboratory testing equipment and funds. As implemented, this system appears to be enforced more rigorously on imported goods than on domestically produced goods. Regulations exist for imported goods but they vary widely depending on when the regulations were written. In general, the newer the regulation, the more likely that it may reflect current accepted international standards, including safety practices.

In addition, Costa Rica requires that all imported products be certified as safe and allowed for sale in the country of origin in order to be registered. Food traders express concern regarding the length of time it takes to register a product under this process, which can take months. As an example, Costa Rica requires extensive documentation to be notarized by the Costa Rican consulate in the country of origin for the importation of distilled spirits. The delays associated with fulfillment of these import requirements are burdensome and costly to U.S. exporters. Costa Rica and the other Central American countries are in the process of developing common standards for the importation of several products, including distilled spirits, which may facilitate trade.

Sanitary and phytosanitary (SPS) requirements can often be cumbersome and lengthy. In addition, the Ministry of Agriculture and Livestock enforces SPS measures that appear to be inconsistent with international standards and the differences do not appear to be based on science (*e.g.*, zero tolerance for Salmonella on raw meat and poultry products). Also, while Costa Rica has opened market access for U.S. live cattle and boneless beef from animals less than 30 months of age, they maintain restrictions on other beef products, including bone-in beef.

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Costa Rica signed the Cartagena Protocol on Biosafety in May 2000. Costa Rica has implemented legislation to regulate the import and cultivation of bioengineered crops. This legislation includes a labeling requirement for genetically modified organisms in agriculture, but there is currently no labeling requirement for processed foods containing the products of biotechnology. Costa Rica has permitted cultivation of transgenic seeds for multiplication purposes since 1992. These seeds must be exported and cannot be cultivated as a crop in Costa Rica.

Legislation passed in 2005 creating a national animal health service provides statutory authority for Costa Rica to undertake an equivalency determination to recognize the equivalence of the U.S. food safety and inspection systems for meat and poultry. Current requirements call for the approval of individual meat and poultry plants as a prerequisite for exporting to Costa Rica. Costa Rica has committed to complete its equivalency determination prior to when CAFTA-DR enters into force for Costa Rica.

GOVERNMENT PROCUREMENT

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

The CAFTA-DR, when it enters into force with respect to Costa Rica, will require procuring entities to use fair and transparent procurement procedures, including advance notice of purchases and timely and effective bid review procedures for procurement covered by the Agreement. Under the CAFTA-DR, U.S. suppliers will be permitted to bid on the procurements of most Costa Rican government entities, including state-owned enterprises, on the same basis as Costa Rican suppliers. The anticorruption provisions in the Agreement will require Costa Rica to ensure under its domestic law that bribery in trade related matters, including in government procurement, is treated as a criminal offense or is subject to comparable penalties.

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

EXPORT SUBSIDIES

Tax holidays are available for investors in free trade zones, unless tax credits are available in an investor's home country for taxes paid in Costa Rica. In 2000, Costa Rica ceased granting financial investment subsidies and tax holidays to new exporters.

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

INTELLECTUAL PROPERTY RIGHTS (IPR) PROTECTION

The United States continues to have concerns over Costa Rica's inadequate enforcement of intellectual property laws. Consequently, Costa Rica remained on the 2007 Special 301 Watch List. While many

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elements of Costa Rica's intellectual property laws appear to be in line with international standards, enforcement remains very weak. Initiatives, including the formation of an intergovernmental intellectual property rights commission and the training of judges and prosecutors on intellectual property laws, have not produced significant improvements in the prosecution of IPR crimes. Deterrence is further undermined as IPR violators are not aggressively prosecuted by the Attorney General of Costa Rica, a fact that is frequently attributed to scarce resources.

Costa Rica's patent office continues to experience significant delays in processing applications, but has tried to remedy that problem by contracting technical patent reviews with two of Costa Rica's educational institutions. Long delays in copyright enforcement cases continue to be a serious problem. Though piracy of satellite television transmissions by the domestic cable television industry has been curtailed, U.S. industry continues to express concern that some apartment buildings and hotels continue to engage in satellite signal piracy. Unauthorized sound recordings, videos, optical discs, and computer software are also widespread. Previous efforts to reduce their presence in the market have not continued over the last year.

In order to implement the CAFTA-DR, Costa Rica must make changes to its existing IPR laws and regulations to address limitations that currently prevent effective enforcement. These changes must be in place for the Agreement to enter into force. These and other IPR reforms will strengthen Costa Rica's IPR protection regime.

Implementation of the CAFTA-DR obligations will provide stronger deterrence against piracy and counterfeiting by, for example, requiring Costa Rica to provide that its judicial authorities have the authority to order the seizure, forfeiture, and destruction of counterfeit and pirated goods and the equipment used to produce them, something that the government is not currently capable of doing in an expeditious or effective manner. The CAFTA-DR will also mandate both statutory and actual damages for copyright and trademark infringement, helping to ensure that monetary damages can be awarded even when it is difficult to assign a monetary value to the violation. Implementation will require Costa Rica to protect data submitted for regulatory approval against unfair commercial use for a period of 5 years following the issuance of marketing approval for pharmaceuticals and 10 years for agricultural chemicals. Finally, the CAFTA-DR obligations will require that Costa Rica accede to the UPOV Convention (International Convention for the Protection of New Varieties of Plants, 1991), the Budapest Treaty on the International Recognition of the Deposit of Microorganisms for the Purposes of Patent Procedure, and the Trademark Law Treaty, as well as make all reasonable efforts to provide patent protection for plants.

SERVICES BARRIERS

Costa Rica's insurance, telecommunications, electricity distribution, petroleum distribution, and railroad sectors are all state monopolies. In addition, there are restrictions on the participation of foreign companies in some private sector activities, such as customs handling, medical services, ferry service, prison operation, and professional services. When the Agreement enters into force with respect to Costa Rica, Costa Rica will accord substantial market access across the country's entire services sector, subject to a few exceptions. Costa Rica will liberalize a significant portion of its insurance market when the Agreement enters into force. The remainder of Costa Rica's market will be opened by 2011. Costa Rica also agreed to the establishment of an independent insurance regulatory body.

Costa Rican regulations restrict the ability of certain professions to practice on a permanent basis in Costa Rica, such as medical practitioners, lawyers, certified public accountants, engineers, architects, and teachers. Such professionals must be members of a local association that sets residency, examination, and

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apprenticeship requirements. However, under the CAFTA-DR, Costa Rica has agreed to allow the provision of certain professional services on a reciprocal basis and also agreed to provide for temporary licensing of professional services.

Costa Rica made specific commitments in the CAFTA-DR to open its telecommunications market in three key telecommunications services activities (private network, Internet, and mobile wireless services) and to establish a regulatory framework to foster effective market access and competition. Under the CAFTA-DR, certain telecommunications market segments in Costa Rica were to open up gradually, beginning with private network services on January 1, 2006. Internet services and wireless services were to have followed on January 1, 2007. However, since the CAFTA-DR did not enter into force with respect to Costa Rica by those dates, Costa Rica will provide such market openings when the Agreement enters into force.

Costa Rica made no commitments in the WTO for the provision of securities trading, underwriting services, or any type of insurance services. The CAFTA-DR, however, provides for liberalization in all these areas. Private commercial banks are required to open branches in rural areas of the country or to deposit with the Central Bank 17 percent of their checking account deposits for state owned commercial banks that have rural branches in order to qualify for the benefits of the law. Under the CAFTA-DR, foreign banks must be treated under the same rules as domestic private banks.

INVESTMENT BARRIERS

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

Several U.S. investors have experienced difficulties executing contracts made with the Costa Rican government. While electricity distribution remains a state monopoly, an electricity cogeneration law enacted in 1996 allowed some private sector participation in the production of electricity, but not in its transmission. This law has since been modified to permit the private construction and operation of plants under build-operate-transfer and build-lease-transfer mechanisms, but the operator must have at least 35 percent Costa Rican equity. Existing private power producers have had their long-term, fixed-rate contracts challenged by certain Costa Rican governmental organizations, but these contracts have been honored. A United States led airport management consortium has maintained that the terms of its concession agreement have been repeatedly altered by the Costa Rican government.

OTHER BARRIERS

The Law regulating commercial representatives of foreign firms (Law No. 6209) grants local companies exclusive representation, even without a signed agreement, for an indefinite period of time. In most cases, foreign companies must pay indemnity compensation in order to terminate a relationship with the local company.

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Under the existing regime, foreign firms may be tied to exclusive or inefficient distributor arrangements. In the CAFTA-DR, Costa Rica committed to establish a new legal regime that will give U.S. firms and their Costa Rican partners more freedom to contract the terms of their commercial relations, which in turn will encourage the use of arbitration to resolve disputes between parties to dealer contracts. In December 2007, Costa Rica enacted Law 8629, which is intended to implement this commitment. The legislation will take effect when the CAFTA-DR enters into force for Costa Rica.

ELECTRONIC COMMERCE

The CAFTA-DR includes provisions on electronic commerce that reflect the importance to global trade. Under the CAFTA-DR, when the Agreement enters into force with respect to Costa Rica, Costa Rica will be obligated to provide nondiscriminatory treatment to U.S. digital products, and not to impose customs duties on digital products transmitted electronically.

COTE D'IVOIRE

TRADE SUMMARY

The U.S. goods trade deficit with Cote d'Ivoire was \$439 million in 2007, a decrease of \$116 million from 2006. U.S. goods exports in 2007 were \$162 million, up 9.6 percent from the previous year. Corresponding U.S. imports from Cote d'Ivoire were \$600 million, down 14.5 percent. Cote d'Ivoire is currently the 124th largest export market for U.S. goods.

The stock of U.S. foreign direct investment in Cote d'Ivoire was \$298 million in 2006 (latest data available), down from \$304 million in 2005.

IMPORT POLICIES

Cote d'Ivoire is a Member of the WTO, the West African Economic and Monetary Union (UEMOA), and the Economic Community of West African States (ECOWAS). As a member of the UEMOA Customs Union, Cote d'Ivoire does not charge tariffs on imports from the eight UEMOA member countries. Imports from all other countries are subject to tariffs based on the UEMOA Common External Tariff (CET) schedule of 5 percent for raw materials and inputs for local manufacture, 10 percent for semi-finished goods, and 20 percent for finished products. For 2006, the simple average tariff for industrial goods was 11.6 percent.

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

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

STANDARDS, TESTING, LABELING, AND CERTIFICATION

All items imported into Cote d'Ivoire must have a certificate of compliance with relevant requirements to clear customs. Two European companies, BIVAC (affiliated to the French group

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Bureau Veritas) and the Swiss firm Cotecna, are contracted to carry out all qualitative and quantitative verifications of goods imported into Cote d'Ivoire with a value exceeding CFA 1.5 million (approximately \$3,000). All merchandise packaging must be clearly labeled as to its origin. Manufactured food products must be labeled in French and have an expiration date. Standards generally follow French or European norms.

GOVERNMENT PROCUREMENT

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

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

SERVICES BARRIERS

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

Cote d'Ivoire does not formally require majority Ivorian ownership in most sectors other than those noted above. There are professional associations, such as legal and accountancy associations that serve to regulate professional services, that require Ivorian nationality. For example, there are restrictions on the registration of foreign nationals by the accountants' association unless they have already been practicing in Cote d'Ivoire for several years under the license of an Ivorian practitioner. In the case of legal services, Cote d'Ivoire distinguishes between providing legal advice and practicing law in court. The former is liberalized, but in order to be admitted to the Ivorian bar and practice in a courtroom, lawyers must be accredited by the Ivorian lawyers' association, which requires Ivorian nationality.

INVESTMENT BARRIERS

The government encourages foreign investment, but political instability since the 2002 conflict between national and rebel forces has substantially undermined investor confidence. The Ouagadougou Political Agreement, signed in March 2007, lays out a roadmap to elections which could help resolve the political crisis and improve the investment climate if implemented. There has been no progress on privatization since 2002 when the National Assembly effectively stopped

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functioning. A resumption of National Assembly activities would probably substantially boost both imports and exports by simply reassuring foreign businesses and investors and by clarifying business rules and regulations.

The Ivorian investment code provides tax incentives for investments larger than \$1 million, as well as land concessions for projects. Concessionary agreements that exempt investors from tax regulations require the additional approval of the Ministry of Finance and Economy and the Ministry of Industry. This makes the clearance procedure for planned investments, if tax breaks are sought, time consuming and confusing. The Center for the Promotion of Investment in Cote d'Ivoire was established to act as a one stop shop for investment to help alleviate this problem. Even when companies have complied fully with the requirements, tax exemptions are sometimes denied with little explanation, giving rise to accusations of favoritism and corruption.

INTELLECTUAL PROPERTY RIGHTS (IPR) PROTECTION

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

The government's Office of Industrial Property (OIPI) is charged with ensuring the protection of patents, trademarks, industrial designs, and commercial names. The office faces an array of challenges, including inadequate resources, lack of political will, and the distraction of the ongoing political crisis. As a result, enforcement of IPR is largely ineffective. Foreign companies, especially from East and South Asia, flood the Ivorian market with all types of counterfeit goods. In addition, lack of customs checks in rebel-controlled Western and Northern border areas makes law enforcement action against trade in counterfeit textiles, pharmaceuticals, and vehicle parts difficult. In 2007, the Ministry of Industry, through the OIPI, prepared a draft law on protection of IPR at the border to provide legal provisions for addressing counterfeiting, but the law is still being reviewed within the Ivorian government.

Cote d'Ivoire's law on mandatory registration of commercial names came into effect in February 2006, and it addresses concerns regarding commercial name infringement. Protection of authorship, literary, and artistic works are regulated by the Ivorian Office of Authors' Rights (BURIDA). BURIDA established a new sticker system in January 2004, to protect audio, video, literary, and artistic property rights in music and computer programs. BURIDA's operations have been hampered by a long running dispute between management and board members over policy and leadership issues, specifically with regard to who should direct the agency. To resolve the crisis at BURIDA, in March 2006, the Minister of Culture invoked a ministerial bylaw to establish a temporary administration and a commission to study and propose a comprehensive reform of BURIDA. Since its establishment, the new administration has boosted the fight against audiovisual piracy including well-publicized raids against retail outlets and street vendors of pirate compact discs (CDs) and digital video discs (DVDs) and legal proceedings against persons involved in copying of audiovisual materials. The agency, in conjunction with lawyers and magistrates, does help to promote IPR enforcement.

ELECTRONIC COMMERCE

Electronic commerce is in its very early stages in Cote d'Ivoire, but it is expected to grow over time. There are a number of barriers to growth, including the longstanding custom of paying with cash and the absence of widespread issuance and use of credit cards. Despite these barriers,

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individuals and businesses have begun experimenting with electronic commerce, and interest in the medium continues to gain ground. Effective August 3, 2006, the West African Central Bank, Banque Centrale des Etats de l’Afrique de l’Ouest, established the interbank automated payment system to reduce delays in bank settlement operations.

OTHER BARRIERS

Many U.S. companies view corruption as an obstacle to investment in Cote d’Ivoire. Corruption has the greatest impact on judicial proceedings, contract awards, customs, and tax issues. It is common for judges who are open to financial influence to distort the merits of a case. Corruption and the recent political crisis have affected the Ivorian government’s ability to attract and retain foreign investment. Some U.S. investors have raised specific concerns about the rule of law and the government’s ability to provide equal protection under the law. The U.S. government, along with other major donors and investing countries, has urged the government of Cote d’Ivoire to implement the Extractive Industries Transparency Initiative, which could substantially reduce corruption in the energy sector, which in turn could boost investor confidence in the overall economy.

An arbitration court, the Joint Court of Justice and Arbitration, is a member of the regional arbitration board known as the Organization for the Harmonization of Business Law in Africa. Since 1997, the court has examined 51 cases, including 10 cases in 2006. Cote d’Ivoire is also a member of the International Center for the Settlement of Investment Disputes.

Ivorian law favors the employment of Ivorians over foreigners in private enterprises. Until recently, foreign employees were required to have a visa “*carte de sejour*” that cost the equivalent of a month’s salary each year. Representatives of UEMOA harshly criticized the requirement and claimed that it violated Article 91 of the UEMOA Treaty, which permits the free movement of persons for employment within the union. On November 8, 2007, President Gbagbo signed a decree suspending the *carte de sejour* requirement for ECOWAS citizens. It is not yet clear how the elimination of the *carte de sejour* requirement will affect employment opportunities in Cote d’Ivoire.

FOREIGN TRADE BARRIERS

DOMINICAN REPUBLIC

TRADE SUMMARY

The U.S. goods trade surplus with the Dominican Republic was \$1.9 billion in 2007, an increase of \$1.1 billion from \$818 million in 2006. U.S. goods exports in 2007 were \$6.1 billion, up 13.8 percent from the previous year. U.S. imports from the Dominican Republic over the corresponding period were \$4.2 billion, down 6.9 percent. The Dominican Republic is currently the 32nd largest export market for U.S. goods.

The stock of U.S. foreign direct investment (FDI) in the Dominican Republic was \$896 million in 2006 (latest data available), up from \$770 million in 2005. U.S. FDI in the Dominican Republic is concentrated largely in the manufacturing sector.

IMPORT POLICIES

Free Trade Agreement

On August 5, 2004, the United States signed the Dominican Republic-United States-Central America Free Trade Agreement (CAFTA-DR or Agreement) with five Central American countries (Costa Rica, El Salvador, Guatemala, Honduras, and Nicaragua) and the Dominican Republic (the Parties).

During 2006, the Agreement entered into force for the United States, El Salvador, Guatemala, Honduras, and Nicaragua. The CAFTA-DR entered into force for the Dominican Republic on March 1, 2007. Costa Rica approved the CAFTA-DR through a national referendum on October 7, 2007, but the Agreement has not entered into force as Costa Rica has not yet completed the process of adopting implementing legislation and regulations.

In 2007, the Parties agreed to amend several textile related provisions of the CAFTA-DR, including, in particular, changing the rules of origin to require the use of U.S. or regional pocket bag fabric in originating apparel. The textile amendments have not entered into force.

Under the Agreement, the Parties remove barriers to trade and investment in the region, which will strengthen regional economic integration. The CAFTA-DR also includes important disciplines relating to: customs administration and trade facilitation, technical barriers to trade, government procurement, investment, telecommunications, electronic commerce, intellectual property rights, transparency, and labor and environmental protection.

Tariffs

Under the CAFTA-DR, about 80 percent of U.S. industrial and consumer goods now enter the Dominican Republic duty free, with the remaining tariffs phased out over 10 years. Nearly all textile and apparel goods that meet the Agreement's rules of origin now enter duty free and quota free, promoting new opportunities for U.S. and regional fiber, yarn, fabric, and apparel manufacturing companies.

Under the CAFTA-DR, more than half of U.S. agricultural exports enter the Dominican Republic duty free. The Dominican Republic will eliminate its remaining tariffs on nearly all agricultural goods within 15 years. For certain products, tariff-rate quotas (TRQs) will permit some immediate duty free access for

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specified quantities during the tariff phase out period, with the duty free amount expanding during that period.

Nontariff Measures

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

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

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

On October 31, 2005, the United States and the Dominican Republic signed a Customs Mutual Assistance Agreement that allows customs officials to exchange information, intelligence, and documents designed to help prevent customs offenses. The Agreement provides a basis for cooperation and investigation in the areas of trade fraud, money laundering, smuggling, export controls, and related security. The United States donated nonintrusive (X-ray) verification equipment that will upgrade and expedite the verification process. Dominican Customs is in the process of expanding the project by either purchasing or leasing additional equipment.

STANDARDS, TESTING, LABELING, AND CERTIFICATION

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

In addition, the Ministry of Agriculture and Livestock enforces sanitary measures that appear to be inconsistent with international standards and the differences do not appear to be based on science (*e.g.*, zero tolerance for Salmonella on raw meat and poultry products and for *Tilletia* on shipments of U.S. rice). During the CAFTA-DR negotiations, the governments created an intergovernmental working group to discuss Sanitary and Phytosanitary (SPS) barriers to agricultural trade. As a result of the work of this group, the Dominican Republic committed to resolve specific measures restricting U.S. exports to the Dominican Republic. In addition, the Dominican Republic agreed to recognize the equivalence of the

FOREIGN TRADE BARRIERS

U.S. food safety and inspection systems for beef, pork, and poultry, thereby eliminating the need for plant-by-plant inspections. However, at this point the Dominican Republic maintains restrictions on U.S. beef and beef products from animals over 30 months of age as well as live cattle of any age.

GOVERNMENT PROCUREMENT

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

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

EXPORT SUBSIDIES

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

INTELLECTUAL PROPERTY RIGHTS (IPR) PROTECTION

While Dominican law provides for sanctions to protect copyrighted works, and the Dominican regulatory framework for patent and trademark protection was improved, U.S. industry continues to cite lack of IPR enforcement as a major concern. To implement the CAFTA-DR requirements, the Dominican government passed legislation in November 2006 to strengthen its IPR protection regime by, for example, requiring authorities to seize and destroy counterfeit and pirated goods and the equipment used to produce them. There has been improved coordination among various government agencies including the Secretariat of Industry and Commerce, the Attorney General's Office, the Patent Office, and the Copyright Office to stop television broadcast piracy.

Patents and Trademarks

The U.S. pharmaceutical industry has expressed concern that the sanitary authority of the Dominican Republic Ministry of Health and Social Welfare continues to approve the import, export, manufacture, marketing, and/or sale of pharmaceutical products that infringe on patented products registered in the Dominican Republic. The Industrial Property Law, which was amended in 2000, has not often been applied in legal proceedings, so the effectiveness of the law has not been thoroughly tested.

The CAFTA-DR requires that test data submitted to the Dominican government for the purpose of product approval be protected against unfair commercial use for a period of 5 years for pharmaceuticals

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and 10 years for agricultural chemicals from the date of product approval in the Dominican Republic. Legislation providing for this protection was passed in November 2006.

Copyrights

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

SERVICES BARRIERS

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

The Dominican Republic ratified the 1997 WTO Financial Services Agreement and its monetary and financial laws are consistent with the commitments of the WTO agreement.

INVESTMENT BARRIERS

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

The Dominican Republic implemented the New York Convention on Recognition and Enforcement of Foreign Arbitral Awards (the New York Convention) in August 2002. The New York Convention provides courts a mechanism to enforce international arbitral awards. In a case that was recently concluded, a U.S. firm settled a dispute with a Dominican state-owned company after winning an international arbitral award at the International Commercial Court.

ELECTRONIC COMMERCE

Law 126-02 enacted in 2002 regulates electronic commerce, documents, and digital signatures. The CAFTA-DR includes provisions on electronic commerce that reflect the issue's importance to global trade. Under the CAFTA-DR, the Dominican Republic has committed to provide nondiscriminatory treatment of U.S. digital products, and not to impose customs duties on digital products transmitted electronically.

FOREIGN TRADE BARRIERS

OTHER BARRIERS

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

Dominican law provides that bribery in trade related matters is treated as a criminal offense or is subject to comparable penalties. These provisions should enhance transparency, predictability, and the rule of law.

Dealer Protection

Many U.S. companies have expressed concern that the Dominican Dealer Protection Law 173, which applies only to foreign suppliers, makes it extremely difficult to terminate contracts with local agents or distributors without paying exorbitant indemnities. Under Law 173, foreign firms may be tied to exclusive or inefficient distributor arrangements. Several U.S. companies have lost lawsuits brought under this law and have suffered significant financial penalties. One U.S. company is appealing a court ruling which threatens to inhibit its ability to sell as well as service its products in the Dominican Republic. By limiting the ability of a foreign firm to change its local agent without severe penalties and compensation, this law has had a negative effect on market access and on consumer welfare.

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

ECUADOR

TRADE SUMMARY

The U.S. goods trade deficit with Ecuador was \$3.2 billion in 2007, a decrease of \$1.2 billion from \$4.4 billion in 2006. U.S. goods exports in 2007 were \$2.9 billion, up 7.7 percent from the previous year. Corresponding U.S. imports from Ecuador were \$6.1 billion, down 13.5 percent. Ecuador is currently the 47th largest export market for U.S. goods.

The stock of U.S. foreign direct investment (FDI) in Ecuador was \$461 million in 2006 (latest data available), down from \$730 million in 2005. U.S. FDI in Ecuador is concentrated largely in the mining and wholesale trade sectors.

IMPORT POLICIES

Tariffs

When Ecuador joined the World Trade Organization (WTO) in January 1996, it bound most of its tariff rates at 30 percent or less, except for agricultural products in the Andean Price Band System (APBS). Ecuador's average applied MFN tariff rate is 11.7 percent. Ecuador applies a four tiered structure with levels of 5 percent for most raw materials and capital goods, 10 percent or 15 percent for intermediate goods, and 20 percent for most consumer goods. Two hundred and seven agricultural related inputs including planting seeds, agricultural chemicals, and veterinary products are duty free.

As a member of the Andean Community (CAN), Ecuador grants and receives exemptions from tariffs, *i.e.*, reduced *ad valorem* tariffs and no application of the Andean Price Band System (APBS), for products from the other CAN countries (Bolivia, Colombia, and Peru). Currently, these countries have an Andean Free Trade Zone. They had agreed to apply Common External Tariffs (CET), as stated in CAN Decision 370, but pursuant to CAN Decision 663 of January 2007, implementation of the CET was postponed until January 31, 2008.

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

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

In August 2007, Ecuador lowered tariffs to 0 percent, 5 percent, and 10 percent for approximately 2,000 imported raw materials, inputs, and capital goods. In October 2007, Ecuador increased tariffs on approximately 600 industrial and agricultural products, largely those that compete with local production. Products with tariff increases included liquor, cellular phones, white goods, textile and leather manufactures, livestock, powdered milk, and ceramics.

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Tariff-Rate Quotas (TRQ)

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

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

Nontariff Measures

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

Another administrative hurdle for agricultural importers is the MAG's use of Consultative Committees for import authorizations. These are usually subject to crop absorption programs, which were to be eliminated as part of Ecuador's WTO accession in 1996. These committees, mainly composed of local producers, often advise the MAG against granting import authorizations for products such as corn, soybean meal, dairy, and meats. The MAG often requires that all local production be purchased at high prices before authorizing imports. If these barriers were removed, U.S. industry estimates that total U.S. corn and soybean meal exports could increase by \$35 million per year.

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

Ecuador assesses a special consumption tax (ICE) of 32 percent on imported and domestic spirits. However, the taxable base upon which Ecuador assesses the ICE differs for domestic and imported spirits. For imported spirits, the ICE is applied to the ex-customs value, which is then marked up 25 percent (*i.e.*, taxable base = [c.i.f. value + tariff + VAT] marked up by 25 percent); the ICE is assessed on this inflated value. In contrast, for domestic spirits, the ICE is assessed on the ex-factory price, and the 25 percent markup, although legally required, is not generally applied (*i.e.*, taxable base = ex-factory value + VAT). In both cases, the excise tax is based on arbitrary values and not on actual transaction values. Further increasing the cost of importing, Ecuador recently raised the tariff rates on spirits such as vodka from 20 percent to 30 percent, Ecuador's highest bound tariff rate for such products.

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

Ecuador maintains bans on the import of used motor vehicles and spare parts, tires, and clothing.

In April 2006, Ecuador's Congress approved a controversial Food and Nutrition Security law. This bill invoked the precautionary principle and in practice prohibited the use, handling, trade, or import of any food products that may have contained organisms derived from biotechnology, since Ecuador did not possess appropriate institutions to provide proof of their safety. The prohibition stopped imports of several commodities in high demand by the animal feed and cooking oil industry (soybean meal and oil) for several weeks. However, apparently due to pressure from local industry, Ecuador's Attorney General declared this law unenforceable due to technical errors in the text.

Health Code legislation passed by Congress in December 2006 reintroduces the provisions of the Food and Nutrition Security law. However, imports have continued normally and it appears the Ministry of Agriculture is awaiting the development of implementing legislation before enforcing the law.

STANDARDS, TESTING, LABELING, AND CERTIFICATION

Ecuador's Animal and Plant Health Inspection Service (SESA) is responsible for administering Ecuador's sanitary and phytosanitary (SPS) controls. According to Ecuadorian importers, bureaucratic procedures required to obtain clearance still appear to discriminate against foreign products. Denials of SPS certification often appear to lack a scientific basis and, in certain cases, appear to have been used in a discriminatory fashion to block the importation of U.S. products that compete with Ecuadorian production. This occurs most often with poultry, turkey and pork meats, beef, dairy products, and fresh fruit. For instance, in May 2007, the World Organization for Animal Health (OIE) classified the United States as a controlled risk country for Bovine Spongiform Encephalopathy (BSE), thereby clarifying that U.S. beef and beef products are safe to trade, provided that the appropriate specified risk materials (SRMs) are removed. However, Ecuador continues to ban U.S. beef and beef products through BSE-related measures. The ability to import some products, such as rice, corn, soybeans, and soybean meal, depends entirely on the discretion of the MAG, which will often look to the Consultative Committees for advice. The impact of removing these barriers would mean an increase of U.S. exports of up to \$20 million per year according to industry estimates. Although Ecuador has a number of SPS measures in place for imports of agricultural products, it has yet to complete its notification obligations under the SPS Agreement. To date, Ecuador has only notified 18 SPS regulations to the WTO.

SESA follows the CAN's Andean Sanitary Standards. Some standards applicable for third countries are different from those applied to CAN members. For example, there can be differences in the requirements for imports from CAN members and third countries. SESA also requires certifications for each product stating that the product is safe for human consumption or, in the case of live animals, that the animal is healthy and that the country of origin or the area of production is free from certain exotic plant or animal diseases. Industry sources assert that this process has been used unreasonably by SESA to prevent entry of animal products – especially poultry – that compete with local producers.

FOREIGN TRADE BARRIERS

U.S. firms report that the Izquieta Perez National Hygiene Institute (INHIP – the Ministry of Health’s executive arm responsible for granting sanitary registration certificates) accepts U.S. Certificates of Free Sale, not in lieu of sanitary registrations, but only as part of the many documents required for sanitary registration. In addition, onerous and inefficient procedures have delayed issuance beyond 30 days, and in some cases have reportedly limited the entry of some products imported from the United States. Pharmaceutical, food, and beverage industry sources estimate that lost U.S. exports due to problems with sanitary registrations amount to \$25 million annually.

Ecuador does not adequately define or provide an appropriate sanitary registration process for food and dietary supplements. Currently, there is no regulation governing the sanitary registration process for such products. When registering foods supplements, U.S. companies are unable to ensure these products are assigned a proper classification by the Ministry of Health. In addition, U.S. companies have expressed concerns regarding regulations issued by Ecuador’s public health ministry requiring foreign food manufacturers to disclose confidential information, such as formulas of imported food and pharmaceutical products. This requirement appears to go beyond the requirements of the Codex Alimentarius Commission on International Standards and Labeling.

GOVERNMENT PROCUREMENT

Government procurement is regulated by a 2001 public contracting law. Foreign bidders must be registered in Ecuador and have a local legal representative in order to participate in government procurement. The law does not discriminate against U.S. or other foreign suppliers. However, bidding on government contracts can be cumbersome and relatively nontransparent. The lack of transparency is also a factor in the cancellations of bid solicitations that unnecessarily adds to the costs of participating in government procurement and subjects the procurement process to possible manipulation by contracting authorities. A large number of government controlled companies (such as fixed line telephony providers, electric power generators and distributors, hospitals, and clinics) are not subject to Ecuador’s rules on government procurement. Ecuador is not a signatory to the WTO Agreement on Government Procurement.

INTELLECTUAL PROPERTY RIGHTS (IPR) PROTECTION

The basic legal tenets of Ecuador’s IPR regime are provided for under a comprehensive 1998 IPR law and Andean Pact Decisions 345, 351, and 486. The 1998 IP law provides greater protection for intellectual property than existed before it came into effect; however, Ecuador’s IPR regime is weak in a number of areas and the law is not being adequately enforced.

Ecuador's 1998 IPR law provided an improved legal basis for protecting patents, trademarks, and trade secrets. However, concerns remain regarding several provisions, including a working requirement for patents, and inadequate protection of undisclosed pharmaceutical test and other data submitted for marketing approval. U.S. companies are also concerned that the Ecuadorian government does not provide patent protection to new uses of previously known or patented products.

Government of Ecuador health authorities continue to approve the commercialization of new drugs that are the bioequivalent of patented drugs, thereby denying the originator companies effective patent protection for innovative drugs. A modification to Ecuador's health code in late 2006 permits sanitary registrations without regard to whether or not a medication is patented. However, a court decision in 2006 that characterized efforts by a patent holder to remove illegal copies from the market as an illegal competitive practice was overturned on appeal in 2007.

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Proprietary pharmaceutical test data submitted for marketing approval is also not being afforded adequate protection. In effect, the government of Ecuador is allowing the test data of registered drugs from originator companies to be relied upon by others seeking approval for their own version of the same product.

Enforcement

Active local trade in pirated audio and video recordings, computer software, and counterfeit brand name apparel continues. The government of Ecuador, through the National Copyright Office's Strategic Plan against Piracy, has committed to take action to reduce the levels of copyright piracy, including implementation and enforcement of its 1998 Copyright Law. However, weak copyright enforcement remains a significant problem, especially concerning sound recordings, computer software, and motion pictures. Although the Ecuadorian Intellectual Property Institute has voiced its concern, the government of Ecuador has not taken action to clarify that Article 78 of the 1999 Law on Higher Education does not permit software copyright infringement by educational institutions.

The International Intellectual Property Alliance (IIPA) estimates that pirated products accounted for 98 percent of the domestic record and music industry in Ecuador in 2006, with estimated damage due to music piracy of \$33 million. Ecuador has made limited progress in establishing the specialized IPR courts required by its 1998 IPR law. The national police and the customs service are responsible for carrying out IPR enforcement, but do not always enforce court orders. Some local pharmaceutical companies produce or import counterfeit drugs and have sought to block compliance with Ecuador's IP law.

SERVICES BARRIERS

In the area of basic telecommunications, Ecuador has only undertaken WTO commitments for domestic cellular services. Accordingly, it does not have market access or national treatment obligations for other domestic and international telecommunications services, such as fixed line voice telephony and data transmission services. In addition, Ecuador has not committed to adhere to the pro competitive regulatory commitments of the WTO Reference Paper.

INVESTMENT BARRIERS

In disputes, U.S. companies have resorted to local courts or alternate dispute resolution mechanisms such as Chambers of Commerce; others have pursued international commercial dispute resolution mechanisms as provided for in their contracts or under the United States-Ecuador Bilateral Investment Treaty (BIT). The BIT, which entered into force in May 1997, includes obligations relating to national and Most Favored Nation treatment; prompt, adequate, and effective compensation for expropriation; the freedom to make investment related transfers; and access to binding international arbitration of investment disputes.

The transparency and stability of the country's investment regime are significantly weakened by the existence of numerous investment related laws that overlap or that appear to have mutually inconsistent provisions. This legal complexity increases the risks and costs of doing business in Ecuador.

In early 2005, Ecuador's Congress modified the Arbitration and Mediation Law to prohibit international arbitration of investment disputes if the national interest could be affected. Depending on how it is

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interpreted and applied, this modification of Ecuador's law may conflict with Ecuador's consent to binding arbitration under the BIT. At a minimum, the law could create confusion among investors regarding their arbitration rights and may also reinforce negative impressions among investors of Ecuador's commitment to international arbitration. Ecuador's notification to the World Bank's International Centre for Settlement of Investment Disputes (ICSID) that Ecuador will not consent to ICSID arbitration for oil and mining issues has introduced additional uncertainty to the investment climate in the petroleum sector.

Certain sectors of Ecuador's economy are reserved to the state. All foreign investment in petroleum exploration and development must be carried out under contract with the state oil company. U.S. and other foreign oil companies produce oil in Ecuador under such contracts. Foreign investment in domestic fishing operations, with exceptions, is limited to 49 percent of equity. Foreign companies cannot own more than 25 percent equity in broadcast stations, and foreigners are prohibited from owning land on the borders or the coast.

Several oil companies are involved in a dispute with the government of Ecuador relating to the refund of value added taxes. In 2004, one of the disputing U.S. companies won a \$75 million international arbitration award against the government of Ecuador. The government has requested a judicial review of the arbitration award. After notice of the award, Ecuador's solicitor general (Procurador General) initiated an investigation of the company for allegedly transferring assets to another foreign company without obtaining the required government authorization. The government of Ecuador has since nullified the company's contract and seized the company's considerable assets in Ecuador. The U.S. company has initiated arbitration proceedings under the BIT; the government of Ecuador is participating in the proceedings.

In 2006, Ecuador amended its hydrocarbons law, unilaterally increasing the share of revenues owed to the government to 50 percent under existing oil production sharing contracts. As a result, at least one U.S. company faces bankruptcy and is attempting to negotiate a change to its concession contract that would permit it to continue operating and investing in Ecuador (it has also initiated international arbitration proceedings as allowed by its contract). In October 2007, Ecuador issued an executive decree increasing the share of extraordinary petroleum revenues owed to the government to 99 percent. Companies are currently assessing the decree's impact on their revenue streams and whether operations would still be feasible, and are holding talks with the government on the possibility of renegotiating their contracts.

U.S. investors in the electricity sector face problems of chronic underpayment, due in part to government regulated prices and the inability to cut off consumers that do not pay their bills; government subsidies only partially offset these losses and are not available to all firms. A 2006 electricity reform law attempts to address some of the problems plaguing the sector, but the problem of underpayment has not been resolved. U.S. firms in this sector are also pursuing international arbitration and are simultaneously attempting to negotiate settlements with the government of Ecuador.

Effective compensation for expropriation is provided for in Ecuadorian law, but can be difficult to obtain in practice. The extent to which foreign and domestic investors receive prompt, adequate, and effective compensation for expropriations varies widely. It can be difficult to enforce property and concession rights, particularly in the real property, agriculture, oil, and mining sectors. Foreign oil, energy, and telecommunications companies, among others, have often had difficulties resolving contract issues with state or local partners.

FOREIGN TRADE BARRIERS

EGYPT

TRADE SUMMARY

The U.S. goods trade surplus with Egypt was \$3.0 billion in 2007, an increase of \$1.2 billion from 2006. U.S. goods exports in 2007 were \$5.3 billion, up 29.4 percent from the previous year. Corresponding U.S. imports from Egypt were \$2.4 billion, down 0.7 percent. Egypt is currently the 35th largest export market for U.S. goods.

The stock of U.S. foreign direct investment (FDI) in Egypt was \$5.9 billion in 2006 (latest data available), up from \$5.4 billion in 2005. U.S. FDI in Egypt is concentrated largely in the mining sector.

IMPORT POLICIES

The Egyptian government has gradually liberalized its trade regime and economic policies in recent years. The reform process had been somewhat halting until the appointment of Prime Minister Ahmed Nazif and a new ministerial economic team in 2004. Under Nazif's leadership, the government adopted a wide range of significant reform measures. However, to maintain its reform momentum, including in the trade sector, the government needs to continue to reduce corruption, reform the cumbersome bureaucracy, and eliminate unreasonable and nonscience based health and safety standards.

Tariffs

In 2004, the Egyptian government reduced the number of *ad valorem* tariff bands from 27 to 6, dismantled tariff inconsistencies, and rationalized national subheadings above the six digit level of the Harmonized System (HS). The government also eliminated services fees and import surcharges ranging from 1 percent to 4 percent. The government reduced its 13,000 line tariff structure to less than 6,000 tariff lines. These and other changes have significantly reduced requests for customs arbitration over the past 3 years. Additionally, the government eliminated export duties on 25 products in short supply on the domestic market.

In February 2007, a presidential decree further reduced import tariffs on 1,114 items, including foodstuffs, raw materials, and intermediary and final goods. The government also adopted the World Customs Organization (WCO) HS-2007 for classifying commodities. The changes reduced the weighted average of import tariffs from 9.1 percent to 6.9 percent. Ninety percent of imported goods now face tariffs below 15 percent. These goods include many foodstuffs, raw materials, intermediate goods, and some finished goods such as refrigerators, heaters, and televisions. Other products, around 8.5 percent of the total, are subject to no tariffs at all. Vehicles, alcohol, and tobacco are the only items on which tariffs are still 40 percent or greater. Passenger cars with engines under 1,600 cc are taxed at 40 percent; cars with engines over 1,600 cc at 135 percent; and in addition, cars with engines over 2,000 cc are subject to an escalating sales tax up to 45 percent. Clothes also face relatively high tariffs, though the 2007 decree reduced the rate from 40 percent to 30 percent. Tariffs on cloth were also reduced from 22 percent to 10 percent, and yarn from 12 percent to 5 percent. The decree eliminated the 2 percent tariff on nitrogen and phosphate fertilizers.

The decree also reduced import duties on several agricultural commodity and food products. Among the reductions were those for fresh fruit, which dropped from 40 percent to 20 percent. Fruit represents less than 1 percent of U.S. agricultural exports to Egypt. Most key U.S. agricultural product exports to Egypt

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now enter at duties of 5 percent or lower. Of the \$1 billion in U.S. agricultural products shipped to Egypt in 2006, about 80 percent were eligible for duty free entry as a result of the tariff changes. In the 2007 tariff reduction, Egypt lowered four tariff lines to make them consistent with its WTO commitments.

However, significant barriers to U.S. agricultural products remain, particularly for those of animal origin, and the government still occasionally makes abrupt import regime changes without notification or opportunity for comment. In July 2006, the tariff rate on poultry was reduced from 32 percent to zero, but in March 2007, the government reimposed the 32 percent tariff. There is a 300 percent duty on wine for use in hotels, plus a 40 percent sales tax. The tariff for alcoholic beverages ranges from 1,200 percent to 3,000 percent.

The tariff schedule for foreign movies is complex but, in general, foreign movies are subject to duties and import taxes of about 46 percent (32 percent for a copy of the movie, 12 percent on posters and 2 percent on the movie reel), as well as a 10 percent sales tax and a 20 percent box office tax (compared to a 5 percent box office tax for local films). The government no longer requires companies wishing to export to Egypt to register with the Egyptian General Organization for Import and Export Controls (GOIEC).

Customs Procedures

Egypt adopted the WTO customs valuation system in 2001. Although the government reports that it has fully implemented the system, some importers say they continue to face a confusing mix of the new (invoice based) and old (reference price) valuation systems depending on the type of imports. The Ministry of Finance has committed to a comprehensive reform of Egypt's customs administration. USAID has financed valuation training for nearly 200 customs officials and representatives of the private sector and sponsored the publication and dissemination by the customs authority of a valuation reference manual, part of a 6 year program by USAID to support reform efforts. The Ministry of Finance is currently reviewing a new customs law to improve the valuation system and otherwise facilitate trade.

Import Bans and Barriers

Passenger vehicles may only be imported within 1 year after the year of production. Egyptian regulations allow foreign investors to import a vehicle duty free for their private use in the year of manufacture, provided that approval is obtained from the Chairman of the General Authority for Investments and Free Zones.

The Egyptian Ministry of Health prohibits the importation of natural products, vitamins, and food supplements in finished form. These items can only be marketed in Egypt by local companies that manufacture them under license, or by local pharmacies that prepare and pack imported ingredients and premixes according to Ministry of Health rules. Only local factories are allowed to produce food supplements and to import raw materials used in the manufacturing process.

The Nutrition Institute and the Drug Planning and Policy Center of the Ministry of Health register and approve all nutritional supplements and dietary foods. The approval process requires 4 months to 12 months. Importers must apply for a license for dietary products. The license is valid from 1 year depending on the product. After the license expires, the importer must request a renewal, which costs approximately \$500. However, if a similar local dietary product is available in the local market, registration for an imported product will not be approved.

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The Ministry of Health must approve the importation of new, used, and refurbished medical equipment and supplies to Egypt. This requirement does not differentiate between the most complex computer based imaging equipment and basic supplies. The MOH approval process entails a number of demanding steps. Importers must submit a form requesting the Ministry of Health's approval to import, provide a safety certificate issued by health authorities in the country of origin, and submit a certificate of approval from the U.S. Food and Drug Administration or the European Bureau of Standards. The importer must also present an original certificate from the manufacturer indicating the production year of the equipment and certifying that new equipment is indeed new. All medical equipment must be tested in the country of origin and proven safe. The importer must prove it has a service center to provide after sales support for the imported medical equipment, including spare parts and technical maintenance.

The Egyptian government continues to maintain a general policy that allows agricultural commodities (such as corn and soybeans) produced through biotechnology to be imported, so long as the product imported is also consumed in the country of origin. However, other U.S. agricultural products, particularly those of animal origin, face significant barriers. Requirements for *Halal* certification complicate beef and whole poultry importation. The government bans the import of poultry parts, such as leg quarters, and requires that Ministry of Agriculture officials be present to observe proper *Halal* slaughter, even though the poultry industry in the United States contracts with the Islamic Council of the United States to perform that service. Egyptian Veterinary Service officials must approve U.S. beef plants for *Halal* slaughter before the individual plants can be approved for export to Egypt. More information on these regulations is available from Egypt's Trade Agreements Sector at <http://www.tas.gov.eg/english>.

STANDARDS, TESTING, LABELING, AND CERTIFICATION

The Egyptian Organization for Standardization and Quality Control (EOS), which is affiliated with the Ministry of Trade and Industry, issues standards and technical regulations through a consultative process with other ministries and the private sector. Verification of compliance with standards and technical regulations is the responsibility of agencies including the Ministry of Health, the Ministry of Agriculture and for imported goods, GOEIC in the Ministry of Trade and Industry.

Of Egypt's 5,000 standards, 543 are Egyptian technical regulations or mandatory standards. EOS reports that it has harmonized mandatory standards with international standards and that about 80 percent of its mandatory standards are based on standards issued by international institutions such as the Geneva based International Organization for Standardization. In the absence of a mandatory Egyptian standard, Ministerial Decree Number 180/1996 allows importers to choose a relevant standard from seven international systems including ISO, European, American, Japanese, British, German, and, for food, Codex standards. However, importers report that products that meet international standards and display international marks are often still subjected to standards testing upon arrival at the port of entry. Product testing procedures are not uniform or transparent, and inadequately staffed and poorly equipped laboratories often yield faulty test results and cause lengthy delays. Procedures are particularly cumbersome for products under the purview of the Ministry of Health.

The EOS also issues quality and conformity marks. The conformity marks are mandatory for certain goods that may affect health and safety. The quality mark is issued by the EOS upon request by a producer and is valid for 2 years. Goods carrying the mark are subject to random testing.

In 2005, new import/export regulations increased transparency and liberalized procedures to facilitate trade. The new regulations reduced the number of imported goods subject to inspection by GOEIC and

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allowed importers to use certifications of conformity from any internationally accredited laboratory inside or outside of Egypt for those goods still subject to inspection by GOEIC. The new import/export regulations also introduced a mechanism for enforcing intellectual property rights at the border and extended the preferential inspection treatment given to inputs for manufacturing to include inputs for the service industry. While these measures have improved Egypt's inspection regime, some importers report that the new regulations are not applied consistently or uniformly.

In recent years the Egyptian government has made great strides in reducing the bureaucratic hurdles and time required for customs clearance of agricultural products by taking a more scientific approach to sanitary and phytosanitary (SPS) measures, which are designed to keep the food supply safe. Despite these improvements, importers of U.S. agricultural commodities continue to face nontransparent and arbitrary treatment of imports in some cases. For example, the Plant Quarantine office rejected a \$15 million U.S. wheat shipment in June 2007, on the grounds of pest infestation, despite evidence to the contrary. U.S. beef, apples, and pears are subject to nontransparent and burdensome SPS measures. Other food imports are sometimes subject to quality standards that appear to lack technical and scientific justification. Also, imports may have to comply with labeling and packaging requirements that some importers find burdensome. For example, meat products can only be imported directly from the country of origin and must include content details in Arabic sealed inside and listed on the outside of the package. This labeling requirement raises processing costs and discourages some U.S. exporters from competing in the Egyptian market.

The Ministry of Trade and Industry is working with the Ministries of Health and Agriculture, among others, to review SPS standards and food product inspection procedures to ensure WTO compliance and prevent duplicative inspection. Egypt is in the process of strengthening the Technical Barriers to Trade (TBT) and SPS enquiry points under the EOS and Ministry of Agriculture.

GOVERNMENT PROCUREMENT

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

A 1998 law regulating government procurement requires that technical factors, not just price, be considered in awarding contracts. A preference is granted to parastatal companies when their bids are within 15 percent of the price in other bids. In the 2004 Small and Medium Sized Enterprises (SMEs) Development Law, SMEs were given the right to supply 10 percent of the value of all government procurement in any tender. Egyptian law grants suppliers certain rights, such as speedy return of their bid bonds and an explanation of why a competing supplier was awarded a contract. Many concerns about transparency remain, however. For example, the Prime Minister has the authority to determine the terms, conditions, and rules for procurement by specific entities.

In September 2006, the executive regulations of the Tenders and Bids Law were amended to streamline procurement procedures. The changes shorten the period required for announcing tenders and evaluating bids, reduce the cost for tender documents, require procuring entities to hold prebid meetings to clarify items in tenders and include model contract terms that set out the rights and obligations of contractors. The amendments allow small- and medium-sized enterprises to obtain tender documents at cost.

Egyptian law also forbids the use of direct purchasing except for cases involving national security or national emergency, and a 2004 Prime Ministerial decree stipulates that all ministries adhere strictly to that law.

FOREIGN TRADE BARRIERS

INTELLECTUAL PROPERTY RIGHTS (IPR) PROTECTION

Although Egypt is a signatory to many international intellectual property conventions, the United States has significant concerns about IPR protection and enforcement in Egypt. In 2002, Egypt strengthened its IPR regime through improvements in its domestic legal framework and enforcement capabilities. Egypt also passed a comprehensive IPR law to protect intellectual property and designed to bring the country into compliance with its obligations under the WTO Agreement on Trade-Related Aspects of Intellectual Property Rights (TRIPS).

The adequacy of Egypt's protection of the intellectual property of U.S. and foreign pharmaceutical firms, however, continues to raise concerns. The United States was encouraged by the Egyptian government's announcement in January 2007 of a new 120 day streamlined drug registration system for drugs carrying a U.S. FDA or European approval. The government's ability to implement this system is not yet clear.

Patents

The Egyptian government has made progress in establishing and strengthening some governmental institutions necessary for protecting intellectual property. Provisions of the new IPR Law allowing for patenting pharmaceutical products took effect on January 1, 2005, when the Egyptian Patent Office opened the mailbox for pharmaceutical patent applications. The Egyptian Patent Office then began examining the approximately 1,500 pharmaceutical patent applications submitted for approval. In March 2007, the Egyptian Patent Office granted its first pharmaceutical product patent from the "mailbox." According to the Patent Office, it has completed its technical examination of all filed applications. However, further clarity is needed regarding the actual disposition of all applications filed in the mailbox and the status of notifications to patent holders.

Copyrights

High levels of piracy adversely impact most copyright industries in Egypt, including movies, sound recordings, books and other printed matter, and computer software. The government of Egypt has improved protection of computer software and has taken steps to ensure that civilian government departments and schools use legitimate software. However, the International Intellectual Property Alliance estimated piracy rates in the Egyptian market for business software at 60 percent and music at 75 percent in 2007. Book piracy remains a particular concern in Egypt, due to weak enforcement in this area.

Although the Ministry of Culture had taken the lead in enforcement of exclusive rights for software, copyright regulations issued in 2006 appear to give the Information Technology Industry Development Agency (ITIDA) under the Ministry of Communications and Information Technology the lead on copyright law enforcement for software and databases. Technical expertise in ITIDA is expected to improve enforcement for software in Egypt. ITIDA has conducted IPR public awareness events with local partners and provided expert opinions in judicial matters relating to IPR infringement for software products.

SERVICES BARRIERS

GATS Commitments

Egypt has restrictions for most services sectors in which it has made GATS commitments. These

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restrictions place a 49 percent limit on foreign equity in construction and transport services. In the computer services sector, larger contributions of foreign equity may be permitted, such as when the Ministry of Communication and Information Technology determines that such services are an integral part of a larger business model and will benefit the country. Egypt restricts companies from employing non-nationals for more than 10 percent of their workforce. Limitations on foreign management also apply to computer related services (60 percent of top-level management must be Egyptian after 3 years from the start-up date of the venture). A prohibition on the acquisition of land by foreigners for commercial purposes was amended in 2002 to allow such acquisition under certain circumstances.

Insurance

Foreign firms may own up to 100 percent of Egyptian private insurance firms, although the market remains closed to foreign intermediaries. Investors acquiring more than a 10 percent stake in an insurance company require approval from the Egyptian Insurance Supervisory Authority. There are currently 21 insurance companies operating in the market, including at least 9 foreign companies. Since Egypt is a member of the African Union, direct insurers are required to cede 5 percent of their reinsurance business to Africa Re, an African reinsurance corporation.

Banking

Egypt permits unrestricted foreign participation in existing local banks. However, no foreign bank seeking to establish a new bank in Egypt has been able to obtain a license in 10 years. Furthermore, Egypt plans to reduce the number of banks in Egypt from 39 to 21 in the next 5 years.

Progress has been slow in the government's plans to restructure the four state-owned banks, which control over 50 percent of the banking sector's total assets. In October 2006, the first of these – the Bank of Alexandria – was privatized through a multiple round auction that concluded with the sale of 80 percent of the bank's shares to a foreign bank. In July 2007, the government announced it would sell its 80 percent stake in Banque du Caire to a strategic investor, while 15 percent will be put up for an initial public offering (IPO) and 5 percent will be held by employees. The announcement signaled the reversal of the government's original plan, announced in September 2006, to merge Banque du Caire with Banque Misr. The government's reversal has been met with criticism from factions of parliament and the public concerned by the growing level of foreign ownership of Egyptian assets. This opposition has resulted in a slowdown in the execution of the revised plan originally slated to be completed in September 2007; the Egyptian government is also likely to reconsider the portion of shares offered in an IPO. The government has set a new timeline for the first quarter of 2008 to complete the sale.

Telecommunications

Egypt's accession to the WTO Basic Telecommunications Agreement in 2002 and the WTO Information Technology Agreement in 2003 required the liberalization of telecommunications services, independence for the National Telecommunications Regulatory Authority (NTRA) by 2006, and the phasing out of tariffs on all information technology imports from WTO Members.

In 2003, Egypt's parliament approved a new telecommunications law that established the framework for the government to meet these commitments. More progress, however, is needed in establishing full autonomy for the NTRA. Although the 2003 law stipulated the end of Telecom Egypt's monopoly of domestic and international telephone service by January 2006, Telecom Egypt continues to hold a *de facto* monopoly since additional fixed line licenses have not yet been issued by the NTRA. The United

States is concerned that the lack of competitive alternatives to Telecom Egypt undermines Egypt's commitment to liberalize the sector.

The government began divesting state ownership of Telecom Egypt in 2005 by privatizing 20 percent of its assets. International firms actively participate in Internet and cellular services and are eligible to bid on licenses for new telecommunications services and for contracts offered by Telecom Egypt to modernize its networks and switching equipment.

The cellular service market currently consists of three private global systems for mobile communications operators. Egypt awarded the most recent license to a cellular operator through a public tender in 2006. Currently, there are more than 23 million mobile subscribers and the wireless communications sector is growing at a rate of more than 30 percent per year. However, companies continue to complain that regulators are stifling competition to the benefit of Telecom Egypt by not licensing companies seeking to provide voice over Internet protocol (VoIP). In addition, Telecom Egypt has been slow in negotiating interconnection arrangements and international gateway accessibility with carriers. Though a previous complaint on the VoIP issue has been resolved, the lack of a publicly available reference interconnection offer by Telecom Egypt continues to introduce delays for carriers seeking interconnection.

Transportation

The government is liberalizing maritime and air transportation services. The government's monopoly on maritime transport ended in 1998, and the private sector now conducts most maritime activities including loading, supplying, ship repair, and, increasingly, container handling. The Port of Alexandria now handles about 60 percent of Egypt's trade. Renovations underway at the Port of Alexandria, thus far at a cost of about £E 300 million (\$55 million), have increased handling capacity to 44 million tons/year, up from 32 million tons/year in 2004. The renovations included construction of deeper quays to receive larger vessels; re-design of storage areas, warehouses, and associated infrastructure; installation of new fiber optic cables for data transmission; installation of a more automated cargo management system; and renovation of the passenger/cruise ship terminal. These renovations have resulted in a smoother flow of goods and services and have, combined with reforms in the Customs Authority, produced a sharp decrease in customs clearance times from three to four weeks in 2004 to about one week at present. However, when shipments are required to be approved by GOIEC, customs clearance may take between 11 days to 20 days.

Egypt and the United States concluded an Air Transport Agreement in 1964, and the countries have modified the agreement only twice since then, adding a security article in 1991 and limited cooperative marketing agreements and a safety article in 1997. The Agreement remains very restrictive and has no provisions on charter services. Private and foreign air carriers may not operate charter flights to and from Cairo without the approval of the national carrier, Egypt Air. U.S. and Egyptian officials have discussed the possibility of an Open-Skies air services agreement to replace the 1964 Agreement and have agreed to maintain contact and exchange views to move the process forward.

Courier and Express Delivery Services

Private courier and express delivery service suppliers seeking to operate in Egypt must receive special authorization from the Egyptian National Postal Organization (ENPO). In addition, although express delivery services constitute a separate for-profit, premium delivery market, private express operators are required to pay ENPO a "postal agency fee" of 10 percent of annual revenue from shipments under 20 kilos. At the end of 2007, the government of Egypt announced its intent to take actions that caused significant concern for private courier and express delivery companies. These new policies would appear

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to grant ENPO even more extensive regulatory oversight over the private express delivery sector by increasing considerably the fees paid to ENPO and requiring private express delivery companies to receive prior ENPO authorization for their prices and other policies. Given that ENPO is not an independent regulator, there are strong concerns that these new proposed policies will negatively impact competition in the express delivery sector.

Other Services Barriers

Egypt maintains several other barriers to the provision of certain services by U.S. and other foreign firms. Foreign motion pictures are subject to a screen quota and distributors may import only five prints of any foreign film. According to the Egyptian labor law, foreigners cannot be employed as export and import customs clearance officers, or as tourist guides.

INVESTMENT BARRIERS

Under the 1986 United States-Egypt Bilateral Investment Treaty (BIT), Egypt committed to maintaining an open investment regime. The BIT requires Egypt to accord national and Most Favored Nation (MFN) treatment (with certain exceptions) to U.S. investors, to allow investors to make financial transfers freely and promptly, and to adhere to international standards for expropriation and compensation. The BIT also provides for binding international arbitration of certain disputes.

Based on a review of Egypt's investment policies, the OECD has invited Egypt to adhere to the OECD Declaration on International Investment and Multinational Enterprises. Egypt signed the Declaration in July 2007, becoming the first Arab and first African country to join. During this process, Egypt agreed to review the restrictions on investors identified in the OECD's 2007 Investment Policy Review of Egypt, such as certain limits in the tourism sector as well as the discriminatory treatment of foreign investors in construction and courier services.

ANTICOMPETITIVE PRACTICES

Egyptian antitrust law focuses on preventing intentionally unfair or abusive practices such as lowering prices to the detriment of smaller competitors or limiting supply to the market to the detriment of consumers. A company holding 25 percent or more market share of a given sector may be subject to investigation if suspected of illegal or unfair market practices. Penalties for companies found to have engaged in monopolistic practices range from £E 13,000 (\$2,400) to £E 10 million (\$1.8 million). The law is implemented by the Egyptian Competition Authority, which reports to the Minister of Trade and Industry. However, the law does not apply to utilities and infrastructure projects, which are regulated by other governmental entities.

ELECTRONIC COMMERCE

Egypt's Electronic Signature Law 15 of 2004 established the Information Technology Industry Development Agency (ITIDA) to act as the electronic signature regulatory authority and to further develop the IT sector in Egypt.

The Ministry of State for Administrative Development (MSAD) is implementing an electronic government initiative to increase government efficiency, reduce services provision time, establish new service delivery models, reduce government expenses, and encourage electronic procurement. For example, the electronic tender project is designed to allow all government tenders to be published online.

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The implementation required new legislation such as electronic signature, approved in 2004; information security and cyber crime, which is expected to be considered in 2008; and right to information, which is being drafted.

OTHER BARRIERS

Pharmaceutical Price Controls

The Egyptian government controls prices in the pharmaceutical sector and does not have a transparent mechanism for pharmaceutical pricing. The Ministry of Health (MOH) reviews prices of various pharmaceutical products and negotiates with companies to adjust prices of pharmaceuticals based on nontransparent criteria. The Ministry of Health has not allowed pharmaceutical prices to adjust completely to compensate for inflation and the depreciation of the Egyptian pound since 2000. For example, the Egyptian pound fell 40 percent in value against the U.S. dollar since 2000 (although the trend reversed somewhat in 2007), but the government has granted price increases for only some pharmaceutical products. Because both domestic and foreign pharmaceutical companies rely heavily on imported inputs, profitability has dropped sharply and some companies claim to be operating at a loss. In 2004, the government reduced customs duties on most imports of pharmaceutical inputs and products from 10 percent to 2 percent. The government claims this step allowed local pharmaceutical companies to compensate for some of their losses from the depreciation of the pound in recent years. Also in 2004, the Ministry of Health lifted restrictions on exporting pharmaceuticals to encourage pharmaceutical investment and exports, and it announced plans to create a fund to stabilize prices of local pharmaceutical products. During 2005 and 2006, the government approved price increases on select foreign and domestic pharmaceutical products.

EL SALVADOR

TRADE SUMMARY

The U.S. goods trade surplus with El Salvador was \$269 million in 2007, a decrease of \$26 million from \$295 million in 2006. U.S. goods exports in 2007 were \$2.3 billion, up 7.5 percent from the previous year. U.S. imports from El Salvador were \$2.0 billion, up 10.1 percent over the corresponding period. El Salvador is currently the 56th largest export market for U.S. goods.

The stock of U.S. foreign direct investment in El Salvador was \$774 million in 2006 (latest data available), down from \$947 million in 2005.

IMPORT POLICIES

Free Trade Agreement

On August 5, 2004, the United States signed the Dominican Republic-United States-Central America Free Trade Agreement (CAFTA-DR or Agreement) with five Central American countries (Costa Rica, El Salvador, Guatemala, Honduras, and Nicaragua) and the Dominican Republic (the Parties).

During 2006, the Agreement entered into force for the United States, El Salvador, Guatemala, Honduras, and Nicaragua. The CAFTA-DR entered into force for the Dominican Republic on March 1, 2007. Costa Rica approved the CAFTA-DR through a national referendum on October 7, 2007, but the Agreement has not entered into force as Costa Rica has not yet completed the process of adopting implementing legislation and regulations.

In 2007, the Parties agreed to amend several textile related provisions of the CAFTA-DR, including, in particular, changing the rules of origin to require the use of U.S. or regional pocket bag fabric in originating apparel. The textile amendments have not entered into force.

Under the Agreement, the Parties remove barriers to trade and investment in the region, which will strengthen regional economic integration. The CAFTA-DR also includes important disciplines relating to: customs administration and trade facilitation, technical barriers to trade, government procurement, investment, telecommunications, electronic commerce, intellectual property rights, transparency, and labor and environmental protection.

Tariffs

As a member of the Central American Common Market (CACM), El Salvador agreed in 1995 to reduce its common external tariff to a maximum of 15 percent.

Under the CAFTA-DR, about 80 percent of U.S. industrial and consumer goods now enter El Salvador duty free, with the remaining tariffs phased out over 10 years, starting in 2006. Nearly all textile and apparel goods that meet the Agreement's rules of origin now enter duty free and quota free, promoting new opportunities for U.S. and regional fiber, yarn, fabric and apparel manufacturing companies.

Under the CAFTA-DR, more than half of U.S. agricultural exports now enter El Salvador duty free. El Salvador will eliminate its remaining tariffs on nearly all agricultural products within 15 years (18 years

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for rice and chicken leg quarters and 20 years for dairy products). For certain products, tariff-rate quotas (TRQs) will permit some immediate duty free access for specified quantities during the tariff phase out period, with the duty free amount expanding during that period. El Salvador will liberalize trade in white corn through expansion of a TRQ, rather than by tariff reductions.

El Salvador and the other Parties have committed to improve transparency and efficiency in administering customs procedures, including the CAFTA-DR rules of origin. Under the CAFTA-DR, El Salvador committed to ensuring greater procedural certainty and fairness in the administration of these procedures, and all the CAFTA-DR countries agreed to share information to combat illegal transshipment of goods. In addition, El Salvador has negotiated agreements with express delivery companies to allow for faster handling of their packages.

STANDARDS, TESTING, LABELING, AND CERTIFICATION

Although sanitary standards have generally not been a barrier in El Salvador, practices with respect to raw poultry and eggs are notable exceptions. Since 1992, the Ministry of Agriculture has imposed restrictions on U.S. raw poultry and egg imports. El Salvador has yet to provide a scientific justification for these measures, which do not appear to be based on relevant international standards. Furthermore, the Salvadoran government does not appear to apply these same restrictions on domestic production, raising potential national treatment concerns. As a result of these measures, the United States has been unable to export raw poultry or eggs to El Salvador. U.S. industry estimates the value of lost U.S. poultry and eggs exports at \$5 million to \$10 million per year. Resolution of this issue is a priority for the United States.

El Salvador requires that rice imports be fumigated at the importers' cost unless they are accompanied by a U.S. Department of Agriculture (USDA) certificate stating that the rice is free of *Tilletia barclayana*. However, USDA cannot issue these certificates since there is no chemical treatment that is both practical and effective against *Tilletia barclayana*. El Salvador has failed to notify this measure to the World Trade Organization (WTO) Sanitary and Phytosanitary (SPS) Committee.

Importers must deliver samples of all foods for laboratory testing to the Ministry of Public Health, which, upon approval, issues the product registration numbers that allow them to be sold at retail outlets. Some processed foods approved for use in the United States were rejected after further analysis in El Salvador, thereby barring their sale. The United States has obtained access for U.S. products rejected by the Ministry of Public Health testing on a case-by-case basis.

Through the CAFTA-DR, the United States continues to engage El Salvador on this issue. In addition, in connection with the CAFTA-DR, El Salvador agreed to recognize the equivalence of the U.S. food safety and inspection system for beef, pork, poultry, and dairy products, thereby eliminating the need for plant-by-plant inspections. However, El Salvador continues to maintain restrictions on U.S. beef and beef products from animals over 30 months of age as well as live cattle over 30 months of age.

El Salvador and the other Central American countries are in the process of developing common standards for the importation of several products, including distilled spirits, which may facilitate trade.

GOVERNMENT PROCUREMENT

Government purchases of goods and services, including construction services, are usually open to foreign bidders.

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The 2000 Public Sector Procurement and Contracting Law applies to the central government as well as to autonomous agencies and municipalities. The Ministry of Finance's Public Administration Procurement and Contracting Regulatory Unit establishes procurement and contracting policy, but all government agencies have their own procurement and contracting units to implement that policy. Under the law, government purchases worth more than approximately \$108,000 must be announced publicly and are subject to open bidding; those worth approximately \$13,600 or more must also be announced, but may be subject to bidding by invitation only; and for smaller purchases, government agencies are only required to evaluate not less than three offers for quality and price. If a domestic offer is assessed as equal to a foreign offer, the government must give preference to the domestic offer. Under certain provisions of the law, such as "urgent" or "emergency" procurements, the head of a government agency or ministry may intervene to award procurement to a seller who may not have otherwise been selected. For government procurement made using external financing or donations, separate procurement procedures may apply.

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

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

EXPORT SUBSIDIES

El Salvador gives a 6 percent tax rebate on exports shipped outside Central America if they have undergone a transformation process that adds at least 30 percent to the original value. Firms operating in free trade zones enjoy a 10 year exemption from income tax as well as duty free privileges.

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

INTELLECTUAL PROPERTY RIGHTS (IPR) PROTECTION

In December 2005, El Salvador amended the Intellectual Property Promotion and Protection Law, Law of Trademarks and Other Distinctive Signs, and Penal Code to implement its CAFTA-DR obligations on IPR. The CAFTA-DR provides for improved standards for the protection and enforcement of a broad range of IPR that are consistent with U.S. and international standards of protection and enforcement, as well as with emerging international standards. Such improvements include: state-of-the-art protection for digital copyrighted products such as U.S. software, music, text, and videos; stronger protection for U.S. patents, trademarks, and test data, including an electronic system for the registration and maintenance of trademarks; and further deterrence of piracy and counterfeiting.

Despite these efforts, the piracy of optical media, both music and video, remains a concern in El Salvador. Optical media imported from the United States by pirates in El Salvador are being used as duplication masters. Concern has also been expressed about inadequate enforcement of cable broadcast rights and the

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competitive disadvantage it places on legitimate providers of this service. In the first 10 months of 2007, the police and Attorney General's Office seized optical media valued at \$1.5 million and made 30 arrests.

SERVICES BARRIERS

El Salvador maintains few barriers to services trade. El Salvador has accepted the Fifth Protocol to the WTO General Agreement on Trade in Services, which was necessary to bring its CAFTA-DR commitments on financial services into effect. Foreign investors are limited to 49 percent of equity ownership in free reception television and AM/FM radio broadcasting. There are no such restrictions on cable television ownership. Notaries must be Salvadoran citizens. The CAFTA-DR granted substantial market access across the entire services regime, offering new access in sectors such as telecommunications, express delivery, computer and related services, tourism, energy, transport, construction and engineering, financial services, insurance, audio/visual and entertainment services, professional, environment, and other service sectors.

In October 2007, an International Services Law was approved. The law regulates the establishment and operation of services parks and centers with incentives similar to those received by the free zones, including tax exemptions for developers, administrators, and service companies. The law covers international distribution, international logistics operations, call centers, information technology, development and research, marine vessels and airships repair and maintenance, entrepreneurial processes, hospital medical services, and international financial services. Services firms operating under the benefits of the Services Law are exempted from income and municipal taxes as well from the tariffs for the imports of capital and intermediate goods.

INVESTMENT BARRIERS

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

There are few formal investment barriers in El Salvador, except as noted in the Services Section. However, some U.S. investors complain that judicial and regulatory weaknesses limit or inhibit their investment in El Salvador.

El Salvador is developing a cost based pricing model for the electricity sector to replace the existing system. The new system would allow the adoption of long term contracts and may alleviate current market distorting regulations and intervention by the regulator, SIGET, as well as politicized management of hydroelectric resources by the state owned, autonomous hydropower generator CEL. The United States has expressed its concerns regarding the impact of duplicative regulations and the regulator's seemingly arbitrary decision making processes and how they are deterrents to U.S. electric energy investments in El Salvador.

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ELECTRONIC COMMERCE

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

ETHIOPIA

TRADE SUMMARY

The U.S. goods trade surplus with Ethiopia was \$79 million in 2007, an increase of \$23 million from the \$56 million surplus in 2006. U.S. goods exports in 2007 were \$168 million, up 22.1 percent from the previous year. Corresponding U.S. imports from Ethiopia were \$88 million, up 8.8 percent. Ethiopia is currently the 122nd largest export market for U.S. goods.

The stock of U.S. foreign direct investment in Ethiopia was \$60 million in 2006 (latest data available), up from \$54 million in 2005.

Ethiopia is in the process of accession to the World Trade Organization (WTO). As part of that process its trade regime will need to be aligned with WTO requirements.

IMPORT POLICIES

Tariffs

Revenue generation, not protection of local industry, appears to be the primary purpose of Ethiopia's tariffs. However, high tariffs are applied on certain items, such as textiles products and leather goods, to protect local industries. Goods imported from members of the Common Market for Eastern and Southern Africa (COMESA) are granted a 10 percent tariff preference. *Ad valorem* duties range from 0 percent to 35 percent, with a simple average of 16.8 percent. In February 2007, the government levied a 10 percent surtax on selected imported goods, with the proceeds designated for distribution of subsidized wheat in urban areas.

Foreign Exchange Controls

Importers often have difficulty obtaining foreign exchange. Ethiopia's central bank administers a strict foreign currency control regime and has a monopoly on all foreign currency transactions. The local currency (Birr) is not freely convertible. While larger firms, state enterprises, and enterprises owned by the ruling party do not typically face major problems obtaining foreign exchange, less well connected importers, particularly smaller, new to market firms, can face burdensome delays in arranging trade related payments. Supplier credit is rarely allowed. An importer must apply for an import permit and obtain a letter of credit for 100 percent of the value of imports before an order can be placed. Even then, import permits are not always granted.

STANDARDS, TESTING, LABELING, AND CERTIFICATION

The Quality and Standards Authority of Ethiopia regulates all exports and imports that have Ethiopian standards. There are no general requirements for product certification. Certification is required for foodstuffs, construction materials, chemicals, textiles, and pharmaceuticals. Standards appear to be consistent with international norms. Pharmaceuticals that have been extensively tested and licensed in other countries are allowed to enter the Ethiopian market with no further testing. Industry sources have reported instances in which burdensome regulatory or licensing requirements have prevented the import and/or local sale of products from the United States and other countries, particularly personal hygiene and health care products.

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GOVERNMENT PROCUREMENT

A high proportion of Ethiopian import transactions are conducted through government tenders, reflecting the heavy involvement of the government in the overall economy. The tender announcements are usually made public to all interested potential bidders, regardless of the nationality of the supplier or the origin of the products or services. Bureaucratic procedures and delays in the decision making process sometimes impede foreign participation in tenders. U.S. firms have complained about the abrupt cancellation of some tenders and a general lack of transparency in the procurement system. Business associations have complained that state owned and party owned enterprises have enjoyed *de facto* advantages over private firms in the government procurement process. Several U.S. firms have complained of pressure to offer vendor financing or other low cost financing in conjunction with bids. Several very large contracts have been signed in recent years between government corporations and Asian companies without a tender process. Ethiopia is not a Member of the WTO and, therefore, is neither a Party nor an observer to the WTO Agreement on Government Procurement.

INTELLECTUAL PROPERTY RIGHTS (IPR) PROTECTION

Ethiopia is a party to the World Intellectual Property Organization Convention. The Ethiopian Intellectual Property Office is responsible for the administration of patents, trademarks, copyrights, and other intellectual property policy and legal issues. In the past few years, Ethiopia has enacted a series of new laws pertaining to copyright and related rights, plant varieties, and trademarks.

INVESTMENT BARRIERS

Official and unofficial barriers to foreign investment persist. Sectors that are closed to private investment include electricity generation and transmission through the national grid and noncourier postal service. Investment in telecommunications services and defense industries is permitted only in partnership with the Ethiopian government. The banking, insurance, and micro-credit industries are restricted to domestic investors. Other areas of investment reserved exclusively for Ethiopian nationals include broadcasting, air transport services using aircraft with a seating capacity up to 20 passengers or a cargo capacity of up to 2,700kg, and forwarding/shipping agency services. Foreign investors are also barred from investing in a wide range of small retail and wholesale enterprises (*e.g.*, printing, restaurants, and beauty shops).

An August 2005 directive allows private companies to provide Internet service through the government's infrastructure, but implementing regulations have yet to be promulgated and the state owned Ethiopian Telecommunications Corporation maintains a *de facto* monopoly on Internet service. There are no regulations on international data flows or data processing use.

The government is privatizing a large number of state owned enterprises. Most, but not all, of the tenders issued by the Privatization and Public Enterprises Supervising Agency are open to foreign participation. Some investors bidding on these properties have complained about a lack of transparency in the process. Others who have leased land or invested in formerly state owned businesses subject to privatization have sometimes experienced bureaucratic problems (*e.g.*, transferring title, delay in evaluating tenders, and tax arrears).

All land in Ethiopia belongs to the state; there is no private land ownership. Land may be leased from local and regional authorities for up to 99 years. In practice, land has been made readily available by the

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authorities to foreign investors in manufacturing and agriculture business, but less so for real estate developers.

SERVICES BARRIERS

Telecommunications

Ethiopia's telecommunications sector is controlled by the state run Ethiopian Telecommunications Corporation (ETC) and is closed to private investment. The sector remains relatively underdeveloped compared to neighboring sub Saharan African countries. For example, text messaging, which is common throughout the continent, is not regularly available in Ethiopia and voice over Internet protocol calls are prohibited. Broadband access, while available, is prohibitively expensive, with a set up cost of over \$10,000 and monthly charges of over \$5,000 for a 2 megabyte leased line.

Government and ETC officials have indicated that extending universal telecommunications coverage, especially to poor rural areas, is a priority. Although private operators have helped to drive greater telecommunications penetration in other African countries, Ethiopian officials have expressed the view that the ETC and state run entities are better suited to advance this objective in Ethiopia. Ethiopia currently has the lowest rate of telephone penetration in Africa, with 2.09 fixed line subscribers per 100 people and 1.09 mobile phone subscribers per 100 people.

Franchising

Difficulties in product quality control, banking regulations, and continuing foreign exchange convertibility issues make franchising difficult. Currently, there are no U.S. franchise operations in the country; though there are local Sheraton and Hilton hotels that operate under United States linked management contracts.

OTHER BARRIERS

Parastatal and Party-affiliated Companies

Ethiopian and foreign investors alike complain about patronage networks and *de facto* preferences shown to businesses owned by the government or associates of the governing party in the form of preferential access to loans, land, procurement contracts, import duties, *etc.*

Judiciary

The judicial system does not offer a high level of property protection. Ethiopia's judicial system remains inadequately staffed and inexperienced, particularly with respect to commercial disputes. While property and contractual rights are recognized, and there are commercial and bankruptcy laws, judges often lack understanding of commercial matters and scheduling of cases often suffers from extended delays. Contractual enforcement remains weak. There is no guarantee that the award of an international arbitral tribunal will be fully accepted and implemented by Ethiopian authorities. Ethiopia has signed but never ratified the 1965 Convention on the Settlement of Investment Disputes between States and Nationals of Other States.

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EUROPEAN UNION

TRADE SUMMARY

The U.S. goods trade deficit with the European Union (EU) was \$107.4 billion in 2007, a decrease of \$9.8 billion from the \$117.2 billion deficit in 2006. U.S. goods exports in 2007 were \$247.3 billion, up 15.1 percent from the previous year. Corresponding U.S. goods imports from the EU were \$354.7 billion, up 6.8 percent. EU countries as a group ranked second behind Canada as a U.S. goods export market in 2007.

U.S. exports of private commercial services (*i.e.*, excluding military and government) to the EU (25) were \$140.5 billion in 2006 (latest data available), and U.S. imports were \$117.3 billion. Sales of services in the EU by majority U.S. owned affiliates were \$259.4 billion in 2005 (latest data available), while sales of services in the United States by majority EU owned firms were \$225.5 billion.

The stock of U.S. foreign direct investment (FDI) in the EU (27) was \$1.1 trillion in 2006 (latest data available), up from \$998 billion in 2005. U.S. FDI in the EU is concentrated largely in nonbank holding companies and in the manufacturing and finance sectors.

OVERVIEW

The U.S. economic relationship with the European Union (EU) is the largest and most complex in the world. The generally robust health of this vast transatlantic trade and investment relationship promotes economic prosperity on both sides of the Atlantic. Recognizing the benefits of enhanced transatlantic economic ties, the United States and the EU continue actively to pursue initiatives to create new opportunities for transatlantic economic activity. At the April 2007 United States-EU Summit, leaders launched the Framework for Advancing Transatlantic Economic Integration (Framework), with the goal of fostering cooperation and reducing trade and investment barriers through a multi-year work program in such areas as regulatory cooperation, intellectual property rights, investment, secure trade, financial markets, and innovation. Building upon the 2005 United States-EU Initiative to Enhance Economic Integration and Growth, this new Framework also established the Transatlantic Economic Council (TEC) to oversee the Framework implementation, with input from the Transatlantic Business Dialogue, the Transatlantic Consumers Dialogue, and the Transatlantic Legislators Dialogue.

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

Barriers to access for key U.S. agricultural exports continue to be a source of particular frustration for the United States. Even where formal EU agricultural tariff barriers may be relatively low, U.S. exports of commodities such as corn, beef, poultry, soybeans, pork, and rice are significantly restricted or excluded altogether due to restrictive EU nontariff barriers or regulatory approaches that often do not reflect science based decision making or a sound assessment of actual risks posed by the goods in question. The United States continues to be concerned about EU and Member State measures that subsidize the development, production, and marketing of large civil aircraft. In addition, the trade distorting effects of various EU Member State policies governing pharmaceuticals and health care products are generating concerns related both to market access and to healthcare innovation. This year's report also outlines

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concerns of U.S. exporters with respect to a number of emerging EU policies that may threaten to disrupt trade in the future, such as the new EU chemicals regulation.

IMPORT POLICIES

Customs Administration

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

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

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

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

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

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EU Enlargement

In anticipation of the accession of Romania and Bulgaria to the EU on January 1, 2007, the United States, in December 2006, entered into negotiations with the EU within the framework of GATT provisions relating to the expansion of customs unions. Upon their accessions, Romania and Bulgaria were required to change their tariff schedules to conform to the EU's common external tariff schedule, resulting in increased tariffs on certain products imported into Romania and Bulgaria from third countries. Under General Agreement on Tariffs and Trade 1994 (GATT 1994) Articles XXIV: 6 and XXVIII, the United States is entitled to compensation from the EU to offset some of these changes. The expansion of preexisting EU tariff-rate quotas (TRQs) to account for the addition of Romania and Bulgaria to the EU common market is another key element of the negotiations. The United States will seek to conclude in 2008 an appropriate bilateral compensation agreement with the EU and to ensure that its benefits are implemented as soon as possible.

WTO Information Technology Agreement (ITA)

The United States has continued to raise serious concerns both bilaterally with the EU and in the WTO ITA Committee in Geneva about a series of EU measures that have the effect of no longer providing or guaranteeing duty free treatment for certain information technology products, such as set-top boxes with a communication function, liquid crystal display (LCD) computer monitors, and multifunction printers. The EU is applying new duties as high as 14 percent on imports of these products. Despite similar concerns being raised by other ITA members, the EU continued to consider proposals in 2007 that would apply new duties on IT products.

Restrictions Affecting U.S. Wine Exports

On March 10, 2006, the European Union and the United States signed an agreement on certain aspects of wine trade, the planned first part of a broader agreement to remove barriers to bilateral trade in wine. The Agreement, which went into effect upon signature, is intended to eliminate the uncertainties caused by the EU's temporary, piecemeal derogations for current U.S. wine making practices and by restrictions placed on U.S. wine labels, including the use of so-called "traditional terms." Traditional terms for the most part, are terms used with certain other expressions (often geographical indications) to describe a wine (e.g., "ruby" and "tawny"). The Agreement did not provide for the automatic acceptance of new wine making practices, nor did it include a permanent solution for the use of traditional terms, among other issues. It did, however, provide for additional negotiations with a view toward concluding one or more agreements to further facilitate trade in wine. These negotiations began in June 2006, and continued through 2007. Meanwhile, the United States is carefully monitoring compliance with the current agreement.

Bananas

Acting against the backdrop of understandings reached separately with the United States and Ecuador in 2001, setting out the means for reaching a resolution to the long running dispute regarding trade in bananas, the EU instituted a new banana import regime on January 1, 2006. The 2001 understandings required that, by January 1, 2006, the EU put in place a tariff only regime for bananas. The understandings further required the EU to seek waivers of its GATT Article I and XIII obligations in order to continue, temporarily, a modified banana import regime incorporating tariff-rate quotas and import licensing requirements. The Article I waiver, as finally granted by the WTO, required that the

future tariff only regime result in at least maintaining total market access for Most Favored Nation (MFN) banana suppliers.

In the fall of 2005, the EU made two proposals for a new tariff rate for bananas. Both of these proposals were subject to review by a WTO arbitrator (according to the terms of the Article I waiver), which found that both proposals failed to satisfy the EU's obligation at least to maintain total market access for MFN suppliers of bananas to the EU market. EU consultations and negotiations with a number of Latin American banana exporting countries throughout 2005 yielded no agreement on the shape of the EC's post-January 1, 2006 regime. The regime, as eventually implemented on January 1, 2006, combined a 176 euro/metric ton MFN tariff level with a zero duty tariff-rate quota in amounts up to 775,000 metric tons for bananas originating in Africa, Pacific, and Caribbean (ACP) countries with which the EU maintains a preferential trading relationship. In November 2006, after continued negotiations failed to achieve a satisfactory result, Ecuador filed a request under Article 21.5 of the DSU for consultations with the EU regarding the compliance of this new regime with the EU's obligations under the WTO. A panel was established in March 2007, and issued its confidential final report on December 10, 2007. The public version of the report is expected in early 2008.

In June 2007, the United States filed a request for the establishment of a panel under Article 21.5 of the DSU, challenging the current EC banana regime as being in breach of GATT Articles I and XIII. The final report was issued to the parties on February 29, 2008. The United States' strong interest is that the EU's import regime must uphold the EU's multilateral commitment to put in place a WTO compatible structure that at least maintains total market access for nonpreferential banana suppliers. While the United States does not directly export bananas to the EU, this is an issue of considerable importance to U.S. companies involved in the production, distribution, and marketing of bananas.

Market Access Restrictions for U.S. Pharmaceuticals

U.S. pharmaceutical companies encounter persistent market access problems throughout the European Union due to the effective price, volume, and access controls placed on medicines by Member State governments. In most cases, Member State governments administer medicine reimbursement programs as part of their healthcare programs, which cover a significant segment of the market. The procedures for getting a product on a reimbursement list and the price controls maintained for those products that are on the list generally lack transparency and often adversely affect U.S. exports. The EU also places strict controls on the nature of information that pharmaceutical companies can furnish to patients. The combination of these measures can limit patients' access to innovative products and may diminish investments by U.S. and EU companies in pharmaceuticals research and development.

The EU's single market is intended to allow pharmaceuticals, like other goods, to move freely within the EU, while Member States' controlled prices may vary significantly from one country to another. This situation permits intermediaries to buy medicines, often in bulk quantities, in EU countries where the government determined price is lower and sell them in other EU countries where the price is set at a higher level – a practice known as parallel trade.

Member State Measures

Austria: Austria maintains a complex pharmaceutical reimbursement approval process that affects market access for innovative products. A pharmaceutical firm seeking to include a product on the list of reimbursable drugs without prior authorization must first obtain the approval of the umbrella organization of social insurance funds (Hauptverband/HVB). Almost all new innovative pharmaceuticals must be

individually approved by HVB physicians. In 2007, the European Commission filed a suit against Austria for violating the EU's Transparency Directive, challenging the transparency of the approval process, particularly the long delays in securing decisions. Industry estimates that the period between market authorization and actual market access averages nearly 400 days in Austria, the third longest period in the EU.

Belgium: Pharmaceutical companies consider Belgium among the most inhospitable markets in Europe. Taxes and pricing policies discourage investment in research and development. Prices on pharmaceuticals reimbursed through the Belgian healthcare system remain well below European averages, although generic pharmaceutical prices tend to be higher than the European average. In addition to the turnover and profit taxes applied exclusively in this sector, pharmaceutical companies are required to fund fully the first € 100 million of any gap between budgeted and actual government spending on pharmaceuticals. In combination, these tax measures amount to a 10 percent additional levy on the sector's turnover. Patient access to innovative drugs remains, in many cases, slower and more restricted than in other EU countries due to restrictive reimbursement criteria and a slow reimbursement process.

Bulgaria: The Bulgarian government's drug supply mechanism affects the access of U.S. pharmaceutical exports to that market. New drug legislation imposes liability on companies for failures of distributors to meet drug supply obligations (incorrect or late deliveries). Instead of holding distributors accountable for correct distribution, the government holds pharmaceutical manufacturers liable for the distributors' performance over which manufacturers may have no control. The registration processes for pharmaceutical products and for drug pricing and reimbursement, including the process by which the National Health Insurance Fund classifies drugs, are cumbersome and need to be more transparent. Newer drugs are often classified with their older, generic versions for pricing purposes, thereby limiting companies' ability to recover their research and development costs.

Cyprus: Pharmaceutical companies report that the Cypriot pharmaceuticals market suffers from several distortions that have resulted in unnecessary barriers to trade and retail shortages of many pharmaceuticals. For example, of the 3,300 drugs sold in Cyprus prior to May 1, 2004, only around 2,200 were available at the end of 2006. Since acceding to the EU on May 1, 2004, Cyprus has introduced reference prices for certain pharmaceuticals distributed through the private sector, resulting in retail price cuts of around 20 percent, on average. The mechanism used by the government to set pharmaceutical retail prices has proved rather controversial, both in terms of the countries used as pricing benchmarks, and the drugs selected. Local representatives of pharmaceutical companies believe the selected benchmark countries are not representative and that the government has avoided using reference prices for drugs that stood to increase in price. Additionally, the government included inexpensive, over-the-counter drugs in the reference pricing list. Furthermore, the government disfavors new, innovative drugs when procuring pharmaceuticals for the public health sector. Innovative, cutting-edge drugs are generally left off the government's procurement list until competing original drugs or cheaper generic substitutes become available.

Czech Republic: The European Commission won a legal case against the Czech Republic in September 2007 based on a complaint from the International Association of Pharmaceutical Companies (MAFS) over the nontransparent pharmaceutical categorization process that determines which medicines will be covered by public health insurance and the level of reimbursement. Although as a result of this ruling no sanctions are currently being imposed, it requires the Czech legislature to conform national law to European legislation as soon as possible or face monetary sanctions. The bill which accomplishes this has already been drafted and approved by Parliament, but it will not take effect until January 1, 2008.

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MAFS acknowledges that the new law is an improvement that makes the categorization process more transparent and provides a mechanism for appeal, but association members continue to object to assignment of their products to low value reimbursement groups. The Czech government's use of therapeutic reference pricing, in which a range of patented and nonpatented drugs are grouped together with a single reimbursement amount applied to all products in a therapeutic group, is cited as a particular impediment to the appropriate valuation of innovative medicines.

Denmark: The pharmaceutical industry complains that Danish reimbursement standards lack sufficient transparency and objective criteria. Furthermore, the industry claims that the Danish government has failed to provide reimbursement for new innovative medicines or has delayed reimbursement for long periods. Within the context of the Danish social security system, this has the practical effect of preventing the sale and use of such medicines. The government has maintained pressure to further decrease prices or sales of innovative pharmaceutical products, and in April 1, 2005, a new reimbursement system was introduced. Under these rules, reimbursements are determined on the basis of the lowest priced medicine available in each therapeutic category, meaning that the patients' own contributions increase unless the cheapest product (often generic) is chosen. Reimbursements only apply to medicines purchased in a Danish authorized pharmacy.

Finland: Until 1995, Finland granted only process patents and no product patents for pharmaceuticals. Given the long development period of a product from chemical synthesis to market authorization, few pharmaceuticals developed after 1995 have made it to the market, and therefore all pharmaceuticals are currently protected only by process patents. In addition to this weakened patent protection, the Pharmaceuticals Pricing Board (PPB) – a decision making body controlling both pricing and reimbursement of prescription pharmaceuticals – has the authority to withdraw products from the reimbursement system, which results in further negative consequences for pharmaceutical market access in Finland. Innovative pharmaceutical companies in Finland have raised concerns that government regulations have resulted in an uncompetitive environment marked by pricing policies that place low ceilings on pharmaceutical prices and that limit the price differentials allowed between generic and innovative products. The lengthy process of approving pharmaceutical products for reimbursement under the national insurance scheme (requiring more than 3 years, in some cases) represents a further impediment to access. In 2006, the PPB set a limit for prices of generic products (40 percent lower than the innovative product at the time), and demanded the same price for the innovative product. Innovative pharmaceuticals can be withdrawn from the reimbursement system if they fail to comply with PPB's price reduction decision.

France: The budgetary environment in France remains tight, with hundreds of additional medicines having been dropped from the Reimbursement List in 2006. As a result, the French pharmaceutical market has experienced a significant slowdown since the beginning of 2006, and sales of reimbursable medicines fell in July 2006 for the first time in 10 years. The drug industry association LEEM, which represents French and foreign pharmaceutical companies in France, acknowledges that the French pharmaceutical industry is affected by the cyclical nature of innovation and development associated with new drugs and that a slowdown in such development does not represent a long term decline. LEEM is also pleased regarding an agreement with the French Government's Economic Health Products Committee (CEPS) signed on January 29, 2007, which will speed up market authorization for practically all medicines from the most to the least innovative. At the same time, a recent study shows that the leading drugs affected by the 2006 reimbursement cuts saw double-digit losses to their sales.

Germany: The government introduced a reference pricing scheme on generic and patented pharmaceuticals on January 1, 2005. U.S. firms contend that they bear the brunt of cost-containment by

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virtue of their substantial share (25 percent) of the German market. U.S. pharmaceutical companies note serious concerns about transparency and fairness in the decision making process related to the new reference pricing scheme, which does not provide a fair rate of return for patented, innovative medicines. Additional cost constraint measures were imposed through the combining of patented, innovative products with generic products, known as “jumbo groups.” Legislation that went into effect in May 2006 clarified how drugs are declared innovative and provided more transparency in the decision making process, addressing some industry concerns. In April 2007, the German government passed broader healthcare reform legislation designed to introduce more competition in the healthcare market. This legislation did not include further regulations on reference pricing. The new legislation’s provisions directing a greater degree of transparency and the use of international standards by Germany’s health technology assessment body are of particular significance, and implementation of these provisions is being closely monitored by the U.S. Government.

Hungary: Hungary’s Drug Act – introduced as part of Hungary’s broad health care reform package in 2006 to 2007 – has had wide reaching effects for the innovative pharmaceutical industry. Key elements of the reforms include: a 12 percent tax on pharmaceuticals, in addition to standard corporate taxes; a \$25,000 registration fee for each sales representative; reductions in the levels of reimbursement; and regulations providing that pharmaceutical companies are responsible for financing gaps in the drug subsidy budget. The transparency of the Hungarian government’s drug reimbursement program remains a significant concern.

Italy: U.S. companies have raised concerns about Italian government measures that they believe will have a deleterious impact on their business and could have a negative effect on patient care. Among these are: an across-the-board reduction in reimbursement prices for almost 300 drugs now on the reimbursement list; an increase in the amount that industry must “pay back” to the central government for regions’ annualized overspending on pharmaceuticals; and additional discounts on certain classes of drugs that will disproportionately disadvantage U.S. research based companies. In addition, particular concerns have been raised regarding a measure introduced in late 2007 that will limit individual pharmaceutical companies’ pricing budgets in 2008 to the level of sales in the previous year, imposing a lack of flexibility to account for the introduction of new products during the course of the coming year. Lack of transparency in Italian procedural measures governing drug pricing and reimbursement has been a longstanding concern of U.S. industry, prompting the filing of a number of complaints to the European Commission under provisions of the EU Transparency Directive.

The Netherlands: The Dutch Ministry of Health views pharmaceuticals as a prime target for savings in its national healthcare budget. Industry has expressed concern that the Ministry does not fully recognize the added value of incremental innovation. Excessive regulation and lack of transparency continue to delay timely introduction of new medicines. Various measures are in force or planned that delay the reimbursement of new compounds. The current multi party Agreement between the Ministry of Health, insurers, pharmacists, and generic manufacturers was extended for another year on September 17, 2007. Nefarma, the association representing the innovative industry, joined the Agreement. Under the current Agreement, Nefarma members will reduce their prices of multi source brands (off-patent products for which there are generics available) by an average of 40 percent. This reduction affects older products, while new, innovative products are protected. Discussions among the same stakeholders are focused on modernizing the current reimbursement system and/or the Pharmaceutical Pricing Act.

Poland: Meaningful access to Poland’s pharmaceuticals market often hinges on whether a drug appears on the government’s reimbursement list, since doctors most often prescribe drugs from the list, and purchases from the list are subsidized by the Polish National Health Fund, making them more affordable

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for patients. The government of Poland's general failure to act upon applications to add innovative drugs to the reimbursement list (with some exceptions) has seriously undermined U.S. and international innovative drug producers' market position in favor of the Polish generic industry. In those cases over the last decade where innovative drugs were added to the list, the decision criteria lacked clarity, and the process required greater transparency. Polish legislation that entered into force on September 28, 2007, requires the Ministry of Health to update the drug reimbursement list every quarter and to provide an explanation for negative decisions, which are to be appealable to administrative courts. If implemented effectively, the new legislation will enhance the transparency of the process for adding drugs to the list and may address longstanding concerns regarding the significant backlog in reimbursement approvals.

In July 2006, the Polish government instituted a 13 percent across-the-board price cut on all imported pharmaceutical products. This measure has raised questions of potential discriminatory treatment, in light of the fact that the regulation applies only to imports. In response, the Polish government has stated it plans to cut the prices paid to domestic producers, to reflect a 13 percent reduction in the value of imported inputs. However, the costs of inputs are not the primary determinant of a drug's value. The European Commission is investigating the consistency of the July 2006 price reductions with EU rules.

Slovakia: U.S. and European pharmaceutical companies complain that a Slovakian Ministry of Health Decree (No. 723/2004), which went into effect on October 15, 2005, further reduces the transparency of government decisions regarding the pricing and reimbursement decisions for medicines prescribed by national health insurance. The Decree specifies the rules to be applied in determining the price of the medicinal product and level of reimbursement. The original Decree provided detailed rules for the calculation of the price and the level of reimbursement. However, recent amendment of the Decree cancelled the detailed rules for determining the reimbursement amount and, instead, provided the Ministry of Health, as the deciding authority, with wide discretion to decide on the amount of reimbursement without setting a clear set of guidelines for such decisions. All parameters on the list are reviewable by the Ministry of Health four times a year. Since these decisions fall outside the Slovak Administrative Code, there is no formal process for the decisions to be appealed by the companies. The new regulation has increased the subjectivity of the Board's decision making, thereby minimizing the predictability and transparency of the process.

Slovenia: Innovative U.S. drug manufacturers continue to face pricing related access barriers in Slovenia, with the government setting price limitations based on a "basket" of "European average prices." In January 2007, the government changed its drug pricing from the average price to the lowest price in the "basket," which further inhibits Slovenian consumers' access to new drugs. Slovenian regulations require health professionals to prescribe drugs with the lowest price in their group as stated on the Interchangeable Drug List. These are the only drugs that are fully reimbursed under the state insurance plan.

United Kingdom (UK): The profits that pharmaceutical companies may earn on sales to the National Health Service (NHS) are limited by a Pharmaceutical Price Regulation Scheme (PPRS). The most recent PPRS, which was agreed to by the pharmaceutical companies in January 2005, required companies that sold more than \$2 million worth of branded medicines to the NHS to reduce their average overall prices by 7 percent. The current PPRS is scheduled to remain in place until 2010. Companies that exceed the profit target by more than 40 percent must refund the excess either as a lump sum payment to the Department of Health or as price reductions to the NHS. The Office of Fair Trading (OFT) has recommended replacing the PPRS with a value based pricing system. The OFT recommendations are currently under review by the Department of Health. If the Department of Health accepts the

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recommendations, the PPRS could be revoked earlier than 2010. U.S. pharmaceutical companies have been notified by the Department of Health of its intention to review the current PPRS arrangements.

Uranium Imports

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

STANDARDS, TESTING, LABELING, AND CERTIFICATION

Overview

As traditional trade barriers such as tariffs decline, U.S. exporters of manufactured and agricultural products increasingly view EU regulatory measures as impediments to market access. U.S. firms frequently cite inadequate transparency in the development and implementation of EU regulations, insufficient economic and scientific analysis to support good regulatory decisions, and a lack of meaningful opportunity for non-EU stakeholders to provide input on draft EU regulations and standards. Further, compliance with divergent technical regulations and standards for products sold in the United States and the EU imposes additional costs on U.S. exporters (*e.g.*, duplicative testing and product redesign) and increases the time required to bring a product to market. To address these systemic concerns, the United States is working to promote greater U.S.-EU regulatory cooperation and enhanced transparency in the EU regulatory system.

Despite often sharing similar regulatory objectives, the U.S.-EU dialogue frequently is unable to resolve regulation related trade problems promptly. In particular, many U.S. exporters view the EU's growing use of the "precautionary principle" to restrict or prohibit trade in certain products, in the absence of a scientific justification for doing so, as a pretext for market protection. Furthermore, EU regulatory barriers are often compounded by multiple measures affecting particular products. Poultry, agricultural biotechnology products, and chemicals are examples of product areas that face complex and restrictive regulation in the EU marketplace. To illustrate:

- U.S. exports to the EU of poultry washed with anti-microbial treatments (AMT) have been blocked for a decade by cumbersome bureaucratic procedures and unnecessary, redundant health and safety assessments – despite the finding by the EU's European Food Safety Agency that these AMTs are safe.
- U.S. exporters of agricultural biotechnology products have been harmed not only by a *de facto* EU moratorium on approving new products, but also by the existence of certain Member State prohibitions on products already approved by the EU for marketing within the EU. This was the subject of a successful WTO challenge by the United States.

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- U.S. producers of chemicals and downstream users of chemicals face the EU's comprehensive new regulatory regime known as Registration, Evaluation, and Authorization of Chemicals (REACH), which adopts a particularly complex and burdensome approach that appears to be neither workable nor cost-effective in its implementation and that could adversely impact innovation and disrupt global trade. This expansive EU regulation affects virtually all industrial sectors, including the majority of U.S. manufactured goods exported to the EU.

Standardization

Given the extensive U.S.-EU economic relationship, EU standards activities are of considerable importance to U.S. exporters. Standards related problems continue to impede U.S. exports, including a general inability to participate in the formation of EU standards and occasional reliance on design based, rather than performance based standards. Disparities between the practices of some European conformity assessment bodies add to the frustration and cost for U.S. exporters. In addition, there are concerns related to the procedures, responsibilities (*e.g.*, accountability and redress), and lack of transparency in the Member States, the European Commission, and the European standards bodies.

Pressure Equipment: In May 2002, the EU Pressure Equipment Directive (PED) entered into force, imposing new requirements on manufacturers of such equipment. Previously, pressure equipment manufacturers could demonstrate conformity based on standards for material specifications, including the U.S. ASME Code. Manufacturers using the ASME Code may now be excluded from the EU market because the European standards incorporate material specifications slightly different from those found in the ASME Code. In the absence of a full set of harmonized EU standards, the PED permits manufacturers to file for a European Approval of Materials (EAM). However, few requests for EAMs have been approved so far. Another option, the Particular Material Appraisal (PMA), is a costly process for which there are no clearly defined procedures in the PED. In light of these factors, U.S. manufacturers seek continued acceptance of materials that meet the ASME code that have been widely used in Europe for decades prior to the PED. In an effort to promote cooperation, U.S. and EU officials and stakeholders have initiated a project to eliminate redundant testing requirements for materials.

Ecological-labeling: Ecological-labeling initiatives by the EU and some of its Member States raise concerns that U.S. (and other) exporters may be disadvantaged to the extent that the standards used for labels reflect subjective criteria or are developed without meaningful and thorough consultation with foreign suppliers. One example is the EU Ecological-labeling Regulation for Paper Products. Experience in the ongoing development of an ecological-label for furniture illustrates the need for effective consultations in the development of standards.

Agricultural Biotechnology Products

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

In May 2003, the United States initiated a WTO dispute settlement process aimed at addressing the EU's *de facto* moratorium on approvals of biotechnology products and the existence of individual Member State marketing prohibitions on biotechnology products that had previously been approved by the EU. The WTO panel issued its final report on September 29, 2006, and the WTO Dispute Settlement Body (DSB) adopted the report on November 21, 2006. The Parties agreed on a 1 year "reasonable period of time" (RPT), expiring on November 21, 2007, for the European Union to come into compliance with the DSB's recommendations and rulings; the deadline was subsequently extended to January 11, 2008. During 2007, the United States and the EU held discussions aimed at resolving the dispute and normalizing U.S.-EU biotechnology trade. When the RPT expired in January 2008, the United States took the first steps toward a resumption of dispute settlement procedures, submitting a request to the WTO for authority to suspend concessions. Under an agreement with the EU, however, proceedings on the U.S. request were suspended to provide the EU an opportunity to demonstrate meaningful progress on the approval of biotechnology products.

Several Member States have imposed marketing bans (safeguard measures) on some biotechnology products that had been previously approved at the EU level. On June 24, 2005, the EU Environment Council rejected, by a qualified majority, eight Commission proposals to lift safeguard measures imposed by five Member States against biotechnology maize. On September 13, 2007, the European Court of Justice upheld an earlier decision, which Austria had appealed, against Upper Austria's effective ban on growing biotechnology crops, on the grounds that there was no scientific evidence to support the ban. On December 18, 2006, the European Commission presented a proposal to lift import and cultivation bans in Austria, and the Council rejected this measure by qualified majority. On October 30, 2007, the European Commission proposed requiring that Austria lift only its import ban on the biotechnology maize product against which the Council did not manage a qualified majority, leaving the Commission an opening to take action. The Commission has, to date, taken no such action against Austria. On April 27, 2007, Germany announced a planned ban on MON810, a biotechnology corn product. The ban was lifted, however, after agreement with the technology provider on post-market monitoring. On February 9, 2008, France imposed a temporary ban on cultivation of MON810, invoking the safeguard clause, and announced that its ban would remain in place contingent on the EU reapproval process that has been ongoing since April 2007.

Delays in the biotechnology product approval process exacerbate the already large asynchronicity of approvals, creating further trade problems. As the U.S. biotechnology firms commercialize new innovative products they may encounter more trade barriers as even minute traces of new products approved in the United States could make them unsellable in the EU.

Rice: In August 2006, USDA announced that a biotechnology rice variety, LL601, had been detected in samples of commercial U.S. long grain rice. LL601 had not been approved for marketing in either the EU or the United States at that time, but it was subsequently approved in the United States. Although EU scientific authorities, like their U.S. counterparts, had concluded that LL601 poses no human health, food safety, or environmental risks, the EU's Directorate for Health and Consumer Protection (DG SANCO) directed Member States to test rice for the presence of LL601 in their markets. Trace elements of LL601 were found both in bulk shipments and in processed food products, prompting the rejection and destruction of shipments. In response, the U.S. Government began intensive talks with EU officials to establish a common protocol for bulk shipments from the United States in an effort to avoid mandatory testing upon arrival in the EU. These talks failed to produce an agreement and the Commission, with Member State support, introduced mandatory testing at destination, effective October 23, 2006.

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The zero tolerance policy maintained by the EU for LL601 substantially increased the risk of rejection at EU ports, making it difficult for most U.S. rice exporters and EU buyers to continue normal shipments during the first two-thirds of 2007. The situation for U.S. rice exporters was further complicated in October 2007, when the EU globalized the remaining quantity of the U.S. milled rice tariff quota, allocating approximately 13,000 tons of the quota to non-U.S. suppliers. This occurred just as U.S. suppliers were preparing to resume normal rice exports to the EU from 2007 crop supplies. The United States has requested that the EU restore this quantity of quota to U.S. suppliers. In December 2007, following a review of U.S. industry measures to ensure the exclusion of LL601 from rice shipments, DG SANCO's Standing Committee decided to eliminate the requirement that EU Member States test all U.S. rice shipments for genetically engineered rice upon arrival at EU ports. This decision came into effect in February 2008.

Co-existence: In accordance with the EU guidance document on the co-existence of biotechnology and conventional crops, which recommends a regional approach to co-existence issues, a number of Member States (including Spain, Denmark, Germany, Italy, the Netherlands, and most regions in Austria) have drafted new co-existence laws or have chosen to provide industry guidance. France is in the process of developing its co-existence legislation. While the decrees/laws vary substantially from country to country, they generally require extensive control, monitoring, and reporting of biotechnology crops. The European Commission may initiate infringement proceedings against a Member State's co-existence law if it is judged to be incompatible with EU law. There is no deadline for Commission action, however. The Commission and the Austrian EU Presidency co-hosted a conference on coexistence in April 2006. The conference concluded that there was a need for all Member States to define their co-existence policy.

Traceability and Labeling: In April 2004, EC Regulations 1829/2003 and 1830/2003 governing the approval, traceability, and labeling of biotechnology food and feed became effective. The regulations include mandatory traceability and labeling for all biotechnology and downstream products. Among the traceability rules are requirements that information that a product contains or consists of biotechnology products must be transmitted to operators throughout the supply chain. Operators must also have in place a standardized system to maintain information about biotechnology products and to identify the operator by whom and to whom it was transferred for a period of 5 years from each transaction. The requirements include an obligation to label appropriate products and to indicate if the food is different from its conventional counterpart in composition, nutritional value, intended use, or health implications.

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

Member State Measures

Austria: The Austrian Biotechnology Law allows, in principle, for planting of biotechnology crops, but strict and complicated rules on liability and compensation still represent a *de facto* barrier. All nine Austrian provinces have passed biotechnology bills to protect their organic and small-scale agricultural sectors. Three Austrian ordinances still ban the planting of all EU approved biotechnology crops and a new ordinance bans the marketing of a biotechnology oilseed rape. Under current Austrian rules,

unapproved biotechnology events must not be detectable in conventional seeds (“zero tolerance”), but EU approved events may be present in conventional and organic seeds up to 0.1 percent.

Driven by political rather than scientific factors, the government of Austria has effectively banned most agricultural biotechnology applications apart from research. All major Austrian supermarket chains have banned biotechnology products from their shelves, even those labeled according to EC regulations. Austria continues to advocate for a revision of EU decision making for biotechnology approvals, despite the fact that Member States approved the decision making procedures presently in place.

Cyprus: Cyprus has adopted a number of restrictive biotechnology policies. For example, Cyprus has voted consistently against any applications for new bioengineered crops before the EU Standing Committee. On July 12, 2007, the Cypriot House of Representatives passed a law (the first of its kind in the EU) that was controversial and requires local stores to place all bioengineered products (defined as products with a biotechnology content above 0.9 percent) on separate shelves, under a sign clearly declaring them as GMO products. President Papadopoulos has referred this legislation to the Cypriot Supreme Court for a ruling on procedural grounds. Cyprus had failed to give advance notice to the European Commission of its plan to introduce this law, in violation of European Commission Directive on food labeling and advertising 2000/13/EC. The government has declared as “GMO-free” areas under the Natura 2000 project (corresponding to 11.5 percent of the land area of the island). Local environmentalists and others are applying constant pressure on the government of Cyprus to declare the whole of Cyprus as GMO free. Largely as a result of this pressure, the government commissioned, in September 2007, a study aimed at establishing that co-existence between bioengineered and conventional crops is impossible in Cyprus. Meanwhile, government application requirements for new agricultural biotechnology crops are stricter than in other EU countries. Additionally, permits for such crops must be renewed every 5 years. Biotechnology products already licensed in the EU may circulate in Cyprus freely, but biotechnology organisms must be separately approved in Cyprus, even if they are already licensed in other EU countries.

France: On February 9, the French government published an “arête” in the French Official Journal extending a ban on MON810, and invoking the safeguard clause against MON810 in France, until a reevaluation of the product occurs at the European level. France’s decision to invoke the safeguard clause against MON810 has been widely criticized by scientists, French parliamentarians, and French farm organizations as lacking scientific justification.

On February 8, 2008, the French Senate approved a new version of the French biotechnology law, which will be reviewed by the National Assembly in early April 2008. The new bill is intended to meet France’s requirement to transpose EU Directive 2001/18 into French law. This was partially accomplished through administrative decrees published in spring 2007, as a result of which France is no longer paying penalties for failing to transpose the Directive correctly.

As a consequence of the ban on MON810, no commercial production of bioengineered corn is expected in 2008. In 2007, 22,000 hectares of bioengineered corn were planted, four times more than in 2006. French corn growers were particularly disappointed by the ban on MON810, as they have become increasingly enthusiastic about the technology in recent years due to encouraging agronomic and economic results; the availability of bioengineered seeds from a larger number of companies; the establishment of effective marketing channels; and the persistent demand from Spain, where virtually the entire harvest was sold.

Bioengineered corn growers and seed companies continued to suffer attacks in 2007 from antibiotechnology activists, who have destroyed commercial fields as well as open field trials. French votes on new bioengineered products in the EU regulatory committee have grown increasingly negative since the Sarkozy Administration took office in May 2007.

Germany: In February 2008, the grand coalition government consisting of the Christian Social Union/Christian Democratic Union and the Social Democratic Party passed an amendment to the biotechnology law of March 2006 that essentially keeps Germany's stringent green biotechnology requirements in place and offers less far-reaching reform than had initially been expected. These requirements include 100 percent accessibility to field registrations; 100 percent farmer liability; plant distance requirements of 150 meters between conventional and bioengineered crops and 300 meters between bioengineered crops and organic fields; and giving German Laender (states) the option of implementing stricter protection measures including distance rules for nature protection purposes. The current biotechnology regulations limit the number of bioengineered plantings. In 2007, only 2,650 hectares of bioengineered corn were grown for commercial purposes in Germany, a relatively small number in comparison with the more than 53,000 hectares planted with bioengineered corn in Spain and the 22,000 hectares planted in France.

In April 2007, the German government issued an order against the technology provider of MON810, requiring it to monitor potential environmental impacts of MON810 corn varieties. In December 2007, the German government declared the monitoring plan provided by the technology provider as sufficient to meet EU requirements and lifted a marketing ban against the product.

Greece: Greece continues to vote against bioengineered varieties that even the European Food Safety Authority (EFSA) has concluded are safe and despite support from a large portion of Greek farmers and Greece's agricultural science community, which favor possible field tests in Greek soil. Greece's Ministerial Decisions for the 0.5 percent threshold on adventitious presence of transgenic material in corn seed shipments from the United States and "no presence" of such material in cottonseeds for planting have remained in force since 2002.

Hungary: Extensive biotechnology research is taking place in Hungary, and the Hungarian government has allowed field tests for herbicide-resistant corn, wheat, and other crops. Hungary has not yet prepared the national application rules for the EU biotechnology regulations on food and feed and traceability and labeling. In January 2005, Hungary adopted a moratorium on corn varieties containing MON810. The Hungarian measure bans the production, use, distribution, and import of hybrids derived from MON810 lines. The ban applies to seed producers and distributors as well as farmers.

Italy: In March 2006, the Italian High Court ruled that coexistence legislation enacted by the Italian Parliament was unconstitutional and that Italy's regions are responsible for the development of coexistence legislation. In 2007, several conferences were held to develop national guidelines for use in developing regional coexistence regulations. Although several regions, particularly those representing the major corn growing areas, have worked to draft regulations that will allow the introduction of biotechnology crops, there remains concern that the legislation enacted in many regions will discourage biotechnology crop planting.

In 2007, after years of prohibiting experimental field trials of new genetically modified crops, the Ministry of Agriculture drafted a Ministerial Decree authorizing field trials of nine approved protocols. This Decree was circulated to the Ministry of Environment for its advice, as is required by law. The

Minister of Environment (and Green Party founder) rejected the protocols, effectively blocking future action.

Luxembourg: Luxembourg bans the marketing of biotechnology crops in its territory and opposes the approval of new biotechnology products at the EU level. The European Commission has pressed Luxembourg to withdraw its ban. Legislation that would regulate the growing of biotechnology crops in Luxembourg has been stalled in a parliamentary committee for 3 years, and there appears to be little interest in moving it forward during the current legislative session.

Poland: Poland's new government, which was formed in October 2007, has begun to recognize the practical implications of its current antibiotechnology policies. Under the antibiotechnology policy announced at the beginning of 2006, Poland had consistently opposed EU approval of new bioengineered products and had set a goal of becoming a "GMO-free" country. Towards this end, the government banned the sale and registration of bioengineered seeds in mid-2006 and passed legislation that will prohibit import, production, and use of animal feed derived from bioengineered crops by September 2008. This law could cause significant increases in feed prices and limit the protein content of feed, posing a threat to the future viability of commercial animal production in Poland. The European Commission is currently pursuing infringement proceedings against Poland's seed and feed legislation.

The new government has expressed interest in reassessing this legislation. Change is being driven by mounting pressure from the livestock, feed, and seed industries; by demand for biofuel production; and by farmer concerns about the spread of pests such as the corn borer and root worm. Scientists, farm groups, feed processors, and the animal production sector in Poland are growing increasingly vocal in their demand that the feed and cultivation bans be lifted.

Officials recently announced they will appeal an EU ruling against Poland's cultivation ban at the Court of First Instance. Poland voted against approval of new bioengineered corn and potato varieties in October 2007 and against new soybean varieties in February 2008.

Romania: Romania's adoption of EU legislation has resulted in a significant change in the country's biotechnology policy. Before 2006, Romania was the largest planter of biotechnology soybeans in Europe. Despite protests from domestic producers, Romania decided to drastically limit biotechnology soybean cultivation in 2006 and to totally ban it in 2007. Romania has approved one biotechnology corn variety for cultivation in 2007.

Spain: Spain remains the EU member with the largest land area under bioengineered corn cultivation. The current government has tended to take a somewhat restrictive position with respect to biotechnology, however. Spain proposed regulations in 2006 that would impose 220 meter distance requirements between biotechnology crops, on the one hand, and conventional and organic crops, on the other. If these coexistence requirements are approved, biotechnology use is likely to decline in Spain.

Ban on Growth-Promoting Hormones in Meat Production

Since the 1980s, the EU has banned the use of hormonal substances that promote growth in food producing animals. Because the use of growth promoting hormones is approved by the U.S. Food and Drug Administration and is common in U.S. beef cattle production, this ban has effectively prohibited the export to the EU of beef from cattle raised in the United States. The United States launched a formal WTO dispute settlement proceeding in May 1996, challenging the EU ban. In 1999, the WTO ruled that the EU's ban was inconsistent with the SPS Agreement because it was not based on a scientific risk

assessment. The WTO authorized the United States to impose sanctions on EU products with an annual trade value of \$116.8 million. At present, the United States continues to apply 100 percent duties on imports from the EU valued at \$116.8 million.

In September 2003, the EU announced the entry into force of an amendment (EC Directive 2003/74) to its hormone ban that recodified the permanent ban on the use of the hormone estradiol-17 β for growth promotion purposes and established provisional bans on the five other growth promoting hormones included in the original EU legislation. The EU argued that the implementation of this new Directive brought it into compliance with the earlier WTO ruling and that U.S. sanctions were no longer justified.

The United States maintains that the revised EU measure cannot be considered compliant with the WTO's recommendations and rulings in the earlier hormones dispute and that U.S. sanctions therefore remain authorized. In November 2004, the EU requested WTO consultations with the United States on this matter. The dispute is currently in the final stages before a WTO panel, which is expected to publish its findings in early 2008.

Animal By-Products Legislation

EC Regulation 1774/2002, which regulates the importation of animal by-products not fit for human consumption, went into force in May 2004. Despite extensive U.S.-EU technical discussions that addressed many problems, an estimated \$100 million in U.S. animal by-product exports to the EU remain adversely affected to some degree by Regulation 1774/2002. The U.S. exports most affected by this regulation are dry pet food, tallow, other animal protein products, and some hides and skins. The regulation's effect on products further downstream, such as certain *in vitro* diagnostic products that may use animal by-products, is unclear. In 2007, the European Commission approved several amendments to the regulation, addressing many of the problems it created. The most important amendments for U.S. exporters relate to pet food. The Commission has also indicated that it is drafting changes to the regulation that could help resolve additional issues, including allowing increased market access for tallow, but it has not yet offered details on specific product coverage or timetables. The United States will continue to seek the elimination of remaining impediments to U.S. exports of animal by-products, particularly tallow for industrial use.

Poultry Meat

U.S. poultry meat exports to the EU have been banned since April 1, 1997, because U.S. poultry producers currently use washes of low concentration pathogen reducing treatments (PRTs), such as chlorine, to reduce the level of pathogens in poultry meat production, a practice not permitted under the EU sanitary regime. In December 2005, EFSA completed studies of four PRTs and found them to be safe, and in February 2006 the European Commission's Health and Consumer Protection Directorate General circulated the first draft of a proposal to allow PRTs to be used on poultry meat in the EU market. The draft regulation banned the simultaneous use on poultry products of more than one PRT, however, and it required poultry treated with PRTs to be rinsed after treatment. These two requirements are not fully consistent with U.S. production methods and would limit the ability of most U.S. producers to export poultry to the EU. Concerns raised by the Commission's Agriculture and Environment Directorates have kept the draft regulation in inter-services consultation for more than 18 months. The concerns of the Agriculture Directorate on marketing standards for PRT-treated poultry appear to have been resolved. Late in 2007, however, Directorate General Environment ordered new studies, due to be completed in the Spring of 2008, of the potential impact of PRTs on water pollution and antimicrobial

resistance, issues that the United States contends are not relevant to the safety of poultry that is treated with PRTs in the United States and then exported to the EU.

During the November 2007 meeting of the Transatlantic Economic Council, the EU committed “to act definitively to resolve the long-standing issue regarding the importation into the EU of U.S. poultry treated with pathogen reduction treatments... [b]efore the next U.S.-EU Summit.”

Member State Measures

Finland and Sweden: In their EU accession agreements in 1995, Sweden and Finland received derogations allowing them to enforce for an indefinite period stricter salmonella controls for food products and stricter border controls for live animals (quarantine) than those maintained by other EU Member States. Imports of fresh or frozen beef, pork, poultry, and eggs from other EU countries and third countries must be certified to be free from salmonella in accordance with Commission Regulation (EC) No. 1688/2005. These special certification requirements are burdensome to U.S. exporters.

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

Mycotoxins

The EU regulations set maximum limits on mycotoxins for a variety of foodstuffs, including cereals, fruit and nuts. In many cases, including for almonds, peanuts and wheat, the EU limits are lower than maximums set by the U.S. Food and Drug Administration. The United States will work with U.S. industry to gain EU acceptance of U.S. origin testing and certification for mycotoxins for U.S. almond and wheat shipments. The United States will continue to seek the development of international standards for mycotoxins within CODEX. In recent years, there have been an increased number of U.S. almond shipments rejected at EU ports because import controls have found excessive levels of aflatoxin. A voluntary aflatoxin sampling plan has been implemented by the U.S. almond industry in coordination with the EU and the U.S. Department of Agriculture to address this problem. The U.S. wheat industry is concerned that EU testing for vomitoxin and ochratoxin in imported wheat shipments will be disruptive for trade.

Barriers Affecting Vitamins and Health Food Products

France: France transposed the EU’s food supplement directives 2002/46/EC and 2006/37/EC by government decree on March 20, 2006. The scope of the government decree is broader than the directives, however, as it included plants and plant based substances in addition to food supplements. The list of 147 plants and plant based substances was issued separately.

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

EMERGING REGULATORY BARRIERS

In addition to the previously mentioned trade barriers arising from EU policies regarding standards, testing, labeling, and certification, the United States has serious concerns about the ongoing development of new regulations that would appear to have serious adverse consequences for U.S. exporters in the future. The United States is actively engaging the EU with respect to the issues outlined below.

Chemicals and Downstream Products

The EU's new chemicals management regulation, REACH, entered into force on June 1, 2007. REACH requires all chemicals produced or imported into the EU in volumes above one ton per year (affecting approximately 30,000 chemicals) to be registered in a central database, and imposes new testing and marketing requirements. Chemicals of very high concern will require an authorization for specific uses in the EU when determined necessary by the new European Chemicals Agency (ECHA). This legislation will impact virtually every industrial sector, from automobiles to textiles because it regulates substances on their own, in preparations, and in products.

The European Commission is presently working on implementation guidance. The United States and other EU trading partners have been stressing since July 2006 that the EU's interpretation and implementation of REACH will determine its environmental and public health benefits as well as the economic and trade costs. We have urged the European Commission to seek input from all stakeholders regarding the REACH Implementation Projects and the resulting guidance before ECHA adopts these guidelines. In addition, the United States has urged the European Commission to provide guidance on its "candidate list" of substances of very high concern to ensure that downstream users do not use this as a "black list," and to ensure that specific uses of substances and viable alternatives have had the benefit of a risk assessment. Guidance should clarify that without going through this step, premature substitution could have negative environmental or public health effects while greatly increasing costs.

One particular concern is the treatment of monomers. Although polymers (mostly plastics) are exempted from REACH registration, monomers used in the EU to make polymers must be registered due to potential exposure during polymer manufacture. But REACH also requires registration of monomers used abroad to create imported polymers, despite the fact that the monomers no longer exist in the imported product and even though the polymers themselves are exempt from registration. Besides the unnecessary costs of collecting information on substances that do not create any risk of exposure in the EU, industry is concerned that the provision may also force these polymer importers to disclose confidential business information.

Another issue of concern relates to the treatment of imported cosmetics. REACH does not appear to provide producers of cosmetics imported into the EU the benefit of any transition period to register inputs, whereas comparable domestic products may benefit from a 3 year to 11 year transition period.

Cosmetics

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

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To minimize possible trade disruption, the United States and the European Commission have embarked on a joint project to develop harmonized, alternative, nonanimal testing methods. The project involves cooperation between the U.S. Interagency Coordinating Committee on the Validation of Alternative Methods and the European Center for the Validation of Alternative Methods (ECVAM). The aim is to develop agreed alternative testing methods that would be submitted to the OECD process for international validation. The validation of alternative methods is a long and expensive process, taking an average of 7 years. The EC is actively encouraging ECVAM to pursue alternative methods in the near term.

Waste Management (WEEE and RoHS Directives)

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

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

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

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

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

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

Energy Using Products Directive

The EU framework directive promoting ecological design for energy using products (EuP) entered into force on August 11, 2005, and EU Member States had until August 11, 2007 to transpose it into national law. As of September 2007, only Austria, Belgium, Ireland, UK, Slovakia, and Sweden have reported full or partial transposition of the law to the European Commission. Through this directive, the EU means to regulate the integration of energy efficiency and other environmental considerations at the design phase of a product. Once in place, design requirements will become legally binding for all products sold in the EU. The legislation commits the European Commission to adopt “implementing measures,” which will be developed after completion of a series of technical studies covering various products, including lighting, office equipment, heating equipment, domestic appliances, air conditioning, consumer electronics, and energy losses from standby modes. The directive sets out CE marking requirements for the items covered by implementing measures. Industry is most concerned about the possible need for a complete product life cycle analysis, and fears adverse impacts on design flexibility, new product development and introduction, as well as increased administrative burdens

Metric-Only Directive

As of January 1, 2010, the EU Council Directive 80/181/EEC (Metric Directive) requires the use of metric-only measurement units for most products sold in the EU. Going well beyond labeling, the Metric Directive would make the use of metric-only units obligatory in all aspects of life in the European Union, including on labels, packaging, advertising, catalogs, technical manuals, and user instructions. This prohibition would end a longstanding practice in the European trade community of allowing manufacturers flexibility in labeling products in metric and standard units. When implemented, the Directive would also create an inconsistency with U.S. law.

In response to strong concerns conveyed by the United States and transatlantic stakeholders about needless additional costs and trade disruption stemming from this directive, the European Commission in September 2007 proposed to amend the EU Metric Directive to permit an indefinite extension in the use of supplementary units (metric and standard units). The Commission proposal is now before the European Parliament and the Council for adoption in 2008.

EU Directive on Wood Packaging Material (WPM)

The EU’s Directive on wood packaging material (WPM) would impose a debarking requirement, in addition to heat treatment fumigation, on WPM from the United States and other countries. This directive could impact tens of billions of dollars of U.S. agricultural and commercial exports to the EU that are shipped on wooden pallets or in wood packaging materials. In response to extensive foreign concern, the EU suspended implementation of this directive in February 2005 and postponed the bark-free requirement until January 1, 2009.

The EU Directive is more restrictive than the international standard established by the International Plant Protection Convention (IPPC) Guidelines for Regulating Wood Packaging Material in International Trade (IPSM-15). IPPC members, including the EU, approved ISPM-15 to harmonize and safeguard WPM requirements in world trade. IPPC members approved specific treatments and the marking of WPM but did not support a debarking requirement in the absence of a scientific justification. The IPPC continues to assess emerging scientific studies related to this issue.

Acceleration of the Phase-Outs of Ozone Depleting Substances and Greenhouse Gases

As part of a wider climate change program to reduce emissions of greenhouse gases to meet its Kyoto Protocol objectives, the EU adopted legislation in May 2006 to regulate the emission of fluorinated gases (f-gases). Two pieces of legislation were adopted – a regulation on f-gases used in stationary applications and the other, a Directive regulating hydrofluorocarbons (HFCs) in vehicle air conditioning. The first measure (the “stationary” regulation) will impact U.S. manufacturers of stationary air conditioning and refrigeration equipment and the companies that produce the chemicals used in them. The second will affect U.S. car and parts manufacturers by phasing-out HFC134a in vehicle air conditioning beginning in 2011 with a complete ban by 2017. The Regulation allows Member States to maintain or introduce stricter protective measures in order to reach Kyoto targets by December 21, 2012. The United States will continue to closely monitor Member States’ implementation.

Member State Measures

Austria: Austria became the second EU Member State after Denmark to ban a range of uses of the three fluorinated gases controlled under the Kyoto protocol on climate change. An ordinance that took effect in 2002 prohibits the use in new sprays, solvents, and fire extinguishers of hydrofluorocarbons (HFCs), perfluorocarbons, and sulphur hexafluoride. The ordinance phases out their use in foams between mid-2003 and the end of 2007. It bans their use in new refrigeration and air conditioning equipment by the end of 2007. A 2007 amendment exempted “mobile applications” (e.g., vehicle air conditioning) from the bans. The ban appears to exempt production of HFCs in Austria for the export market. Even under the new EU regulation that focuses on containment instead of bans, the Austrian government has indicated it will try to retain its own national HFC bans.

Denmark: Denmark has introduced a general ban, effective January 1, 2006, to January 1, 2011, on the sale, use and import of the fluorinated gases, HFCs, perfluorocarbons (PFCs), and sulphur hexafluorides (SF₆). These f-gases were already being gradually phased out as of September 2002. As of January 1, 2007, new systems containing more than 10 kilos of f-gases (most air conditioning systems, industrial installations, and cooling systems in supermarkets) were included in the ban. New systems containing less than 150 grams of f-gases (most refrigerators in private households) were already included in the ban, while products for the export market generally are exempt. The European Commission has allowed Denmark to retain its ban on f-gases. The exemption applies until the Kyoto Protocol’s first commitment period expires in 2012. In the meantime, a decision will be made in 2009 about a possible revision of EU rules. The Danish government has announced that it will continue its efforts to make the EU introduce rules similar to those that apply in Denmark.

In 2004 Denmark implemented a maximum two percent trans fat acid limit for the total fat content in foods, far below the EU limit. The European Commission decided in March 2007 not to file a case against Denmark, thus accepting the claim that use of trans fat acids entails health risks as a valid legal argument for the tougher Danish requirements.

Finland: A ban on the importation and sale of new appliances containing hydrochlorofluorocarbons (HCFCs) was imposed on January 1, 2000, and remains in place. The importation of the chemical HCFC is allowed when used for maintenance of old refrigeration appliances using HCFC. New HCFC compounds used for maintenance of refrigeration equipment will be banned as of 2010 and use of all HCFC compounds, including recycled compounds, will be banned as of 2015.

Sweden: On November 23, 2005, Sweden notified the WTO of its intention to ban Deca-BDE effective on January 1, 2007. Under the ban, Deca-BDE may not be placed on the Swedish market or used as a substance or an ingredient in a substance or preparation in concentrations exceeding 0.1 percent by weight. Articles, or flame-protected components thereof, containing Deca-BDE in concentrations exceeding this weight requirement may not be placed on the Swedish market. This prohibition does not apply to motor vehicles or to electrical and electronic equipment. The Swedish Chemicals Inspectorate (Inspectorate) may issue regulations on exceptions to the ban. The Inspectorate may also, until December 31, 2009, grant exceptions to the ban on a case-by-case basis.

The United States and other WTO Members have raised concerns with Sweden. As a result, Sweden agreed to review the ban and consider a complete withdrawal. In March 2007, the European Commission formally adopted an infringement letter against Sweden's partial ban.

GOVERNMENT PROCUREMENT

Since the EU is signatory to the GPA, all of the Member States are also subject to the GPA. This includes Romania and Bulgaria, which became subject to the GPA upon their accession to the EU in January 2007.

In 2004, the EU adopted a revised Utilities Directive (2004/17), covering purchases in the water, transportation, energy, and postal services sectors. Member States were mandated to implement the new Utilities Directive by the end of January 2006, but some EU Member States still have not implemented it. This Directive requires open, objective bidding procedures, but discriminates against bids with less than 50 percent EU content that are not covered by an international or reciprocal bilateral agreement. The EU content requirement applies to U.S. suppliers of goods and services in the following sectors: water (production, transport, and distribution of drinking water), energy (gas and heat), urban transport (urban railway, automated systems, tramway, bus, trolley bus, and cable), and postal services.

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

Member State Measures

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

Austria: U.S. firms continue to report a strong pro-EU bias and pro-Austrian bias in government contract awards. In major defense purchases related to national security, most government procurement

regulations do not apply, and offset requirements can reach up to 200 percent of the value of the contract. Defense offsets in Austria are linked to political considerations and transparency remains limited.

Czech Republic: U.S. and other foreign companies express great concern about the lack of transparency in the public procurement process. A 2006 law on government procurement that was intended to bring the Czech Republic in line with EU legislation did little to improve procurement transparency. Over 50 percent of all public contracts awarded in 2006 fell under the 6 million Czech koruna threshold and thus were not subject to the transparency requirements of the new law. Of those remaining, the government only offered a third of the contracts to open and competitive tenders. Transparency International Czech Republic notes that while EU membership appears to have had a positive effect on new Member States, the Czech Republic remains near the bottom, 23rd of the 28 EU and Western European countries surveyed in its Corruption Perceptions index.

France: France has a strong and extremely competitive aerospace and defense manufacturing base. Having allowed only limited privatization in the sector; the French government continues to maintain shares in several major prime contractors. The French defense market remains difficult for non-European firms to participate in. Even in the case of competition among European suppliers, French companies are often selected as prime contractors. Nevertheless, U.S. firms have been successful as component and systems suppliers in instances where U.S. products provide capabilities required for interoperability or where the cost of internal development is prohibitive.

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

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

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

Lithuania: The public procurement process in Lithuania is not always transparent. Complaints persist that some tenders are so narrowly defined that they appear to be drafted so that only one company can

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provide the good or service. Since 2003, the Lithuanian government has required offset agreements as a condition for the award of contracts for procurement of military equipment exceeding LTL 5 million (about \$1.8 million). While the Lithuanian government purchases most U.S. military equipment using U.S. Government grant money, which precludes offsets, the Lithuanian government has requested offsets for defense purchases that use its own funds. This offset requirement adds an unnecessary level of complexity to exporting military equipment to Lithuania.

Portugal: U.S. firms continue to face stiff competition when bidding against EU firms on public procurements in Portugal. The Portuguese government tends to favor EU firms, even when bids from U.S. firms appear technically superior or lower in price. There is a general lack of transparency in procurement procedures. U.S. firms appear to be more successful when bidding as part of a consortium or via a joint venture entity with Portuguese or other EU firms. Although this trend has held for the past several years, there was a recent success in the defense technology sector, with a U.S. firm securing a contract to provide avionics services to the Ministry of Defense.

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

Slovenia: The Slovenian government has indicated that it intends to improve the transparency of its public procurement process. While the Ministry for Public Administration stated that it plans to create an electronic procurement system, its efforts in this area have stalled. U.S. firms continue to express concerns that the public procurement process in Slovenia is nontransparent. Many U.S. bidders report that European firms are favored and usually win contracts in spite of more costly tenders and questionable ability to deliver and service their products. This is a problem across the entire range of public procurement, but it seems most prevalent in telecommunications, medical equipment, and defense procurement.

Spain: U.S. construction companies view Spanish public sector infrastructure projects as effectively closed to them. During the past 10 years, at least two major U.S. construction firms closed their Spanish offices due to insufficient business. This period coincided with strong growth in the Spanish construction sector. Two U.S. construction and engineering firms were interested in the Spanish government's major program to build large desalinization plants. However, after reviewing prospects, the U.S. firms concluded that outside bidders would not be seriously considered and given high bidding costs, they did not compete. Of 10 desalinization plant contracts that have been awarded, all but one was awarded to Spanish firms. Spain's exclusionary procurement policies contrast with those of the United States, where Spanish companies in several sectors, including construction, have won sizeable contracts at the state and local levels.

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

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SUBSIDIES POLICIES

Government Support for Airbus

Over many years, the governments of France, Germany, Spain, and the United Kingdom have provided subsidies to their respective Airbus member companies to aid in the development, production and marketing of Airbus large civil aircraft. These governments have financed between 33 percent and 100 percent of the development costs for all Airbus aircraft models (launch aid) and have provided other forms of support, including equity infusions, debt forgiveness, debt rollovers, and marketing assistance, including political and economic pressure on purchasing governments. The EU's aeronautics research programs are driven significantly by a policy intended to enhance the international competitiveness of the European civil aeronautics industry. EU governments have spent hundreds of millions of euros to create infrastructure for Airbus programs, including 751 million euros spent by the City of Hamburg to create land that Airbus is using for assembly of the A380 "superjumbo" aircraft and 182 million euros spent by French authorities to create the AeroConstellation site, which also contains facilities for the A380. The beneficiary of more than \$6 billion in subsidies, the Airbus A380 is the most heavily subsidized aircraft in history. Some EU governments have also made legally binding commitments of launch aid for the new Airbus A350 aircraft, even though Airbus has not yet repaid any of the financing it received for the A380.

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

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

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

Government Support for Airbus Suppliers

Belgium: The federal government of Belgium, in coordination with Belgium's three regional governments, subsidizes Belgian manufacturers that supply parts to Airbus. In the fall of 2006, the EU Commissioner for Competition concluded that Belgium's 195 million euro support program exceeded the allowable level of support under EU regulations. The Belgian federal government in June 2007 subsequently reduced its support fund to 150 million euros (of which 40 million euros have not been disbursed to date), but simultaneously, the Flemish Regional government set up a 50 million euro start-up fund for the aviation sector in Flanders. It thus remains unclear how much assistance already paid to the companies for the A350 program, if any, has been reimbursed. The Belgian commitment to the A380 superjumbo was 195 million euros, not all of which was disbursed. Airbus A380 related research and

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development started in 2001, and costs covered to date have netted orders worth 1.3 billion euros for the A380. Belgium claims that its A380 support was structured in accordance with the 1992 bilateral agreement and covers nonrecurring costs.

France: In addition to the launch aid that the French government provided for the development of the Airbus A380 super jumbo aircraft, France provides aid in the form of reimbursable advances to assist the development by French manufacturers of products such as planes, aircraft engines, helicopters, and on-board equipment by French manufacturers. French appropriations supporting new programs in these areas in 2007 totaled 209.8 million euros, of which 150.5 million euros were committed to the A380. Overall 2007 appropriations, including 44.7 million euros in support of research and development in the aeronautical sector, amount to 258.4 million euros.

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

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

United Kingdom (UK): UK government support for Airbus has most recently included investment in the Integrated Wing Program, announced in December 2006. The Department for Business, Enterprise, and Regulatory Reform (DBERR) and selected regional development agencies will provide half of the funding for the \$68 million program, with the remainder drawn from Airbus and participating suppliers. The Integrated Wing Program is one of twelve key technologies identified in the National Aerospace Technology Strategy (NATS), which largely directs UK government investment in strategic aerospace capabilities.

Government Support for Aircraft Engines

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

The European Commission announced its approval of a 250 million pound "reimbursable advance" without opening a formal investigation into whether the advance constituted illegal state aid (under EU law). According to a European Commission statement, the "advance will be reimbursed by Rolls-Royce to the UK government in case of success of the program, based on a levy on engine deliveries and maintenance and support activity." Detailed terms of the approved launch aid were not made public. To date, none of the launch aid for the Trent 600 and 900 has been repaid.

Propulsion is another area considered important to the future of the UK aerospace industry, and DBERR has extended support to Rolls-Royce for the development of environmentally friendly engine technologies. This funding is directed through established research funding channels, though the government has provided occasional direct support to Rolls-Royce over the past 5 years.

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

Canned Fruit Subsidies

The new EU Common Market Organization (CMO) for fruit and vegetables came into effect on January 1, 2008. Implementing rules, covering fresh and processed products, are designed to encourage the development of Producer Organizations (POs) as the main vehicle for crisis management and market promotion. Although export subsidies have been eliminated, processing aid subsidies are only gradually being phased out in favor of decoupled Single Farm Payments, limited by national envelopes. At the end of a 5 year transitional period, the EU expects to “fully decouple” its support for the sector. Hidden subsidies remain an ongoing concern for the United States. The 1985 U.S.-EU Canned Fruit Agreement attempted to impose some discipline on EU fruit processing subsidies. Despite this agreement, EU growers and producers, particularly in the peach industry, continued to receive a range of assistance payments, including producer aid, market withdrawal subsidies, sugar export rebates, producer organization aid, and regional development assistance. The United States continues to monitor and review EU assistance in this sector, evaluating potential trade distorting effects.

INTELLECTUAL PROPERTY RIGHTS (IPR) PROTECTION

Overview

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

In 2006, the European Commission issued communications on strengthening the criminal law framework to combat IP infringement, and a renewed effort to introduce a community patent. Efforts to create a community patent appear to be stalled for the moment.

The United States has raised certain concerns regarding the IPR practices of the EU and its Member States, both through the U.S. Special 301 process and through WTO dispute settlement procedures. The United States continues to be engaged with the EU and individual Member States on these matters. Examples of concerns with respect to EU Member States are described below, and notably include the problem of pirated merchandise being shipped to and sold in Czech border markets.

In April 2004, the EU adopted a Directive on the enforcement of intellectual and industrial property rights, such as copyright and related rights, trademarks, designs, and patents. This Directive requires all Member States to apply effective and proportionate remedies and penalties to serve as a deterrent against those engaged in counterfeiting and piracy. Member States are required to have a similar set of measures, procedures, and remedies available for rights holders to defend their IPR. Member States were supposed to have implemented the Directive by April 2006.

FOREIGN TRADE BARRIERS

Patents

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

In some countries, such as Portugal and Hungary, generic copies of medicines that are still under patent are allowed on the market by the Ministries of Health.

Data Exclusivity

In some of the new Member States in particular, there is a need to improve protection for undisclosed data submitted to obtain marketing approval for pharmaceutical and agricultural chemical products. Article 39.3 of the TRIPS Agreement requires such protection.

Hungary: Hungary's 2001 ministerial Decree on the protection of test data took effect on January 1, 2003. Retroactive protection exists for pharmaceutical products that received first marketing authorization in the EU or Hungary on or after April 12, 2001. However, Hungary has not yet implemented in full the EU regime for data protection.

Poland: Concerns remain over delays in full implementation of the EU data protection regime. In addition, no concrete actions have been taken to ensure against the market approval of drugs that may infringe valid patents.

Patenting of Biotechnological Inventions

A 1998 EU Directive (98/44) on the legal protection of biotechnological inventions harmonizes EU Member State rules on patent protection for biotechnological inventions. Although Member States were required to bring their national laws into compliance with the Directive by July 2000, some had not yet fully met that obligation, and the European Commission has started legal proceedings at the European Court of Justice against them.

Geographical Indications (GIs)

The United States has long had concerns about the EU's system for the protection of GIs, reflected in Community Regulation 1493/99 for wines and spirits and in Regulation 2081/92 for certain other agricultural products and foodstuffs, which raise questions with respect to what is required under the TRIPS Agreement.

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

GI regulations for wines and spirits, which have not yet been amended to incorporate national treatment obligations, the United States will be carefully monitoring developments in this respect as well.

Member State Measures

Belgium: While Belgium transposed the EU Copyright Directive into national law in May 2005, it failed to meet the April 2006 deadline to implement the EU Enforcement Directive. Belgium finally implemented EU Regulation 1383/2003 concerning customs actions against goods suspected of infringing certain IPRs on October 1, 2007. Digital video discs (DVDs) that are pirated in Belgium and imports of DVDs intended for sale in other EU Member States are a growing problem in Belgium. In addition, according to the Belgian Antipiracy Foundation (BAF) some 250,000 illegal downloads of DVDs occur daily in Belgium. Illegal copies on video home system (VHS), compact disc recordable (CD-R), and digital video disc recordable (DVD-R) media are distributed by specialty stores (10 percent), retail outlets (10 percent), and local and international Internet sites (80 percent). The recording industry estimates that 85 percent of blank compact discs (CDs) and other digital media storage devices sold in Belgium are used for illegal downloads of music or videos. Annual losses to the U.S. motion picture industry through IPR piracy in Belgium are estimated at over 15 million euros. Belgium's 1994 Copyright Law provides deterrent penalties for piracy, but legal procedures are cumbersome and the court system is overburdened. Obtaining a judicial restraining order against Internet piracy, for example, takes 2 to 3 months, and judges demand proof of damages to assign more than token fines. However, the country's first-ever prison sentence for copyright piracy was imposed in April 2006, and Belgium was the first of the EU-15 to ratify the WIPO Copyright Treaty and the WIPO Performance and Phonograms Treaty (referred to jointly as the WIPO Internet Treaties) in May 2006.

Bulgaria: Despite the improved coordination by a strong interagency IPR council, enforcement remains a concern. Optical disc (OD) piracy rates have flattened, while Internet piracy is on the rise, with the piracy rate of copyrighted material on the web at over 90 percent. On a positive note, the business software industry for the first time in the last 4 years reported a 2 percent drop in piracy rates down to 69 percent, which nevertheless remains among the highest in the EU. End-user software piracy, especially among small and medium sized businesses, remains an obstacle to the software industry.

Cyprus: According to industry sources, the level of DVD and CD piracy in Cyprus continues at roughly 50 percent. Software piracy, largely fueled by small personal computer assembly and sale operations, has declined to 53 percent but is still significantly above the European average. Internet piracy is a growing concern.

Czech Republic: The Czech Republic is the source of significant and ongoing problems with piracy and counterfeiting in open-air markets along the Czech border. Although the Czech Parliament added new amendments to the Copyright Law and the Law on Consumer Protection in 2006 granting the Customs Office greater authority to seize pirated and counterfeit products, this has had little effect on copyright and trademark infringement at the border markets. The level of piracy and counterfeiting is rising, according to IPR watchdog groups, especially those from the recording and manufacturing industries. Problems in court proceedings persist. Court cases, including IPR related cases, can often stretch to 5 years on average, and even then the current system for the calculation and collection of damages favor defendants, according to legal experts who work in the field.

France: In order to strengthen French policy on illegal downloading of music and movies, President Sarkozy appointed a committee composed of entertainment producers, copyright holders, and Internet access providers to present a series of proposals to prevent piracy and to stimulate the growth of a legal

digital music and movie market. On October 16, 2007, the French Parliament approved a bill on counterfeiting, which transposes into French law the April 29, 2004, EU Directive on the enforcement of IPR. Also during 2007, the government issued an implementing decree regarding the interoperability articles of the French Digital Copyright Law of August 2006. The decree established a Technical Measures Regulation Authority (TMRA), which will decide on issues of interoperability of digital rights management (DRM) systems, as well as rights to copy original works for private use. The United States believes that the law and decree create an uncertain environment for proprietary DRM systems in France and set a troubling precedent for government-mandated interoperability. The United States also remains concerned about a second pending decree implementing Article 15 of the Digital Copyright Law. The decree could impose source code disclosure obligations on technical protection measures and security software providers who make their products available in France. The United States continues to engage France on this issue.

Germany: Non-retail outlets (Internet, print media, mail order, and open-air markets) are the primary distribution channels for pirated goods in Germany. Pirated videos, video compact discs (VCDs), and DVDs are sold primarily by residential mail-order dealers who offer the products via the Internet or through newspaper advertisements, or directly sell them in open-air markets. German copyright legislation allows the making of private copies, which, although it does not include sharing or downloading of music, has been sometimes misunderstood as being a broad exception. While German federal authorities have been receptive to U.S. IPR concerns, there have been mixed results at the German state level, which can have broad impact due to Germany's decentralized law enforcement structure. German authorities in several cases have prosecuted pirates who downloaded music and videos from the Internet and then distributed burned CDs or DVDs. The government in July 2003 enacted amendments to the German Copyright Act intended to bring it in line with the EU Copyright/"Information Society" Directive. Additional amendments to the copyright law were passed by Parliament in 2007. U.S. publishers have expressed a concern that these amendments may result in insufficient protections for copyrighted works, particularly those in digital format. The United States continues to engage the German government on the issue.

Greece: Although protection of IPR in Greece is better than it was during the last decade, violations, particularly in copyrighted audio-visual products, software and apparel, and footwear continue to raise concerns. Despite the existence of adequate IPR legislation, a lack of emphasis on training with respect to IPR issues has led to widespread tolerance of piracy, including in the judiciary. This tolerance has meant that enforcement is not as aggressive as it might be, and penalties for violators are usually not enforced at deterrent levels. The United States has encouraged Greece to raise enforcement levels and educate the judiciary on IPR matters to discourage this trend.

Italy: Italy's antipiracy laws, which also address Internet piracy, are among the toughest in Europe. However, Italy possesses one of the highest overall piracy rates in Western Europe due to a lack of adequate enforcement efforts. Street vendors continue to openly sell pirated and counterfeited goods. Italian judges rarely hand down meaningful jail sentences for cases of IPR infringement, which gravely diminishes Italy's efforts to combat piracy effectively. Leaders in industry, government, and academia agree that a change in public perception of the seriousness of IPR crimes is a prerequisite for improved IPR protection in Italy.

Lithuania: Estimates of piracy levels of optical media, software, and motion pictures in Lithuania vary. The situation appears to be improving, however. Lithuania adopted legislation in 2006 that harmonizes Lithuania's laws with EU regulations, which strengthened IPR protection by increasing penalties and making it easier for prosecutors to present necessary evidence. The government has demonstrated the

political will to enforce IPR protections in specific cases and continues to seize pirated goods when identified at the border or in the territory of Lithuania. The government made progress in early 2007 by closing down a number of Internet pirate websites. In September 2007, the government of Lithuania instituted a resolution guided by Directive 2000/31/EC that regulates the procedures for eliminating the possibility of access to unlawfully obtained, created, amended, or utilized information and establishes criteria for when the service provider shall be deemed to be aware of unlawful activity on the part of a service recipient or of the fact that information provided by a service recipient has been unlawfully obtained, created, amended, or utilized.

Poland: As border enforcement continues to strengthen, Internet piracy of movies and music is becoming a more serious problem. According to an antipiracy group, the Polish court system remains overburdened, with nearly 5,000 pending IPR protection cases. Cases in large cities may not be prosecuted for several years.

Romania: Although authorities have made gradual improvements, the rates of copyright piracy remained high in Romania in 2007: 70 percent in business software, 89 percent in entertainment software, and 65 percent in records and music. However, levels of DVD and videocassette piracy are falling and most of the blatant retail piracy has been eliminated. Romania has established a dedicated IPR prosecutor in the General Prosecutor's Office (GPO). However, few IPR cases are prosecuted.

Spain: Copyright infringement remains a serious problem, with illegal Internet downloads growing rapidly in scale. Content provider companies say that Internet service providers (ISPs) resist their requests to deny access to their networks to websites illegally trafficking in copyrighted material and to shut down service to persons uploading or downloading large quantities of copyright protected material. The United States pursued an intensified dialogue with Spain on these matters in 2007, with a particular focus on Internet piracy. The status of pharmaceutical patent protection is weaker in Spain than in many other places in Europe, by virtue of the fact that, under the terms of Spain's accession to the EU, Spain was not required to recognize pharmaceutical product claims that had been made in European patent applications prior to October 7, 1992. Consequently, a number of pharmaceutical products whose patents predate 1992 are subject only to relatively weaker process patent protection.

Sweden: Internet piracy is a significant problem in Sweden, and the government's enforcement efforts have not been effective. During 2007, the government took several potentially helpful steps to address the problem, but the incidence of piracy had not declined as of early 2008.

A May 2006 police raid of Pirate Bay, the world's largest Bit Torrent tracker and a major worldwide facilitator of illegal Internet trade in copyright-protected digital content, sent shockwaves through the international file-sharing community, but Pirate Bay was back in operation within a few days. Even though the Pirate Bay tracker site is no longer located in Sweden, other parts of Pirate Bay's operations appear to be running on servers in Sweden. Sweden also remains host to a large number of the world's piracy "top sites" and possibly to the largest number of DC++ file-sharing hubs and users. An estimated one million Swedes, out of a total population of 9 million, are said to have engaged in illegal file sharing.

Sweden's government has repeatedly signaled to police and prosecutors over the past year that it wants them to step up antipiracy efforts. Following an 18 month investigation, the government initiated the prosecution of four key Pirate Bay figures in January 2008. The trial is expected to begin before the summer. To discourage illegal file sharing, the government has also urged content providers to provide legal alternatives for the delivery of content over the Internet. This recommendation was embraced in 2007 by the high profile Renfors Commission. The Renfors Commission also notably recommended that

ISPs be given the right and the obligation to cancel service to users who have repeatedly conducted copyright infringing activities over a network. The rights holder community praised the Renfors report, which was circulated for public comment near the end of 2007.

In July 2007, the government of Sweden presented a proposal for the implementation of the EU Enforcement Directive. The government proposal includes a provision that would give courts the authority to order ISPs to give rights holders pursuing civil claims information about the identity of persons that commit copyright infringement on the Internet. The enforcement legislation was still under government review in early 2008. The government has stated that it intends to send a bill to parliament before the summer.

SERVICES BARRIERS

Concerns Related to EU Enlargement

On May 28, 2004, the European Commission notified Members of the WTO of a proposed consolidation of the EU's schedule of specific commitments under the General Agreement on Trade in Services (GATS), pursuant to GATS Article V, to reflect both the 1995 accession to the EU of Austria, Finland, and Sweden, and the 2004 accession of Cyprus, the Czech Republic, Estonia, Hungary, Latvia, Lithuania, Malta, Poland, Slovakia, and Slovenia. As a result of this proposed consolidation, a number of GATS commitments by these countries have been modified in a way that may reduce sector-specific or horizontal market access commitments. Although not within the scope of the EU's GATS Article V notification, the EU's consolidation proposal also entails the extension to the new Member States of Most Favored Nation exemptions reflected in the EU's existing schedule of GATS commitments.

Following GATS rules, which allow a Member to reduce or withdraw commitments provided that they negotiate offsetting compensation to maintain the overall level of market access, the United States worked closely with Brazil, Hong Kong, Japan, Canada, and 12 other WTO Members to negotiate a compensation package with the European Union. Negotiations were successfully completed on September 25, 2006. The agreed compensation package contains new and enhanced commitments in several other services sectors, including public utilities, engineering, computer, advertising, and financial services. The European Commission appears to be having difficulty gaining the approval of Member States for these commitments, however.

Television Broadcasting and Audiovisual Services

The 1989 EU Broadcast Directive (also known as the Television without Frontiers Directive) includes a provision requiring that a majority of television transmission time be reserved for European-origin programs "where practicable and by appropriate means." All EU Member States, including the Member States that acceded to the EU in May 2004 and January 2007, have enacted legislation to implement the Broadcast Directive. The United States has sought to ensure that the flexibility built into the Directive is preserved and that individual broadcasting markets are allowed to develop according to their specific conditions and needs.

Member State Measures

Several EU Member States have specific legislation that hinders the free flow of some programming or film exhibitions. A summary of some of the more significant restrictive national practices follows.

FOREIGN TRADE BARRIERS

France: France continues to apply the EU Broadcast Directive restrictively. France's implementing legislation, which was approved by the European Commission in 1992, specifies percentages of European programming (60 percent) and of French programming (40 percent) that exceed the requirements of the Broadcast Directive. Moreover, these quotas apply to both the 24 hour day and prime time slots, and the definition of prime time differs from network to network. The prime time restrictions pose a significant barrier to U.S. programs in the French market. In addition, the United States continues to be concerned that radio broadcast quotas that have been in effect since 1996 (specifying that 40 percent of songs on almost all French private and public radio stations must be Francophone) limit broadcasts of American music.

In addition to the broadcasting quotas, cinemas must reserve 5 weeks per quarter for the exhibition of French feature films, or 4 weeks per quarter for theaters that include a French short-subject film during 6 weeks of the preceding quarter. Operators of multiplexes may not screen any one film with more than two prints, or through interlocking, in such a way as to account for more than 30 percent of the multiplex's weekly shows. Theatrically released feature films are not allowed to advertise on television.

Italy: Legislation approved in 1998 that made Italy's TV broadcast quota stricter than the EU Broadcast Directive remains in effect. The legislation makes 51 percent European content mandatory during prime time and excludes talk shows from the programming that may be counted toward fulfilling the quota. A 1998 regulation requires all multiplex movie theaters of more than 1,300 seats to reserve 15 percent to 20 percent of their seats, distributed over no fewer than three screens, for the showing of EU films. In May 2004, Italy enacted controversial media reform through the "Gasparri Law," under which the media/communications market is considered one sector. Under this law, no single operator may receive more than 20 percent of the sector's total revenues. In addition, the law provides for the gradual privatization of RAI, the state-owned radio and television broadcasting conglomerate.

Spain: For every 3 days that a film from a non-EU country is screened – in its original language or dubbed into one of Spain's languages – one EU film must be shown. This ratio is reduced to 4 to 1 if the cinema screens a film in an official language of Spain and keeps showing the film during all sessions of the day in that language.

Postal and other Delivery Services

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

Member State Measures

Belgium: While the Belgian Post has taken some modest steps in recent years to liberalize, industry competitors continue to express concerns about market access. The Belgian postal regulator, BIPT, appears to lack a mandate to ensure competition and to prevent abuse of the dominant position of the historic postal operator, and it continues to define postal services more broadly than does current EU legislation. A January 2006 law introduced a new licensing regime as well as a compensation fund for universal service. The licensing regime would provide revenue to the Belgian Post if liberalization

proved unprofitable due to its universal service obligation. Under the current legal framework, private express delivery operators appear to be covered by the licensing regime as well as by the obligation to contribute to a compensation fund for universal postal service. Belgian and foreign express delivery operators continue to argue that they should be excluded from the scope of the universal service obligation because their services are clearly distinct from conventional postal services by virtue of their value added characteristics.

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

Professional Services

Professions are licensed at the Member State level. Member states maintain nationality and other country level requirements that impede professional mobility or market access by foreign service providers.

Legal Services:

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

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

Czech Republic: U.S.-educated lawyers may register with the Czech Bar and take an equivalency exam, but they are limited to practicing home country (U.S.) law and international law. To represent clients in Czech courts, U.S. lawyers must first undergo a 3 year legal traineeship and pass the Czech bar exam. U.S. firms are allowed to cooperate with local firms and lend them their name; as a result, firms that operate in the country do so as independent Czech branches. These firms may employ U.S. attorneys that are attached to the staffs as "advisors."

Finland: Citizens of countries outside the European Economic Area (EEA) can practice domestic and international law and represent clients in court, but they are not entitled to the title of Asianajaja (Attorney at Law). Only a Finn or an EEA citizen who meets certain requirements may be accepted as an Asianajaja. In addition to conferring prestige, the Asianajaja designation helps in the solicitation of clients, because Asianajaja may be held accountable for their actions by the Board of the Bar Association and by the Chancellor of Justice, while other lawyers and legal advisers are not subject to such oversight.

France: New law firms entering the French legal services market must apply for a license from the French Bar. In practice, many U.S. firms register with the French authorities as a branch of an existing EU-registered partnership.

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

Ireland: In general, lawyers holding degrees from non-Irish law schools who wish to practice Irish law and appear before Irish courts must either pass transfer examinations or retrain as lawyers under the direction of the Law Society of Ireland. Only lawyers who have either been admitted to the Bar of England, Wales, or Northern Ireland; practiced as an attorney in New York, California, Pennsylvania (with 5 years experience required in Pennsylvania), or New Zealand; or admitted as lawyers in either an EU or EFTA Member State are entitled to take the transfer examination.

Italy: In 2001, Italy passed a law implementing EU Directive 98/5 on EU lawyers’ freedom to establish themselves EU-wide. The law enabled Italian lawyers to practice jointly, including with EU lawyers, through a limited liability partnership or through the Italian branch of a partnership formed in another EU Member State, as long as the limited liability partnership was composed exclusively of Italian and EU lawyers. U.S. lawyers working in Italy are usually members of international partnerships, related to their parent companies (U.S. law firms), and are not licensed to practice Italian law.

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

Accounting and Auditing Services:

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

Architectural Services:

Austria: Only citizens from EU and EEA Member States are eligible to obtain a license to provide independent architectural services in Austria. This restriction does not appear to be reflected in the European Communities’ Schedule of Specific Commitments under the GATS.

Financial Services:

Poland: Foreign service providers have requested that Poland treat independent legal persons as a single taxable person (*i.e.*, VAT grouping) as allowed by the EU VAT Directive. VAT grouping is already employed by the United Kingdom, the Netherlands, Ireland, Germany, Austria, Denmark, Finland, Sweden, Romania, Belgium, and Hungary. Spain and the Czech Republic also will be introducing VAT

grouping soon. VAT grouping would allow financial service providers to recover VAT charges they incur when making intracompany payments for supplies, including labor costs.

Telecommunications Market Access

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

In November 2007, the European Commission issued a major package of proposed revisions to the existing regulatory framework for electronic communications, following a review which began in December 2005. Key proposals included the creation of an EU-wide regulatory authority, explicit affirmation of functional separation of provider networks and services divisions as a National Regulatory Authority (NRA) remedy, a reduction in the number of markets subject to *ex-ante* regulation, reform of spectrum management, strengthening of consumer rights and data protection, and the extension of Commission veto powers over NRA remedies. The proposals generated immediate controversy, however, with a number of Member States and members of Parliament opposed to the creation of an EU-wide authority and to the functional separation plans. The proposals are under discussion in the Parliament and in the Council. While all parties seek to conclude action on the proposals by early 2009, their contentious nature may produce significant modifications before final adoption at the EU level. The Commission hopes for Member State transposition into national legislation during 2010.

Member State Measures

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

Austria: In general, Austria has moved toward a more open and competitive telecommunications market and has implemented the relevant EU directives. Implementation of the new regulatory framework is also well advanced. The incumbent, Telekom Austria, offers fixed line networks, mobile telephony, and Internet access, including broadband. It is the market leader in all of these areas, although its share of the national telephony market has dropped to about 60 percent in recent years, as new entrants have entered the market. Per capita mobile phone penetration has reached more than 110 percent, since some individuals have more than one mobile phone. Recent takeovers have led to increased concentration in the mobile phone sector, however, the number of mobile providers dropped from six in early 2006 to four operators in 2007. Consumer prices for fixed line voice telephony, mobile communication, and broadband have declined, but pricing is nontransparent. The two biggest operators account for more than 70 percent of the market.

Finland: Finland has one of the most mature mobile markets in Europe, with the overall penetration rate at 107.6 in 2006. Fierce competition and a tough regulatory environment have created a difficult market for mobile operators. Mobile call charges in Finland continue to be the cheapest in Western Europe (the 15 EU Member States, Iceland, Norway, and Switzerland), although rates in Finland rose by 12 percent between March 2006 and March 2007. The merger of Telia and Sonera in 2002 reduced the number of competitors, since Telia in consequence relinquished its Finnish mobile business, and Tele2 also withdrew in late 2005.

Finnish mobile phone operators have systematically been appealing the significant market power decisions of the Finnish NRA. Several recent cases (*e.g.*, Elisa and Sonera), appeals for which have taken as long as three to 5 years, underscore the high degree of regulatory uncertainty that operators currently face.

France: New entrants into the French telecommunications market face stiff competition and negotiating access can be problematic. A French court of appeals fined France Telecom 80 million euros in July 2006 after finding that the company had abused its position as France's dominant telecommunications operator by blocking access for rival asymmetric digital subscriber line Internet operators to its network between 1999 and 2002. The French Conseil de la Concurrence (Competition Council) had previously fined Orange, SFR, and Bouygues Telecom a total of \$640 million – the largest fine ever levied in France – for having exchanged information between 1997 and 2003 designed to deter competition.

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

In 2006, the German government amended the Telecommunications Act to boost customer protection rules, including more transparent pricing and billing, and to introduce liability limitations for service providers. Section 9a of the amended Telecommunications Act, which took effect in February 2007, authorizes the granting of “regulatory holidays” for services in new markets. DT lobbied hard for such an exemption. Competitors complain that the exemption will shield DT from regulation as it installs a lucrative fiber optic network in order to provide triple play services (digital telephone, television, and Internet services). Since DT lacks a significant competitor capable of making a similar offering, this provision risks creating a *de facto* monopoly for services that do not meet the criteria of a “new market.” The United States has raised concerns on this issue with the German government. In addition, the European Commission initiated infringement proceedings immediately after Section 9a entered into force.

One U.S. trade association representing competitive telecommunications carriers has complained that there have been long delays in obtaining access to and use of unbundled DT network elements, such as IP and ATM bitstream access. This association also reports that DT has not yet begun to deliver high capacity trunk lines and lower capacity end user links, despite a mandate from Germany's national regulatory agency to do so.

Luxembourg: In 2005, Luxembourg began revising administrative procedures to implement the EU Framework Directive to liberalize Member States' telecommunications markets and allow for fairer competition. Despite these efforts, the state owned Post and Telecommunication Company (P&T)

FOREIGN TRADE BARRIERS

continues to dominate the nation's telecommunications market. In addition, despite a 1998 court ruling opening Luxembourg's small mobile phone market to competition, the wireless communications market remains dominated by only three companies, one of which, market leading LUXGSM, is 85 percent owned by the P&T.

Poland: Poland's telecommunications market has continued to liberalize. In February 2007, Poland's Electronic Communications Office (UKE) fined Telekomunicja Polska (TPSA), the former state operator and currently Poland's largest telecommunications group, a record 339 million zloty (\$136 million) for hindering competition. TPSA, which is now owned 47.5 percent by France Telecom, has appealed the fine and pressed UKE to allow higher prices for landline subscriptions. While UKE has generally been successful in increasing competition and lowering prices, the costs of long-distance and international calls in Poland are still among the highest in the EU. Overall, Poland's telecommunications market has showed signs of maturation, including higher market penetration (approximately 120 percent for cell phones), industry consolidation, slower growth, and less room for new competitors. In provincial towns and villages, one of the few remaining unsaturated telecommunications markets in Poland, some U.S. companies have complained that requirements on general tenders are prewritten in favor of TPSA, and they are unable to compete.

Energy Market Access

Cyprus: The government of Cyprus expects the European Commission to soon conclude that Cyprus qualifies under Articles 22 and 28 of EU Directive 2003/55/EC as a developing and protected market for natural gas. This designation will likely reinforce the dominant position of the Electricity Authority of Cyprus (EAC), a semi-governmental power supplier that in many respects remains a monopoly. In collaboration with the EAC, the government has established a new Public Company for Natural Gas (PCNG), giving it a monopoly on the importation of natural gas for the 10 year to 12 year period permitted under the EU Directive. The government of Cyprus will own 51 percent of the PCNG, the EAC 39 percent, and private parties only 10 percent. The EAC earlier decided to participate in the PCNG and in the construction and operation of a land-based liquid natural gas unit (an immediate and urgent need for the Cyprus energy market) based on the presumption that the country's natural gas market would be declared an emerging one and that the PCNG would be given authority to set gas prices. The EAC's influence, through the PCNG, over natural gas prices and power distribution could adversely affect foreign power suppliers.

INVESTMENT BARRIERS

Overview

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

Under the 1993 Maastricht Treaty, free movement of capital became an EU responsibility and capital controls both among EU Member States and between EU members and third countries were lifted. A few Member State barriers remain in place, in some cases in apparent contravention of EU law. Right of establishment issues, particularly regarding third countries, are a shared competence between the EU and the Member States. The division of this shared competence varies from sector to sector based on whether

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the EU has issued regulations in a particular sector. Direct branches of non-EU financial service institutions remain subject to individual Member State authorization and regulation.

The EU requires national treatment for foreign investors in most sectors. EU law, with a few exceptions, requires that any company established under the laws of one Member State must, as a Community undertaking, receive national treatment in all Member States, regardless of the company's ultimate ownership. As discussed below, however, EU law imposes some restrictions on U.S. and other foreign investments, and other restrictions have been proposed.

Ownership Restrictions and Reciprocity Provisions

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

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

The Takeover Directive was due to be implemented by Member States by May 20, 2006. Implementation has been delayed, however. By February 2007, 17 Member States had transposed the Directive or adopted necessary framework rules. Belgium implemented the directive in April 2007, while Cyprus, the Czech Republic, Estonia, Italy, Poland, and Spain had not yet fully aligned their legislation with the Directive. The Netherlands adopted its implementing law in October 2007. Other Member states have tabled draft legislation.

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

On September 19, 2007, the European Commission released two draft directives and three draft regulations designed to promote internal energy market integration and enhance EU energy security. Specifically, the proposals would separate energy production and supply from transmission through the forced unbundling of major EU energy firms; require that energy companies from third countries seeking a significant interest in EU energy networks comply with the same requirements (*e.g.*, vertically integrated firms will not be allowed to invest in EU grids); and prevent third country firms from majority

ownership or control of transmission lines for gas and electricity networks within the EU. If this package were to be adopted in the form in which it was proposed, it would be the first time that EU-wide restrictions had been imposed upon inward investment by companies from non-EU countries. A proposed savings clause would allow countries with preexisting international agreements with the EU (*e.g.*, WTO or partnership and cooperation agreements) to maintain existing investments in the EU. The draft proposals have proved controversial, and the unbundling clauses have generated opposition from key Member States, including France and Germany. The European Parliament and Council are considering the proposals and may act on them during 2008.

EU institutions and individual Member States separately are reviewing growing investments by sovereign wealth funds (SWFs) and other assets owned or controlled by governments. The Commission has begun considering the establishment of an investment review process that would focus on specific, “strategic” sectors, such as energy, but no formal proposals have yet been made. As of early 2008, the Commission had not yet determined whether EU-level action with respect to SWFs was either necessary or appropriate.

The United States and EU formally established a bilateral Investment Dialogue in November 2007. The dialogue will initially focus on three areas of work: cooperation on promoting open investment climates; discussion of laws, policies, and practices that could adversely impact investment flows in the EU and the United States; and reviewing recent trends in global investment flows and exploring joint effort to reduce global investment barriers.

Member State Measures

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

Bulgaria: Local companies in which foreign partners have controlling interests must obtain licenses to engage in certain activities, including production and export of arms/ammunition; banking and insurance; exploration, development, and exploitation of natural resources; and acquisition of property in certain geographic areas. On February 23, 2007, the United States and Bulgaria signed the Treaty on Avoidance of Double Taxation, but a protocol to the agreement must be negotiated before the package can be submitted to the U.S. Senate for advice and consent and ratified by the Bulgarian Parliament.

Cyprus: Cypriot law imposes significant restrictions on the foreign ownership of real property. Persons not ordinarily resident in Cyprus (whether of EU or non-EU origin) may purchase only a single piece of real estate (not to exceed three donum, or roughly one acre) for private use (normally a holiday home). Exceptions can be made for projects requiring larger plots of land (*i.e.*, beyond that necessary for a private residence), but they are difficult to obtain and are rarely granted. Upon its accession to the EU, Cyprus received a 5 year derogation from the EU *acquis communautaire* on this issue, and the restriction on property acquisition for EU citizens not normally resident in Cyprus will expire in May 2009. The restrictions will continue to apply, however, to non-EU residents, including U.S. nationals.

Tertiary education investment restrictions: Cypriot legislation on foreign investment in tertiary education distinguishes between colleges and universities. Investment in universities, defined as institutions with no fewer than 1,000 students enrolled in a sufficiently diverse range of classes and curricula, is encouraged. Foreign (including non-EU) investors can set up or acquire a university in Cyprus by simply registering a

company on the island and following a set of nondiscriminatory criteria. By contrast, non-EU investment in colleges is discouraged. Non-EU investors can set up or acquire a local college by registering a company in Cyprus or elsewhere in the EU provided that the company has EU-origin shareholders and directors. As a consequence, non-EU investors are not allowed to participate in the administration of local colleges, whether as directors or shareholders.

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

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

Professional recognition of real estate agents: The current law licensing real estate agents to practice in Cyprus, last amended in 2007, creates significant barriers to entry into the profession. The law recognizes only licensed individuals (not companies) to act as authorized real estate entities and licenses are only granted to individuals who have served as apprentices to licensed individuals for up to 5 years (recently amended from 8 years). The amended law also fails to address the operation of franchises. Existing real estate agents are trying to use the law to restrict new entrants in the local real estate market. To obtain a license to practice real estate in Cyprus, an individual must seek approval from the Licensing Board, which is made up of seven members, four of whom are real estate agents.

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

France: There are generally few screening or prior approval requirements for non-EU foreign investments in France. As part of a November 2004 law that streamlined the French Monetary and Financial Code, however, the State Council was directed to define a number of sensitive sectors in which prior approval would be required before acquisition of a controlling equity stake. A December 2005 government Decree (Decree 2005-1739 of 30 December 2005) lists 11 business sectors in which the French Ministry of Economy, Finance, and Industry has the right to monitor and restrict foreign ownership through a system of “prior authorization.” In addition, the government implemented the EU Takeover Directive with a March 31, 2006 bill (“*loi du 31 mars 2006 relative aux offres publiques d’acquisition*”) that also includes specific measures related to hostile takeovers. Implementing legislation allows companies to resort to a U.S.-style “poison pill” takeover defense, including granting existing shareholders and employees the right to increase their leverage by buying more shares through stock purchase warrants at a discount in case of an unwanted takeover. The government has also asked the state-owned financial institution, *Caisse de Depots et Consignations*, France’s largest institutional investor, to work as a domestic buffer against foreign takeovers by increasing its stake in French companies. The French government has thus demonstrated an inclination in certain sectors to intervene in potential transnational mergers and to otherwise signal an interest in defending French private “champions” from foreign takeover attempts. The Finance Ministry becomes involved in mergers and acquisitions when the government uses its “golden share” in state owned firms to protect national interests.

FOREIGN TRADE BARRIERS

Germany: Germany's 2002 takeover law was marginally changed by the implementation of the EU Takeover Directive. Germany made use of its "opt-out" right and retained measures that allow firms to ward off hostile takeover bids, first at the shareholder level, where management may be given authority at annual shareholder meetings to take necessary measures to guard against unwanted takeover interest; and, second, at the management level, where the managing board may take protective measures upon approval by the supervisory board, bypassing the need for shareholder approval altogether. The EU directive offers companies the choice either to abide by the German law or to "opt-in" to the EU regulation. Companies using the "opt-in" may limit their waiver of Germany's protective measures to companies that also have no measures in place to fend off hostile takeover bids.

Germany passed legislation in July 2004 requiring notification by foreign entities of investments expected to exceed 25 percent of the equity of German firms engaged in the production of armaments and cryptology technology used for classified government communications. Following an inter-ministerial review, the government may veto such sales within 1 month of receipt of a notification. The German government expanded the scope of the law in 2005 to include tank and tracked vehicle engines.

The Ministry of Economics is drafting a legislative proposal for a national security based review mechanism for foreign investments. Parliament may consider legislation enacting the proposal in early 2008.

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

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

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

Lithuania: Some foreign investors, including U.S. citizens, report difficulties in obtaining and renewing residency permits. U.S. citizens can stay in Lithuania no more than 90 days without a visa (and no more than 180 days total per calendar year). Those who stay longer face fines and deportation. The current residency permit process is not user-friendly. In principle, Lithuanian embassies abroad are able to initiate the application process for residency permits. In practice, U.S. citizens are only able to begin the residency permit process upon arrival in Lithuania. Decisions by the Migration Office regarding the issuance of residency permits may take up to 6 months.

FOREIGN TRADE BARRIERS

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

Romania: Uncertainty and lack of predictability in Romania's legal and regulatory system pose a continuing impediment to foreign investors. Tax laws change frequently. Tort cases often require lengthy, expensive procedures, and judges' rulings often do not follow precedent.

ELECTRONIC COMMERCE

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

Data Privacy

The EU Data Protection Directive (1995/46) allows the transmission of EU data to third countries only if those countries are deemed by the European Commission to provide an adequate level of protection by reason of their domestic law or of the international commitments they have entered into (Article 25(6)). U.S. companies can only receive or transfer employee and customer information from the EU by using one of the exceptions to the Directive's adequacy requirements or by demonstrating they can provide adequate protection for the transferred data. These requirements can be burdensome for many U.S. industries that rely on data exchange across the Atlantic.

Currently, the Commission has recognized Switzerland, Canada, Argentina, Guernsey, Isle of Man, the U.S. Department of Commerce's Safe Harbor Privacy Principles, and the transfer of Air Passenger Name Record to the U.S. Bureau of Customs and Border Protection as providing adequate protection. The U.S. Safe Harbor framework provides U.S. companies with a simple, streamlined means of complying with the adequacy requirement. The agreement allows U.S. companies that commit to a series of data protection principles (based on the Directive) and that publicly state their commitment by "self-certifying" on a dedicated website (<http://www.export.gov/safeharbor>), to continue to receive and transfer personal data from the EU. Signing up to the Safe Harbor is voluntary, but the rules are binding on signatories. A failure to fulfill the commitments of the Safe Harbor framework is actionable either as an unfair or deceptive practice under Section V of the FTC Act or, for air carriers and ticket agents, under a concurrent Department of Transportation statute.

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

Brussels Regulation

On December 22, 2000, the EU adopted the so-called Brussels Regulation which allows consumers to sue companies in the court of their country of residence, "when the website is directed to [his/her] Member State or to several countries, including that Member State." Industry has complained that the practical effect of this regulation is that companies doing business on the Internet in the EU risk being sued in every EU Member State, as opposed to being subject to the jurisprudence of their country of origin.

FOREIGN TRADE BARRIERS

OTHER BARRIERS

Healthcare

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

In the health insurance market, Ireland has espoused "risk equalization," whereby private insurers are required by law to compensate the Voluntary Health Insurance (VHI) Board, a quasigovernmental body, for the additional risk that it accepts in offering community (or equal) rating for policy holders of different ages and medical profiles. Compensation is to be paid once a certain threshold based on the number of insured is reached, but the Irish government has not clarified the formula for determining the threshold. This ambiguity has been a factor in discouraging U.S. insurance firms from entering the Irish market.

GHANA

TRADE SUMMARY

The U.S. goods trade surplus with Ghana was \$217 million in 2007, an increase of \$120 million from \$97 million in 2006. U.S. goods exports in 2007 were \$416 million, up 43.7 percent from the previous year. Corresponding U.S. imports from Ghana were \$199 million, up 3.4 percent. Ghana is currently the 95th largest export market for U.S. goods.

The stock of U.S. foreign direct investment in Ghana was \$237 million in 2006 (latest data available), down from \$239 million in 2005.

IMPORT POLICIES

Tariffs

Ghana is a Member of the World Trade Organization (WTO) and the Economic Community of West African States (ECOWAS). Along with other ECOWAS countries, Ghana adopted a common external tariff (CET) in 2005. The ECOWAS CET requires that members simplify and harmonize *ad valorem* tariff rates into four bands: zero duty on social goods (*e.g.*, medicine, publications); 5 percent on imported raw materials; 10 percent on intermediate goods; and 20 percent on finished goods. Currently, Ghana maintains 190 exceptions to the CET. Tariff rates for the items covered under these exceptions are within the 0 percent to 20 percent range, but will require some increase or decrease to align with the CET. Ghana is currently in a transition period and is negotiating the exceptions with ECOWAS. The deadline for agreement on a comprehensive ECOWAS CET was January 1, 2008, but this deadline was not met.

Nontariff Measures

Importers are confronted by a variety of fees and charges in addition to tariffs. Ghana levies a 12.5 percent value added tax (VAT) plus a 2.5 percent National Health Insurance Levy on the duty inclusive value of all imports and locally produced goods, with a few selected exemptions. In addition, Ghana imposes a 0.5 percent ECOWAS surcharge on all goods originating from non-ECOWAS countries and charges 0.4 percent on the free on board value of goods (including VAT) for the use of the automated clearing system, the Ghana Community Network. Further, under the Export Development and Investment Fund Act, Ghana imposes a 0.5 percent duty on all nonpetroleum products imported in commercial quantities. Ghana also applies a 1 percent processing fee on all duty free imports.

All imports are subject to destination inspection and an inspection fee of 1 percent of cost, insurance and freight (CIF). Importers have indicated that they would prefer a flat fee on each transaction. The destination inspection services are currently provided by four private companies licensed by the Ghanaian government. Importers are lobbying the Ghanaian government to shift the provision of destination services from the four licensed companies to Ghana Customs because of the cost and delays incurred as a result of having outside providers.

In July 2007, an *ad valorem* excise tax on locally produced and imported malt drinks, water, beer, and tobacco products was replaced with specific rates. This is the outcome of a study sponsored

FOREIGN TRADE BARRIERS

by Coca-Cola for the Ghanaian government. The previous *ad valorem* excise tax was between 5 percent and 140 percent for these products. Specific rates are now charged on a liter basis depending on the level of alcohol content. Carbonated soft drinks attract GHC 0.04 (about \$0.04) per liter, while malt drinks attract GHC 0.05 per liter excise tax. Tobacco products have a range of GHC 0.01 to GHC 0.03 per stick depending on the quality. An examination fee of 1 percent is applied to imported vehicles. Imported used vehicles that are more than 10 years old incur an additional tax ranging from 5 percent to 50 percent of the CIF value. Ghana Customs maintains a price list of vehicles that it uses to determine the value of used vehicles for tax purposes. There are complaints that this system is nontransparent as the price list is not publicly available.

All communications equipment requires a clearance letter from the National Communications Authority.

Each year, between May and October, there is a temporary ban on the importation of fish, except canned fish, to protect local fishermen during their peak season. Ghana continues to ban imports of U.S. bone-in beef due to concerns about Bovine Spongiform Encephalopathy (BSE). Certificates are required for agricultural, food, cosmetics, and pharmaceutical imports. The procedures are cumbersome. Permits are required for poultry and poultry product imports. The permit process is time consuming, and at the time the permit is issued, a nonstandardized quantity limit is imposed. Ghana prohibits the importation of meat with a fat content by weight greater than 25 percent for beef, 42 percent for pork, 15 percent for poultry, and 35 percent for mutton. Imported turkeys must have their oil glands removed. It also restricts the importation of condensed or evaporated milk with less than 8 percent milk fat by weight, and dried milk or milk powder containing less than 26 percent by weight of milk fat, with the exception of imported skim milk in containers. Effective November 1, 2007, the Ghanaian government imposed a temporary ban on the import of tomato paste and concentrates, citing “unfair trade practices.” Importers are challenging the ruling in court.

STANDARDS, TESTING, LABELING, AND CERTIFICATION

Ghana has issued its own standards for most products under the auspices of its testing authority, the Ghana Standards Board (GSB). The GSB has promulgated more than 250 Ghanaian standards and adopted more than 3,057 international standards for certification purposes. The Food and Drugs Board is responsible for enforcing standards for food, drugs, cosmetics, and health items.

Under Ghana’s “Conformity Assessment Program,” some imports are classified as “high risk goods” (HRG) that must be inspected by GSB officials at the port to ensure they meet Ghanaian standards. The GSB has classified the HRG into 17 broad groups, including food products, electrical appliances and used goods. The classification of HRG is vague and broad, and its scope has raised numerous questions. For example, the category of “alcoholic and nonalcoholic products” could presumably include beverages, pharmaceuticals, and industrial products under the same classification. The process requires prior registration with GSB as an importer of HRG and GSB approval to import HRG. The importer must submit to GSB a sample of the HRG, accompanied by a certificate of analysis or a certificate of conformance from accredited laboratories in the country of export. Most often, the GSB officials conduct a physical examination and check labeling and marking requirements and ensure that goods are released within 48 hours. Currently, the fee for registering each HRG is GHC 100 (about \$93.50). There is also a testing fee in addition to the registration fee. The fee is not fixed but based on the

number and kinds of parameters tested. The GSB publishes most of its fees on its website. U.S. companies, however, have expressed concern that the standards that the program utilizes are unknown and that independent third party certifications and marks may not be recognized, resulting in costly and redundant testing.

Ghana does not allow cholesterol-free labeling on the grounds that all plant-origin oils are free of cholesterol. Coconut oil, however, contains cholesterol. Ghana also requires that all food products carry expiration dates or shelf life and requires that the expiry date be at least half the shelf life at the time of inspection. Goods that do not have half of their shelf life remaining are seized at the port of entry and destroyed. This requirement appears inconsistent with the Codex Alimentarius Commission General Standard for Labeling of Prepackaged Foods.

Ghana currently has no specific law governing agricultural biotechnology. An enabling regulatory framework for biotechnology is in the early stages of consideration. The draft National Biosafety Framework for Ghana was completed in 2004. The President's Cabinet is currently reviewing a draft Biosafety Bill that establishes the National Biosafety Authority, which will be the administrative body responsible for all issues related to biotechnology in Ghana.

The draft Biosafety Bill provides that all biotechnology products will require a permit, which could be disruptive to trade. The bill includes provisions that would govern procedures for contained work and field trials on biotechnology products, release of these products into the environment, and importation, exportation, and transit of agricultural biotechnology products.

GOVERNMENT PROCUREMENT

Ghana is not a signatory to the WTO Agreement on Government Procurement. In 2003, Parliament enacted a public procurement law that codified guidelines to enhance transparency and efficiency in the procurement process and assigned responsibility for administration of procurement to a central body. In 2004, the government inaugurated the Public Procurement Board. Individual government entities have formed tender committees and tender review boards to conduct their own procurement. Large public procurements are made by open tender and foreign firms are allowed to participate. A draft guideline being applied to current tenders gives a margin of preference of 7.5 percent to 20 percent to domestic suppliers of goods and services in international competitive bidding. Notwithstanding the procurement law, companies cannot expect complete transparency in locally funded contracts. Allegations of corruption in government procurement are fairly common.

EXPORT SUBSIDIES

Agricultural export subsidies were eliminated in the mid-1980s. However, the government uses preferential credits and tax incentives to promote exports. The Export Development Investment Fund provides financing on preferential terms using a 12 percent interest rate, which is below market rates. The Export Processing Zone (EPZ) Law leaves corporate profits untaxed for the first 10 years of business operation in an EPZ, after which the tax rate climbs to 8 percent (the same as for non-EPZ companies). Seventy percent of production in the EPZ zones must be exported. The current corporate tax rate for nonexporting companies is 25 percent.

FOREIGN TRADE BARRIERS

INTELLECTUAL PROPERTY RIGHTS (IPR) PROTECTION

Ghana is a party to the Berne Convention for the Protection of Literary and Artistic Works, the Paris Convention for the Protection of Industrial Property, the Patent Cooperation Treaty, the World Intellectual Property Organization (WIPO) Copyright Treaty and the African Regional Industrial Property Organization. Ghana has signed the WIPO Performances and Phonograms Treaty and the Patent Law Treaty. Since December 2003, Parliament has passed six bills designed to bring Ghana into compliance with the WTO TRIPS Agreement. The new laws address copyright, trademarks, patents, layout-designs (topographies) of integrated circuits, geographical indications, and industrial designs. Regulations to define the procedures for IPR protection and enforcement have not been promulgated.

Piracy of copyrighted works is known to take place, although there is no reliable information on the scale of this activity. Holders of intellectual property rights have access to local courts for redress of grievances, although few trademark, patent, and copyright infringement cases have been filed in Ghana in recent years. Government initiated enforcement remains relatively rare but the Copyright Office, which is under the Attorney General's Office, has initiated several raids on pirated works, and the customs service has collaborated with some companies to check import shipments for specific counterfeit products.

SERVICES BARRIERS

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

Ghana allows foreign telecommunications firms to provide basic services, but requires that these services be provided through joint ventures with Ghanaian nationals. The National Communications Authority (NCA) has yet to become an effective mechanism to resolve complaints alleging that Ghana Telecom, the state owned national telecommunications operator, has engaged in anticompetitive practices.

Ghana allows up to 60 percent foreign ownership in insurance firms. This cap does not apply to auxiliary insurance services, in which 100 percent foreign ownership is permitted. Ghana allows foreign companies to provide a full range of insurance services, as long as they are registered as companies in Ghana.

Foreigners may participate in banking and other noninsurance financial services but there are some conditions relating to nonresident foreigners. Shares held by a single nonresident foreigner and the total number of shares held by all nonresident foreigners in any company listed on the Ghana Stock Exchange may not exceed 10 percent and 74 percent, respectively.

INVESTMENT BARRIERS

Foreign investment projects must be registered with the Ghana Investment Promotion Center (GIPC), a process that is supposed to take no more than five working days but often takes longer. In order to improve its service, the GIPC in 2007, introduced an online registration system http://www.gipc.org.gh/forms_page.aspx.

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The following minimum equity requirements apply, in the form of either cash or its equivalent in capital goods, for non-Ghanaians who want to invest in Ghana: \$10,000 for joint ventures with a Ghanaian; \$50,000 for enterprises wholly owned by a non-Ghanaian; and \$300,000 for trading companies (firms that buy/sell finished goods) either wholly or partly owned by non-Ghanaians. The GIPC has proposed increasing the minimum equity for trading companies to \$1 million. Trading companies must also employ at least 10 Ghanaians. Work visa quotas for businesses are in effect.

ELECTRONIC COMMERCE

Barriers to electronic commerce are mainly related to inadequate telecommunications and financial infrastructure. The legal framework for electronic transactions has been drafted but has yet to be enacted. The payment system in Ghana is largely cash based. The government plans to establish a national switch that will link banks and financial institutions throughout Ghana and ease the way for expansion of point of sale and other electronic payments tools by March 2008.

OTHER BARRIERS

There are frequent problems related to the complex land tenure system, and establishing clear title can be difficult. Non-Ghanaians can have access to land only on a leasehold basis.

Frequent backlogs of cargo at the port hurt the business climate. The Customs Service phased in an automated customs declaration system to facilitate customs clearance. Although the new system has cut down the number of days for clearing goods through the ports, the desired impact has yet to be realized because complementary services from government agencies, banks, destination inspection companies, and security services have not been established.

The residual effects of a highly regulated economy and lack of transparency in certain government operations create an added element of risk for potential investors. Entrenched local interests sometimes have the ability to derail or delay new entrants, and securing government approvals may depend upon an applicant's local contacts. The political leanings of the Ghanaian partners of foreign investors are often subject to government scrutiny and corruption remains a challenge.

FOREIGN TRADE BARRIERS

GUATEMALA

TRADE SUMMARY

The U.S. goods trade surplus with Guatemala was \$1.0 billion in 2007, an increase of \$635 million from \$409 million in 2006. U.S. goods exports in 2007 were \$4.1 billion, up 16.1 percent from the previous year. U.S. imports from Guatemala were \$3.0 billion, down 2.3 percent over the corresponding period. Guatemala is currently the 41st largest export market for U.S. goods.

The stock of U.S. foreign direct investment in Guatemala was \$347 million in 2006 (latest data available), up from \$303 million in 2005.

IMPORT POLICIES

Free Trade Agreement

On August 5, 2004, the United States signed the Dominican Republic-United States-Central America Free Trade Agreement (CAFTA-DR or Agreement) with five Central American countries (Costa Rica, El Salvador, Guatemala, Honduras, and Nicaragua) and the Dominican Republic.

During 2006, the Agreement entered into force for the United States, El Salvador, Guatemala, Honduras, and Nicaragua. The CAFTA-DR entered into force for the Dominican Republic on March 1, 2007. Costa Rica approved the CAFTA-DR through a national referendum on October 7, 2007, but the Agreement has not entered into force for Costa Rica as it has not yet completed the process of adopting implementing legislation and regulations.

In 2007, the Parties agreed to amend several textile related provisions of the CAFTA-DR, including, in particular, changing the rules of origin to require the use of U.S. or regional pocket bag fabric in originating apparel. The textile amendments have not entered into force.

Under the Agreement, the Parties agree to remove barriers to trade and investment in the region, which will strengthen regional economic integration. The CAFTA-DR also includes important disciplines relating to: customs administration and trade facilitation, technical barriers to trade, government procurement, investment, telecommunications, electronic commerce, intellectual property rights, transparency, and labor and environmental protection.

Tariffs

As a member of the Central American Common Market (CACM), Guatemala agreed in 1995 to reduce its common external tariff to a maximum of 15 percent.

Under the CAFTA-DR, about 80 percent of U.S. industrial and consumer goods now enter Guatemala duty free, with the remaining tariffs phased out over 10 years, starting in 2006. Nearly all textile and apparel goods that meet the Agreement's rules of origin now enter duty free and quota free, promoting new opportunities for U.S. and regional fiber, yarn, fabric, and apparel manufacturing companies.

FOREIGN TRADE BARRIERS

Under the CAFTA-DR, more than half of U.S. agricultural exports now enter Guatemala duty free. Guatemala will eliminate its remaining tariffs on nearly all agricultural products within 15 years (18 years for rice and chicken leg quarters and 20 years for dairy products). For certain products, tariff-rate quotas (TRQs) will permit some immediate duty free access for specified quantities during the tariff phase-out period, with the duty free amount expanding during that period. Guatemala will liberalize trade in white corn through a gradual expansion of a TRQ which will provide for an aggregate increase of 35 percent by the end of 2025. Guatemala's imports of corn consist mainly of yellow corn, over 90 percent of which comes from the United States.

Guatemala and the other Parties agreed to improve transparency and efficiency in administering customs procedures, including the CAFTA-DR rules of origin. Parties must also provide consistent and fair application of these procedures, and all the CAFTA-DR countries must share information to combat illegal transshipment of goods. The Foreign Trade Administration Office at the Ministry of Economy administers the CAFTA-DR TRQs, including compliance with timing, volumes, and procedures. Such information is publicly available on the Ministry's website.

STANDARDS, TESTING, LABELING, AND CERTIFICATION

During the CAFTA-DR negotiations, the governments created an intergovernmental working group to discuss SPS barriers to agricultural trade. The objective was to use the impetus of the market access negotiations to seek changes to the Central American countries' SPS regimes. Through the work of this group, Guatemala has committed to resolving specific measures that may affect U.S. exports to Guatemala. In addition, in connection with the CAFTA-DR, Guatemala agreed to recognize the equivalence of the U.S. food safety and inspection systems for meat and poultry, thereby eliminating the need for plant-by-plant inspections. Guatemala was the first country in the world to re-open its market to U.S. live animals after the 2002 discovery of a Bovine Spongiform Encephalopathy infected cow in the United States. Guatemala is now introducing U.S.-bred livestock to improve its meat and dairy industries. However, Guatemala continues to have restrictions on importation of those U.S. live cattle over 30 months of age.

Guatemala and the other Central American countries are in the process of developing common import standards for several products, including distilled spirits, which may facilitate trade

GOVERNMENT PROCUREMENT

Guatemala's Government Procurement Law requires most government purchases over 900,000 quetzals (approximately \$117,800) to be submitted for public competitive bidding. Foreign suppliers must submit their bids through locally registered representatives, a process that can place foreign bidders at a competitive disadvantage.

Since 2004, Guatemalan government entities have been required to use Guatecompras, an Internet based electronic procurement system; this has improved transparency in the government procurement process. However, some government institutions use other systems of public procurement, such as when they receive funding from an international organization or NGO and use those institutions' procurement and auditing systems.

FOREIGN TRADE BARRIERS

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

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

EXPORT SUBSIDIES

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

INTELLECTUAL PROPERTY RIGHTS (IPR) PROTECTION

In May 2006, Guatemala strengthened its legal framework for the protection of IPR with the passage of laws in preparation for the entry into force of the CAFTA-DR. The CAFTA-DR provides for improved standards for the protection and enforcement of a broad range of IPR, which are consistent with U.S. and international standards of protection and enforcement as well as with emerging international standards. Such improvements include state-of-the-art protections for digital copyrighted products such as U.S. software, music, text and videos; stronger protection for U.S. patents and trademarks; and further deterrence of piracy and counterfeiting. However, enforcement of these provisions has yet to become fully effective and U.S. copyrights continue to be infringed, for example for business software. The CAFTA-DR also requires Guatemala to protect undisclosed test data submitted for the purpose of product marketing approval of pharmaceutical and agricultural chemical products against disclosure and unfair commercial use. In May 2007, Guatemala suspended consideration of a rule that would conflict with these provisions.

SERVICES BARRIERS

Some professional services may only be supplied by professionals with locally recognized academic credentials. Public notaries must be Guatemalan nationals. Foreign enterprises may provide licensed professional services in Guatemala through a contract or other relationship with an enterprise established in Guatemala. Under the CAFTA-DR, U.S. insurance companies may establish wholly owned subsidiaries and joint ventures, and will be able to establish as a branch in 2009. The Guatemalan Congress is considering an insurance law that would strengthen supervision of the insurance sector and allow foreign insurance companies to open branches in Guatemala in 2008, a year earlier than required by the CAFTA-DR. U.S. insurance suppliers may provide cross-border insurance in areas such as marine, aviation and transportation, goods in international transit and the brokerage for these products, and reinsurance. Services auxiliary to

FOREIGN TRADE BARRIERS

insurance such as claims settlement, actuarial, risk assessment, and consulting also may be provided on a cross-border basis.

Guatemala has agreed to ensure reasonable and nondiscriminatory access to essential telecommunications facilities and to ensure that major suppliers provide interconnection at cost oriented rates. U.S. companies have raised allegations of anticompetitive behavior, including unilateral changes of interconnection rates and suspension of service by the country's major fixed line telephone service provider, Telgua, a subsidiary of America Movil (owned by Telmex of Mexico). In one case involving a U.S. owned company, Guatemala's courts ordered Telgua to reconnect circuits that it had unilaterally disconnected, but Telgua ignored the court order and the Guatemala telecommunications regulator – the Superintendency of Communications – has not forced Telgua to comply with the court order. The license issued to another U.S. owned telecommunications operator in Guatemala is being challenged by Telgua. USTR continues to work with the Guatemalan government to guarantee compliance with its obligations to ensure access to the major supplier's network.

INVESTMENT BARRIERS

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

In June 2007, a U.S. company operating in Guatemala filed a claim under Chapter 10 of the CAFTA-DR against the government of Guatemala with the International Centre for Settlement of Investment Disputes (ICSID). The claimant alleges the government of Guatemala has indirectly expropriated the company's assets by negating a contract and has requested \$65 million in compensation and damages from the Guatemalan Government. The claim is pending before the ICSID.

ELECTRONIC COMMERCE

The CAFTA-DR includes provisions on electronic commerce that reflect its importance to global trade. Under the CAFTA-DR, Guatemala has committed to provide nondiscriminatory treatment to U.S. digital products and not to impose customs duties on digital products transmitted electronically. Guatemala has proposed legislation that would: provide legal recognition to communications and contracts that are executed electronically; permit electronic communications to be accepted as evidence in all administrative, legal, and private actions; and allow for the use of electronic signatures. The legislation is pending in the Guatemalan Congress.

FOREIGN TRADE BARRIERS

HONDURAS

TRADE SUMMARY

The U.S. goods trade balance with Honduras went from a trade deficit of \$30 million in 2006 to a trade surplus of \$551 million in 2007. U.S. goods exports in 2007 were \$4.5 billion, up 21 percent from the previous year. U.S. imports from Honduras were \$3.9 billion, up 5.2 percent over the corresponding period. Honduras is currently the 38th largest export market for U.S. goods.

The stock of U.S. foreign direct investment (FDI) in Honduras was \$517 million in 2006 (latest data available), up from \$367 million in 2005. U.S. FDI in Honduras is concentrated largely in the manufacturing sector.

IMPORT POLICIES

Free Trade Agreement

On August 5, 2004, the United States signed the Dominican Republic-United States-Central America Free Trade Agreement (CAFTA-DR or Agreement) with five Central American countries (Costa Rica, El Salvador, Guatemala, Honduras, and Nicaragua) and the Dominican Republic.

During 2006, the Agreement entered into force for the United States, El Salvador, Guatemala, Honduras, and Nicaragua. The CAFTA-DR entered into force for the Dominican Republic on March 1, 2007. Costa Rica approved the CAFTA-DR through a national referendum on October 7, 2007, but the Agreement has not entered into force for Costa Rica as it has not yet completed the process of adopting implementing legislation and regulations.

In 2007, the Parties agreed to amend several textile related provisions of the CAFTA-DR, including, in particular, changing the rules of origin to require the use of U.S. or regional pocket bag fabric in originating apparel. The textile amendments have not entered into force.

Under the Agreement, the Parties agree to remove barriers to trade and investment in the region, which will strengthen regional economic integration. The CAFTA-DR also includes important disciplines relating to: customs administration and trade facilitation, technical barriers to trade, government procurement, investment, telecommunications, electronic commerce, intellectual property rights, transparency, and labor and environmental protection.

Tariffs

As a member of the Central American Common Market, Honduras agreed in 1995 to reduce its common external tariff to a maximum of 15 percent.

Under the CAFTA-DR, about 80 percent of U.S. industrial and consumer goods now enter Honduras duty free, with the remaining tariffs phased out over 10 years, starting in 2006. Nearly all textile and apparel goods that meet the Agreement's rules of origin now enter duty free and quota free, promoting new opportunities for U.S. and regional fiber, yarn, fabric, and apparel manufacturing companies.

FOREIGN TRADE BARRIERS

Under the CAFTA-DR, more than half of U.S. agricultural exports now enter Honduras duty free. Honduras will eliminate its remaining tariffs on nearly all agricultural products within 15 years (18 years for rice and chicken leg quarters and 20 years for dairy products). For certain products, tariff-rate quotas (TRQs) will permit some immediate duty free access for specified quantities during the tariff phase out period, with the duty free amount expanding during that period. Honduras will liberalize trade in white corn through expansion of a TRQ, rather than by tariff reductions.

Honduras and the other Parties have agreed to improve transparency and efficiency in administering customs procedures, including the CAFTA-DR rules of origin. Under the CAFTA-DR, Honduras committed to ensure greater procedural certainty and fairness in the administration of these procedures, and all the CAFTA-DR countries agreed to share information to combat illegal transshipment of goods. In the early months of the CAFTA-DR, a small number of U.S. exporters experienced delays in their product clearing Honduran customs, due to confusion over classification procedures. Honduras implemented the World Trade Organization (WTO) Customs Valuation Agreement in February 2000.

Nontariff Measures

The Directorio Ejecutivo de Ingresos (DEI), the Honduran customs and tax authority, has taken over verification of origin certifications from the Ministry of Industry and Trade. DEI verifies that the origin certifications from producers, exporters, or importers comply with the minimum requirements according to the CAFTA-DR and other treaties. In the past, some U.S. exporters had experienced delays due to confusion between “proveniencia” (the item was coming from the United States) and “pocendencia” (the item was made in the United States), but this problem appears to have been remedied.

STANDARDS, TESTING, LABELING, AND CERTIFICATION

All imported foodstuffs must be registered with the Sanitary Regulations Directorate (previously the Division of Food Control), after which a sanitary registration number is issued. All products (except samples used to obtain the registration number) must have this identification prior to entering the country. In addition, products cannot be imported with only an English language label. Stick-on labels in Spanish are allowed for product information, but not for manufacturing information or expiration date. Labels must be affixed prior to customs clearance and at the time of product registration.

The Ministry of Health has expedited the surveillance process by focusing most closely on products considered to be a high risk for sanitary concerns, such as raw meat, and simplifying the procedures for low risk products. Regulations appear to be evenly enforced for both U.S. and Honduran producers. From 2002 to mid-year 2006, Honduras imposed a ban on poultry products from a number of U.S. states, due to concerns over low pathogenic avian influenza. The ban was lifted in June 2006 and has not since been reinstated.

During the CAFTA-DR negotiations, the governments created an intergovernmental working group to discuss Sanitary and Phytosanitary barriers to agricultural trade. Through the work of this group, Honduras committed to resolving specific measures affecting U.S. exports to Honduras. For example, Honduras now recognizes the equivalence of the U.S. food safety and inspection systems for meat and poultry, and in so doing has eliminated the need for plant-by-plant inspection.

Honduras and the other Central American countries are in the process of developing common standards for the importation of various products, which may facilitate trade.

FOREIGN TRADE BARRIERS

GOVERNMENT PROCUREMENT

Under the 2001 Government Contracting Law, all public works contracts over 1 million lempiras (approximately \$53,000 as of December 2007) must be offered through public competitive bidding. Public contracts between 500,000 and 1 million lempiras (\$26,500 and \$53,000) can be offered through a private bid, and contracts less than 500,000 lempiras (\$26,500) are exempt from the bidding process.

The CAFTA-DR requires procuring entities to use fair and transparent procurement procedures, including advance notice of purchases and timely and effective bid review procedures, for procurements covered by the Agreement. Under the CAFTA-DR, U.S. suppliers are permitted to bid on procurements of most Honduran government entities, including most key ministries and other government entities, on the same basis as Honduran suppliers. The anticorruption provisions in the CAFTA-DR require each government to ensure under its domestic law that bribery in matters affecting trade and investment, including government procurement, is treated as a criminal offense, or is subject to comparable penalties. However, Honduras has not demonstrated the willingness or ability to investigate and prosecute these types of crimes.

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

EXPORT SUBSIDIES

Honduras does not have export promotion schemes other than the tax exemptions given to firms in free trade zones. Under the CAFTA-DR, Honduras may not adopt new duty waivers or expand existing duty waivers that are conditioned on the fulfillment of a performance requirement (*e.g.*, the exportation of a given level or percentage of goods). However, Honduras may maintain such duty waiver measures for such time as it is an Annex VII country for the purposes of the WTO Agreement on Subsidies and Countervailing Measures (SCM Agreement). Thereafter, Honduras must maintain any such measures in accordance with Article 27.4 of the SCM Agreement.

INTELLECTUAL PROPERTY RIGHTS (IPR) PROTECTION

In early 2006, Honduras strengthened its legal framework for the protection of IPR with the passage of new laws in preparation for the entry into force of CAFTA-DR. However, implementing regulations for these new laws, as well as for IPR legislation adopted in 1999, had yet to be put in force as of November 2007. The CAFTA-DR provides for improved standards for the protection and enforcement of a broad range of IPR, which are consistent with U.S. and international standards of protection and enforcement as well as with emerging international standards. Such improvements include state-of-the-art protections for digital copyrighted products such as U.S. software, music, text, and videos; stronger protection for U.S. patents, trademarks, and test data, including an electronic system for the registration and maintenance of trademarks; and further deterrence of piracy and counterfeiting.

Honduran authorities need to dedicate the personnel and resources necessary to wage a truly effective campaign against IPR infringement. The prosecutor's office currently contains just two staff members. Although these prosecutors have the ability to seize pirated and counterfeit goods when found, they do not have the ability to prosecute the case without a formal written complaint from an injured party. This complicates and prolongs an already lengthy judicial process. That process also needs far greater transparency. Numerous trademark cases are pending in Honduran courts, including one involving the unauthorized use of the Chili's restaurant trademark that has been in the Honduran judicial system for several years. There are also numerous allegations that Honduran cable TV operators are using

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copyrighted U.S. programming without permission. Overall, lawyers and judges sometimes lack training in IPR matters, particularly with regard to evidence gathering and keeping statistics on prosecution of IPR crimes. Criminal prosecution efforts are difficult to evaluate since the victims of these crimes almost always settle at the administrative court level.

SERVICES BARRIERS

Until December 2005, the government owned telephone company Hondutel maintained monopoly rights over all fixed line telephony services. In 2003, the government began to allow foreign investors to participate in fixed line telephony services as “sub-operators” in partnership with Hondutel. Approximately 40 firms since then have entered into “sub-operator” contracts with Hondutel. Despite the purported elimination of its monopoly, the lack of a legal framework for granting concessions has left investors unsure of whether they may legally establish as fully independent service providers. Hondutel currently charges the highest international termination rates in the region.

Both foreign and domestic firms invest in cellular telephony services. In 2006, Hondutel awarded itself the third of three cellular licenses on a noncompetitive basis. A fourth license is scheduled to be awarded in early 2008, with four international firms prequalified to bid.

The Honduran Congress has been debating new telecommunications legislation for over a year that would require congressional approval for each new license to operate mobile or long-distance services. The United States has expressed concerns over this proposal and over indications that Honduras intends to open sectors only “gradually.”

INVESTMENT BARRIERS

The CAFTA-DR establishes a more secure and predictable legal framework for U.S. investors operating in Honduras. Under the CAFTA-DR, all forms of investment are protected, including enterprises, debt, concessions, contract, and intellectual property (IP). U.S. investors enjoy, in almost all circumstances, the right to establish, acquire, and operate investments in Honduras on an equal footing with local investors. Among the rights afforded to U.S. investors are due process protections and the right to receive fair market value for property in the event of an expropriation. Investor rights are protected under the CAFTA-DR by an impartial procedure for dispute settlement that is fully transparent and open to the public. Submissions to dispute panels and dispute panel hearings will be open to the public, and interested parties will have the opportunity to submit their views. Under the CAFTA-DR, the existing United States-Honduras Bilateral Investment Treaty will be suspended after a period of 10 years. Investors will continue to maintain important investment rights and protections under the investment provisions of the CAFTA-DR.

The CAFTA-DR eliminated a requirement that foreign firms act through a local agent that was at least 51 percent Honduran owned; however, Honduras still must authorize foreign investment in the health, air transport, terrestrial transport, education, natural resources, farming, and fuel sectors. These sectors still must have a Honduran national as a local agent, or act through companies that are at least 51 percent Honduran owned.

Foreign ownership of land within 40 kilometers of the coastlines and national boundaries is constitutionally prohibited, although tourism investment laws allow for certain exceptions. Inadequate land title procedures, including overlapping claims and a weak judiciary, have led to numerous

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investment disputes involving U.S. nationals who are landowners. In addition, the lack of implementing regulations in certain regions can lead to long delays in the awarding of titles.

ELECTRONIC COMMERCE

The CAFTA-DR includes provisions on electronic commerce that reflect its importance to global trade. Under the CAFTA-DR, Honduras has committed to provide nondiscriminatory treatment of digital products, and not to impose customs duties on digital products transmitted electronically. Honduras currently has no domestic legislation concerning electronic commerce, as the sector is still not developed in the Honduran market. The Electronic Commerce System Directorate, a joint project of the Chamber of Commerce and Industry of Tegucigalpa, the Chamber of Commerce and Industry of Cortes, and the National Industry Association, is the institution in charge of establishing the policies and norms pertaining to electronic commerce in Honduras. The Directorate is currently in the process of developing legislation.

Although the infrastructure in Honduras is improving, the country still lacks adequate basic telecommunications infrastructure and Internet bandwidth capacity to effectively support significant electronic commerce. Except for web page promotional material, companies are not utilizing computer-based sales as a substantial distribution channel in Honduras.

OTHER BARRIERS

U.S. firms and citizens have found corruption to be a serious problem in Honduras. In 2007, Transparency International ranked Honduras 131st out of 177 countries on corruption indicators and Honduras fell below the median on the World Bank Institute's "Control of Corruption" indicator. Honduras is now developing a corruption remediation plan, which includes elements such as civil service reform, external audits of public utilities (especially electricity and telecommunications), strengthening police capabilities, and implementation of the transparency law.

Corruption appears to be most prevalent in the areas of government procurement, the buying and selling of real estate (particularly land title transfers), performance requirements, and the regulatory system. Telecommunications and energy are the areas that have proved most worrisome. Honduras's judicial system is allegedly subject to outside influence, and the resolution of investment and business disputes involving foreigners is largely nontransparent.

ANTICOMPETITIVE PRACTICES

U.S. industry has expressed concern that investors who set up business in Honduras have at times found themselves subject to practices that, in the United States, might be considered anticompetitive. There have been allegations that on a regional basis the major steel producers have engaged in price collusion. In 2006, the Honduran government passed a Competition law, establishing an anti-trust enforcement commission to combat such abuses. The government has now named the commissioners to the new commission and the commission was operational in 2007.

FOREIGN TRADE BARRIERS

HONG KONG, SAR

TRADE SUMMARY

The U.S. goods trade surplus with Hong Kong was \$13.1 billion in 2007, an increase of \$3.3 billion from \$9.8 billion in 2006. U.S. goods exports in 2007 were \$20.1 billion, up 13.2 percent from the previous year. Corresponding U.S. imports from Hong Kong were \$7.0 billion, down 11.5 percent. Hong Kong is currently the 14th largest export market for U.S. goods.

U.S. exports of private commercial services (*i.e.*, excluding military and government) to Hong Kong were \$5.3 billion in 2006 (latest data available), and U.S. imports were \$6.4 billion. Sales of services in Hong Kong by majority U.S. owned affiliates were \$11.0 billion in 2005 (latest data available), while sales of services in the United States by majority Hong Kong owned firms were \$1.7 billion.

The stock of U.S. foreign direct investment (FDI) in Hong Kong was \$38.1 billion in 2006 (latest data available), up from \$32.6 billion in 2005. U.S. FDI in Hong Kong is concentrated largely in the nonbank holding companies, finance, wholesale trade sectors.

IMPORT POLICIES

Hong Kong, China is a special administrative region (SAR) of the People's Republic of China. The Hong Kong government pursues a market oriented approach to commerce. Hong Kong is a duty free port with few barriers to trade in goods and services and few restrictions on foreign capital flows and investment. Hong Kong had traditionally maintained excise duties on certain goods, including alcoholic beverages, which were among the highest in the world. However, on February 27, 2008, the Hong Kong Financial Secretary announced that taxes on wine, beer, and liquor (containing not more than 30 percent alcohol) would drop immediately from 40 percent, 20 percent, and 20 percent, respectively, to zero. The 100 percent tax on spirits (more than 30 percent alcohol content), however, was left unchanged. The U.S. Government is pleased with this largely positive development and is actively working with like minded governments to encourage Hong Kong to eliminate the remaining excise duties on spirits.

Hong Kong banned imports of U.S. beef in December 2003 following a reported case of Bovine Spongiform Encephalopathy (BSE). After 2 years of intensive efforts by the U.S. Government and industry, the Hong Kong government announced the partial reopening of its market to deboned beef derived from animals less than 30 months of age, with some restrictions, in December 2005. These excessive restrictions, however, have discouraged most qualified U.S. beef exporters from shipping to Hong Kong. It is estimated that the 2 year ban (2004-2005) cost U.S. exporters approximately \$160 million. World Organization for Animal Health (OIE) guidelines provide for scientifically based conditions under which all beef and beef products from animals of any age can be safely traded. In May 2007, the OIE classified the United States as controlled risk for BSE. The United States continues to press Hong Kong to fully open its market for all U.S. beef and beef products on the basis of the OIE guidelines and the OIE's classification of the United States as controlled risk for BSE.

COMPETITION POLICY

In late 2006, the Hong Kong government established an independent Competition Policy Review Committee to discuss the need, scope, and application of a comprehensive and cross-sector law on competition. Small and medium sized enterprises in Hong Kong have expressed strong opposition to the

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creation of such a policy. The Hong Kong government plans to announce the details of proposed competition policy legislation for public discussion and scrutiny before introducing the bill in the 2008-09 legislative session. The U.S. Government will continue to follow these developments.

INTELLECTUAL PROPERTY RIGHTS (IPR) PROTECTION

The Hong Kong government continues to maintain a robust IPR protection regime. Hong Kong has strong laws in place, a dedicated and effective enforcement capacity, and a judicial system that supports enforcement efforts with deterrent fines and prison sentences. Hong Kong remains vulnerable, however, to some forms of IPR infringement. The U.S. Government continues to monitor the situation to ensure that Hong Kong sustains its IPR protection and enforcement efforts and addresses remaining problem areas.

Hong Kong Customs enforcement efforts, including raids on underground production facilities, have closed most large scale pirate manufacturing operations, prompting many producers of pirated optical media to switch to computers or compact disc burners to produce illicit copies and forcing retailers to rely increasingly on smuggled goods. Since 2004, Hong Kong Customs has used the Organized and Serious Crimes Ordinance (OSCO) to prosecute piracy syndicates and to freeze their assets. Seven IPR cases have resulted in the freezing of \$13.7 million in assets. On October 2, 2007, the Hong Kong High Court issued an order allowing the confiscation of \$154,000 from the convicted mastermind of a pirated optical disc syndicate for the first time. This ruling could prove a useful new deterrent. The volume of openly marketed pirated optical media found in retail shopping arcades has decreased significantly in recent years as a result of OSCO, but infringing products still remain available in Hong Kong. U.S. Government officials have encouraged the Hong Kong government to sustain the pace of its ongoing enforcement activities aimed at local producers and vendors of infringing products.

Hong Kong's IPR enforcement efforts have helped reduce losses by some U.S. companies, but the rapid growth of peer-to-peer downloading from the Internet, end-use piracy, and the illicit importation and transshipment of pirated and counterfeit goods—including optical media and name brand apparel from mainland China—continue to be problematic. The software industry estimates that Hong Kong's software piracy rate in 2007 was 53 percent, well above the software piracy rates in other advanced economies and significantly higher than Korea, Singapore, and Taiwan. Losses to business and entertainment software rights holders are estimated at approximately \$180 million, and the government has not been successful in prosecuting contested business end-user piracy cases.

Hong Kong officials have established a joint task force with copyright industry representatives to track down online pirates using peer-to-peer networks for unauthorized file sharing. In addition to criminal litigation, both the music and movie industries have increased the use of civil lawsuits against those who engage in illegal file sharing. However, because of the high costs associated with pursuing criminal charges under the current system, the industries have called on the government to expand criminal liability by putting forward legislation specific to digital technology issues, including copyright protection and digital rights management, as soon as possible. The Hong Kong government promised to release a draft of new digital protection laws by the end of 2007, but by January 2008 had not yet done so.

Hong Kong Customs routinely seizes IPR infringing products arriving from mainland China and elsewhere. However, stakeholders report that large quantities of counterfeit pharmaceuticals, luxury goods, and other infringing products continue to enter Hong Kong destined for both the local market and transshipment to third countries. The lack of expertise within Hong Kong's enforcement agencies in identifying high quality counterfeit drugs and overlapping lines of responsibility for pharmaceutical

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products make combating counterfeit pharmaceuticals difficult. Customs officials have partnered with four local Internet service providers (ISPs) to prevent the sale of counterfeit and infringing products on Internet auction sites.

The lack of a copyright register in Hong Kong continues to make it difficult for law enforcement officials and prosecutors to identify original copyright owners in infringement cases, effectively increasing the burden of proof that right holders need to present to prove infringement. Although Hong Kong judges, law enforcement officials, and IP industry stakeholders have complained repeatedly about the lack of a copyright register, the government has declined to establish such a register, citing concerns about cost effectiveness and divergent views among different copyright owners' associations about the scope of registrations. The U.S. Government continues to promote the development of a copyright register in Hong Kong to protect right owners and end users.

After extensive consultation, the Copyright (Amendment) Ordinance 2007 (Ordinance) was passed in July 2007. In particular, the Ordinance provides for criminal penalties for unauthorized copying and distribution of infringing copies of printed works in the course of profit generating activities. Additionally, the Ordinance also provides civil liability for the act of circumventing technological protection measures (TPMs). The scope of these two provisions will be further clarified in implementing legislation which the government plans to table before the Legislative Council in the second quarter of 2008, while it continues consulting with stakeholders.

In addition, the Ordinance contains provisions to potentially hold company directors criminally liable for the use of pirated software in their businesses. This measure follows government efforts in 2006 to partner with software industry representatives to provide free on-site audits for companies to determine if they are unknowingly using unlicensed software and to assist violators in purchasing licenses to guarantee the use of legitimate computer products. The Hong Kong government has been actively working to inform companies of their obligations under the law. In 2006, as part of the Asia Pacific Economic Cooperation forum Anti-Counterfeiting and Piracy Initiative, the Hong Kong government agreed that its ministries should use only legal software and other copyrighted materials and should implement effective policies intended to prevent copyright infringement on their computer systems, including via the Internet. The U.S. Government supports the Hong Kong government's efforts to ensure the legitimate use of software.

SERVICES BARRIERS

Since November 2004, U.S. banks licensed in Hong Kong have been able to provide renminbi (RMB) services. In November 2005, all banks in Hong Kong were permitted modest increases in the scope of RMB business they can offer to clients, including providing services related to deposit taking, exchange, remittances, and credit cards. Making loans in Hong Kong in RMB, however, is still not permitted for any bank. In January 2007, the central government granted the approval to mainland lenders to issue RMB bonds in Hong Kong. The first RMB bond issuance in Hong Kong, at the value of 5 billion RMB, was successfully launched in June 2007, making Hong Kong the first place outside mainland China to possess a RMB bond market. Additional private RMB bonds were issued in August and September 2007.

The October 2002 United States-Hong Kong Civil Aviation Agreement significantly expanded opportunities for U.S. carriers. The Agreement allows cooperative marketing arrangements between U.S., Hong Kong, and third-country carriers (code sharing) and also increases the ability of U.S. carriers to operate cargo and passenger services between Hong Kong and third countries. However, restrictions on frequencies and routes for these services remain. In 2005, the United States and Hong Kong convened a

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round of negotiations to expand the Air Services Agreement. The talks were inconclusive and no further negotiations have been scheduled.

Foreign law firms that practice foreign law in Hong Kong are barred from practicing Hong Kong law and from employing or forming a partnership with Hong Kong solicitors. Foreign law firms that wish to provide both foreign and Hong Kong legal services may do so only by establishing a Hong Kong legal practice in which all partners are Hong Kong-qualified solicitors and the number of registered foreign lawyers employed does not exceed the number of Hong Kong solicitors. Such firms may be associated with, or even be branches of, overseas law firms if they meet certain criteria (*e.g.*, at least one partner of the Hong Kong firm must also be a partner in the overseas firm).

STANDARDS, TESTING, LABELING, AND CERTIFICATION

Food Labeling

Although Hong Kong has a population of only seven million residents, it is an important market for exports of U.S. food and processed products and serves as a transshipment point for food and processed products bound for China. The United States exported more than \$1.3 billion of agricultural, fishery, and forestry products to Hong Kong in 2007. The Hong Kong government is in various stages of implementing several labeling schemes that could raise significant barriers to consumer-ready U.S.-origin processed food exports.

The Hong Kong government has re-notified the World Trade Organization (WTO) of its intention to implement mandatory nutrition labeling regulations. Given Hong Kong's small market size for most individual products, repackaging products to comply with the new Hong Kong labeling standard may not be economically feasible. The United States has requested that the regulations allow flexibility for products that comply with U.S. labeling laws and is in the process of developing its formal response to the regulations. If the proposed regulations are passed in their current form, they would be so stringent that market participants estimate compliance costs for relabeling and/or restickering would result in thousands of low volume products disappearing from the market, thus harming consumer choice. In addition, this proposal would significantly increase barriers to market entry. Data reported from a limited but diverse sampling of U.S. and non-U.S. suppliers indicate that up to 80 percent of the 6,000 products that these firms currently export to Hong Kong would not justify the expense of new labeling. For nearly one-third of these items, companies estimate that the cost of compliance would exceed the products' total annual sales to Hong Kong.

On July 9, 2007, an amendment to Hong Kong's Labeling Regulation went into effect that requires manufacturers to declare allergenic substances and list the food additive functional class, as well as name or identification number (under the International Numbering System) on food labels. Hong Kong's requirements vary only slightly from U.S. regulations. However, the United States is concerned that the regulations do not contribute to improved consumer awareness or information. All U.S. processed food products exported to Hong Kong already include extensive label information on ingredients, allergens, and additives. As a result of these small differences, U.S. food products, especially name brand processed foods, have had difficulty complying with the labeling changes in the period allotted. The United States has expressed its objections to this regulation.

During 2008, the Hong Kong government will review the effectiveness of guidelines, originally issued in July 2006, for the voluntary labeling of genetically modified food. The Hong Kong government in 2007 conducted a survey to evaluate the effectiveness of the voluntary food labeling system for genetically

modified food and there is concern that the system could be made mandatory, increasing the cost of labeling and harming U.S. exporters. Mandatory labeling could seriously undermine sales in this market for high value U.S. food and agricultural products. Additionally, Hong Kong retailers fear negative consumer reaction and a reduction in consumer choice for food products in Hong Kong if labeling of food products containing biotechnology ingredients becomes mandatory.

Energy Efficiency Labeling and Regulations

The Environmental Protection Department of the Hong Kong government has announced its intention to implement mandatory energy efficiency labeling for consumer products, such as appliances. At this early stage, implementing legislation has not yet been submitted to the Legislative Council and it is uncertain whether and to what extent the Hong Kong government will consult with its trading partners for input on the design and operation of such a labeling system. A Hong Kong-specific labeling system could become a trade barrier to the extent the local system differs materially from internationally agreed labels, such as the “Energy Star” label used in the United States and Japan. The Hong Kong government has also announced that it will adopt energy efficiency regulations for existing and new buildings, including requirements that real estate facilities be upgraded to conform to the Building Education and Assessment Model (BEAM) design standard. Although legislation to implement this proposal has not yet been submitted to the Legislative Council, failure to recognize existing international standards would pose a significant trade barrier.

Pharmaceuticals

U.S. industry has expressed concerns about lengthy approval procedures for new pharmaceuticals, which shorten the effective patent life of new products by 6 months. In addition, U.S. industry is concerned about the lack of transparency in the Hong Kong Hospital Authority’s approval process for new drugs. These cumbersome procedures also inhibit the patent owners’ ability to market their products on a timely basis.

U.S. pharmaceutical companies are concerned that the Hong Kong Department of Health continues to issue marketing authorizations for patent infringing pharmaceutical products. In addition, the industry has concerns about sales of counterfeit pharmaceuticals—which threaten consumer safety and brand reputation—and it seeks more vigorous enforcement and tougher penalties to deter this kind of illicit trade. According to industry, counterfeit pharmaceuticals from other countries (particularly within the Asia-Pacific region) are being imported in increasing quantities into Hong Kong. Counterfeit pharmaceuticals are then repackaged to appear similar to legitimate pharmaceuticals registered in Hong Kong. The United States Government continues to urge the Hong Kong government to address both the marketing approval/patent protection linkage issue and the counterfeiting issue as they pertain to pharmaceutical products.

INDIA

TRADE SUMMARY

The U.S. goods trade deficit with India was \$6.4 billion in 2007, a decrease of \$5.3 billion from 2006. U.S. goods exports in 2007 were \$17.6 billion, up 74.9 percent from the previous year. Corresponding U.S. imports from India were \$24.0 billion, up 10.1 percent. India is currently the 16th largest export market for U.S. goods.

U.S. exports of private commercial services (*i.e.*, excluding military and government) to India were \$6.7 billion in 2006 (latest data available), and U.S. imports were \$6.6 billion. Sales of services in India by majority U.S. owned affiliates were \$2.8 billion in 2005 (latest data available), while sales of services in the United States by majority India owned firms were \$2.4 billion.

The stock of U.S. foreign direct investment (FDI) in India was \$8.9 billion in 2006 (latest data available), up from \$6.6 billion in 2004. U.S. FDI in India is concentrated largely in the information, manufacturing, and banking sectors.

IMPORT POLICIES

U.S. exporters continue to encounter tariff and nontariff barriers that impede their exports, despite the government of India's ongoing economic reform efforts. While U.S. exports registered notable growth in 2007, continued reduction of the bilateral trade deficit will depend on significant additional Indian liberalization of the trade and investment regime.

The government has continued to restructure tariffs applied to nonagricultural goods. The government's 2007-2008 budget, unveiled in February 2007, reduced the applied duty on most industrial products from 12.5 percent to 10 percent. At that time the government also announced reductions to applied duties on many raw materials and intermediates. For example, tariffs on polyester fibers, yarn, and other raw materials were lowered from 10 percent to 7.5 percent. The government also adjusted downward tariffs on chemicals and plastics from 12.5 percent to 7.5 percent. Despite tariff cuts on these goods, India's average applied tariff on industrial goods remains high, mainly due to significantly high tariffs on petrochemicals, automobiles, motorcycles, and finished steel products. Also, the U.S. textile industry continues to have concerns about nontransparent applications of tariffs and taxes.

Despite lower applied tariffs in nonagricultural goods, India has bound only 70 percent of its nonagricultural tariff lines. According to the WTO, India's average bound rate is 34.9 percent – well above its average applied tariff rate (16.4 percent in 2005). Also, India's WTO bound agricultural tariffs are among the highest in the world, ranging from 100 percent to 300 percent, with an average bound tariff of 114 percent. While many Indian applied tariff rates are lower, they still represent a significant barrier to trade in agricultural goods and processed foods. Further, given the fact that there are large disparities between bound and applied rates, U.S. exporters face greater risk of market closure because India has the ability to raise its applied rates to bound levels in an effort to manage prices and supply.

The United States has actively sought market-opening opportunities in India, both bilaterally and multilaterally. The U.S. Trade Representative (USTR) and India's Minister of Commerce chair the United States-India Trade Policy Forum (TPF). The creation of the TPF was announced by President Bush and Prime Minister Singh during the Prime Minister's visit to Washington in July 2005. A part of

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the United States-India Economic Dialogue, the TPF meets regularly, including through its five Focus Groups – Agriculture, Innovation and Creativity (*i.e.*, intellectual property rights), Investment, Services, and Tariff and Nontariff Barriers – to discuss the full range of bilateral trade and investment issues.

With the exception of wine, spirits, and other alcoholic beverages, the government applies an “additional duty” at a rate equal to the Central Excise Tax rate applicable to like domestic products. On July 3, 2007, the government issued a customs notification exempting alcoholic beverages from the rates of additional duty set forth in a prior customs notification. Under the prior customs notification, imports of alcoholic beverages were subject to rates of additional duty ranging from 20 percent to 150 percent *ad valorem* (and in some cases higher specific duties). On the same date, the government raised the applied tariff on wine from 100 percent to 150 percent. The applied tariff on distilled spirits remained at 150 percent, and several states continue to discriminate against imported spirits.

Imports also are subject to state-level value added or sales taxes and the Central Sales Tax as well as various local taxes and charges.

In March 2006, the government established a 4 percent *ad valorem* “extra additional duty”. The extra additional duty (also referred to as the “special additional duty”) applies to all imports, including alcoholic beverages, except those exempted from the duty pursuant to a customs notification. The extra additional duty is applied in addition to, and calculated on top of, the basic customs duty (*i.e.*, tariff) and additional duty. On September 14, 2007, the government issued a customs notification allowing importers to apply for a refund of the extra additional duty paid on imports subsequently sold within India and for which the importer has paid state-level value added taxes. Importers report that the refund procedures are cumbersome and time consuming.

The government publishes tariff and other customs duty rates applicable to imports, but there is no official publication or searchable database setting forth applied tariff and other customs duty rates. To determine the applied tariff or other customs duty rate applicable to a particular product, importers must consult separate customs and excise tax schedules and cross-reference these schedules with any applicable customs or excise notification that may subject the product to higher or lower rates than set forth in the schedules (assuming the importer is able to determine that any such notification exists). Such a system lacks transparency and imposes significant burdens on importers. Classification of products under India’s customs and excise tax schedules is generally aligned with the Harmonized System (HS) of tariff nomenclature.

On June 20, 2007, a WTO dispute settlement panel was established to consider U.S. claims that the additional duty and extra additional duty result in customs duties that exceed India’s WTO-bound rates and as such are inconsistent with India’s WTO obligations. The U.S. claims against the additional duty are limited to alcoholic beverages, whereas its claims against the extra additional duty concern a number of industrial and agricultural products, including alcoholic beverages. The panel expects to issue its final report to India and the United States in March 2008.

Import Licensing

India also maintains a negative import list. The negative list is currently divided into three categories: banned or prohibited items (*e.g.*, tallow, fat, and oils of animal origin); restricted items that require an import license (*e.g.*, livestock products, certain chemicals); and “canalized” items (*e.g.*, petroleum products, some pharmaceuticals, and bulk grains) importable only by government trading monopolies subject to cabinet approval regarding timing and quantity.

FOREIGN TRADE BARRIERS

India has liberalized many restrictions on the importation of capital goods. The government allows imports of second-hand capital goods by the end-users without requiring an import license, provided the goods have a residual life of 5 years. Refurbished computer spare parts can only be imported if an Indian Chartered Engineer certifies that the equipment retains at least 80 percent of its residual life, while refurbished computer parts from domestic sources are not subject to this requirement. The government has required import licenses for all imports of remanufactured goods since 2006. Industry reports that the licensing requirement is onerous as implemented: the license application requires excessive details, quantity limitations are set on specific part numbers, and the delay between application and grant of the license is long and creates uncertainty.

In October 2007, the Indian Director General of Foreign Trade (DGFT) eliminated the registration requirement for foreign exporters of unshredded scrap metal. However, a preshipment inspection (PSI) regime remains in place.

Import licensing and other import related requirements and how they apply on an harmonized system (HS)-code basis are published in the International Trade Classification (HS). This document has been unavailable on the Indian Commerce Department Director General of Foreign Trade's website for several months, thus decreasing transparency and placing an extra burden on importers.

Customs Procedures

The government appears to apply discretionary customs valuation criteria to import transactions. Valuation procedures allow India's customs to reject the declared transaction value of an import when a sale is deemed to involve a reduction from the ordinary competitive price. U.S. exporters have reported that India's customs valuation methodologies do not reflect actual transaction values and effectively increase tariff rates. The United States is working through the WTO Committee on Customs Valuation to address this issue.

Industry reports that, since September 2007, India has improperly included royalties in the customs valuation of imported digital video disc (DVD) analog master tapes and digital linear tapes and has assessed customs duties, retroactively for 5 years for some importers, using the revised valuation methodology. In addition, industry has noted that these issues have resulted in the detention of these products at the border by India's customs.

In addition, India's customs generally requires extensive documentation, which inhibits the free flow of trade and leads to frequent processing delays. In large part this red tape is a consequence of India's complex tariff structure and multiple exemptions, which may vary according to product, user, or specific Indian export promotion program. While these difficulties persist, India has shown improvement in this area. According to the World Bank, over the past 2 years the number of days needed to complete an import or export transaction India has been halved, while there have been smaller reductions in the number of required documents.

The government continues its unofficial policy of revising edible oil reference prices once every two weeks and maintains a reference price system for soybean oil to address alleged under invoicing. The reference price is the basis upon which India assesses its 45 percent customs duty. The system is nontransparent and unpredictable. When the government reference price for soybean oil rises above the transaction price, the effective rate of duty may also increase above India's 45 percent WTO bound tariff. Exports of U.S. crude soybean oil to India are negligible after reaching a peak of \$25 million in 2002.

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The current applicable duty on soybean oil is 40 percent. Due to high international prices of vegetable oils, the government has kept its reference price for vegetable oils unchanged since September 2006, in order to keep domestic prices under control.

Certain customs procedures impede importation of automotive products. Motor vehicles may be imported through only three specific ports and only from the country of manufacture. Declared transaction values of automotive products may be rejected and, as a result, legitimate reductions in the wholesale price of such products are ignored.

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The government has identified 68 specific commodities (including milk powder, infant milk foods, packaged drinking water, certain types of cement, household and similar electrical appliances, gas cylinders, and multi-purpose dry cell batteries) that the Bureau of Indian Standards (BIS) must certify before the products are allowed to enter the country. Foreign companies can receive automatic certification for imported products, provided BIS has first inspected and licensed the production facility. However, U.S. industry alleges that inspection and licensing costs imposed on foreign manufacturers are so high that they may restrict trade in these items.

Since 2004, India has subjected all imported boric acid to stringent requirements associated with insecticides, whether the product is intended for use as an insecticide or as a manufacturing input (for example, in the production of glass and ceramics). Most uses of boric acid are noninsecticidal, and most boric acid exported from the United States to India is noninsecticidal. The Indian government has not indicated that there has been a problem of noninsecticidal boric acid being diverted for use as insecticide. Traders (*i.e.*, resellers) of boric acid remain unable to import boric acid for resale because they cannot obtain no-objection certificates (NOCs) from ministries. These NOCs are required before applying for import permits from the Ministry of Agriculture's Central Insecticides Board & Registration Committee (CIB&RC). The NOC system was extended in July 2006 for 3 years. End users are able to import boric acid with an import permit issued by the CIB&RC. However, these import permits also include a tonnage limitation in excess of which an end user cannot import. Meanwhile, local refiners continue to be able to produce and sell noninsecticidal boric acid, with a requirement only to maintain records showing they are not selling to insecticidal end users. The United States continues to engage the government to not treat industrial boric acid as an insecticide and to withdraw the import permit system for this product.

The U.S. Government is increasingly concerned over India's failure to notify certain proposed technical regulations and conformity assessment procedures to the WTO (*e.g.*, the BIS protocol for tires and the Drugs and Cosmetics (Amendment) Rules, 2007, see below). Some measures do not appear to have been published at all. Until recently, India did not specify emission standards for motorcycles with engine capacities above 800 ccm, preventing the import of such motorcycles from international manufacturers. After concerted efforts by the U.S. government and private industry to encourage India to adopt a reasonable standard for large motorcycles, the government harmonized its emission norms with Euro III standards for large engine motorcycles.

In bilateral and multilateral fora, the U.S. Government has raised concerns about the Indian government's development, adoption, and implementation of technical regulations, standards, and conformity assessment procedures. For example, the United States is currently raising concerns in the WTO Technical Barriers to Trade Committee about India's 2007 implementation of the BIS protocol on tires. At both the July 2007 and November 2007 meetings of the WTO Committee on Technical Barriers to Trade, the United States encouraged continued Indian participation in the UN/ECE WP-29 discussions on

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a global standard for tires. The United States has also asked to meet with the government bilaterally to discuss several potential issues, including: the objective of the new protocol; whether compliance with the protocol is voluntary or mandatory; whether compliance testing at the Central Institute for Road Transport applies to both imported and domestic tires; whether foreign and domestic tires are subject to the same performance criteria for tire specifications; and why licensing fees are calculated differently for foreign and domestic companies. On this latter point, it is the U.S. understanding that such fees for foreign companies are based on sales invoiced to dealers in India, whereas fees for domestic companies are based on units sold in India. Industry has asserted that the different fee calculation methodologies result in much higher licensing fees for foreign tire companies.

The United States has also raised concerns in Geneva with respect to the potential negative impact on trade of the proposed “Drugs and Cosmetics (Amendment) Rules, 2007.” The draft amendment appears to introduce unnecessarily burdensome procedures and includes a costly registration system that appears to discriminate against imported products. The United States has been unable to ascertain how these procedures will increase product safety for consumers and has asked India to engage in further discussions on this issue to enable a better understanding of the objectives and rationale of the new rules. The United States has also requested that India consider delaying enforcement of the amendment to allow reasonable time for all interested parties to comment and to afford suppliers a reasonable interval to comply with the new requirements.

The lack of an efficient medical device regulatory regime in India has hampered growth in the country’s healthcare sector and impeded trade in health products. In 2006, the government amended an existing law governing the regulation of pharmaceuticals to include certain medical devices. The government currently is developing a regulator for medical devices. The U.S. Government and U.S. industry continue through the United States-India High Technology Cooperation Group to encourage India to develop its medical device regulations by taking into account and participating in international harmonization efforts on medical device regulation.

Sanitary and Phytosanitary (SPS) Measures

The United States has raised concerns with India regarding its failure to notify SPS measures to the WTO. India continues to maintain regulations that restrict most forest products and block all imports of U.S. poultry, poultry products, pet food, pork, and most imports of U.S. dairy products. Although processed dried pet food is exempt from India’s avian influenza ban, Indian officials continue to ban imports of dry processed pet food while a new pet food import protocol is being negotiated. In addition, fumigation requirements threaten existing U.S. exports of pulses and new market access for barley. Sales of U.S. wheat to India are blocked by strict tolerances for weed seeds and impractical sampling procedures. Bilateral technical level discussions to resolve these issues are ongoing. Earlier discussions have resulted in long term agreements under which U.S. in-shell almonds and other U.S. commodities are allowed entry into the Indian market.

In 2007, the United States raised two issues at the WTO SPS Committee that concern SPS enforcement actions by India: restrictions due to avian influenza and dairy restrictions. India bans imports of U.S. poultry, swine, and their products as a result of the detection of low pathogenic avian influenza in wild birds in the United States. Despite repeated requests, India has not yet provided a scientific justification for this ban, which does not appear to comply with guidelines established by the World Organization for Animal Health (OIE).

As for the dairy restrictions, India maintains more stringent maximum residue levels on imported dairy products than it does for domestic products. In October 2006, the United States proposed a health certificate attesting that U.S. milk and milk products are fit for human consumption. However, India rejected this offer to certify citing concerns for outdated U.S. action levels for pesticides that have been banned in the United States. In November 2007, Indian and U.S. officials held a digital video conference to discuss possible changes to the U.S. proposed export certificates. These discussions are ongoing.

The United States also has concerns about India's notification process for amendments to certain regulations that affect plant trade. In particular, India has amended its "Plant Quarantine (Regulation of Import into India) Order, 2003" several times without providing an opportunity for prior public comment, as required by WTO obligations. India's amendments constrain U.S. agricultural exports, introduce onerous labeling requirements, and set pesticide and quarantine pest requirements that may not be science-based or may not meet OIE and Codex Alimentarius guidelines.

In August 2006, in an attempt to consolidate its existing multitude of laws and regulations governing the food and food processing sectors, the government enacted an integrated food law titled, "Food Safety and Standards Act, 2006." The law also created a Food Safety and Standards Authority (FSSA), responsible for establishing food safety standards for packaged and processed foods and for regulating India's manufacturing storage, distribution, sale, and import sectors. The FSSA is not yet operational.

Agricultural Biotechnology

Under India's biotechnology regulations, the Genetic Engineering Approval Committee (GEAC) must approve all biotechnology food/agricultural products or products derived from biotechnology plants/organisms prior to import, and the importer must notify officials if a consignment contains a biotechnology trait. As a result of India's biotechnology regulations, U.S. exports of products derived from genetically engineered commodities are strictly prohibited, except for soybean oil derived from Round-Up Ready soybeans for refining prior to consumption. In 2007, U.S. soybean oil exports to India totaled approximately \$11 million.

India's evolving biotechnology regulatory process does not appear to be entirely science based and despite recent efforts, consensus within the biotechnology community is that further reforms are needed to facilitate faster growth in the sector. In 2007, the Ministry of Environment and Forest (MEF) issued a notification that processed food products derived from genetically engineered products where the end product is not a live modified organism do not require approval from GEAC for production, marketing, importation and use in India. The DGFT is now expected to notify necessary amendments that would allow imports of biotechnology processed food without prior GEAC approval.

GOVERNMENT PROCUREMENT

India is not a signatory to the WTO Agreement on Government Procurement. India's government procurement practices and procedures are not transparent. Foreign firms rarely win Indian government contracts due to the preference afforded to Indian state owned enterprises in the award of government contracts and the prevalence of such enterprises. The Purchase Preference Policy (PPP) applied by government enterprises and government departments gives preference to any state owned enterprise that submits an offer that is within 10 percent of the lowest bid. The PPP was renewed in 2005, with some modifications. The government announced in October 2007 that the PPP will be terminated on March 31, 2008.

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EXPORT SUBSIDIES

The tax exemption for profits from export earnings has been completely phased out, but tax holidays continue for Export Oriented Units and exporters in Special Economic Zones (SEZ). In addition to these programs, India continues to maintain several duty drawback programs that appear to allow for drawback in excess of duties levied on imported inputs. India also provides preshipment and postshipment export financing to exporters at a preferential rate. India's textile industry enjoys subsidies through modernization schemes, such as the Technology Upgradation Fund Scheme and the Scheme for Integrated Textile Parks. India has not submitted a notification to the WTO Committee on Subsidies and Countervailing Measures since 2001.

INTELLECTUAL PROPERTY RIGHTS (IPR) PROTECTION

Large-scale copyright piracy, especially in the software, optical media, and publishing industries, continues to be a major problem. The United States retained India on the "Priority Watch List" as part of the 2007 Special 301 review.

IPR protection and enforcement has been the subject of ongoing discussion in the Trade Policy Forum's Innovation and Creativity Focus Group.

Patents

India amended its patent law effective January 1, 2005. The amended patent law extends product patent protection to pharmaceuticals and agricultural chemicals. While a positive step, these changes do not address several important weaknesses in India's patent law. For example, the new law does not clarify some ambiguities regarding the scope of patentable inventions. Additionally, there are growing concerns by the research based pharmaceutical industry that the application of the new pregrant opposition rules may impede the timely grant of patent applications for new compounds.

Indian law does not provide for adequate protection against unfair commercial use of test or other data that companies submit in order to obtain government marketing approval for their pharmaceutical or agricultural chemical products. The government in June 2007 released recommendations of the long awaited Data Protection Committee. The report's data protection recommendations, however, fell short of international standards. The report is being discussed within the government, and some of the recommendations may require legislative changes to be implemented.

Copyrights

The government has proposed amendments that are intended to update the copyright laws to address issues related to the Internet and digital works. However, the proposed amendments have some deficiencies, including no clear path towards India's implementation of the World Intellectual Property Organization Internet Treaties.

India's enforcement efforts against copyright piracy are weak. Piracy of copyrighted materials (primarily software, films, popular fiction works, and certain textbooks) remains a problem for both U.S. and Indian producers. Costs to the U.S. industry amounted to nearly \$496 million in 2006. The sale of semiconductors that violate copyright and semiconductor mask laws continues to be a concern. In addition, India has not adopted an optical disc law to deal with optical media piracy, although inter-ministerial consultations to examine draft optical disc legislation are underway.

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Cable television piracy continues to be a significant problem. Copyrighted U.S. content is transmitted without authorization by licensed cable operators often using pirated videocassettes, video compact discs, or DVDs as source materials. This has had a significant detrimental effect on all motion picture market segments in India – theatrical, home video, and television.

Enforcement

India's criminal IPR enforcement regime, including border protection against counterfeit and pirated goods, remains weak. There have been few reported convictions for copyright infringement resulting from raids, including raids against repeat offenders. Backlogs in the court system and documentary and other procedural requirements have provided impediments to the prosecution of criminal counterfeiting and piracy. Obstruction of raids, leaks of confidential information, delays in criminal case preparation, and the lack of adequately trained officials have further hindered the criminal enforcement process.

SERVICES BARRIERS

Indian government entities have a strong ownership presence in some major services industries such as banking and insurance, while private firms play a preponderant or exclusive role in a number of rapidly growing parts of the services sector, including the information technology sector, advertising, car rental, and a wide range of business consulting services. While India has submitted an initial offer to provide further services liberalization in the WTO Doha Round, the offer does not remove existing limitations in such key sectors as distribution, telecommunications, financial services, and the professions.

Insurance

In 1999 the Insurance Regulatory and Development Act opened India's insurance market to private participation. Under this law, foreign participation in the Indian insurance sector is allowed, but foreign equity is limited to 26 percent of paid-up capital. In recent years, the Indian government has initiated attempts to raise the limit on foreign equity participation to 49 percent, but strong opposition from opposition parties has thus far prevented any increase in foreign equity in the insurance sector.

Banking

Foreign banks may operate in India in one of three forms: a direct branch, a wholly-owned subsidiary, or through a stake in a private Indian bank. Although India has opened up to privately-held banks, most Indian banks are government owned, and entry of foreign banks remains highly regulated. Foreign banks may not own more than 5 percent of an Indian private bank without approval of the Reserve Bank of India. Foreign ownership of a private Indian bank cannot exceed 74 percent of the capital of the private Indian bank. State owned banks hold roughly 75 percent of the assets of the banking system, although private banks are growing rapidly.

As of October 2007, there were 29 foreign banks with 273 branch offices operating in India under RBI approval. Under India's branch authorization policy, foreign banks are required to submit their internal branch expansion plans on an annual basis. Four U.S. banks now have a total of 52 branches in India. They operate under restrictive conditions including directed lending and asset allocation requirements. Their ability to expand is severely limited by nontransparent quotas on branch office expansion. In its GATS schedule, India committed to grant 12 new foreign branch office licenses annually. In contrast, domestic private Indian banks received 100 branch office licenses in 2006. Foreign banks are allowed to

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establish wholly-owned subsidiaries but must divest their ownership stakes down to 26 percent by 2009, making this option largely unattractive. As a result, there are no wholly owned subsidiaries of foreign banks in India.

Audiovisual and Communications Services

India's government has removed most barriers to the import of motion pictures, although U.S. companies have experienced difficulty in importing film/video publicity materials and are unable to license movie-related merchandise due to royalty remittance restrictions.

In March 2004, in the face of considerable distributor and consumer resistance, as well as confusion surrounding pricing issues and other rules, the government suspended implementation of the Conditional Access System (CAS) for cable television. However, in accordance with a Delhi High Court Order in January 2007 requiring television subscribers to install set-top-box decoders to view premium channels, CAS now has been implemented across the country. By providing tighter regulation of the cable industry as a whole, industry participants expect CAS to help reduce the problem of pirated broadcasts, although it is too early to assess the impact on piracy yet.

The government allows FDI of up to 49 percent in Indian cable networks and companies that uplink from India. Total foreign investment in "direct-to-home" (DTH) broadcasting has been restricted to 49 percent, with an FDI ceiling of 20 percent on investments by broadcasting companies and cable companies. At present, news channels are permitted 26 percent foreign equity investment, ensuring a dominant Indian partner holds at least 51 percent equity. Operational control of the editorial content must be in Indian hands.

India's government prohibits any foreign equity interest in FM radio broadcasting. Foreign ownership in satellite ventures uplinking from India is capped at 20 percent and the management must be Indian. There is a 49 percent cap on foreign ownership of cable operators.

In November 2005, the Indian government issued a "Downlink Policy" that applies to international content providers that want to downlink programming to India. One of the requirements under the policy is that international content providers either establish a registered office in India or designate a local agent. The government implemented this rule reportedly to have greater oversight over programming content. However, companies note that most other countries (including the United States) do not require a license for the downlinking of programming and that India can control content through its licensed entities (such as cable companies or DTH providers). Companies claim that this policy is overly burdensome and results in a taxable presence. Companies have asked that the downlink regulations be amended to avoid the taxable presence. However, in February 2008, India's Ministry of Information and Broadcasting confirmed that the Policy will remain in place and that companies must amend the agreements signed between the companies and their Indian customers, making the tax liabilities retroactive to November 11, 2005.

The United States continues to raise this issue with the Indian government and the Ministry of Information and Broadcasting, most recently at the United States-India Trade Policy Forum in Chicago on February 19, 2008.

Accounting

Only graduates of an Indian university can qualify as professional accountants in India. Foreign accounting firms can practice in India if their home country provides reciprocity to Indian firms. Only firms established as a partnership may provide financial auditing services and foreign-licensed accountants may not be equity partners in an Indian accounting firm. The government is working on opening up the sector to foreign chartered accountants and professional consultants through the Limited Liability Partnership Bill, which was introduced in Parliament in December 2006. Press reported in November 2007 that the bill had cleared Parliament's Standing Committee on Finance, raising the prospects of the bill's passage in early 2008.

Construction, Architecture, and Engineering

Many construction projects are offered only on a nonconvertible rupee payment basis. Only government projects financed by international development agencies allow payment in foreign currency. Foreign construction firms are not awarded government contracts unless local firms are unable to perform the work. Generally, foreign firms may participate in government contracts through joint ventures with Indian firms.

Legal Services

India requires that anyone wishing to practice law must enroll as a member of the Bar Council. Only foreign nationals from countries that allow Indian nationals the right to practice law may enroll in the Bar Council. FDI is not permitted in this sector, and foreign law firms are also not authorized to open offices in India. Foreign legal service providers may be engaged as employees or consultants in local law firms, but they cannot sign legal documents, represent clients, or be appointed as partners. India has not made any offers for liberalizing foreign access to the legal services sector at the WTO. The United States-India Legal Services Working Group, a TPF initiative created in December 2006, has faced difficulty in arranging its first meeting due to the Bar Council's continued opposition to opening the legal services market in India.

Telecommunications

Despite positive steps towards liberalizing and introducing private investment and competition in its telecommunications services market, concerns remain regarding India's weak multilateral commitments in basic and value added telecommunications services and the apparent bias of telecommunications policy towards government owned services providers. In addition, many procompetitive recommendations of the telecommunications regulator have been delayed or rejected by the Department of Telecommunications (DOT) without adequate explanation.

India's national telecommunications policy allows private participation in the provision of all types of telecommunications services. In April 2007, DOT guidelines operationalized an increase in foreign equity limits from 49 percent to 74 percent for National and International Long Distance services.

In India's rapidly expanding and lucrative wireless telecommunications industry, the government is struggling to move forward with formalizing policies for reallocating telecommunications spectrum frequencies from defense, space, and other government bodies to commercial cellular mobile telecommunications operators. Expectations for the release of new second generation (2G) and third generation (3G) spectrum resulted in an avalanche of new applications for Unified Access Service

licenses before the government arbitrarily announced an application deadline of October 1, 2007. U.S. companies have complained that the spectrum and licensing policies under consideration by the government could potentially block their participation in the market.

Though India's Prime Minister has indicated greater support for the use of open auctions to resolve the controversial policy issues of 2G and 3G telecommunications services licensing and spectrum allocation, his views appear to remain at odds with those of the Communications Minister, who continues to advocate a "first come, first served" policy for the allocation of 2G spectrum. Though the Minister has said that open auctions may be appropriate for the allocation of 3G spectrum, he has not clarified whether or not the auction will be restricted to certain companies. U.S. companies remain concerned that they will be denied the opportunity to obtain either 2G and 3G spectrum, and thereby miss the opportunity to participate in India's lucrative and growing mobile telecommunications market, which has experienced 90 percent annual growth since 2005 and which reportedly adds eight million new subscribers per month.

Competitive carriers have expressed concerns about the neutrality and fairness of government policy. The government retains a significant ownership stake in three telecommunications firms: a 26 percent interest in the international carrier, VSNL; a 56 percent stake in MTNL, which primarily serves Delhi and Mumbai; and the 100 percent ownership of BSNL, which provides domestic services throughout the rest of India. Private companies and associations accused the government of favoritism after they learned at Government/Industry meetings on October 3-4, 2007, that MCIT/DOT had unilaterally given BSNL an additional 10 MegaHertz in 2G/GSM spectrum.

India's Access Deficit Charge (ADC) regime disproportionately impacts consumers making international calls to India. Telecommunications Regulatory Authority of India (TRAI) implemented the ADC in 2003 in connection with its Telecommunications Interconnection Usage Charge (IUC) Regulation. However, the ADC is not an "interconnection charge," but, rather, a supplemental component of India's overall universal service regime. Although India has eliminated the charges on outbound international calls, inbound international calls are still subject to the per-minute charge. India has stated that the ADC will be steadily cut, allowing the ADC to be phased out in 2008. The U.S. Government will continue to encourage India to meet this goal.

India does not allow voice over Internet protocol over networks connected to the Public Switched Telecommunications Network.

U.S. satellite operators have long complained about the closed and protected satellite services market in India. In practice, even though current Indian regulations do not preclude the use of foreign satellites, foreign satellite capacity must be provided through the Indian Space Research Organization (ISRO). That is, the foreign operator must sell its capacity to ISRO, a direct competitor, who then resells it to the customer. This middleman scenario raises a number of concerns: first, it creates additional costs for the consumer (a markup added by ISRO); second, it allows ISRO to negotiate contract terms with the goal (explicitly stated at times) of moving the service to one of ISRO's satellites once capacity is available; and third, the market grows at a rate determined by ISRO.

In 2004, TRAI recommended that India adopt an "open skies" policy and allow competition in the satellite services market. Prior to that date, India had already instituted a partial open skies policy with respect to international very small aperture terminal connections to the U.S. Internet Backbone for Indian Internet Service Providers. However, to date, the further liberalization proposed by the TRAI recommendations has not been adopted by the government of India.

FOREIGN TRADE BARRIERS

Distribution Services

The retail sector in India is largely closed to foreign investment. In January 2006, the government began allowing FDI in single-brand retail stores, subject to a foreign equity cap of 51 percent and government approval. Foreign direct investment in other than single-brand retail outlets is not permitted. With regard to direct selling, apparently arbitrary legal actions (including raids and seizures of property) have been initiated against a U.S. company operating in India with Foreign Investment Promotion Board approval. The case remains unresolved pending the outcome of an appeal to the Supreme Court.

Postal and Express Delivery

In 2006, India's Department of Post made public a draft of the India Post Office (Amendment) Bill. The draft bill updates the 1898 Post Office Act but also includes provisions with potentially negative effects for the operations of private express delivery companies. The key issues of concern to U.S. industry are: the draft bill includes a provision requiring all registered delivery services suppliers to contribute to financing the regulator's universal service obligation; the postal monopoly would be expanded by providing the Indian Department of Post the exclusive right to carry all "letters" up to 300 grams; and the bill would impose limits on foreign investment in all private delivery services, including express delivery suppliers, and might force foreign owned express companies to divest their existing operations in India. The U.S. Government has encouraged India's government to strike these problematic provisions from any final postal reform legislation.

Internet Services

U.S. companies have expressed concern that proposed amendments to India's Information Technology Act, which would impose liability on Internet based companies whose users commit illegal acts, would have a chilling effect on Internet access and commerce in India.

INVESTMENT BARRIERS

Equity Restrictions

Most sectors of the Indian economy are now at least partially open to foreign investment, with certain exceptions. The government continues to prohibit or severely restrict FDI in certain politically sensitive sectors, such as agriculture, retail trading, railways, and real estate. At the same time, the government has liberalized other aspects of foreign investment and eliminated various government approvals. Automatic FDI approval in many industries, including bulk manufacturing activities, is now allowed, while investment in some sectors still requires government approval.

The Indian government's stringent and nontransparent regulations and procedures governing local shareholding inhibit inward investment and increase risk to new entrants. Attempts by non-Indians to acquire 100 percent ownership of a locally traded company, permissible in principle, face regulatory hurdles that render 100 percent ownership unobtainable under current practice. Price control regulations have undermined incentives for foreign investors to increase their equity holdings in India. Some companies report forced renegotiation of contracts in the power sector as a result of ruling government changes at the state and central levels.

FOREIGN TRADE BARRIERS

Investment Disputes

Long standing unresolved disputes involving U.S. investors continue to discourage further U.S. investment in the energy sector. For example, in one unresolved dispute, notwithstanding a 2006 Supreme Court of India decision in favor of a U.S. firm in its claims against an entity of the government of India, the government has yet to pay the award required by the decision.

However, there has been significant progress in 2007 toward resolving several payment disputes that American power sector investors have with the State of Tamil Nadu. The government, which has limited jurisdiction over commercial disputes involving matters under state jurisdiction, has been helpful in convincing Tamil Nadu to settle these commercial disputes. The United States continues to urge the government that in order to create an attractive and reliable investment climate, India and its political subdivisions need to provide a secure legal and regulatory framework for the private sector, as well as institutionalized dispute resolution mechanisms to expedite resolution of commercial issues. The Government Law Ministry signed an agreement with The Permanent Court of Arbitration (PCA), the Hague, to open a regional center in India. PCA officials visited India in late 2007 to view the logistics for opening up the regional PCA center, which is not expected before mid-2008.

ANTICOMPETITIVE PRACTICES

India suffers from a slow bureaucracy and with little or no fear of government action and a clogged court system where cases can linger for years. Indian firms face few if any disincentives to engage in anticompetitive business practices.

In September 2007, the government introduced new merger control amendments to its Competition Act. The merger and acquisition provisions, once notified and enacted, would require foreign companies, including those with a limited nexus to Indian markets, to seek approvals for mergers and acquisitions made anywhere in the world, including outside India and the company's home country. The government would impose a 210 day waiting period before the transaction could take place, even if it would have little or no impact on business within India. If enacted, a broad swath of global mergers and acquisitions would be potentially caught up in this new law. The United States is working with industry, foreign governments, and Indian companies and industry groups to persuade the government to promulgate regulations under the new law to correct the most problematic aspects of the M&A provisions.

OTHER BARRIERS

India has an unwritten policy that favors counter-trade (a form of trade in which imports and exports are linked in individual transactions). The Indian Minerals and Metals Trading Corporation is the major counter-trade body, although the State Trading Corporation also handles a small amount of counter-trade. Private companies also are encouraged to use counter trade. Global tenders usually include a clause stating that, all other factors being equal, preference will be given to companies willing to agree to counter-trade.

India has continued to apply actively its antidumping law. During 2006, the last year for which WTO statistics are available, India initiated 30 antidumping investigations (highest among all WTO Members) and imposed 18 new antidumping measures (third highest among all WTO Members). India's new investigations focused largely on plastics and textiles, with two of these initiations involving U.S. exports. In September 2007, the United States participated in the second technical exchange with Indian

FOREIGN TRADE BARRIERS

antidumping administrators to obtain a better understanding of India's trade remedy laws and their compliance with India's WTO obligations. The U.S. and Indian Governments have agreed within the context of the United States-India Commercial Dialogue to continue these discussions on trade remedy issues.

INDONESIA

TRADE SUMMARY

The U.S. goods trade deficit with Indonesia was \$10.1 billion in 2007, a decrease of \$276 million from \$10.3 billion in 2006. U.S. goods exports in 2007 were \$4.2 billion, up 37.6 percent from the previous year. Corresponding U.S. imports from Indonesia were \$14.3 billion, up 6.6 percent. Indonesia is currently the 39th largest export market for U.S. goods.

U.S. exports of private commercial services (*i.e.*, excluding military and government) to Indonesia were \$1.3 billion in 2006 (latest data available), and U.S. imports were \$349 million. Sales of services in Indonesia by majority U.S.-owned affiliates were \$1.1 billion in 2005 (latest data available), while sales of services in the United States by majority Indonesian-owned firms were \$23 million.

The stock of U.S. foreign direct investment (FDI) in Indonesia was \$10.6 billion in 2006 (latest data available), up from \$9.5 billion in 2005. U.S. FDI in Indonesia is concentrated largely in the mining sector.

The United States and Indonesia continue to hold regular meetings under their trade and investment framework agreement to discuss outstanding trade concerns and explore ways to further enhance trade and investment relations. In August 2007, Indonesia and Japan signed an economic partnership agreement, Indonesia's first bilateral free trade agreement. Indonesia fully implemented the first stage of its commitments under the Association of South East Asian Nations (ASEAN) Free Trade Agreement (AFTA) on schedule in 2002, and it has been active in ASEAN's efforts to pursue free trade agreements with China, Japan, South Korea, India, Australia, and New Zealand.

IMPORT POLICIES

Tariffs

The Indonesian government released a new tariff reduction package in January 2004. The new tariff book categorizes tariffs into International Non-ASEAN Tariffs and ASEAN Tariffs. Most Non-ASEAN tariffs fall into 0 percent, 5 percent, and 10 percent tiers, except for sensitive items such as automotive goods and alcohol. ASEAN tariffs fall into three tiers, 0 percent, 2.5 percent, and 5 percent, for all goods covered by the AFTA. Indonesia's simple average bound tariff was 37.1 percent in 2006. Its simple average applied tariff was 6.9 percent.

In January 2006, Indonesia announced the results of the second and final phase of its Tariff Harmonization Program. Of 9,209 tariff lines reviewed, Indonesia made changes to 800, lowering 635 tariffs and increasing 165. Most Indonesian tariffs are bound at 40 percent. Products for which tariff bindings exceed 40 percent or which remain unbound include automobiles, iron, steel, and some chemical products. In the agricultural sector, 1,341 tariff lines have bindings at or above 40 percent. Fresh potatoes, for instance, have a tariff binding of 50 percent. Local agriculture interests continue to lobby the government to increase tariff rates above bound WTO levels on sensitive agricultural products, such as sugar, soybeans, and corn.

The maximum tariff on automobiles is 80 percent. Tariffs on passenger car kits imported for assembly range from 25 percent to 50 percent, depending on engine size, while tariffs on nonpassenger car kits are

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25 percent. Tariffs on automotive components and parts imported for local assembly of passenger cars and minivans are 15 percent. U.S. motorcycle manufacturers remain concerned about the high tariff of 60 percent (25 percent on knockdown kits), the luxury tax of 75 percent, as well as the prohibition on motorcycle traffic on toll ways as barriers to the Indonesian market.

To implement the ASEAN Harmonized Tariff Nomenclature, starting from September 14, 2007, the Indonesian government amended its tariff schedule by lowering some tariff bindings including wire rods, steel strands, aluminum foil, and automotive components to 20 percent from 45 percent.

Nontariff Barriers

The luxury sales tax on 4,000 cc sedans and 4x4 Jeeps or vans is 75 percent, compared with the luxury tax on automobiles with engine capacity under 1500 cc, which ranges from 10 percent to 30 percent. Forty percent of the market is made up of passenger cars with engine displacement less than 1500 cc, including a large group of vehicles predominantly produced in Indonesia that are taxed at a rate of 10 percent.

The National Logistics Agency (Bulog) previously had a monopoly on importing and distributing major bulk food commodities, such as wheat, rice, sugar, and soybeans, but it now has the status of a state owned enterprise with responsibility for maintaining stocks for distribution to military and low income families, and for managing the country's rice stabilization program. Bulog is no longer entitled to draw on Bank Indonesia credit lines, a privilege it enjoyed under the Soeharto regime, and it must use commercial credit and pay import duties. In conjunction with the reduction of Bulog's authority and role, some designated private companies are now permitted to import rice, wheat, wheat flour, soybeans, garlic, and sugar.

In February 2007, the Indonesian government announced it was relaxing the ban on imports of rice because of late rains and a poor harvest. In August 2007, it revoked the ban. According to the Ministry of Trade, Bulog has discretion as to when and how much rice to import. Under new authority, Bulog can import premium rice, but it must consult with the Minister of Trade before doing so. Bulog also has authority to impose measures to stabilize rice prices without consulting other ministries in areas where there are rice shortages and price fluctuations. The Indonesian government has increased rice import duties from 450 Rupiah per ton (\$48 per ton) to 550 Rupiah per kilogram (\$58 per ton). Historically, the United States has not made significant commercial sales of rice to Indonesia; most shipments have occurred through the P.L. 480 Title I concessional loan program.

The Indonesian government continues to maintain a ban on imports of chicken parts originally imposed in 2000 by the Directorate General of Livestock Services in the Ministry of Agriculture (MOA). The U.S. Government has repeatedly raised concerns about this issue, but the MOA continues to insist that the ban is needed to assure consumers that imports are *Halal* (or produced in accordance with Islamic practices). U.S. industry estimates the value of lost trade from the ban at roughly \$10 million per year.

The Indonesian government also imposes *de facto* quantitative restrictions on imports of animal based food products by requiring an import permit from the Directorate General of Livestock. In approving requests for such letters, the Indonesian government may arbitrarily alter the quantity allowed to enter. U.S. industry estimates the annual trade impact of this restriction to be between \$10 million and \$25 million.

In addition to the ban on imports of salt during the harvest season, Indonesian regulators require salt importing companies to be registered and to source 50 percent of their raw materials locally. A Ministry

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of Trade decree from 2004 allows five companies to import sugar, with the Ministry of Trade empowered to decide which companies can import sugar and in what quantities.

Indonesia applies quantitative import limits to wines and distilled spirits. In addition to the regular import duty of 170 percent, a 10 percent VAT and 35 percent luxury tax, the Indonesian government restricts imports of alcoholic beverages to two registered importers, both state owned enterprises. The combined effect of these barriers is to impede U.S. exports to Indonesia; during the first half of 2007, there were no direct U.S. exports of spirits to Indonesia, according to U.S. industry estimates.

The U.S. Government has received reports that Indonesia's Customs Service uses a schedule of arbitrary "check prices" rather than actual transaction prices on importation documents to assess duties on food product imports, despite Indonesia's commitments under the WTO Customs Valuation Agreement. Indonesian Customs officials defend this practice by arguing it combats under invoicing and assert that 80 percent of all Customs applications are accepted without extraordinary review. Importers are notified, however, when an application appears to be suspicious and, if the matter is not resolved, Customs makes an assessment based on an average of the price of the same or a similar product imported during the previous 90 days. Although most food product import tariffs remain at 5 percent, the effective level of duties can be much higher. For example, U.S. industry estimates that application of arbitrary check prices adds up to \$2,000 per shipment of U.S. table grapes to Indonesia, leading to an estimated annual loss of around \$3.5 million per year in potential trade for this product alone. The U.S. Government also has received complaints from importers about costly delays and requests for unofficial payments from a number of companies importing goods through Indonesian ports. The United States will continue to raise concerns with the Indonesian government over this issue.

Parliament approved an amended Customs Law in 2006 that cuts red tape for importers and exporters and imposes stiffer sanctions on smugglers. It established a code of ethics for customs officers and a set of penalties and incentives to punish corrupt behavior and reward good performance. The U.S. Government continues to monitor the implementation of this law and its effectiveness.

Import Licensing

The Indonesian government continues to reduce the number of products subject to import restrictions and special licensing requirements. Currently, 141 tariff lines are subject to import licensing restrictions, down from 1,112 tariff lines in 1990. Alcoholic beverages, lubricants, explosives, and certain dangerous chemical compounds, among other items, are subject to these requirements.

In 2002, the Minister of Industry and Trade issued a decree on Special Importer Identification Code Numbers. This decree requires importers of certain product categories to apply for a special importer identity card, without which products can be detained at port. These goods include: corn, rice, soybeans, sugar, textile and related products, shoes, electronics, and toys.

The Minister of Industry and Trade issued a decree in 2002 concerning Textile Import Arrangements. Only companies that have production facilities using imported fabrics as inputs for finished products, such as garments or furniture, may obtain import licenses. The United States has raised concerns that the import licensing requirements restrict and distort trade and has urged the Indonesian government to rescind the decree.

STANDARDS, TESTING, LABELING, AND CERTIFICATION

In July 2000, the Indonesian government implemented the Consumer Protection Law of 1998 by requiring registration of imported food products. Importers must apply for a registration number from the Agency for Drug and Food Control (BPOM). According to U.S. importers, these requirements have proven to be overly burdensome and costly.

BPOM tests imported food products although implementation of this requirement is not yet complete and enforcement is inconsistent. Some U.S. producers have expressed concern that the extremely detailed information on product ingredients and processing they must provide may require them to reveal proprietary business information, leading some of them to discontinue sales in Indonesia. If fully implemented, the annual level of trade adversely affected by this requirement is estimated by U.S. industry at between \$10 million and \$25 million.

In 2007, Indonesia notified its Draft Decree Concerning Food Safety Control for the Import and Export of Fresh Food of Plant Origin to the WTO. The United States provided comments that expressed some concerns with these measures, which are under consideration in Indonesia.

Following the June 2005 discovery of a single case of Bovine Spongiform Encephalopathy in the United States, Indonesia's MOA banned imports of U.S. meat and other ruminant products on July 1, 2005. U.S. beef exports had been growing rapidly and approached a record \$15 million in 2005 prior to imposition of the import ban. In early 2008, following negotiations during much of 2007, the Indonesian government agreed to allow full market access for imports of all U.S. beef and beef products from animals of all ages, consistent with the guidelines of the World Organization for Animal Health.

In May 2005, Indonesia issued a proposed regulation, Decree 37, which imposed new requirements for fresh fruit and vegetable imports. The proposal inaccurately reflected the presence of fruit flies in the United States. Although the United States corrected this information in its August 2005 response to the proposed regulation, Decree 37 became effective on March 27, 2006 without modification of the U.S. pest status. The final regulation requires imports of fruit fly host commodities to originate from fruit fly free areas or to be treated as a condition of entry. Eleven U.S. fruit exports were affected by Decree 37, including apples and grapes. In December 2006, following an MOA inspection visit, Indonesia declared California as a pest-free area for the Mediterranean fruit fly for grapes, opening the way to renewed grape exports.

Indonesia still maintains requirements for U.S. apples that do not take into account pest-free production areas in the Pacific Northwest. The United States has raised the issue bilaterally and in WTO meetings. At the WTO SPS Committee meeting in October 2007, the United States held a bilateral meeting with the Indonesian delegation, noting that, while exports of apples, pears, and cherries have resumed, Indonesia still requires treatment for pests that do not exist in the exporting regions or which cannot become established in Indonesian territory. The Indonesians said that they consider the matter to be resolved since trade in these products is moving, but they also indicated that they would be willing to have technical discussions to resolve any outstanding issues. Indonesia is the seventh largest market for U.S. apples, worth over \$24 million in 2006. The United States will continue to raise this issue.

Indonesia has established policies on biotechnology, but does not appear to have a unified science based regulatory framework to implement its regulations. The Biosafety and Food Safety Committees are responsible for implementing regulations for biotechnology and initiating assessments for product approvals. Biosafety assessments for *Bacillus thuringiensis* (Bt) corn, Roundup Ready (RR) Corn, and

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RR soybeans are complete. However, final approval for these products has not yet been granted due to incomplete food safety assessments. Furthermore, an MOA decree from January 2001 for biotechnology enhanced food established a 5 percent threshold level for labeling. To date, Indonesia has not issued implementation guidelines due to limited testing capabilities and ongoing discussion about the practical implementation of labeling requirements.

GOVERNMENT PROCUREMENT

Indonesia is not a signatory to the WTO Agreement on Government Procurement. In 2004, Indonesia issued a Presidential Decree on government procurement aimed at simplifying procedures and increasing efficiency and transparency in the procurement process. However, the Decree grants special preferences to encourage domestic sourcing and the maximum use of local content in government projects. Under the Decree, foreign companies are eligible to bid on government contracts as part of a joint partnership or as a subcontractor to a domestic firm, and permissible foreign participation in such projects increased from \$1 million to \$5 million.

The decentralization of procurement decisions may introduce additional barriers as local and provincial governments adopt their own procurement rules. A 2006 presidential decree requires agencies to announce projects, invite tenders, and provide related information in one national newspaper. By 2008, it requires the announcement of tenders to be publicized on a national procurement website that is under development.

Foreign firms bidding on high value government sponsored projects have been asked to purchase and export the equivalent value of selected Indonesian products. Government departments, institutes, and corporations are expected to utilize domestic goods and services to the maximum extent feasible, with the exception of foreign aid-financed procurement of goods and services. State owned enterprises that publicly offer shares through the stock exchange are exempted from government procurement regulations.

INTELLECTUAL PROPERTY RIGHTS (IPR)

IPR protection and enforcement remains a concern in Indonesia, where widespread optical disc piracy and counterfeiting of consumer goods, including automotive parts and pharmaceuticals, cost U.S. firms and the Indonesian government hundreds of millions of dollars in lost revenue and pose serious health and safety concerns for Indonesians. Indonesia has made progress in the past couple of years, but considerable work remains. The United States will continue to raise concern about the range of IPR issues with Indonesia and work with it to help strengthen its IPR regime.

Copyrights

Indonesia's Copyright Law came into force in July 2003. The law contains a number of important provisions long sought by U.S. and Indonesian copyright holders, including criminal penalties for end-user piracy and the ability of rights holders to seek civil injunctions against pirates. The Copyright Law establishes rights to license, produce, rent, or broadcast audiovisual, cinematographic, and computer software. It also provides protections for neighboring rights in sound recordings and for the producers of phonograms. It stipulates a 50 year term of protection for many copyrighted works. An Optical Disc (OD) Regulation became effective in April 2005. The Ministry of Industry leads an interagency OD factory monitoring team that has registered 31 factories and has begun unannounced inspections with some support from local IPR industry associations.

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Following a December 2005 directive by the Indonesia National Police, police increased and sustained IPR enforcement activities, particularly against pirate OD vendors, distributors, and factories. The Jakarta and Surabaya police were particularly active, seizing and destroying millions of illegal ODs, arresting hundreds of suspects, and seizing illegal burners and closing OD production lines. There are currently three cases involving factories producing pirated products that are scheduled for the criminal court resulting from two raids on July 1, 2007. Licenses may be revoked following court verdicts. The Ministry of Industry has also applied administrative sanctions to the factory owners. In September 2007, the Attorney General's Office raised the profile and priority of IPR issues by authorizing the Terrorism and Transnational Crime Task Force to handle IPR cases. These activities, while considerable, have yet to produce a significant increase in prosecutions and deterrent fines or custodial sentences, or the permanent impoundment or destruction of large scale production equipment used to manufacture pirated products. While the success of recent police enforcement activities has resulted in some decrease in the quantity, quality and availability of pirated ODs, the rate of piracy in Indonesia remains high.

Patents and Undisclosed Data

Indonesia enacted its Patent Law in August 2001. The Law consolidated three previous laws covering patents and established an independent commission to rule on patent disputes and appeals. The Law transferred jurisdiction over IPR civil cases to the Commercial Court from the District Court, and raised the maximum fine for patent violations to 500 million Rupiah (\$60,000). The term of protection is 20 years as of date of receipt and cannot be extended. A patent is subject to cancellation in the event the patent holder fails to pay annual fees within specified periods. The Law requires that a transfer of patent rights shall be recorded and announced based on a fee. The unauthorized use of a product or process invention that is the subject of a pending application constitutes patent infringement.

Despite the improvements to its patent regime, Indonesia continues to lack adequate patent protection in many areas, particularly with respect to foreign rights holders. Chief among these inadequacies is the requirement that an inventor must physically produce a product or utilize a process in Indonesia in order to obtain a patent for that product or process invention. The Patent Law's provisions on compulsory license authorize the Director General of Intellectual Property Rights to grant a license to a third party without the authorization of the patent holder if the Director General determines that the patent cannot be implemented, or implemented partly, in Indonesia, or that the patent will be implemented in a form and manners encumbering the interests of the public. Further, in the pharmaceuticals field, Indonesia does not provide effective protection against unfair commercial use of undisclosed test and other data.

Trademarks

Indonesia's 2001 trademark law raised the maximum fine for criminal trademark violations to 1 billion Rupiah (\$120,000) and slightly reduced the maximum possible prison term. The Indonesian government justified this move by claiming that financial penalties were a greater deterrent to IPR violators than imprisonment. Foreign rights holders, however, had pushed for minimum sentencing guidelines, arguing that most IPR cases never result in the maximum possible sentence.

The trademark law provides for the determination of trademark rights by priority of registration, rather than by priority of commercial use. The law also provides for the protection of well known marks, but offers no administrative procedures or legal grounds under which legitimate owners of well known marks can cancel preexisting registrations. The only avenue for challenging existing trademark registrations in Indonesia is through the courts, an often burdensome undertaking that must be initiated within 5 years from the date of the disputed registration. Faster processing (within 180 days) of trademark cases by the

Commercial Courts has provided relief to some trademark holders. However, rights holders cannot always rely on the courts, even when they have strong evidence to support the cancellation of a registration.

SERVICES BARRIERS

Despite relaxation of some restrictions, significant trade barriers to services continue to exist in many sectors.

Legal Services

Only Indonesian citizens with a degree from an Indonesian legal facility or other recognized institution may practice as lawyers. Foreign lawyers can only work in Indonesia as “legal consultants” and must first obtain the approval of the Ministry of Justice and Human Rights. A foreign law firm seeking to enter the market must establish a relationship with a local firm.

Distribution

In 1998 and 1999, Indonesia liberalized portions of the distribution services sector under the terms of its agreements with the IMF after the financial crisis. The Indonesian government eliminated restrictive marketing arrangements for cement, paper, plywood, and cloves and other spices. Indonesia allows up to 100 percent foreign equity in the distribution and retail sectors, with the condition that the investor enter into a “partnership agreement” with a small-scale Indonesian enterprise. This partnership agreement need not involve an equity stake in the project. Nonetheless, some U.S. direct selling companies have complained that Indonesia’s market is generally closed to investment in the direct selling industry.

Energy

The November 2001 Oil and Gas Law deregulated the downstream oil and gas sectors, which include refining, distribution, storage, and retail activities. Under the law, the state oil and gas company Pertamina was converted into a limited liability company and its public service obligation ended in 2003. The law also stipulated the formation of a new Oil and Gas Downstream Business Regulating Board (Badan Pengatur Kegiatan Usaha Hilir Migas, or BPH Migas) that effectively took control of Pertamina’s former regulatory function over the downstream industry. BPH Migas is an independent government institution that reports directly to the President. Its primary functions include regulating the supply and distribution of oil fuel, allocating sufficient fuel oil to meet national fuel oil reserves, stipulating conditions on fuel oil transportation and storage, setting tariffs for natural gas pipeline use, setting the price of natural gas for households and small consumers, and regulating the transmission and distribution of natural gas. Since late 2005, about 25 local and international investors are reported to have obtained initial licenses for downstream operations.

Financial Services

Indonesia allows 99 percent foreign ownership in the banking sector, however, Indonesia’s GATS commitments remain bound at only 52 per cent. Financial service providers may not establish as a branch. Indonesia also continues to restrict the supply of certain cross-border insurance.

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Audit and Accounting Services

Foreign firms cannot practice under international firms' names, although terms such as "in association with" are permissible. Foreign accounting firms must operate through technical assistance arrangements with local firms. Foreign agents and auditors may act only as consultants and cannot sign audit reports. Foreign directors, managers, and technical experts/advisors, unless mentioned otherwise, are allowed a maximum stay of 2 years, with a possible 1 year extension. Licensed accountants must hold Indonesian citizenship. A Ministry of Finance decree requires a 5 year limit on general audits by an accounting firm (Indonesia is one of only a small handful of countries to require this). While many countries require the rotation of an audit partner, many U.S. companies consider the mandatory audit firm rotation overly burdensome. Auditors practicing in the capital markets are prohibited from delivering specified nonaudit services such as consulting, bookkeeping, and information system design.

Audio-Visual

Foreign investment is prohibited in broadcast and media sectors, including film and video production and distribution, and cinema construction and operation. Films are also subject to review and censorship before screening domestically. Foreign investment in the provision of radio and television broadcasting services, radio and television broadcasting subscription services and media print information services also are prohibited.

Construction, Architecture and Engineering

Foreign consultants working under government contract are subject to government billing rates. Foreign construction firms are only permitted to be subcontractors or advisors to local firms in areas where the government believes that a local firm is unable to do the work. In addition, for government financed projects, foreign companies must form joint ventures with local firms.

Telecommunications Services

Indonesia has recently made progress in liberalizing the telecommunications sector, notably by permitting increased foreign ownership – up to 65 percent foreign ownership in value added and mobile telecommunications services and up to 49 percent for fixed networks. While an improvement over its current WTO commitments, the new limits on fixed services represent a step backwards from recent practice where up to 95 percent ownership was permitted.

Indonesia formed a telecommunications regulatory body (BRTI) in July 2004 to improve transparency in regulation development and dispute resolution. The body is responsible for regulating, monitoring and enforcing the telecommunications law, including its implementing regulations. BRTI was largely inactive until 2007, when it took several steps to improve the telecommunications sector, including drafting new interconnection regulations, formulating rules for tariffs, and mediating disputes between parties.

INVESTMENT BARRIERS

Indonesia's new Investment Law was approved by the legislature in March 2007. The Law sets out affirmative principles, such as equal treatment of foreign and domestic investors. Its impact, however, will depend on the accompanying implementing regulations. Among those is the "Negative Investment List" issued on July 3, 2007, identifying restricted and closed sectors for investment. According to the Indonesian government, 69 sectors are more open than before, 11 sectors are more restrictive and 25

FOREIGN TRADE BARRIERS

sectors are closed to foreign investment. It insists that the list will not be applied retroactively and will only affect new investments; however implementing regulations that would provide clarification have yet to be issued. While the new Law increased transparency and legal certainty, it also has limited some investment previously allowed. The United States will continue to raise this issue with Indonesia.

The new Investment Law eliminates the divestment requirement and the limited duration of investment that existed in the old foreign investment law. Previously, foreign investors were required to divest at least 5 percent to local shareholders within 15 years, and investment approvals were good for a maximum of 30 years. No divestment requirements or duration limits exist in the new law. The Indonesian government also issued four new decrees in September 2007 that are designed to streamline the business entry process for both local and foreign investors.

Indonesia began to implement a large-scale decentralization of authority and budget control from the central government to the provincial and district-level governments in 2001. Decentralization has complicated government efforts to improve Indonesia's investment climate. While intended to reduce burdensome bureaucratic procedures and other requirements on foreign investors, decentralization has produced uneven results. Some counties and cities have capitalized on decentralization to increase government revenues, attract foreign business, and improve social services. For example, subnational governments such as Yogyakarta province have set up one stop service centers for businesses to get all required licenses in one place. However, other subnational governments have increased uncertainty among foreign investors with additional legislation, restrictive practices, and trade distorting revenue raising measures contrary to national laws. In an effort to help alleviate this problem, under proposed revisions to the law, local governments would be granted the authority to tax based upon a "positive" list indicating affirmative local authority, rather than a "negative" list indicating areas where the central government retains authority.

A World Bank study has found that it takes 105 days on average to establish a business in Indonesia. In response to labor demonstrations in 2006, Indonesia decided to indefinitely postpone plans to revise the country's labor laws.

ELECTRONIC COMMERCE

Despite the proliferation of Internet service providers in recent years, several factors hinder the growth of electronic commerce in Indonesia. These include the lack of a clear policy in support of an open telecommunications infrastructure, a low level of computer ownership by both businesses and individuals, lack of funding, and weak IPR protection. U.S. industry has identified the lack of a legal framework for ensuring security of online transactions as a particularly significant impediment. The Indonesian government completed drafting of cyber crime and electronic transactions legislation in September 2005, and the measures are currently being debated in the legislature. The last legislative debate was in May 2007, but without resolution to indicate prospects for further progress.

OTHER BARRIERS

Foreign companies continue to complain about corruption in Indonesia. U.S. and other foreign companies have expressed concern about demands for unwarranted fees to obtain required permits or licenses, expedite processes, as well as to influence government awards of contracts and concessions. The integrity of the legal system remains a concern and courts at several levels are perceived as inefficient and corrupt. To help address this issue, the President of Indonesia is urging state owned enterprises to improve management performance and reduce corruption. In addition, the Ministry of

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Finance is leading civil service reform efforts – a preventive strategy in the overall anticorruption reform movement – and new leadership in the directorates of tax and customs is seeking to improve services and efficiency.

Indonesia has empowered several corruption fighting bodies. The Corruption Eradication Commission (KPK) coordinates all anti-corruption efforts in the government and has the authority to investigate and prosecute high-level corruption cases. It has continued to intensify its activity since it set up operations in 2004, investigating and prosecuting more cases as well as increasing its staffing. The KPK has a 100 percent successful prosecution rate since its inception and has successfully prosecuted 39 cases, including 21 successful cases in 2007 (through August 31), up from 14 in 2006. The Anti-Corruption Court handles all anti-corruption cases initiated by the KPK. In addition, the Indonesian Parliament passed new whistleblower protection legislation in August 2006. Indonesia also ratified the United Nations Convention against Corruption (UNCAC) in March 2006 and hosted the second Conference of State Parties for the UNCAC in January 2008.

ISRAEL

TRADE SUMMARY

The U.S. goods trade deficit with Israel was \$7.8 billion in 2007, a decrease of \$409 million from \$8.2 billion in 2006. U.S. goods exports in 2007 were \$13.0 billion, up 18.7 percent from the previous year. Corresponding U.S. imports from Israel were \$20.8 billion, up 8.6 percent. Israel is currently the 19th largest export market for U.S. goods.

U.S. exports of private commercial services (*i.e.*, excluding military and government) to Israel were \$3 billion in 2006 (latest data available), and U.S. imports were \$2.3 billion. Sales of services in Israel by majority U.S.-owned affiliates were \$1 billion in 2005 (latest data available), while sales of services in the United States by majority Israel-owned firms were \$474 million.

The stock of U.S. foreign direct investment (FDI) in Israel was \$10.0 billion in 2006 (latest data available), up from \$8.4 billion in 2005. U.S. FDI in Israel is concentrated largely in the manufacturing, information, and the professional, scientific, and technical sectors.

The United States-Israel Free Trade Area Agreement

Under the United States-Israel Free Trade Area Agreement (FTA), signed in 1985, the United States and Israel agreed to phased tariff reductions culminating in the complete elimination of duties on all products by January 1, 1995. Most tariffs between the United States and Israel have been eliminated as agreed, although tariff and nontariff barriers continue to affect a certain portion of U.S. agricultural exports.

To temporarily and partially address the differing views between the two countries over how the United States-Israel FTA applies to trade in agricultural products, in 1996 the United States and Israel signed an Agreement on Trade in Agricultural Products (ATAP), establishing a program of gradual and steady market access liberalization for food and agricultural products effective through December 31, 2001. Negotiation and implementation of a successor ATAP was successfully completed in 2004. This Agreement is effective through December 31, 2008, and grants improved access for select U.S. agricultural products. The Agreement provides U.S. food and agricultural products access to the Israeli market under one of three different categories: unlimited duty free access; duty free tariff-rate quotas (TRQs); or preferential tariffs, which are set at least 10 percent below Israel's Most Favored Nation (MFN) rates. The Agreement also provides for annual increases in TRQs. Negotiations for a successor ATAP commenced in early 2008.

IMPORT POLICIES

Agriculture

Market Access: Approximately 90 percent of U.S. agricultural exports (by value) enter Israel duty and quota free as a result of Israel's implementation of commitments under the WTO, the FTA, and the 2004 ATAP. However, remaining U.S. agricultural exports, consisting largely of consumer oriented goods, face restrictions such as a complicated tariff-rate quota (TRQ) system and high tariffs. In addition, the ability of U.S. exporters to utilize available TRQ volumes can be hampered by problems with the administration and transparency of Israel's TRQs. TRQ related problems include a lack of data on quota fill-rates and license allocation issues such as small noncommercially viable quota quantities and

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administrative difficulties in obtaining licenses for within quota imports. Under the 2004 ATAP, Israel committed to taking steps to improve the administration of TRQs, including engaging in regular bilateral consultations. However, the mid-year reallocation of unused quotas by the Israeli Quota Administration failed to solve the problems. The negotiations for a successor ATAP seek to address these issues.

Restrictions remain on other U.S. agricultural exports, including high value goods that are important to the Israeli agricultural sector such as dairy products, fresh fruits, fresh vegetables, almonds, wine, and some processed foods. According to industry estimates, elimination of levies on processed foods could result in increased sales by U.S. companies, with appropriate market development efforts, in the range of \$25 million to \$50 million. Removal of quotas and levies on dried fruits could result in increases in sales by U.S. exporters of up to \$10 million. U.S. growers of apples, pears, cherries, and stone fruits estimate that elimination of Israeli trade barriers would lead to an increase of \$5 million to \$25 million in export sales of these products. It is estimated that free trade in agriculture could result in U.S. almond exports growing by as much as \$10 million.

The Israeli New Food Committee of the Ministry of Health published regulations for new food registrations in February 2006. The registration of foods containing bioengineered ingredients began in early 2007. The new procedure was supposed to encompass only registration requirements. However, U.S. companies have had difficulty in getting products approved and receiving information on the regulation and specific requirements in a timely manner. They have also been confronted with stringent new standards that are of concern to the United States.

Meat Imports and Kosher Certification: Israel prohibits the importation of any meat or meat products that are not certified as kosher by Israel's chief rabbinate, a policy that presents significant challenges for U.S. meat exporters. There is strong demand in Israel for quality kosher beef. However, the process for granting kosher certificates is expensive and complex. In 2002, the U.S. meat industry and the two governments attempted to develop steps to facilitate U.S. compliance with Israel's kosher requirements. Unfortunately, these efforts were unsuccessful. Industry estimates that kosher certification for U.S. meat could result in an annual increase in U.S. meat exports of \$15 million in the medium term and more than \$25 million in the long term. In addition, work on an agreement on veterinary certificates of health for live animal imports was suspended after the announcement of the discovery of a case of Bovine Spongiform Encephalopathy (BSE) in the United States involving an imported animal. The Israeli government has engaged in regular consultations with the U.S. Department of Agriculture to alleviate remaining concerns. In fall 2007, the Israeli Ministry of Agriculture agreed to allow imports from the United States of cattle aged less than 12 months, but the ban remains in effect for all other beef imports, including pet food. The United States has requested that Israel rely on guidelines on BSE developed by the World Organization for Animal Health (OIE). OIE guidelines currently provide that no age limits should apply for a controlled-risk country like the United States as specific risk material is removed from the animal at slaughter.

Israel permits the domestic production and marketing of non-*Kosher* meat, but bans its importation. U.S. firms estimate that elimination of the prohibition on non-*Kosher* imports could result in increased sales of up to \$10 million.

Wine Imports: The 2004 ATAP for the first time granted U.S. wine exporters an annual Israeli TRQ of 200,000 liters of wine. In addition, U.S. exports in excess of the quota limit are charged a tariff lower than Israel's MFN rate. However, the current method of quota allocation for wine creates a significant challenge for wine imports. Equal quotas are allocated to each applicant for an import license – qualified or otherwise. Further compounding the problem, the reallocation of quotas at the end of a period often

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occurs too late to make it commercially viable for another importer to utilize the remaining quota. Wine importers note that the Israeli government does not require Israeli wine producers to follow the detailed labeling requirements of the official Israel Standard for Wine, while these rules are strictly enforced on imported wines.

Rabbinical regulations for *Kosher* certification also pose challenges for U.S. wine exporters. For example, rabbinical regulations do not permit use of the same company name on *Kosher* and non-*Kosher* wines. To keep their *Kosher* certification, importers of *Kosher* wines are not permitted to import non-*Kosher* wines. *Kosher* wines cannot be stored in the same warehouse as non-*Kosher* wines.

Sales of U.S. wines to Israel are about \$700,000 per year. Industry estimates that the elimination of trade barriers could result in increased exports worth up to \$10 million per year.

Agricultural Labeling Requirements: Imported food products face rigid labeling requirements. For many products, Israeli labeling requirements are far more cumbersome than U.S. requirements. The cost of additional labeling has been a deterrent for many U.S. companies that have considered marketing their products in Israel. The loss of sales of U.S. products is difficult to estimate due to the variety of products affected by these regulations.

The Israeli government has adopted licensing requirements for “sensitive” and “nonsensitive” products, classifications ostensibly based on a product’s potential impact on public health. Importers have experienced difficulty and incurred significant costs in obtaining these licenses. The list of sensitive foods includes: milk products and milk product substitutes; meat and poultry products and their substitutes; fish products and their substitutes; food supplements: vitamins, minerals and herbs; baby food; egg products; canned food (under pH 4.5); food that contains food coloring; gelatin products, including products that contain gelatin; honey products; other food products stored at low temperature; mineral water; mushroom products; and food that was exported, but then returned to Israel.

Customs Procedures

Some U.S. exporters have reported difficulty in claiming preferences under the FTA. Israel has cited concerns about the U.S. method for issuing certificates of origin as the basis for sometimes delaying entry of, or delaying preferential tariff treatment for, U.S. goods entering Israel.

STANDARDS, TESTING, LABELING, AND CERTIFICATION

Certain technical standards continue to pose nontariff barriers which limit U.S. exporter access to the Israeli market. However, there have been several key improvements in 2007. Israel’s law mandates that the Standards Institution of Israel (SII) adopt international technical standards whenever feasible. In the past, the SII frequently opted for restrictive standards in Israeli regulations that tended to hinder or exclude U.S. products. In May 2007, senior officials of the U.S. National Institute of Standards and Technology (NIST) met with their SII counterparts and agreed to fund formal training on U.S. standards for Israeli officials. Furthermore NIST established that it would serve as the point-of-contact for U.S. private sector standards bodies with Israeli. U.S. and Israeli officials will meet again in early 2008.

However, individual Israeli government ministries may still adopt additional technical regulations that could prevent the importation of U.S. made products and services to Israel. This procedure could create difficulties for U.S. exporters who contend that transparency is frequently lacking, particularly for food imports.

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U.S. industry has said that requirements for technical standards are often not uniformly enforced. In some instances, domestic products appear to have an advantage over imports because enforcement of labeling requirements and other regulations on domestic producers has been inconsistent, while technical regulations are more strictly enforced with respect to imported goods. U.S. companies that have been doing business in Israel for many years are increasingly confronted with new standards, often based on standards of the European Union, that have been integrated into Israeli regulations and which discriminate against U.S. products in such areas as electrical products and automobiles. In addition, the SII will not recognize U.S. testing of electrical components and products unless the product undergoes additional and often costly testing in Israel.

SII recently became a member of two European standards development organizations, specifically the European Committee for Standardization (CEN) and the European Committee for Electrotechnical Standardization (CENELEC). The United States has expressed concern that SII membership in these organizations may further disadvantage U.S. exporters, particularly small and medium-sized firms.

GOVERNMENT PROCUREMENT

Israel is a signatory to the GPA, which covers most Israeli government entities and government owned corporations. Most of the country's open international public tenders are published in the local press.

Nonetheless, U.S. firms do encounter difficulty in accessing the Israeli procurement market. Government owned corporations make extensive use of selective tendering procedures. In addition, the lack of transparency in the public procurement process discourages U.S. companies from participating in major projects and disadvantages those that choose to compete. A proposed regulation not yet passed in the Knesset could impede transparency further by allowing an internal committee within each Israeli government ministry to exempt up to 4 million shekels from public tenders. Enforcement of public procurement laws and regulations in Israel is not consistent.

Israel also has offset requirements that it implements through international cooperation (IC) agreements. Under IC agreements, foreign companies are required to offset their earnings from sales to the government of Israel by agreeing to invest in local industry, co-develop or co-produce with local companies, subcontract to local companies, or purchase from Israeli industry. As of January 1, 2006, the IC offset percentage for industries covered by Israel's WTO GPA obligations is 28 percent of the value of the contract; for procurements excluded from GPA coverage, including most military procurements, the offset is 35 percent. Israel has committed to reduce the offset level on procurement covered by the WTO GPA to 20 percent on January 1, 2009.

U.S. suppliers have found the size and nature of their IC proposals to be a decisive factor in close tender competitions, despite a court decision that prohibits the use of offset proposals in determining the award of a contract. Small and medium sized U.S. exporters are often reluctant to commit to make purchases in Israel in order to comply with the IC requirements and therefore refrain from participation in Israeli tenders.

In addition, the inclusion of unlimited liability clauses in many government tenders discourages U.S. firms from competing. When faced with the possibility of millions of dollars in legal costs for unforeseeable problems resulting from a government contract, most U.S. firms are forced to insure against the risk, which raises their overall bid price, and reduces their competitiveness.

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The United States-Israel Reciprocal Defense Procurement Memorandum of Understanding (MOU), extended in 1997, is intended to facilitate defense cooperation in part by allowing each government to allow sources from the other country to compete on defense requirements on an equal basis as possible, consistent with national laws and regulations. This MOU applies to procurements of conventional defense supplies and services by either government, including procurements the Ministry of Defense (MOD) makes using Israeli government funding in Israeli currency. U.S. suppliers have expressed concern about the lack of transparency and apparent lack of justification for excluding U.S. suppliers from various MOD tendering opportunities. The MOU, which has benefited Israeli defense industries by opening up the U.S. procurement market to their products, has not resulted in a sufficiently open market for U.S. suppliers interested in competing for MOD procurements funded by Israel.

INTELLECTUAL PROPERTY RIGHTS (IPR) PROTECTION

The United States remains concerned about Israel's weak data exclusivity legislation that provides a shorter term of protection from unfair commercial use of the confidential test data of pharmaceutical firms than is expected for an OECD level economy. Furthermore, the U.S. Government and U.S. industry remain concerned that even during these truncated periods of protection, generic companies may be allowed to rely on the undisclosed test data of U.S. companies to manufacture generic copies for export.

The United States remains concerned that Israel's patent term extension legislation provides inadequate pharmaceutical patent term adjustments granted to compensate for delays in obtaining regulatory approval of a drug. In addition, the legislation creates numerous bureaucratic obstacles for patent holders who wish to apply for a patent term extension. The legislation also applies retroactively to all pending applications for patent term extensions and already granted patent term extensions.

Israel remained on the 2007 Special 301 Priority Watch List due to U.S. concerns over pharmaceutical and copyright issues. The U.S. Government continues to urge Israel to take steps that will provide longer periods of data protection and patent term extension.

In 2007, the Knesset passed copyright legislation. The United States still has some concerns regarding this legislation and will continue to monitor its implementation and will work to ensure that Israel fulfills its commitment to accord national treatment to U.S. music rights holders consistent with a 1953 United States-Israel bilateral treaty and Israel's repeated assurances. The United States continues to encourage Israel to accede to the World Intellectual Property Organization (WIPO) Copyright Treaty and the WIPO Performance and Phonograms Treaty (commonly known as the WIPO Internet Treaties), particularly in view of the importance of Israel's high-technology software and telecommunication industries.

SERVICES BARRIERS

Audiovisual and Communications Services

Only selected private Israeli television channels are allowed to advertise. These channels received broadcast licenses and the advertising privilege in exchange for certain local investment commitments. Israeli law largely prohibits other channels, both public and private, from advertising. The government funds the country's public channels, whereas the remaining private channels generate revenues via subscription fees. In 2002, the Israeli government developed regulations that allow foreign channels aired through the country's cable and satellite networks to broadcast a limited amount of advertising aimed at a domestic Israeli audience. Currently, the regulations allow foreign channels to use up to 25 percent of

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their total advertising time to target the Israeli market. The regulations allow a foreign channel to apply for more than 25 percent advertising time if the channel can prove that it has a sizable viewing audience outside of Israel.

INVESTMENT BARRIERS

The Israeli government actively solicits foreign private investment, including joint ventures, especially in industries involving exports, tourism, telecommunications, and high technology. There are generally no foreign ownership restrictions, but a foreign entity must be registered in Israel. Investments in regulated sectors, including electronic commerce, banking, insurance, and defense industries, require prior government approval in Israel.

ELECTRONIC COMMERCE

Israel still lacks a clear regulatory body and tax laws that cover electronic commerce transactions. The Electronic Signature Bill regulates signatures on electronic media. Loopholes in the law allow the consumer to decline to pay for any merchandise for which he or she did not physically sign, which serves as a disincentive to the establishment of online businesses. The Ministry of Justice maintains a register of entities authorized to issue electronic certificates attesting to the signature of the sender of an electronic message. The Ministry also has the Registrar of Databases within its jurisdiction, which by law must issue licenses to any firm or individual holding a client database.

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JAPAN

TRADE SUMMARY

The U.S. goods trade deficit with Japan was \$82.8 billion in 2007, a decrease of \$5.8 billion from \$88.6 billion in 2006. U.S. goods exports in 2007 were \$62.7 billion, up 5.1 percent from the previous year. Corresponding U.S. imports from Japan were \$145.5 billion, down 1.8 percent. Japan is currently the fourth largest export market for U.S. goods.

U.S. exports of private commercial services (*i.e.*, excluding military and government) to Japan were \$41.3 billion in 2006 (latest data available), and U.S. imports were \$23.9 billion. Sales of services in Japan by majority U.S. owned affiliates were \$53.5 billion in 2005 (latest data available), while sales of services in the United States by majority Japan owned firms were \$28.4 billion.

The stock of U.S. foreign direct investment (FDI) in Japan was \$91.8 billion in 2006 (latest data available), up from \$79.3 billion in 2005. U.S. FDI in Japan is concentrated largely in the finance, manufacturing, wholesale trade, and the professional, scientific, and technical services sectors.

REGULATORY REFORM OVERVIEW

The United States-Japan Regulatory Reform and Competition Policy Initiative

Through the United States-Japan Regulatory Reform and Competition Policy Initiative (Regulatory Reform Initiative), the U.S. Government seeks changes to regulations and practices in Japan that limit competition, prevent development of innovative products and services, and hinder access for U.S. products and services in Japan's market. The U.S. Government addresses a wide range of issues through this Regulatory Reform Initiative in specific industry sectors, such as information technologies, telecommunications, and pharmaceuticals/medical devices, as well as in other areas that affect multiple sectors, such as competition policy and increased transparency.

The governments of the United States and Japan concluded the Regulatory Reform Initiative's sixth annual Report to the Leaders in June 2007, which documented progress made under the Regulatory Reform Initiative since late 2006. The U.S. Government again presented new, detailed recommendations to Japan in October 2007. After several months of working- and high-level talks, the next Report documenting progress is expected to be completed in the summer of 2008.

The following sections on Sectoral Regulatory Reform and Structural Regulatory Reform outline some of the key reform and market access issues that the U.S. Government continues to seek progress on by Japan under this Regulatory Reform Initiative.

SECTORAL REGULATORY REFORM

Telecommunications

In its 2007 recommendations to Japan under the Regulatory Reform Initiative, the U.S. Government continued to urge Japan to take concrete steps to promote competition and efficiency in the wireless telecommunications sector, streamline regulation of convergent services, and strengthen competitive safeguards on dominant carriers. The U.S. Government also continues to request that Japan ensure the

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impartiality of its regulatory decision making, including by abolishing the legal requirement that the government own one-third of the dominant carrier, Nippon Telegraph and Telephone (NTT), and ensuring greater transparency in rulemaking.

Interconnection: Japanese laws and regulations do not prevent NTT's regional carriers from imposing high rates and onerous conditions on their competitors for interconnection. Revisions that Japan's Ministry of Internal Affairs and Communications (MIC) made to its Rules for Interconnection Charges have resulted in modest reductions in interconnection rates, although these rates remain high by international standards. The U.S. Government looks to MIC to ensure that reasonable interconnection terms and conditions and competitive rates are established, particularly as preparations are made to introduce NTT's Internet Protocol (IP) based Next Generation Network to replace the analog network that all carriers use to reach subscribers.

Dominant Carrier Regulation: NTT continues to dominate overwhelmingly Japan's fixed line market. In turn, Japan has been seeking to promote competition in the telecommunications market through its Competition Promotion Program. However, as Japan's broadband users turn from digital subscriber line (DSL) to optical fiber, NTT's competitors fear that NTT may extend its dominant position through control of the fiber-to-the-home (FTTH) market and by bundling NTT fixed services with those of NTT DoCoMo, the dominant wireless operator. In October 2007, MIC issued a revised "New Competition Promotion Program 2010" to address competition concerns as suppliers increasingly offer telecommunications services over IP based networks. The U.S. Government has urged Japan to speed implementation of the plan and will continue to monitor MIC's implementation of the program.

Universal Service Program: Japan approved a scheme beginning in January 2007 for NTT East and West and its competitors to collect a universal service fee of seven yen per month from subscribers of voice services. Based on a routine review, Japan decided to reduce the fee to six yen monthly from January 2008, with subsequent reviews to determine future fees. NTT regional carriers (the only carriers able to benefit from the fund) then receive these fees through the universal service fund to offset costs of providing services in rural areas. The U.S. Government has urged Japan to broaden the base of potential beneficiaries of this fund and ensure that it is implemented in a competitively neutral manner. Cross-subsidization of NTT West by NTT East using interconnection revenue (ostensibly to address NTT West's higher network costs, based on higher number of rural subscribers) further undercuts arguments for the program's need.

Mobile Termination: Like most countries, Japan uses the "Calling Party Pays" system, imposing the entire cost of termination on the calling party (enabling mobile subscribers to benefit from free incoming calls). Although NTT DoCoMo, the dominant mobile incumbent carrier, has lowered its termination rates over the past 10 years, rate reductions have plateaued and remain high. Despite recognizing DoCoMo as a dominant carrier in 2002, MIC has not required DoCoMo to explain how its rates are calculated. With new entrants now in the mobile sector, the U.S. Government will closely monitor actions both by DoCoMo and MIC in addressing such rates to ensure effective competition is possible.

New Mobile Wireless Licenses: Starting in 2005, MIC began to open the market to new mobile providers beyond the three main incumbents by auctioning blocks of spectrum to a limited number of new wireless entrants. In 2007, MIC invited bidding on two additional licenses to offer wireless broadband services and only opened bidding to nonincumbents, awarding licenses in December. Although MIC appears to have made an effort to award the licenses on the basis of objective criteria, the complexity of factors the MIC chose to evaluate raises questions as to whether it achieved its goal. Given the scarcity of spectrum and high demand for new technologies, the U.S. Government has urged MIC to consider alternative

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means to assign commercial spectrum in a timely, transparent, objective, and nondiscriminatory manner that adheres to principles of technology neutrality, including through auctions. The U.S. Government has also stressed to Japan the importance of ensuring reasonable “roaming” rates for competitors and Mobile Virtual Network Operators (MVNOs), an area where MIC is making noticeable progress through policies and dispute mediation.

Information Technologies (IT)

Through its October 2007 Regulatory Reform Initiative recommendations, the U.S. Government continues to urge Japan to ensure its regulatory framework for IT and electronic commerce promotes competition and innovation, enhances transparency, and protects users, in addition to taking new steps to protect intellectual property rights (IPR) effectively in the face of challenges posed by globalization and new technologies in a digital era.

IT and Electronic Commerce Policymaking: To augment measures that Japan has taken to promote and support the use of IT and electronic commerce, the U.S. Government has urged Japan to take steps to: ensure transparent policy and rule-making processes are applied to provide interested parties with opportunities to express views and to be aware of and participate in the work of related government-appointed advisory groups; implement laws, regulations, and guidelines to promote choice and competitive market conditions by ensuring that technology providers and users have the flexibility to choose preferred technologies; work cooperatively with the private sector on international standards development and, when appropriate, use established international standards when formulating IT and electronic commerce guidelines and regulations; and ensure its IT and electronic commerce policies and laws are compatible with international practices.

Privacy: With the entry into effect of Japan’s Law on the Protection of Personal Information (Privacy Law) in April 2005, Japan’s ministries and agencies formulated implementation guidelines to ensure its effectiveness. The Cabinet Office reviewed implementation of the Privacy Law and released a report on this review in June 2007. The U.S. Government stressed its view that clear, consistent, and predictable privacy guidelines should be developed across ministries, with separate guideline provisions added as necessary for individual business sectors, and that any recommendations regarding cross-border transfers provide effective protection for individuals’ personal information without unduly restricting the international flow of data.

IPR Protection: The U.S. Government continued to urge Japan to adopt a number of new measures to strengthen IPR protection. These include: extending the term of copyright for sound recording and all other subject matter protected under Japan’s Copyright Law; adopting a statutory damages system that would act as a deterrent against infringing activities; improving the efficacy of the patent application process; and actively working with the United States to develop ways to promote greater protection of IPR worldwide, especially in Asia. (*See also “Intellectual Property Rights Protection” in this chapter.*)

Government IT Procurement: In order to increase the transparency and fairness of Japan’s IT procurements and to stimulate innovation and competition in those procurements, the U.S. Government has urged Japan to: ensure all procuring entities comply with Japan’s Basic Policy for the Public Procurement of Computer Systems (Basic Policy); improve communications with suppliers interested in the implementation of Japan’s government IT procurement policy; apply Japan’s Bayh-Dole system that allows companies to control the intellectual property of inventions they develop under government contracts to all government procurement; allow IT vendors to limit their liability to a level proportionate to the risks they take in government procurement transactions; reduce the use of sole source contracting in

IT procurements, including by applying rules on competitive bidding to independent administrative legal entities, government-sponsored private companies, and local governments; and ensure that contracts are swiftly concluded after winning bidders are chosen and are not backdated.

Medical Devices and Pharmaceuticals

The U.S. Government continues to stress the importance for Japan of adopting policies that ensure Japan's regulatory system facilitates the introduction of advanced medical devices and pharmaceuticals and that its reimbursement system appropriately values innovation. Recognizing that innovation can foster economic growth and improved healthcare, the Ministry of Health, Labor and Welfare (MHLW), in its 2007 "Vision" paper, outlined plans to improve the international competitiveness of Japan's pharmaceutical industry. MHLW is preparing a similar paper for the medical device industry. The U.S. Government has urged Japan to implement rapidly the steps set out in the drug Vision paper.

Japan is the largest foreign market for U.S. medical devices and pharmaceuticals, and thus its regulatory and reimbursement policies have a substantial impact on U.S. industry. The U.S. Government, in its 2007 Regulatory Reform Initiative recommendations, urged Japan to facilitate the simultaneous global development of pharmaceuticals, improve the environment for clinical trials, and promote the use of vaccines, among other steps. Regarding devices, the U.S. Government urged Japan to take additional measures, such as speeding approvals of minor product changes, reforming stability testing rules, and eliminating unnecessary data requirements. The U.S. Government is hopeful that Japan's new goals to improve its regulatory system will prove effective, including plans to cut drug approval times by 2.5 years by 2012, more than double the drug review staff by 2010, and increase the device review staff by 30 percent by 2009.

With respect to pricing, Japan is scheduled to revise reimbursement price levels for medical devices and pharmaceuticals on April 1, 2008. The U.S. Government has strongly urged Japan to adopt reimbursement pricing policies that reward development and introduction of innovative medical devices and pharmaceuticals. Such policies will promote the speedy introduction of advanced products that not only help save and improve lives, but also make Japan's healthcare system more efficient by reducing the need for surgeries and cutting the lengths of hospital stays, which are the longest among countries in the OECD.

Regarding drug reimbursement, in the 2007 Report to the Leaders, MHLW noted it would consider industry's views on pricing reforms and ways to improve the reward for innovation. In December 2007, Japan announced its decision on Japan fiscal year 2008 pricing revisions that expanded the use of repricing based on market expansion, albeit with a temporary exception to the rule that lessens its impact on reimbursement prices for new drugs. The U.S. Government continues to urge Japan to abolish repricing based on market expansion because this rule reduces incentives to introduce innovative medicines in Japan. In its December 2007 pricing decisions, MHLW also continued to adhere to the use of biennial, instead of annual, reimbursement rate reviews. The U.S. Government continues to strongly urge Japan to avoid annual reimbursement reviews. Regarding medical device reimbursement, MHLW has agreed to continue to discuss with industry key issues such as the Foreign Average Price (FAP) rule, functional categories, and the system for reimbursement of innovative (C1/C2) technology. The U.S. Government continues to urge Japan to eliminate the FAP rule and to work with U.S. industry to improve the functional category system for devices.

Separately, Japan's 2002 Blood Law established a principle of "self-sufficiency" and included a Supply and Demand Plan (Plan) for the Japanese government to manage supply and demand in the blood market.

FOREIGN TRADE BARRIERS

The U.S. Government continues to urge Japan to ensure the Plan does not discriminate against foreign blood plasma products and is made consistent with Japan's international trade obligations. The U.S. Government also urges Japan to develop a reimbursement pricing system for blood products that accounts for the industry's unique characteristics and that is not based on Japan's model for drugs.

Nutritional Supplements: While Japan has taken steps, such as streamlining import procedures, to open its \$10.4 billion nutritional supplements market, many barriers to market access remain. Restrictions on health and nutrition claims are a major concern. In Japan, nutritional supplements are classified as food, and only foods approved as Foods for Specific Health Uses (FOSHU) or Foods with Nutritional Function Claims (FNFC) are allowed to have health or nutrition claims. Due to the costly and time consuming approval process for FOSHU and the limited range of vitamins and minerals that qualify for FNFC, however, producers are not able to obtain FOSHU or FNFC approval for a majority of nutritional supplements. This limits the information available to consumers at the point of sale and hinders the ability of producers to differentiate their products. Other concerns include lengthy lead times for food additive applications, high levels of import duties for nutritional supplements compared to duties on pharmaceuticals containing the same ingredient(s), and the potential for opaque development of health food safety regulations or new regulations for health food safety that may not be based on scientific risk assessment principles.

Cosmetics and Quasi-Drugs: Japan is the second-largest market in the world for cosmetics after the United States, yet regulatory barriers continue to limit consumer access to safe and innovative products. Unlike the U.S. over the counter drug monograph system, Japan requires premarket approval for products that are classified as quasi-drugs under the Pharmaceutical Affairs Law. The approval process has requirements that are burdensome, lack transparency, and do not appear to enhance product safety, quality, or efficacy. In addition, many types of advertising claims for cosmetics and quasi-drugs are prohibited, even if scientifically verifiable, denying consumers relevant and important information to help them make sound choices. Other concerns related to cosmetics and quasi-drugs include burdensome paperwork and long lead times for the approval of imported products. The U.S. Government continues to recommend that Japan address these and other issues under the Regulatory Reform Initiative.

Financial Services

As Japan's financial sector becomes increasingly integrated into the global financial system, domestic efforts are underway to improve the international competitiveness of Japan's financial sector. The Financial Services Agency (FSA) published in December of 2007 the "Plan for Strengthening the Competitiveness of Japan's Financial and Capital Markets," for example, with a corresponding legislative effort in early 2008. Recent measures taken towards convergence with global practices in accounting and financial reporting standards follow the easing of regulatory barriers to domestic and foreign competition. As a result, foreign financial institutions have gained market share in securities brokerage, asset management, insurance, and banking.

Financial Instruments and Exchanges Law: The Financial Instruments and Exchanges Law (FIEL) of 2006 amended 89 financial laws and consolidated the remainder into a cohesive text. The FIEL was an effort to enhance investor protection and promote the movement of financial assets into securities markets through cross-sectoral rules for investment product sales, management, and disclosure. Given the hundreds of pages of statutes comprising the FIEL and that implementation of the law began September 30, 2007, however, the law's overall impact is still not discernable and partners are looking to see that FIEL implementing regulations, interpretation, and enforcement are evident, consistent, and predictable.

FOREIGN TRADE BARRIERS

The transparency and predictability of Japan's financial regulatory system have improved, but further progress is needed. In particular, the FSA could expand the body of written interpretations of Japan's financial laws. While supervision and disclosure have improved, Japan must continue to move forward in establishing transparency in regulation and supervision of financial institutions to bring them in line with international standards and best practices in the support of the government's goal to improve Japan's global financial services competitiveness.

No-Action Letters and Written Interpretations: The FSA has been making some efforts to enhance the effectiveness of the no-action letter system, including the active solicitation of input from U.S. and other foreign firms on how best to improve the system. The use of the system, however, has not materially increased. The U.S. Government has recommended the FSA explore ways to expand use of the no-action letter system, which remains relatively unexploited as a means of seeking administrative guidance. The U.S. Government has also encouraged the FSA to expand the written interpretations it provides through other means, including through active use of its "interpretive letter" system and increasing the number of "reference cases" published on the FSA Internet site.

Agriculture

Japan maintains many tariff and nontariff barriers to trade in the agricultural sector. The U.S. Government's October 2007 submission to Japan under the Regulatory Reform Initiative includes a number of recommendations to enhance the efficiency of the trading environment and the transparency of trade-related rules and regulations. These include: allowing the use of three internationally approved production substances on organic crops and lifting the overly strict zero residue requirement; implementing a Maximum Residue Limits regime that is not more trade restrictive than necessary and treats imports consistently with treatment of domestic products; completing the review of food additives already recognized as safe by a Joint Food and Agriculture Organization/World Health Organization Evaluation Committee; applying science based standards in accordance with World Organization for Animal Health (OIE) protocols on meat; and implementing international standards in plant quarantine. (See also *Standards, Testing, Labeling, and Certification* in this chapter.)

Plant Quarantine Issues: Japan's plant quarantine system is restrictive. Some measures that restrict trade are not based on science. One key impediment to trade is Japan's frequent use of nationwide bans in response to quarantine issues in exporting countries, as opposed to regional bans (*e.g.* states or counties), as recognized by international standards. For example, when a disease or pest outbreak is reported in the United States, Japan has been inclined to impose a nationwide ban on all associated U.S. plant products. This step is unnecessarily trade restrictive. In accord with its WTO SPS obligations, the United States has effective measures to contain the spread of plant disease, and any outbreaks of such diseases are typically limited to a small geographic area. Additionally, it is not apparent that Japan's standards for pest risk analysis are based on international standards, nor that Japan has provided a scientific justification for these measures or articulated how they are a consequence of the level of phytosanitary protection that Japan has determined to be appropriate. The U.S. Government and Japan are working closely through the Regulatory Reform Initiative and in various bilateral fora to facilitate trade and remove restrictions.

Japan's Ministry of Agriculture, Forestry, and Fisheries (MAFF) prohibits the entry of various fresh plant products due to the presence of pests, even though some of these pests are also present in Japan. Japan has a pest forecast system that monitors certain domestic pests and alerts producers to potential increased pest damage. For decades, the Japanese government has contended that this constitutes official control under the International Plant Protection Convention (IPPC), the international standard setting body for plant protection. According to Japan, it must impose a similar system for imported commodities.

Recently the Japanese government took initial steps to harmonize with international standards. In December 2004, Japan notified the WTO of its intent to relax quarantine measures for several plant pests and diseases. In May 2006, five additional cosmopolitan pests were added to the list of pests subject to relaxed quarantine measures. Although the U.S. Government has welcomed these actions, Japan continues to impose measures that are more restrictive than provided for in international standards on dozens more pests in ways that adversely affect U.S. exporters.

STRUCTURAL REGULATORY REFORM

Antimonopoly Law and Competition Policy

Although Japan has made significant positive steps in recent years to bolster its competition regime, cartel activity and bid rigging persist with deleterious effects for the country's economy and government finances. Further measures to combat anticompetitive behavior would improve the business environment. At the same time, further attention must be given to ensuring that antimonopoly enforcement procedures are perceived to be fair and transparent.

Establishing More Effective Deterrence to Anticompetitive Behavior: The Antimonopoly Act (AMA), Japan's primary competition legislation, provides for both administrative and criminal sanctions against violators. However, criminal prosecutions, which would more effectively deter anticompetitive behavior, have been few. From 1990 through October 2007, the Japan Fair Trade Committee (JFTC) initiated 12 criminal prosecutions of alleged AMA violators. While Japanese courts have imposed substantial financial penalties on companies and prison sentences on individuals convicted of violating the AMA, they have consistently suspended prison sentences on individuals even in the case of repeat offenders. The U.S. Government continues to urge Japan to take steps to maximize the effectiveness of AMA enforcement against hard-core violations of that Act, including by increasing the number of criminal prosecutions, strengthening criminal sentences of convicted individuals, and maintaining the system of imposing both administrative surcharges and criminal sanctions on corporate participants in cartel and bid rigging conspiracies.

The lack of sufficient personnel has also hindered the JFTC's ability to enforce the AMA effectively. JFTC's staff totaled 737, including 383 assigned to the Investigation Bureau as of March 31, 2007. JFTC remains relatively weak, however, in the number of staff with post-graduate economics training, a factor which hurts JFTC's ability to engage in the careful economic analysis necessary to properly evaluate noncartel behavior. The U.S. Government continues to urge JFTC to improve its economic analysis capabilities.

Improving Fairness and Transparency of JFTC Procedures: The JFTC introduced a system in January 2006 to allow companies subject to a proposed cease-and-desist or surcharge payment order to review the evidence relied upon by JFTC staff and to submit evidence and make arguments in their defense prior to an order being issued. A similar system was implemented for proposed recipients of public warnings for suspected violations of the AMA or the Premiums and Misrepresentations Act. To ensure further the credibility and transparency of JFTC hearing procedures, however, the U.S. Government has asked the Japanese government to lengthen significantly the two week period during which a company may respond to a draft cease-and-desist or surcharge order from the JFTC, increase the number of JFTC hearing examiners who are outside legal professionals, and strengthen conflict of interest rules with respect to hearing examiners. The U.S. Government has also requested clarification of conditions under which the JFTC might return to an *ex-ante* hearing system, improved regulations for the standards and procedures

used by the JFTC to issue warnings, and recognition of attorney-client privilege in JFTC investigation and hearing procedures.

Broadening Measures to Combat Bid Rigging: In response to frequent and persistent revelations of bid rigging, the Japanese authorities have implemented a series of measures to address the problem. Apart from several cases of invocation by the JFTC of the 2003 law against bureaucrat led bid rigging (so-called *kansei dango*), the Ministry of Land, Infrastructure, Transport and Tourism (MLIT) has strengthened administrative sanctions against companies found by JFTC to have engaged in unlawful bid rigging. MLIT also introduced an administrative leniency program to complement the JFTC leniency program (designed to help encourage individuals and companies to report anticompetitive acts) and put in place a series of measures aimed at ensuring a competitive bidding process for project contracts tendered by the Ministry. In June 2007, the Japanese Diet also passed new legislation aimed at controlling post-retirement employment by its officials in companies they previously helped regulate or were otherwise involved with while in government service, the so-called “descent from Heaven” (*amakudari*), which has been a factor in many bid rigging conspiracies. The U.S. Government has recommended the relevant Japanese authorities increase the standard minimum period of suspension from bidding for companies involved in bid rigging conspiracies, work to prevent conflicts of interest in government procurement, strengthen efforts to eliminate involvement in bid rigging by government officials, and expand the existing administrative leniency programs.

Transparency

Transparency issues continue to be a top concern of U.S. companies that operate in the Japanese market. The U.S. Government has strongly urged Japan to adopt a number of new measures to achieve a higher degree of transparency in governmental regulatory and policy making processes – a critical ingredient necessary to further improve the business and trade environment.

Advisory Groups: Although advisory councils and other government commissioned study groups are accorded a significant role in the development of regulations and policies in Japan, the process of forming these councils and study groups often remains opaque and nonmembers are not uniformly offered meaningful opportunities to provide input into these groups’ decision-making processes. The U.S. Government continues to urge Japan to ensure transparency of advisory councils and other government sponsored working groups through new requirements, including those that will ensure ample and meaningful opportunities are provided for all interested parties, as appropriate, to participate in and directly provide input to these councils.

Public Comment Procedures (PCP): U.S. companies remain concerned by the degree to which all Japanese ministries and agencies are fully implementing Japan’s PCP. In particular, concern remains that comment periods are unnecessarily short and that comments that are provided are not adequately being taken into consideration before final decisions are made. The U.S. Government has stressed the need for Japan to ensure its PCP is being fully implemented and to make additional revisions to the system so that truly meaningful opportunities are made available for public input into policy-making and regulatory processes. In addition, the U.S. Government continues to encourage Japan’s ministries and agencies to accelerate the voluntary practice of providing greater opportunities for the public to comment on legislation in the early stages of its formation.

Transparency in Regulation and Regulatory Enforcement: To ensure the private sector has sufficient information about regulations, including interpretations of those regulations, and the information necessary to comply, the U.S. Government has requested that Japan specifically require its ministries and

agencies to make public their regulations and any statements of policy of generally applicable interpretation of those regulations.

Privatization

The Japanese government's effort to reform the Japan Post Group from a public corporation to private business has made important progress. The U.S. Government recognizes that reform, if implemented in a fully market-oriented manner, can have an important positive impact on the Japanese economy by stimulating competition and leading to a more productive use of resources.

The U.S. Government welcomes the ongoing privatization of Japan Post, which has multi-billion dollar banking and insurance businesses in addition to its mail and parcel delivery operations. The U.S. Government continues to monitor carefully the implementation of the Japanese Government's reform efforts, and continues to call on the Japanese Government to ensure all necessary measures are taken to achieve a level playing field between Japan Post and the private sector in Japan's banking, insurance, and express delivery markets.

In the area of express carrier services, the U.S. Government remains concerned by unequal conditions of competition between Japan Post Service and U.S. international express delivery providers. The U.S. Government is strongly urging Japan to create a level playing field, including by ensuring Japan Post Service is subject to similar customs clearance procedures and costs for international express delivery services and that subsidization of Japan Post Service's international express service by revenue from noncompetitive postal services is prevented.

The U.S. Government also has continued to urge the Japanese government to ensure that the process by which this reform proceeds is made fully transparent, including by full and meaningful use of Public Comment Procedures and through opportunities for interested parties to express views to related officials and advisory bodies before decisions are made. The U.S. Government is additionally asking Japan to undertake regular (*i.e.* annual) reviews of the market impacts of the Japan Post reforms that includes the views of other market participants. (*For detailed discussion of Japan Post privatization and the postal insurance corporation, see "Insurance" under the Services Barriers section.*)

Commercial Law

Japan undertook a major reform of its commercial law by enacting a new Corporate Code, which entered into force May 1, 2006. Among other provisions, the code now permits the use of modern merger techniques, including domestic and cross-border triangular mergers. After significant public controversy, however, the Japanese government in April 2007 finalized tax and public disclosure rules for cross border triangular mergers that appear to substantially limit the use of these techniques. Under the new rules, in order for shareholders to defer capital gains on the transaction, the foreign acquiring company, at a minimum, must establish a subsidiary with an office, an employee/executive, and some "business activity" in the Japanese market before the merger. As of December 2007, only one transaction has taken place using these provisions.

Through the Regulatory Reform Initiative, the U.S. Government continues to urge Japan to improve further its commercial law and corporate governance systems to reflect international best practices, promote efficient corporate restructuring and increases in shareholder value. Specifically, the U.S. Government is urging Japan to review impediments to the use of modern merger techniques now

available to investors, including whether the tax rules unduly impede the ability of foreign investors to use triangular merger mechanisms.

The U.S. Government also continues to encourage Japan to strengthen further corporate governance mechanisms, including by facilitating and encouraging active proxy voting by institutional investors such as pension and mutual funds, requiring authorization of antitakeover measures by a company committee composed of a majority of truly independent directors, ensuring sufficient protection of minority shareholders in management buy-out and take-over bid situations, and encouraging the major Japanese stock exchanges to adopt listing rules or guidelines that encourage best corporate governance practices.

Article 821 of the new Company Law still has the potential to create burdens for foreign corporations that conduct their primary business in Japan through Japanese branch offices. The U.S. Government has recommended that Japan adopt a simple re-domestication procedure that allows foreign companies to merge or convert into a Japanese corporation, and continues to request that Japan amend Article 821 to prevent adverse effects on the legitimate operation of foreign companies in Japan.

Legal System Reform

Japan continues to impose restrictions on the ability of foreign lawyers to provide international legal services in Japan in an efficient manner. The U.S. Government is urging Japan to further liberalize the legal services market by allowing foreign lawyers to form professional corporations and establish multiple branch offices in Japan whether or not they have established a professional corporation and by counting all of the time foreign lawyers spend practicing law in Japan toward the 3 year experience requirement for licensure as a foreign legal consultant. In addition, the U.S. Government has requested that Japan ensure that Japanese lawyers may become members of international legal partnerships with lawyers outside Japan without restriction. Japan has agreed to continue to examine these issues including by holding further hearings with both the Japanese Bar Association and registered foreign lawyers practicing in Japan. The U.S. Government also is urging Japan to promote arbitration and other alternative dispute resolution (ADR) procedures, including by amending the Foreign Lawyers Law to explicitly permit foreign lawyers to act as neutrals and to represent parties in any international ADR proceedings taking place in Japan.

Distribution and Customs Clearance

The U.S. Government welcomes Japan's efforts to formulate an Authorized Economic Operator (AEO) system in Japan. Under the Regulatory Reform Initiative, the U.S. Government has recommended that Japan apply the following measures to customs brokers with good compliance records: introduce a two-stage declaration of import to allow separation of declaration of shipment acceptance and declaration of tax and duty payment, which would enable express carriers to release import items in a timely way outside of regular business hours; allow customs brokers to make export declarations after export, a system that is effective in the United States and would reduce the impact of airport curfews; allow customs brokers using Nippon Automated Cargo Clearance System (NACCS) to declare express items at any convenient customs office beyond a territory of the Customs Office; and lower overcharge and NACCS charges.

To follow a global trend toward reducing customs workloads while maximizing efficiency, the U.S. Government recommends Japan increase the Customs Law *de minimis* limit from its current 10,000 yen to a level comparable to the \$200 *de minimis* limit.

FOREIGN TRADE BARRIERS

The U.S. Government welcomes assurances by Japan that distribution vehicles, including those carrying *Yu-pack* and Express Mail Service (EMS) items, will be treated equally with regard to the enforcement of parking laws and traffic regulations. In light of the impact of the revised Road Traffic Law, the U.S. Government has encouraged Japan to take measures that help provide additional parking spaces for distribution vehicles in urban centers where shortages have appeared through the Law's enforcement. The U.S. Government therefore recommends that Japan: (1) increase the number of parking spaces and delivery zones on major streets; (2) coordinate policies among concerned ministries and local authorities to facilitate distribution activities in crowded areas; and (3) ensure equitable application of parking laws for all distribution vehicles.

IMPORT POLICIES

Rice Import System: Although Japan has generally met import volume commitments it made during the Uruguay Round and subsequent negotiations, Japan's highly regulated and nontransparent importation and distribution system for imported rice limits meaningful access to Japanese consumers. U.S. rice exports to Japan in calendar year 2006 were valued just under \$169 million, representing 330,453 metric tons of rice or about 48.5 percent of Japan's minimum access requirement. However, only a small fraction of rice imported from the United States reaches Japanese consumers identified as U.S. rice, despite industry research showing Japanese consumers would buy U.S. high-quality rice if it were more available.

In 1999, Japan established a tariff-rate quota (TRQ) of approximately 682,000 metric tons (milled basis) for imported rice. The Japan Food Department (JFD) of the Ministry of Agriculture, Forestry, and Fisheries (MAFF) manages imports of rice within the TRQ through periodic minimum access (MMA) tenders and through the simultaneous buy-sell (SBS) tenders. Imports of U.S. rice under the MMA tenders are destined almost exclusively for government stocks. The stocks are released exclusively for nontable rice users in the industrial food processing or feed sector, or re-exported as food aid.

Recent increased testing requirements for rice imports have hampered trade of U.S. rice to the Japanese market. In December 2005, MAFF began to impose strict testing requirements on rice imports, ostensibly to ensure compliance with the Japanese Government's new Maximum Residue Limits policy. Rice and wheat, however, are the only commodities for which Japan requires multiple testing, including a test by the rice industry. The result is a disproportionate increase in the cost of bringing U.S. rice to market, particularly for SBS rice because of its smaller import lot size.

Rice Stocks Release Program: On July 29, 2005, in an effort to reduce Japan's government held stocks of rice imported under its WTO MMA commitment, MAFF introduced a new program under which a certain quantity of MMA rice stocks is released to select rice flour users via Japanese rice-flour millers. Although the stated purpose of this policy is to reduce stock levels, the program in effect channels the release of imported rice stocks to displace imports of rice flour bakery/cake mixes, including imports from the United States. Japanese data show that imports of rice flour bakery/cake mixes from the United States during the January-December 2006 period were down 14 percent by quantity and nearly 8 percent by value compared with the same period in 2005. The decline in U.S. imports was similar in 2007. The U.S. Government has strongly urged Japan to address these issues through the United States-Japan Trade Forum and in the context of the WTO Committee on Agriculture. The U.S. Government remains highly concerned about the adverse affect on U.S. exports of prepared mixes and the consistency of the policy with Japan's WTO commitments.

FOREIGN TRADE BARRIERS

Wheat Import System: Japan requires wheat be imported through MAFF's Food Department, which then resells wheat to Japanese flour millers at prices substantially above import prices. These high prices discourage wheat consumption by increasing the cost of wheat based foods in Japan. The U.S. Government remains concerned by the operation of a state trading entity for wheat and its potential to distort trade.

Corn for Industrial Use: Japan's domestic potato starch blending requirement was abolished in April 2007. While the U.S. Government views the decision as a positive step, the reforms do not go far enough to be truly market based. The previous system was replaced by a levy or a surcharge payment arrangement where the quasi-governmental Agriculture and Livestock Industries Corporation collects the difference between the import cost of corn intended for starch production and resale price to Japanese starch manufacturers. The fund created by the pool of collected surcharge is then used to support domestic potato producers. This system mimics the sugar import system. The U.S. Government intends to monitor carefully the administration of this new system for any market distorting effects.

Pork Import Regime: Japan is the world's largest importer of pork, importing a record 725,000 tons in Japan FY 2006, with imports from the United States valued at \$1.15 billion. Japan's pork import system includes a gate price and a safeguard negotiated during the Uruguay Round which automatically raises the gate price if imports are 119 percent or more of the average quantity level of imports during the corresponding period in the previous 3 years.

Beef Safeguard: Once Japan fully opens its beef market, the U.S. Government is concerned about the possibility that Japan's beef safeguards will be triggered, which could hamper the United States' ability to regain historical export levels in the near future (*see the section on "Beef" under the "Standards" heading for context*). Japan has indicated some flexibility in this regard for 2008 imports by applying the 2002-2003 beef import baseline to set its beef safeguard trigger.

Japan's beef safeguard was negotiated during the Uruguay Round to afford protection to domestic producers in the event of an import surge. The safeguard is triggered when imports increase by more than 17 percent from the previous Japanese fiscal year on a cumulative quarterly basis. Once triggered, the safeguard remains in place for the rest of the fiscal year. If triggered, beef tariffs will rise to 50 percent from 38.5 percent. The U.S. Government is seeking a change in the beef safeguard in the Doha Development Agenda negotiations.

Fish Products: Japan has been the most important export market for U.S. fish and seafood products for over 30 years; as recently as 1988, 73 percent of U.S. seafood exports went to Japan. In 2006, however, the European Union surpassed Japan as the most important export market for fisheries products, with only 23 percent of U.S. seafood exports going to Japan. This data should be viewed, however, against the growing trend of U.S. origin seafood being routed through China and Korea for value added processing and/or cold storage holding before being imported into Japan, making actual trade flows harder to follow.

Tariffs on Japanese seafood imports are generally low, but for some products market access is not seamless. Japan maintains several species and product specific import quotas on fish products, including pollock, surimi, Pollock, and cod roe, herring, Pacific cod, mackerel, Pacific whiting, squid, and sardines. Administration of the system has improved considerably over the years, and it is expected that obstacles to Japanese importers and processors will continue to be reduced. While Japan cut tariffs as a result of the Uruguay Round, it did not change its import quotas. As part of ongoing WTO Doha negotiations, Members including the United States and Japan have committed to clarify and improve rules on fisheries subsidies.

FOREIGN TRADE BARRIERS

High Tariffs on Beef, Citrus, Dairy, and Processed Food Products: Japan maintains high tariffs on a number of food products that are important exports for the United States, including red meat, citrus, wine, and a variety of processed foods. Examples of double digit import tariffs include 38.5 percent on beef, 32 percent on oranges, 40 percent on processed cheese, 29.8 percent on natural cheese, 17 percent on apples, and a 15 to 29.8 percent on wine depending on the HTS classification. These high tariffs generally apply to food products where Japan is protecting domestic producers. Tariff reductions are a high priority for the U.S. Government in the Doha Development Agenda agriculture negotiations.

Wood Products and Building Materials: Japan continues to restrict the importation of U.S. manufactured wood products through tariff escalation (*i.e.*, progressively higher tariffs based on the level of processing of the wood product). The elimination of tariffs on wood products remains a long standing U.S. Government objective.

Leather/Footwear: Japan continues to apply a TRQ on leather footwear that substantially limits imports into Japan's market, and establishes these quotas in a nontransparent manner. The U.S. Government will continue to seek elimination of these quotas.

STANDARDS, TESTING, LABELING, AND CERTIFICATION

Japan's enforcement of national standards hinders trade in certain farm, forest, and industrial products. U.S. industry has commented that Japan's stringent testing methods and low tolerances for regulated substances such as pesticides and food additives make it difficult to satisfy import requirements for many products. The U.S. Government is urging Japan to use science based standards and implement risk-based enforcement policies which are the least trade restrictive measures that also satisfy consumer safety concerns.

Standards

Beef: On July 27, 2006, Japan partially reopened its market to U.S. beef. Except for approximately 1 month from December 2005 to January 2006, Japan's market had been effectively closed since the December 2003 detection of a cow with Bovine Spongiform Encephalopathy (BSE) in Washington State.

Japan allows imports of U.S. beef and beef products from animals aged 20 months or younger. This policy, however, has prevented the United States from regaining all but a small portion of its historic level of exports to the Japanese market. Before the ban, Japan was the largest export market for U.S. beef and beef products, totaling roughly \$1.4 billion annually.

The U.S. Government has urged Japan to bring its BSE measures in line with international guidelines set by the World Organization for Animal Health (OIE) by allowing imports of all U.S. beef and beef products derived from animals of all ages deemed safe under OIE guidelines. In May 2007, the OIE determined that the United States is a "Controlled Risk" country for BSE, a determination based on science. The U.S. Government remains highly concerned by Japan's unwillingness to adopt these science based, international guidelines under which beef and beef products can be safely traded and will continue to work vigorously toward achieving a full reopening of Japan's market to U.S. beef in line with OIE guidelines through use of various bilateral and multilateral fora.

Enforcement of Maximum Residue Limits (MRLs): Japanese regulatory requirements specify that foods containing pesticide residues will not be allowed on the Japanese market unless residue levels conform to

national Maximum Residue Limit (MRL) standards. These new regulations, known as the “Positive List,” became effective on May 29, 2006. The U.S. Government worked closely with the Ministry of Health, Labor, and Welfare (MHLW) to ensure that potentially trade restrictive measures relating to the new positive list were addressed to minimize disruptions to U.S. agricultural trade with Japan. However, several outstanding issues remain, including MHLW’s MRL enforcement policy that predates the implementation of the new Positive List.

A major U.S. Government concern is that import violations of the MRLs may be treated more harshly than domestic violations. When an MRL violation is detected in a shipment of imported food, MHLW takes action against the entire industry of the country where the food product was sourced; in contrast, violations in a shipment of domestic origin are addressed on a company-by-company basis. Violations in imported food shipments can lead to sanctions that severely affect trade regardless of the level of the violation or the degree of the threat to health. For instance, following only two violations, MHLW can implement 100 percent test-and-hold requirements. The resulting delays can lead to major losses for perishable goods. To address these concerns, the U.S. Government is urging MHLW, through the Regulatory Reform Initiative, to implement a regime that is as minimally trade restrictive as possible, provides national treatment to imports, and is in accordance with international practices.

Restrictive Food Additive List: Japan’s list of food additives restricts imports of several U.S. food products, especially processed foods. The list, which limits the use of specific food additives on a product-by-product basis, is more restrictive than accepted international standards and is without sufficient scientific evidence. For example, the list effectively prohibits imports of light mayonnaise, creamy mustard, or figs containing potassium sorbate, a food additive evaluated and accepted by numerous national and international standard setting organizations, including the Joint FAO/WHO Expert Committee on Food Additives. In spite of this prohibition on imports, Japan in fact allows the use of potassium sorbate in 36 other foods, most of which are traditional Japanese food products not normally produced outside Japan.

U.S. manufacturers have also complained that the process for gaining approval for indirect food additives (that is, additives that do not remain on food, such as solvents) is slow and lacks transparency.

In 2002, Japan created a list of 46 food additives for expedited review. The U.S. Government and many of Japan’s other trading partners have been disappointed by the lack of progress by the MHLW and the Food Safety Commission in finalizing reviews and approving many of these additives, notwithstanding the availability of extensive safety data. In addition, Japan classifies post-harvest fungicides as food additives requiring registration and approval, while the international community, including Codex, classifies them as pesticides. Therefore, products found to have any trace of an unapproved pesticide are prohibited. To address some of these concerns, the U.S. Government has urged Japan through the Regulatory Reform Initiative to complete its review of the remaining 26 food additives in an expedited fashion.

Microbial Content Standards: Japan’s standards under the Food Sanitation Law for microbial content on frozen foods are, in certain instances, impractical and overly restrictive, particularly for foods that require cooking before consumption.

Poultry: Since 2002, Japan has imposed a number of national and statewide bans on the import of U.S. poultry, poultry-meat, and eggs due to the detection of notifiable avian influenza (NAI), both high pathogenic notifiable avian influenza (HPNAI) and low pathogenic notifiable avian influenza (LPNAI) in U.S. poultry. These bans are not consistent with international guidelines and have disrupted millions of

dollars of U.S. poultry trade. According to international guidelines recently revised by the OIE, countries must report to the OIE any findings of NAI in domestic poultry, regardless of its pathogenicity. These guidelines, as well as the WTO SPS agreement, provide for importing countries to impose bans on imports only from affected regions (zones) of the exporting country. While the guidelines support banning certain poultry meat from regions affected by HPNAI, they do not support banning poultry meat from regions affected by LPNAI. As a result of bans based on the reporting of high and low pathogenic avian influenza, as well as other factors, U.S. poultry meat exports to Japan have decreased substantially from roughly \$148 million in 2001 to \$70 million in 2002, ranging from \$39 to \$61 million a year from 2003 through 2006 and down an additional 17 percent in 2007.

Organics: U.S. organic exports to Japan continue to be limited by Japan's ban on three production substances allowed for use on U.S. organic crops: Alkali extracted humic acid, Potassium bicarbonate, and Lignin sulfonate. In addition, Japan's zero tolerance policy for pesticide residues on organic products is not consistent with international standards, is not science based, and is, in practice, more thoroughly enforced for imported organic products.

Marine Craft: Although Japan continues to maintain an inspection regime for new boats and marine engines that is unique in the world in its severity and complexity, Japan's regulatory agencies, MLIT and the Japan Craft Inspection (JCI) Organization, have made a significant shift towards adoption and acceptance of ISO standards, when these ISO standards are determined to provide equivalent or improved safety. The U.S. Government looks to accelerate progress with Japan as quickly as possible to also address Japanese requirements that no other country considers necessary, such as requiring that each imported boat be individually inspected. These unusual rules place an enormous burden on Japanese importers and American boat manufacturers. The U.S. Government will continue to work with relevant organizations and agencies in Japan to urge Japan's acceptance of acceptance of third-party tests of Japanese ISO based standards.

Building Size, Designs, and Wood Products

Japan has adopted and implemented regulations with respect to indoor air quality and chemical emissions, and may be considering additional steps. The U.S. Government will continue to monitor regulatory developments in this area and urge that transparency is ensured in any rule making process that may result. In addition, Japan's fire testing of wood frame assemblies also is subject to standards that are open to interpretation by testing facilities, thereby affecting predictability in meeting Japan's fire testing requirements.

Biotechnology

Japan is the world's largest importer of bioengineered grains and annually imports about 16 million metric tons of U.S. corn and 3.7 million metric tons of U.S. soybeans. In 2006, exports of these commodities alone were worth \$3 billion. As the world's largest exporter and world's largest importer of bioengineered crops, the United States and Japan share a common interest in promoting effective biotechnology approval and regulatory policies.

Japan's regulatory system is complex and compliance is costly. Japan's independent Food Safety Commission conducts risk assessments in support of product evaluations by the Ministry of Health, Labor and Welfare and Ministry of Agriculture, Forestry and Fisheries. The regulatory burden is such that only large multinational companies or governments can typically afford to complete the approval process, even for bioengineered traits that are relatively well known. Further, a surge in new biotechnology

applications is expected in coming years that will strain this regulatory system. There is also the real possibility of trade disruptions from an unapproved bioengineered variety showing up in trace amounts in imported grain or processed foods. To avoid disrupting trade, the U.S. Government is encouraging Japan's regulatory agencies to take a risk based, case-by-case approach when dealing with unapproved varieties.

In addition to Japan's national regulatory system, 11 prefectural and local governments have rules, generally not based on science, which further limit the cultivation of bioengineered crops. These rules, combined with local regulations and public pressure on research institutions, have made it increasingly difficult for technology companies to secure sites for field trials, which are mandated under the national government's approval process.

Although Japan is the largest importer of bioengineered crops, no consumer-ready foods with recognizable bioengineered ingredients are sold in Japan. One factor that keeps bioengineered foods out of the supermarket is Japan's labeling requirement. As yet, no Japanese food manufacturer or retailer has been willing to test the market for a genetically modified organism labeled, consumer-ready food.

The U.S. Government will continue to encourage Japan to address these issues and continue to participate in discussions on biotechnology policy advancement and regulation in international fora (*i.e.*, the WTO, the Codex Alimentarius Commission, the OECD, and the APEC forum) and through international agreements dealing with international movement of bioengineered crops.

Labeling

Proprietary Ingredient Information Disclosure Requirement for Import: As part of its product classification process for new-to-market food and dietary supplement products, Japan mandates that all ingredients and food additives be listed by name, along with content percentages, and include a description of the manufacturing process. In addition to being overly burdensome, this process runs the risk that proprietary information may be obtained by competitors.

Labeling of Beef: In 2007, the Ministry of Agriculture, Forestry, and Fisheries adopted labeling guidelines for "wagyu" beef. Although presented as voluntary standards, the guidelines bar use of the term "wagyu" on cattle not born and raised in Japan. The U.S. Government is concerned by the regulation and is monitoring this situation closely.

GOVERNMENT PROCUREMENT

Japan is a Signatory to the WTO Agreement on Government Procurement (GPA). For procurement of construction services by sub-central and government enterprises covered under the GPA, Japan applies a threshold of approximately \$22 million, which is three times the threshold applied by the United States.

Construction, Architecture, and Engineering

Even though Japan has the second largest public works market in the world (\$149 billion in 2007), U.S. companies annually obtain far less than 1 percent of projects awarded. Two bilateral public works agreements are in effect: the 1988 United States-Japan Major Projects Arrangements (MPA) (updated in 1991) and the 1994 United States.-Japan Public Works Agreement, which includes the Action Plan on Reform of the Bidding and Contracting Procedures for Public Works (Action Plan). The MPA included a list of 42 projects in which international participation is encouraged. Under the Action Plan, Japan must

FOREIGN TRADE BARRIERS

use open and competitive procedures for procurements valued at or above the thresholds established in the GPA. Public works issues are raised in the Expert-Level Meeting on Public Works under the United States-Japan Trade Forum.

Problematic practices that continue to limit the participation of U.S. design/consulting and construction firms in Japan's public works sector include bid rigging (*dango*), under which companies consult and prearrange a bid winner. The prevalence of *dango* is evidenced by the recent Defense Facility Agency procurement, in which 58 major construction companies were implicated in *dango*. The U.S. Government continues to stress the need for Japan to effectively address this pervasive problem.

Another concern is Japan's use of excessively narrow Japan-specific qualification and evaluation criteria that preclude U.S. firms from competing for projects. The U.S. Government has asked Japan to develop procedures to simplify the qualification process for foreign firms that have relevant experience outside of Japan, as well as to ensure that all of the qualification requirements for a project are made public, as required by the GPA and the bilateral agreements. For example, the Action Plan requires that definitive criteria be published so that firms can determine if they qualify for a project. Other concerns with Japan's procurement practices include the imposition of unreasonable restrictions on the formation of joint ventures, extremely low design fees, and excessive and costly documentation requirements for design bids.

The U.S. Government has also urged Japan to increase the use of Construction Management and Project Management in its public works to create greater opportunities for U.S. firms, which have extensive expertise in these areas. Construction and Project Management involve advanced project delivery and management systems that maximize the efficiency of projects.

The U.S. Government is paying special attention to several major projects covered by the public works agreements of particular interest to U.S. companies with the expectation that they will provide important opportunities for U.S. firms. These projects include Okinawa Institute of Science and Technology; Haneda Airport development and expansion; Kansai International Airport; Central Japan International Airport; Kyushu University Relocation Project; Gaikan Expressway Project; Metropolitan Expressway Shinagawa Route Projects; Japan Post's Post Office Projects; major public buildings, large-scale hospital building projects, urban development, and redevelopment projects; major PFI projects; and the MPA projects that have not yet been undertaken or completed.

INTELLECTUAL PROPERTY RIGHTS (IPR) PROTECTION

The U.S. Government continues to pursue its IPR protection agenda with Japan through bilateral consultations and cooperation as well as in multilateral and regional fora. For its part, Japan continues to make progress in improving the protection of IPR. In addition to increasing our bilateral cooperation, the U.S. Government has identified a number of areas in Japan's IPR protection regime where further action by Japan is needed.

Patents

The U.S. Government has urged Japan to adopt a 12 month patent application filing grace period, similar to that provided under U.S. law, to harmonize the two systems and provide U.S. innovators with an appropriate measure of protection against loss of rights when seeking to obtain patent protection in Japan. The U.S. Government also continues to urge Japan to implement procedures to avoid a piecemeal approach to patent examinations that results in unnecessarily lengthy delays in granting patents.

FOREIGN TRADE BARRIERS

In 2005, Japan established an Intellectual Property High Court staffed with judges and judicial research officials conversant with IPR cases, which the Japanese government reports has reduced the average length of litigation. The U.S. Government welcomes this reduction in the average length of litigation as helping to address longstanding concerns, and will continue to monitor the implementation and impact of Japan's reforms on the cost, length, and effectiveness of IPR related litigation.

Copyrights

Adequate protection of intellectual property, including copyrights and neighboring rights, is critical for the continued development and competitiveness of content related industries such as entertainment software, music, film, literary works, and software, and is a vital component to advancing electronic commerce and a well-functioning digital economy. The U.S. Government remains concerned that Japan's Internet service provider liability law does not provide adequate protection for the works of right holders on the Internet or the appropriate and necessary balance of interests among telecommunications carriers, service providers, rights holders, and website owners. The law could be improved by, among other things, including a requirement for more expeditious notification to right holders in the "notice and takedown" system.

The U.S. Government continues to monitor Japan's efforts to promote digital content distribution and urges that as technology advances to distribute content, the international framework of the exclusive rights of authorship and the incentives to create be preserved.

The U.S. Government is also urging Japan to continue efforts to reduce piracy rates, including piracy on the Internet, and is recommending that Japan amend its Civil Procedures Act to provide for the availability of statutory damages for infringement, at the election of the right holder, as an alternative to actual damages. Police and prosecutors should be given *ex officio* authority to enable them to investigate and prosecute IPR crimes on their own initiative, without the requirement of right holder consent. To develop Japan's digital communication networks, Japan's Copyright Law should better protect the technological adjuncts to copyright protection such as strengthening the remedies for trafficking in the tools used to circumvent access controls. Japan also does not forbid copyright infringement in government operations through a public decree or the issuance of regulations.

The U.S. Government is also concerned about the scope of the personal use exception, both as it applies to the Internet and to book piracy in the educational context, and is encouraging Japan to: make clear in its law that the otherwise infringing use of copyrighted works over peer-to-peer networks is not excused by the personal use exemption; and address the fact that Japan's personal use exception appears to allow students to copy entire textbooks for personal use.

The U.S. Government also continues to strongly urge Japan to extend the term of protection for all the subject matter of copyright and neighboring rights to life plus 70 years, or where the term of protection of a work (including a photographic work), performance, or phonogram is calculated on a basis other than the life of a natural person, to 95 years.

Japan's government is coordinating an ongoing discussion among stakeholders of these and other related issues and plans to revise Japanese laws in the near term. The U.S. Government welcomes this process and encourages Japan to ensure it is open, inclusive, and transparent, and offers all stakeholders fair opportunities to express views.

Border Enforcement

Border enforcement is a critical component of effective IPR protection. The U.S. Government notes steps taken by Japan to strengthen its own border enforcement as well as to provide assistance to improve the border enforcement of key trading partners. The U.S. Government also welcomes revisions to the Customs Tariff Law, which went into force in 2007, including expanding the list of prohibited goods for export to include items that infringe copyrights and neighboring rights, and strengthening the penalty clauses for customs offences. It is important for Japan to continue its aggressive interdiction of infringing articles and to vigorously apply the new provisions of the Customs Tariff Law. The U.S. Government also welcomes Japan's international efforts to enhance IPR enforcement in fora such as the G-8, APEC, and the WTO TRIPS Council, as well as in the *ad hoc* Japan-China-Korea trilateral Customs dialogue.

SERVICES BARRIERS

Insurance

Japan's private insurance market is the second-largest in the world, after that of the United States, with direct net premiums of an estimated 36.8 trillion yen (over \$300 billion) in Japan fiscal year (FY) 2006. In addition to the offerings of Japanese and foreign private insurers, substantial amounts of insurance are also provided to Japanese consumers by the National Public Health Insurance System, a web of insurance cooperatives (*kyosai*), and the Kampo life insurance company (a wholly government owned entity of the Japan Post Group). Given the size and importance of Japan's private insurance market as well as the scope of the obstacles that remain, the U.S. Government continues to place a high priority on ensuring that the Japanese government's regulatory framework fosters an open and competitive insurance market.

Kampo Insurance: The Japan Post Group's insurance business, Kampo, continues to be the largest player in Japan's insurance market. In Japan FY 2006, there were approximately 64 million life and annuities insurance policies issued by Kampo in force compared to 126 million issued by all private life insurance companies combined. The U.S. Government has long standing concerns about Kampo's impact on competition in Japan's insurance market. It remains vital that Japan create a level playing field between Kampo and private sector insurers to cultivate competition, encourage more efficient allocation of resources, and stimulate economic growth.

The U.S. Government is closely monitoring the privatization of Japan Post and implementation of related reforms. The Japan Post reform framework established by Japan's Diet in 2005 includes a number of key measures that, if implemented fully, will represent long awaited progress in areas of concern to U.S. and insurers in the market. Importantly, the legislation also included establishment of equivalent conditions of competition between Japan Post and the private sector as a basic principle of the reforms.

In addition to ensuring equal supervisory treatment between Kampo and private sector companies, the U.S. Government continues to seek for Japan to take the steps necessary to achieve a level playing field. Among those steps, the U.S. Government urges that adequate measures are implemented to ensure that cross-subsidization does not take place among the newly created Japan Post businesses and related entities, including by ensuring Japan Post's strict compliance with the Insurance Business Law's arms-length rule and requiring adequate financial disclosures to demonstrate that cross-subsidization is in fact not occurring. The U.S. Government also continues to emphasize the importance of ensuring the new company established to manage Japan's post office network will transparently and without discrimination select insurance products of private providers for distribution throughout the network.

FOREIGN TRADE BARRIERS

The U.S. Government continues to call on Japan to ensure that a level playing field is created between the postal insurance company and private insurers before the postal insurance institutions are permitted to underwrite and introduce new or altered insurance products. Approval of any proposed new products by the new postal insurance company has shifted to a new process whereby decisions are made by the Prime Minister (with the Commissioner of the Financial Services Agency acting as proxy) and Minister of Internal Affairs and Communications, after hearing the opinion of an appointed government advisory body. This new process should be transparent and open to all parties. It is also critical that the process include careful analysis of, and full consideration given to, actual competitive conditions in the market and that private sector views are actively solicited and considered before decisions are made.

As modifications to the postal financial system could have serious ramifications to competition in Japan's insurance market, adequate transparency in implementation of the reforms passed by the Diet is essential. The U.S. Government has urged Japan to continue to take a variety of steps that ensure transparency, including: providing meaningful opportunities for interested parties to exchange views with related government officials as well as members of government-commissioned advisory committees and groups before decisions, including those on new products, are made; and fully utilizing public comment procedures with respect to drafting and implementing regulations, guidelines, Cabinet Orders, and other measures.

Kyosai: Insurance businesses run by cooperatives, or *kyosai*, hold a substantial market share of insurance business in Japan. Some *kyosai* are regulated by their respective agencies of jurisdiction (the Ministry of Agriculture, Forestry and Fisheries, or the Ministry of Health, Labor and Welfare, for example) instead of by the FSA, while others have been allowed to operate without any regulatory supervision at all. These separate regulatory schemes undermine the ability of the Japanese government to provide companies and policyholders a sound, transparent, regulatory environment, and afford *kyosai* critical business, regulatory, and tax advantages over their private sector competitors. The U.S. Government believes all *kyosai* must be subject to the same regulatory standards and oversight as their private sector counterparts to ensure a level playing field and to protect consumers.

The Japanese government took some important steps in 2006 to bring more oversight scrutiny to unregulated *kyosai*. Under these regulatory reforms, previously unregulated *kyosai* will be supervised by the FSA and held to some of the same regulatory standards as private sector insurers. *Kyosai* that do not comply with FSA regulations will be forced to shut down their operations. As the Japanese government implements this new system and reviews its operation as required under the amended law, the U.S. Government urges additional steps be taken to hold *kyosai* to the same regulations and FSA supervision as are applied to private companies.

With respect to *kyosai* regulated by ministries and agencies other than the FSA, the U.S. Government remains concerned by their continued expansion in Japan's insurance market and continues to call on Japan to bring these *kyosai* under FSA supervision.

Policyholder Protection Corporations: The Life and Non-life Policyholder Protection Corporations (PPCs) are mandatory policyholder protection systems created in 1998 to provide capital and management support to insolvent insurers. Japan's Diet passed legislation in 2005 to renew the PPC system. While some improvements were made, the PPC system continues to rely upon prefunding by its members, instead of adopting a system of funding to follow an insolvency that results in a draw of funds from the PPC (post-funding). The U.S. Government continues to urge Japan to adopt more fundamental changes in the PPC systems, including the post-funding approach, when the next renewal of the system is enacted.

Bank Sales: The U.S. Government welcomes the decision taken by the Japanese government in December 2007 to liberalize fully the range of products eligible to be sold through the bank sales channel. As meaningful liberalization of the bank sales channel is critical for Japanese and foreign stakeholders alike, regulation of the channel should avoid arbitrary *ex-ante* restrictions that would effectively minimize the benefits of liberalization. Equally important is that restrictions on sales in the channel not unreasonably limit sales of first or third-sector products.

Professional Services

U.S. and other foreign firms and individuals are hampered in providing professional services in Japan by a complex network of legal, regulatory, and commercial practice barriers. U.S. professional services providers are highly competitive. Their services also help facilitate access for U.S. exporters of other services and goods, and contribute valuable expertise to the economies they serve. The availability of such services can be a key factor in U.S. firms' decisions whether to invest and thus is central to improving the environment for foreign direct investment in Japan.

Accounting and Auditing Services: U.S. providers of accounting and auditing services face regulatory and market access barriers in Japan that impede their ability to serve this important market. Only Certified Public Accountants (CPAs) or Audit Corporations (made up of five or more Japanese CPAs) can offer accounting services. Foreigners must pass a national examination to qualify and this examination is offered annually. The U.S. Government will continue to urge Japan to remove restrictions on accounting services.

Medical Services: Restrictive regulation limits foreign access to the medical services market. In our bilateral Regulatory Reform Initiative, the U.S. Government has recommended that Japan allow commercial entities to provide full service, for-profit hospitals in Japan's special economic zones as a first step to opening this sector to foreign capital affiliated providers.

Educational Services: Excessive regulation has discouraged foreign universities from operating branch campuses in Japan, presenting obstacles in the form of both administrative requirements and restrictions on pedagogical choices. Under the United States-Japan Investment Initiative, the Japanese government established a new category of "Foreign University - Japan Campus" for foreign accredited institutions of higher education. This designation provides these campuses with benefits similar to those accorded Japanese educational institutions (for example, student eligibility for student rail passes and student visas), but does not confer tax benefits enjoyed by Japanese institutions and their students. The U.S. Government continues to urge Japan's Ministry of Education, Culture, Sports, Science and Technology to work with these foreign universities to find a nationwide solution that grants tax benefits comparable to Japanese schools and allows them to continue to provide their unique contributions to Japan's educational environment.

INVESTMENT BARRIERS

Despite being the world's second-largest economy, Japan continues to have the lowest inward FDI as a proportion of total output of any major OECD country. Inward foreign mergers and acquisitions (M&A) activity, which accounts for up to 80 percent of FDI in other OECD countries, also lags in Japan, even though it is on an upward trend.

FOREIGN TRADE BARRIERS

The Japanese government has recognized the importance of FDI to revitalizing the country's economy. In September 2006, the Japanese government set a goal of doubling the stock of FDI in Japan by 2010 to the equivalent of 5 percent of Gross Domestic Product (GDP). Japan has also taken several recent steps to improve the FDI environment, including revision of the Corporate Code to permit the use of triangular stock swaps for international M&A deals. With only one cross-border stock transaction occurring under the new rules as of October 2007, however, the long term impact of the liberalization of M&A rules is still unclear.

Cross-border M&A is more difficult in Japan than in other countries, partly because of attitudes toward outside investors and partly because of differing management techniques and the relative lack of financial transparency and disclosure. There is also growing concern among foreign investors about the impact of recent court rulings related to allowable defensive measures by listed companies against unsolicited takeover bids.

The United States-Japan Investment Initiative, co-chaired by the U.S. Department of State and Japan's Ministry of Economy, Trade and Industry (METI), has worked to promote policy changes that improve the overall environment for foreign (and domestic) investment since 2001 and to focus on specific barriers in certain sectors, including educational and medical services.

Anticompetitive Practices

Law against Unjustified Premiums and Misleading Representations: Despite nominal changes to the Law against Unjustified Premiums and Misleading Representations over the past two decades, the law itself and JFTC's enforcement of its provisions block many common sales techniques such as product giveaways and lotteries. In March 2007, however, the JFTC did revise the maximum amount that a business may offer as a nonprize premium from one-tenth to two-tenths of the purchase price. Nevertheless, fair trade councils (essentially, private trade associations) set their promotion standards through self-imposed fair competition codes that are recognized by the JFTC. These codes frequently impose additional standards that effectively protect vested manufacturing and retailing interests to the detriment of new entrants to the market. As of November 2007, there were still 38 JFTC authorized premium codes.

(For detailed discussion on other anticompetitive practices and Antimonopoly Act enforcement, see the section above titled "Structural Regulatory Reform.")

OTHER BARRIERS

Autos and Automotive Parts

A variety of nontariff barriers have traditionally impeded access to this market, and overall sales of North American made vehicles and parts in Japan remain low. Even as U.S. automakers have invested in Japanese automobile manufacturers, there has not been a corresponding level of increase in sales in Japan's market. The Japan Automobile Importers Association (JAIA) reports that sales of U.S. produced motor vehicles in Japan decreased in 2006 to 16,290 units.

Through the Regulatory Reform Initiative, the U.S. Government continues to address crosscutting structural and regulatory reform issues with Japan that affect the automotive sector, including urging Japan to take steps that help expand the opportunities for foreign investment, strengthen competition policy, and increase transparency in rule making.

FOREIGN TRADE BARRIERS

Aerospace

Japan has been among the largest foreign markets for U.S. civil aerospace products in recent years. The civil aerospace market in Japan is generally open to foreign firms, and some Japanese firms have entered into long-term relationships with American aerospace firms. The U.S. Government continues to monitor Japan's development of indigenous civil aircraft.

Military procurement by the Ministry of Defense (MOD) accounts for over half of the domestic production of aircraft and aircraft parts and continues to offer the largest source of demand in the aircraft industry. Although U.S. firms have frequently won contracts to supply defense equipment to Japan (over 90 percent of the annual foreign defense procurement is from the United States), the MOD has a general preference for domestic production or the licensing of U.S. technology for production in Japan to support the domestic defense industry.

Although Japan has considered its main space launch vehicle programs as indigenous for many years, U.S. firms continue to participate actively in those space systems, including Japan's primary space launch vehicle, the HII-A. The U.S. Government has welcomed Japan's plans to develop a supplementary GPS navigation satellite constellation known as the "quasi-zenith" system. The U.S. Government is working very closely at the technical level with Japanese counterparts to ensure the Japanese system remains compatible with the U.S. system and anticipates that U.S. companies will have the opportunity to supply major components.

Business Aviation

Japan's regulatory framework coupled with infrastructure shortages impedes the development of business aviation, as well as the ability of business aviation interests from other countries to use facilities in Japan.

Regulations for commercial airline safety, maintenance, and repair issues administered by the Japan Civil Aviation Bureau (JCAB) of the MLIT also apply to business aircraft. The current regulatory environment greatly raises the costs of qualification, operation, and maintenance of business aircraft to uneconomical levels. As a result, most business aircraft in Japan are registered in the United States. Landing business aircraft in Japan is difficult due to rules that hamper flexible scheduling, especially in the Tokyo area. Current regulatory burdens mean Japanese companies, foreign companies in Japan, and foreign companies interested in doing business with Japan cannot use business aviation effectively and economically. U.S. aircraft manufacturers note further that the regulatory situation has greatly limited sales of their airplanes to Japanese clients.

Severely restricted hours for landings and take-offs at Haneda and the lack of services at Narita and Haneda significantly limit travel on business aircraft to and within Japan. On a more positive note, certain airports in the Chubu and Kansai regions are more open to business aircraft and are attempting to provide many of the same services that business aircraft operators receive in the United States and Europe. Since April 2005, regional (nondesignated) airports may also accept landings of international charter and business aviation flights with 3 days' notice, provided that customs, immigration, and quarantine are available. These forward looking measures are not sufficient, however, to overcome other obstacles impeding business aircraft use in Japan.

Based on the growing needs of business aircraft owners and operators, the U.S. Government has been urging JCAB to reexamine the application of airline-specific civil aviation regulations to business

aviation and develop appropriate regulations specific to the business aviation industry. These regulations should, to the greatest degree possible reflect a regulatory approach consistent with the treatment of business aviation in the North America, Europe, and several other parts of the world. The U.S. Government also encourages JCAB to consider the regulatory reform requests submitted by U.S. and Japanese industry. In advance of the opening of the additional runway at Haneda planned for 2010, the U.S. Government urges Japan to make immediate improvements in the overall regulatory framework. In the past year, JCAB has taken positive steps, such as participating in business aviation events in the United States and Japan. JCAB also created a team to study business aviation and is in the process of conducting research on conditions impacting business aviation in other countries.

Civil Aviation

Market access for U.S. air carriers in Japan improved significantly with a 1998 bilateral agreement and additionally with a new bilateral agreement reached in September 2007 (pursuant to comity and reciprocity pending formal conclusion). U.S. carriers, however, remain constrained by restrictions on traffic rights, operational flexibility, and pricing, and some of the world's highest airport costs.

The September 2007 agreement provides nonincumbent cargo carriers with the ability to serve additional points in Japan and beyond. Restrictions and limitations on same country code-sharing arrangements were mostly removed with some notable exceptions. This agreement also relaxed the pricing regime from "double approval" to "country of origin." It fell short, however, of the standard "double disapproval" regime for pricing liberalization. On a related note, U.S. industry has reported cumbersome and time-consuming filings are still required for fare changes. Key U.S. concerns include the continuing disparity between the rights of "incumbent" and "nonincumbent" airlines, restrictions on change-of-gauge, and pricing inflexibility. Limitations on same country code-sharing have been lessened, but remain more restrictive than the open code-sharing framework in U.S. agreements with most other countries. The September 2007 agreement provided two U.S. nonincumbent cargo carriers the ability to service an additional point in Japan, coupled with new fifth freedom (onward connection) rights.

Narita International Airport ("Narita") operates below its potential capacity. The U.S. Government encourages Japan to take steps that would increase capacity and reduce congestion at one of the world's most important airports. An extension of Narita's second runway that will facilitate more long haul flights is currently underway, although there are concerns about the project's financing – specifically that already high user fees may be increased. Recently lowered landing fees at Narita were offset in part by other new or increased fees. The issue of high landing fees at Narita, Kansai, and Central Japan International Airport (Centrair) airports continues to be raised in the Regulatory Reform Initiative and in bilateral aviation discussions.

Both Narita and Haneda Airports are undergoing ambitious expansion projects set to be completed by 2010. The planning processes for these airport projects have not been fully transparent. Concerns include the procedures by which new slots at Narita airport will be allocated, and prospective rules at Haneda that could adversely impact the competitiveness of U.S. carrier operations in the long term. While these issues will be addressed in United States-Japan Civil Aviation Talks set to resume by the summer of 2008, the U.S. Government urges Japan to ensure that, through a timely and transparent consultative process, non-Japanese carriers have meaningful opportunities to comment. The ultimate decisions regarding these issues will significantly affect the traveling public and the movement of cargo in the Tokyo Metropolitan Area, and throughout the Asia Pacific region. Connections between airports in the Tokyo metropolitan area remain difficult and time-consuming. The weak connectivity harms the

efficiency of the airports and carriers serving Tokyo. The U.S. Government encourages Japan to improve transit access between Haneda and Narita Airports.

Consistent with its longstanding policy to promote competition and market access in civil aviation, the U.S. Government will continue to press Japan for further liberalization.

Transport/Ports

The U.S. Government continues to hold longstanding concerns over the barriers to entry to and the competitiveness of Japanese ports. Foreign shippers servicing Japan are locked into long-term relationships with specific Japanese stevedoring companies, which reportedly collude within the industry association to keep newcomers out and costs high. Foreign companies have indicated that a lack of transparency in Japanese laws and regulations related to ports creates a barrier to entry. Foreign owned and run stevedoring businesses do not exist at major Japanese ports, and even major Japanese companies have been prevented from being directly involved in the stevedoring business. As part of the Regulatory Reform and the Initiative, we have made recommendations on transparency that could apply to the rulemaking process. Japanese laws and regulations could be reviewed with an eye to facilitating new entrants and outside competition in the stevedoring business.

Japan amended its Port Transportation Business Law (effective November 2000) to eliminate the need for new entrants to prove there is surplus demand. Charges for harbor services in nine large ports are subject to a prior notification requirement, and there is an approval requirement for other ports by the MLIT.

Since 1999, the U.S. Government has continued to express concern that reforms have not lessened the Japan Harbor Transportation Association (JHTA)'s ability to deter new entry and restructuring in the ports sector. The Port Transportation Business Law introduces new requirements that run counter to the need for efficient port operations and discriminate against new entrants wishing to offer port services. In addition, MLIT has not addressed concerns about the prior consultation process conducted by the JHTA nor about the apparent threat of illegal strikes against foreign carriers who obtain permission to operate their own container terminals. The U.S. Government continues to note that the Japanese government has failed to implement important aspects of the wide-ranging port deregulation promised in 1997.

JORDAN

TRADE SUMMARY

The U.S. goods trade deficit with Jordan was \$477 million in 2007, a decrease of \$294 million from 2006. U.S. goods exports in 2007 were \$857 million, up 31.7 percent from the previous year. Corresponding U.S. imports from Jordan \$1.3 billion were down 6.2 percent. Jordan is currently the 73rd largest export market for U.S. goods.

The stock of U.S. foreign direct investment (FDI) in Jordan was \$40 million in 2006 (latest data available), up from \$1 million in 2005.

THE UNITED STATES-JORDAN FREE TRADE AREA AGREEMENT

The United States-Jordan Free Trade Area Agreement (FTA) was signed in October 2000 and entered into force on December 17, 2001. It is the United States' first FTA with an Arab state. The FTA will phase out duties on nearly all goods by 2010. The Agreement also provides for more open markets in services, such as telecommunications, construction, finance, health, and transportation, as well as strict enforcement and protection of intellectual property rights. It is also the first of the United States' FTAs to include commitments in the areas of labor and environment.

IMPORT POLICIES

Tariffs

Jordan is a member of the WTO and has reduced its tariffs pursuant to its WTO commitments. Tariffs between the United States and Jordan are being eliminated pursuant to the terms of the FTA, although nontariff barriers continue to affect a certain portion of U.S. agricultural exports.

The Jordan General Sales Tax law allows the government to impose a "Special Tax" at the time of importation or local production.

Agriculture

Jordan is a net food importer. All of Jordan's consumption of corn, rice, and sugar is imported, as are most of its needs for wheat, barley, and meat. According to the Jordanian Department of Statistics, in 2006, Jordan imported \$1.61 billion worth of agricultural products, of which about \$150 million, or 9.3 percent, came from the United States.

Import licenses, or advance approvals to import goods, are required for certain food and agricultural goods. These licenses are granted by the Ministry of Industry and Trade, the Ministry of Agriculture, and the Ministry of Health.

Jordan selectively enforces sanitary and phytosanitary (SPS) measures on imports of fruits, vegetables, and beef from the United States, which effectively create nontariff barriers for these products.

FOREIGN TRADE BARRIERS

On August 23, 2007, the U.S. Department of Agriculture disclosed to the World Organization for Animal Health (OIE) a case of low-pathogenic avian flu in the United States. After that disclosure was made, the Jordanian Ministry of Agriculture suspended imports of U.S. poultry in early September 2007 and officially banned such imports in early October 2007. The ban was lifted on October 23, 2007, but import licenses for U.S. poultry were not issued until November 12, due to bureaucratic delays.

In 2005, Jordan banned the importation of beef and live animals from all states in the United States after the announcement of the discovery of a single U.S. case of Bovine Spongiform Encephalopathy (BSE) in Alabama. The subsequent partial lifting of the ban was accompanied by strict conditions that are difficult to meet for both U.S. exporters and Jordanian importers, particularly for meat products that are not minced, ground, or bone-in.

IMPORT LICENSE AND PRE-SHIPMENT INSPECTION

In addition to the special requirements for certain agricultural products, Jordan requires that an importer of goods for commercial purposes be a registered trader or commercial entity. The Ministry of Industry and Trade may issue directives to require import licenses for certain goods or categories of goods.

Jordan ended its preshipment inspection program on September 1, 2007.

STANDARDS, TESTING, LABELING, AND CERTIFICATION

The Jordan Institution of Standards and Metrology (JISM) issues and routinely updates standards for approximately 1,300 products. JISM's current standards are, in general, compatible with U.S. standards. JISM concluded a twinning program with Germany to review its current standards and incorporate new sets of standards. JISM's director has assured the United States that the new market surveillance system will not be biased against U.S. standards, which are also considered international standards. JISM has already licensed several local laboratories to test for compliance with applicable standards.

JISM also issues and enforces labeling requirements.

GOVERNMENT PROCUREMENT

Foreign investors can bid on government commissioned research and development programs for which international or mixed bidders are eligible. Alternatively, foreign bidders can find a Jordanian partner to bid on such programs. This requirement will be dropped when Jordan accedes to the GPA. In 2002, Jordan initiated its accession to the GPA. During 2007, Jordan made significant progress in its negotiations to accede to the GPA and it is anticipated that Jordan's accession to the GPA will be completed in 2008.

EXPORT SUBSIDIES

All exporters are granted the following incentives:

- Net profits generated from most export revenues are fully exempt from income tax. The mining sector is excluded, as are exports governed by specific trade protocols and foreign debt repayment schemes. WTO Members agreed to exempt this program from WTO disciplines on export subsidies until 2015.

FOREIGN TRADE BARRIERS

- Foreign inputs used in the production of exports are exempt from customs duties, and all additional import fees are assessed on a reimbursable basis.

INTELLECTUAL PROPERTY RIGHTS PROTECTION

Prior to its accession to the WTO, Jordan passed several new laws to improve protection of intellectual property rights (IPR). Jordan's law provides for depositing a work with the National Library, part of the Ministry of Culture, but failure to deposit the work does not prejudice the rights or the author under Jordan's Copyright Law. Patents and trademarks must be registered with the Registrar of Patents and Trademarks at the Ministry of Industry and Trade. In 2007, Jordan amended its Trademark and Patent Laws to enable accession to the Madrid Protocol Concerning the Registration of Marks and the Patent Cooperation Treaty. In addition, in signing the FTA, Jordan committed to even stronger enforcement of IPR, particularly in the pharmaceutical sector. Jordan has also acceded to the World Intellectual Property Organization (WIPO) treaties on copyrights (WCT) and performances and phonographs (WPPT).

Jordan's record on IPR enforcement has improved. In 2007, the First Instance Court of Amman issued the first jail sentence in Jordan for software piracy, and the Business Software Alliance indicated that software piracy in Jordan decreased 2 percentage points to 61 percent in 2006. Jordan's Customs Department and the Public Security Department have created specialized IPR units. Pending amendments to JISM's authorizing law aim to enhance the agency's role in seizing counterfeit products that have entered the Jordanian market. However, while Jordan's Customs Department and the Public Security Department have created specialized IPR units, Jordanian agencies responsible for IPR enforcement lack resources and capacity, and enforcement mechanisms and prosecution still need to be strengthened, particularly to enable *ex officio* seizure authority absent a formal complaint by a private party or rights holder.

Further improvements are still needed to strengthen Jordan's IPR enforcement regime. A sizeable portion of videos and software sold in the marketplace continue to be pirated. Jordan's government continues to examine means to provide more comprehensive protection of IPR, including through more stringent enforcement of existing laws, introduction of new regulations based on existing laws, and the creation of an independent IP body.

INVESTMENT BARRIERS

Jordan's investment laws treat foreign and local investors equally, with the following exceptions:

- Under Article VI of Regulation Number 54 for the year 2000 (entitled "Regulating Non-Jordanian Investment"), foreign investors may not have whole or partial ownership of investigation and security services, sports clubs (except for health clubs), stone quarrying for construction purposes, customs clearance services, or land transportation of passenger and cargo trucks, buses, and taxis.
- Under the terms of the United States-Jordan FTA, ownership of periodical publications is restricted to Jordanian natural persons or Jordanian juridical entities wholly owned by Jordanians;
- Under the same agreement, U.S. investors are limited to 60 percent ownership in printing/publishing and in aircraft or vessel maintenance and repair services; and

FOREIGN TRADE BARRIERS

- Under the FTA, U.S. investors are limited to 50 percent ownership in a specified list of businesses and services.

While Jordanian laws set limitations on foreign ownership in certain sectors, the laws also allow for the government to grant exceptions to these limitations where it deems appropriate. This exception policy is viewed as being too limited by some potential U.S. investors.

A minimum capital requirement of JD 50,000 (\$70,000) is set for foreign investors. This requirement does not apply to participation in public shareholding companies.

ELECTRONIC COMMERCE

Jordan started to introduce electronic commerce legislation a few years ago; though a clear body of regulations and tax laws covering electronic commerce transactions has yet to emerge. Legislation that allows for and regulates electronic signatures is still needed.

Jordan neither actively regulates nor promotes electronic trade. However, no tariffs are imposed on electronic transactions.

KAZAKHSTAN

TRADE SUMMARY

The U.S. goods trade deficit with Kazakhstan was \$499 million in 2007, an increase of \$184 million from \$314 million in 2006. U.S. goods exports in 2007 were \$753 million, up 16.5 percent from the previous year. Corresponding U.S. imports from Kazakhstan were \$1.3 billion, up 30.3 percent. Kazakhstan is currently the 75th largest export market for U.S. goods.

The stock of U.S. foreign direct investment in Kazakhstan was \$4.9 billion in 2006 (latest data available), up from \$4.7 billion in 2005.

Kazakhstan has been negotiating membership in the World Trade Organization (WTO) since January 29, 1996. As part of that process, Kazakhstan is still negotiating bilateral market access agreements with a number of WTO Members, including the United States, the European Union, and Australia. In 2007, Kazakhstan signed market access agreements with Malaysia, Brazil, and Israel. Currently, 19 out of 40 Members of the WTO Working Party for Kazakhstan have signed bilateral market access agreements. While progress was made in 2007 in implementing WTO-consistent legislation, more work remains in a number of areas, including reform of customs practices, sanitary and phytosanitary (SPS) regulation, technical barriers to trade (TBT), government procurement, and taxation.

The United States-Kazakhstan Bilateral Trade Agreement, which came into force in 1993, grants conditional normal trade relations treatment. A bilateral investment treaty came into force in January 1994.

IMPORT POLICIES

Kazakhstan is a member of the Eurasian Economic Community (EAEC), along with Russia, Kyrgyzstan, Belarus, Tajikistan, and Uzbekistan. Armenia, Moldova, and Ukraine currently have observer status. Five of the EAEC members (all but Uzbekistan) have formed a free trade area. In 2006, Kazakhstan, Russia, and Belarus announced the formation of a trilateral customs union. The customs union remains under development and aims to bring about coordinated customs procedures and a high degree of uniformity in its members' external tariffs. While work on establishing the customs union continues, Kazakhstani officials have stated that the customs union would only come into force after Kazakhstan becomes a member of the WTO.

Goods imported for short term use in Kazakhstan under a temporary import regime can be fully or partially exempt from duties, taxes, and nontariff regulations. The types of goods not eligible for duty exemptions include food products, industrial waste, and consumables. The Law on Investments, enacted in January 2003, provides customs duty exemptions for imported equipment and spare parts, but only if Kazakhstan-produced stocks are unavailable or not up to international standards.

U.S. exporters to Kazakhstan have consistently identified the requirement to obtain a "transaction passport" (providing information on, *inter alia*, the importer, contract details, local bank of importer/exporter, and a foreign partner) to clear goods through customs as a significant barrier to trade. The transaction passports are designed to stem capital outflows and money laundering by requiring importers to show documents that legitimize and verify the pricing of import/export transactions. In July 2006, the National Bank of Kazakhstan (NBK) enacted new regulations that simplified – but retained –

FOREIGN TRADE BARRIERS

the transaction passport requirement. Principal changes included eliminating the trade distorting maximum financing term of 180 days for imported goods and transferring the authority to issue transaction passports from customs to the NBK and commercial banks. According to some business representatives, the new regulations have succeeded in simplifying the production and issuance of transaction passports.

In April 2007, the government of Kazakhstan increased significantly the tariff rates for imports of beef, pork, lamb and mutton, horsemeat, bovine tongues and livers, poultry meat, eggs, and rice. These tariff increases are contrary to the spirit of WTO accession (trade liberalization) and will be subject to negotiation under the United States' bilateral market access agreement with Kazakhstan.

In August 2007, Kazakhstan enacted an amendment to its Customs Code, requiring that importers provide government documentation from the country of origin in order to import goods into Kazakhstan. The requirement precluded imports of U.S. goods into the country for several months, trapping at least \$100 million of U.S. goods in Kazakhstani customs and causing some U.S. companies to delay or cancel their shipments to Kazakhstan. The issue was resolved, initially when the Kazakhstani government agreed to exempt U.S. goods from the new requirement on the basis that the U.S. Government does not issue export documents; in November 2007, the amendment was permanently repealed. Kazakhstan is working on other amendments to its Customs Code in order to bring its legislation further into compliance with WTO standards; the government hopes to enact these new statutes in 2008. For now, however, problematic customs administration remains a principal barrier to trade.

STANDARDS, TESTING, LABELING, AND CERTIFICATION

In 2007, Kazakhstan adopted a number of laws in furtherance of its efforts to develop a national system of standardization and certification, such as laws on Safety of Chemical Products, Safety of Food Products, Safety of Toys, Safety of Equipment, and Machinery, as well as a series of amendments to the law On Technical Regulation. Kazakhstan enacted these laws to implement international standards and meet WTO requirements.

The Kazakhstani Law on Technical Regulation distinguishes the state's responsibilities from those of the private sector. The government is responsible for product safety, but delegates quality control responsibilities to authorized private institutions. A wide range of goods are subject to mandatory certification requirements which apply to both domestically produced and imported goods. A related regulation lists the specific categories of products subject to certification, including machines, cars, agricultural and telecommunications equipment, construction materials, fuel, clothes, toys, food, and drugs.

Standards for imported goods are addressed further in the Law on Technical Regulation, which specifies that contracts for the delivery of imported goods subject to mandatory certification should be required to confirm compliance with Kazakhstani mandatory certification requirements. Delivery contracts must also be accompanied by documents that describe the products and list the country of origin, the producer, the expiration date, and any storage requirements, as well as the code of use in both the Kazakh and Russian languages. In addition, the law states that foreign certificates, testing protocols and compliance indicators must be in accordance with international treaties.

Kazakhstan intends to accede to the International Laboratory Accreditation Conference and the International Accreditation Forum and is currently developing legislation toward this goal. This step

would automatically make Kazakhstan a party to a number of international treaties on metrology and standards.

GOVERNMENT PROCUREMENT

Some potential U.S. suppliers have raised concerns about the transparency and efficiency of Kazakhstan's government tender process.

In July 2007, Kazakhstan enacted a new law on State procurement. The new law is aimed at increasing the transparency of the procurement process and providing the relevant state agencies with greater operational flexibility. The new law was followed by amendments to the Administrative Code, stipulating administrative penalties for violating the procurement law.

The Rules on Oil and Gas Procurement give significant preferences to local suppliers and establish what many foreign and domestic firms consider unwarranted state interference in even small tenders.

INTELLECTUAL PROPERTY RIGHTS (IPR) PROTECTION

The government's effort to diversify the economy away from the energy sector and spur the growth of a domestic high technology industry, along with the WTO accession process, has led to a strong emphasis on IPR protection. The progress achieved on the legislative front, as well as in enforcement, was reflected in the May 2006 removal of Kazakhstan from the USTR's Special 301 Watch List.

Although domestically produced pirated films and music are increasingly available in Almaty and Astana thanks largely to decreasing technology costs, the vast majority of pirated materials in the regions appear to be imported predominantly from Russia and China. Armed with statutes enacted in November 2005 that authorize stiffer penalties for violators, the authorities have conducted numerous raids against distributors of pirated recordings. The government's efforts have greatly helped to expand the Kazakhstani market for licensed goods. Still, much remains to be done, particularly in making customs controls more effective against imported infringing goods. Legislation to strengthen intellectual property (IP) protection and enforcement efforts is under development, including legislation to grant customs officials' *ex officio* powers.

Further progress is also needed in the realm of civil adjudication, where an increasing number of IPR disputes are being settled. Although civil courts have been used effectively to stem IPR infringement, judges often lack expertise in the area of IPR, which is a significant obstacle to further improvement in the IPR climate of the country. In 2006 and 2007, the U.S. Patent and Trademark Office and the U.S. Department of Justice provided extensive training on IPR enforcement to Kazakhstani IPR experts and law enforcement officials.

SERVICES BARRIERS

Foreign ownership of individual mass media companies, including news agencies, is limited to 20 percent. Foreign banks and insurance companies are limited to operating in Kazakhstan through joint ventures with Kazakhstani companies. Overall capital of all foreign insurance companies may not exceed 25 percent of the non-life insurance market and 50 percent of the life insurance market. For certain professional services, including auditing, architectural, urban planning, engineering, integrated engineering, and veterinary services, commercial presence is allowed only in the form of a juridical person. For veterinary services, foreign participation in the charter capital may not exceed 49 percent.

FOREIGN TRADE BARRIERS

Concerns have been raised about possible preferential treatment for Kazakhstan's domestic satellite (KazSat 1), which could result in competitive disadvantages for U.S. satellite operators serving the Kazakhstan market. Certain regulatory requirements also appear to impose additional conditions on U.S. satellites serving the Kazakhstan market such as requiring operators to maintain a network control and billing center in Kazakhstan.

INVESTMENT BARRIERS

Kazakhstan's 2003 Law on Investments provides the legal basis for foreign investment in Kazakhstan. In general, U.S. investors have concerns about the Law's narrow definition of investment disputes, its lack of clear provisions for access to international arbitration, and certain aspects of investment contract stability guarantees.

Most foreign investment in Kazakhstan is directed to the oil and gas sector. One notable aspect of this sector is the State's active promotion of "local content" in purchases of goods and services for petroleum operations. For example, the July 2005 Law on Production Sharing Agreements (PSAs) contains explicit requirements regarding the local purchase of goods and services and the hiring of Kazakhstani nationals for all investment in offshore oil and gas exploration and production. The Law also requires that KazMunayGas, the national oil company, have a minimum 50 percent share in offshore projects and it creates a means by which the national oil company may obtain field rights outside of a tender process. Taken together, these clauses establish KazMunayGas as a necessary partner for international oil companies investing in the Caspian Sea, at least in the initial stages of an agreement.

Also in 2005, Kazakhstan added a controversial "preemption" amendment to its Law on Subsurface Use. The amendment guarantees the State the right of first refusal when a party seeks to sell any part of its stake in a mineral resource extraction project. The state claims this preeminent right even in cases where the controlling agreement assigns preemptive rights elsewhere (*e.g.*, to other investors in a consortium). The amendment applies the preeminent right retroactively. Although Kazakhstani government officials emphasize the importance of contract sanctity, this amendment raises serious questions about the government's respect for contracts.

In January 2007, the government of Kazakhstan again amended the Subsurface Use Law as well as the Petroleum Law, tightening local content requirements and mandating that companies meet local content benchmarks annually, rather than on average over the lifetime of a project. Subsurface user entities are now required to submit an annual procurement program and maintain a national register of goods and services consumed or supplied for subsoil use operations. These amendments also introduced a ban on the transfer of contractual subsurface use rights within two years of entering into a contract with the government, and permit the government to bar a bidder from receiving subsurface use rights on national security grounds. The new provisions appear to be designed to strengthen the state's control over the assignment of subsurface use rights.

In October 2007, the government again amended the Subsurface Use Law in ways that have raised concerns for foreign investors. These amendments allow the government to initiate negotiations to change the terms of existing contracts where subsoil operations on sites of strategic importance are deemed to harm Kazakhstan's national security or economic interests. If the subsoil operator refuses to renegotiate, the government can terminate the operator's contract. U.S. Government officials have expressed concern to Kazakhstan's officials about the possible negative effects of these changes to the

FOREIGN TRADE BARRIERS

Subsurface Use Law on the overall investment climate in Kazakhstan, and will continue to monitor its implementation.

Kazakhstan's law allows citizens of Kazakhstan and foreigners to own land under commercial and noncommercial buildings, including dwellings and associated land. Such land may also be leased for up to 49 years. The land code, enacted in June 2003, for the first time allowed private ownership by Kazakhstan's citizens of agricultural land, in addition to industrial, commercial, and residential land. An amendment enacted in July 2007 extended the right to own agricultural land to Kazakhstani owned businesses as well. Foreigners may still only lease agricultural land for up to 10 years.

Foreign investors continue to have difficulty obtaining work permits for employees who are not Kazakhstani nationals. The quota is set each year, based on a percentage of foreign labor as a share of the total national work force. Many companies report that permits for key managers and technicians are routinely rejected or granted for unreasonably short periods or are conditioned upon demands for additional local hires. Companies also note that hiring regulations are confusing and interpreted inconsistently by local officials and the Ministry of Labor and Social Protection.

The government has been steadily increasing the number of work permits available. In 2005, the number of permits was limited to 0.32 percent of the economically active population (estimated at about 8 million people). The figure increased to 0.55 percent in 2006 and to 0.8 percent in 2007. For 2007, the quota for managers and professionals was increased from 0.24 percent to 0.3 percent. For skilled workers, the quota rose from 0.18 percent to 0.37 percent; and for seasonal farm workers, the quota remains unchanged at 0.13 percent.

OTHER BARRIERS

There are other structural barriers to investment in Kazakhstan, including a weak system of business law, a lack of an effective judicial system for breach of contract resolution and an unwieldy government bureaucracy. Many companies serving the Kazakhstani market report significant logistical difficulties.

In addition, there is a burdensome tax monitoring system for all companies operating in Kazakhstan. Many companies report the need to maintain excessively large staffs in Kazakhstan to deal with the cumbersome tax system and frequent inspections. The actions of tax and various regulatory authorities, as well as actions to enforce environmental regulations, can be unpredictable. The government has, on occasion, initiated criminal cases against local employees of foreign firms. Kazakhstani authorities often require, as part of a foreign firm's contract with the government, that the firm contribute to social programs for local communities.

Widespread corruption, present at all levels of government, is also seen as a barrier to trade and investment in Kazakhstan. It reportedly affects nearly all aspects of doing business in Kazakhstan, including customs clearance, registration, employment of locals and foreigners, payment of taxes, and extending even to the judicial system.

FOREIGN TRADE BARRIERS

KENYA

TRADE SUMMARY

The U.S. goods trade surplus with Kenya was \$259 million in 2007, an increase of \$87 million from 2006. U.S. goods exports in 2007 were \$584 million, up 11.1 percent from the previous year. Corresponding U.S. imports from Kenya were \$325 million, down 8.0 percent. Kenya is currently the 87th largest export market for U.S. goods.

The stock of U.S. foreign direct investment in Kenya was \$68 million in 2006 (latest data available), down from \$145 million in 2005.

IMPORT POLICIES

Tariffs

Kenya is a member of the WTO, the Free Trade Area of the Common Market for Eastern and Southern Africa, the East African Community (EAC), and the EAC Customs Union. High import duties and Kenya's value added tax (VAT) pose trade barriers, especially in the agricultural sector. Kenya's import regulations on agricultural products are sometimes altered to reflect fluctuations in domestic supply and demand as well as political factors. Kenya has bound only 14.6 percent of its tariff lines under WTO rules.

Kenya applies the EAC Customs Union Common External Tariff, which includes three tariff bands: zero duty for raw materials and inputs; 10 percent for processed or manufactured inputs; and 25 percent for finished products. A selected list of sensitive items, comprising 58 tariff lines, has rates above 25 percent, including milk and milk products, corn, popcorn, rice, wheat, and wheat flour. For a few products, the tariff varies in different EAC countries. For example, the wheat tariff is 35 percent in Kenya but 0 in Uganda.

While the U.S. Government welcomed the simplification of the tariff system that resulted from the establishment of the EAC Customs Union in 2005, it has raised concerns with Kenya and other EAC members about tariff increases introduced on several U.S. exports, including used clothing, almonds and wheat flour. The duty on used clothing, a major U.S. export to the EAC region, was increased to 45 percent or \$0.30 per kilogram, whichever is higher. The tariff on unshelled almonds increased from 0 percent to 10 percent, while the tariff on shelled almonds and other nuts increased from 15 percent to 25 percent.

Nontariff Measures

Kenya has removed many nontariff measures that affect U.S. exports. Kenya justifies those import controls still in existence as necessary to address health, environmental, and security concerns. All Kenyan importers pay an import declaration fee set at 2.25 percent of the customs value of imports and are required to have the following documents: a clean report of findings from the Pre-shipment Verification of Conformity (PVoC) agent for regulated products (see Standards section) and valid *pro forma* invoices from the exporting firm.

FOREIGN TRADE BARRIERS

Kenyan law limits the importation of refined petroleum products by stipulating that any consignment of oil that a company imports for the domestic market be no less than 70 percent crude, thus requiring that it be refined by the monopoly Kenya Petroleum Refineries.

The government continues to carefully control imports of seed corn by subjecting hybrid varieties to a certification process that effectively restricts trade.

Customs Procedures

Kenya's customs procedures, including its PVoC program, are detailed and rigidly implemented, often leading to delays in clearance of both imports and exports.

STANDARDS, TESTING, LABELING, AND CERTIFICATION

Under the PVoC system, all goods entering the country require a Certificate of Conformity from the country of origin, demonstrating conformity with Kenyan standards. For consignments shipped without inspections, importers may apply for a destination inspection subject to acceptance by the Kenya Bureau of Standards (KEBS), a regulatory body under the Ministry of Trade and Industry. In such cases, KEBS, which has oversight of the PVoC program (which is administered by two private sector firms), requires importers to pay a 15 percent penalty charge and post a 15 percent bond on the cost, insurance, and freight value in addition to paying the costs of the test itself. Other areas within the PVoC program that the private sector has identified as troublesome include the product list coverage, procedures and documentation, the cost of PVoC services, and the limited capacities of the accredited laboratories.

In November 2007, in response to representations by U.S. officials, KEBS agreed to waive the Certificate of Conformity requirement and associated fee for bulk agricultural commodities inspected and certified by U.S. Government inspection agencies, thereby significantly reducing the cost of exporting such commodities to Kenya.

Commercial and research applications of agricultural biotechnology in Kenya are currently regulated through guidelines that are neither formal regulations nor enacted law. The guidelines, initially published in 1998 and reviewed yearly, describe a committee based approach for review and approval of agricultural biotechnology imports, including a specific review of end uses, *e.g.*, planting seeds for trials.

In early 2007, the Cabinet approved a Biotechnology Policy outlining the safety procedures for biotechnology in the context of research and development, technology transfer, and commercialization of products. In October 2007, a Biosafety bill, which would have provided the legal and scientific infrastructure to regulate agricultural biotechnology, proceeded through several parliamentary approval stages up to the second reading but was not enacted into law before Parliament was dissolved in October 2007.

Any plant consignment arriving in Kenya must have a copy of the plant import permit provided by the Kenya Plant Health Inspectorate Service and an additional health (phytosanitary) certificate, international model, or its equivalent. U.S.-origin food or plant imports containing genetically modified components must indicate genetic modification status as an additional declaration, with the details stated on the phytosanitary certificate, or they must have a certificate of analysis from a credible laboratory.

In September 2007, the government established a National Codex Council to spearhead the development of food and safety standards through research and the adoption of established international standards under the Codex Alimentarius Commission.

GOVERNMENT PROCUREMENT

In 2005, Kenya enacted the Public Procurement and Disposal Act, which provides for a Public Procurement Oversight Authority. The Authority was established on January 1, 2006. Its nine member Oversight Advisory Board is appointed by the Minister of Finance.

The Public Procurement and Disposal Act is designed to make procurement more transparent and accountable, requiring procurement agencies to carry out an annual update of prequalified firms. The Act establishes penalties for violations of the Law. It gives exclusive preferences to Kenyan citizens where the funding is 100 percent from the government of Kenya or a Kenyan state related entity and the amounts are below a yet-to-be-determined threshold. The Law allows for restricted tendering under certain conditions, such as when the complex or specialized nature of the goods or services requires the pre-qualification of contractors. Restrictions can also be imposed if the time and costs required to examine and evaluate a large number of tenders would be disproportionate to the value of the tender. It is expected that the new law will enhance the transparency of national security related procurements, which have been the subject of a number of high profile corruption cases in recent years.

The Supplies Management and Practitioners Bill of 2006 became law in October 2007. It addresses loopholes left by the Public Procurement and Disposal Act by specifying that only a procurement professional may be entrusted with the responsibility of procurement in any public entity.

The World Bank, the International Monetary Fund, the European Union, and other donors have conditioned some of their official assistance programs on reform of public procurement. In March 2007, the U.S. Millennium Challenge Corporation signed a 2 year, \$12.7 million Threshold Program with Kenya focused on fighting corruption through the implementation of procurement reforms with an emphasis on health sector procurement and supply chain management.

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

EXPORT SUBSIDIES

Kenya maintains a Manufacturing Under Bond (MUB) program that is designed to encourage manufacturing for export by exempting enterprises operating under the program from import duties and VAT on imported raw materials and other imported inputs and providing a 100 percent investment allowance on plant, machinery, equipment, and buildings. It is expected that goods produced under the MUB system will be exported. If not, they are subject to a surcharge of 2.5 percent and imported inputs used in their production are subject to all other duties. The program is open to both local and foreign investors.

Firms operating in Kenya's Export Processing Zones, which offer a variety of fiscal, tax, and in-kind incentives, are allowed to sell up to 20 percent of their output on the domestic market. However, they are liable for all taxes on products sold domestically plus a 2.5 percent penalty.

FOREIGN TRADE BARRIERS

INTELLECTUAL PROPERTY RIGHTS (IPR) PROTECTION

Kenya is a member of most major international and regional intellectual property conventions. However, government enforcement of IPR continues to be a serious challenge. Pirated and counterfeit products in Kenya, mostly imported from South Asia and East Asia, present a major impediment to U.S. business interests in the country. Industry estimates that piracy and counterfeiting of business software, music, consumer goods, and pharmaceuticals in Kenya cost firms over \$300 million in lost sales annually. Kenya is among the world's top software piracy markets, according to a Business Software Alliance investigation.

The Kenya Copyright Board (KCB) is charged with coordinating all licensing and treaty activity and has the authority to inspect, seize, and detain suspect articles and to prosecute offenses. The KCB established an IPR enforcement unit in October 2006. The KCB has minimal staff and has not, to date, effectively carried out its mandate. The KCB is working jointly with Microsoft and, in late 2007, conducted raids on several cyber cafes in Nairobi that were found to be using counterfeit Microsoft operating software. A Kenyan media report estimated that 8 of 10 computers in Kenya use pirated operating software.

Kenyan artists have formed organizations to raise the awareness of intellectual property rights and to lobby the government for better enforcement, but merchants still freely peddle pirated versions of Kenyan and international works without fear of arrest or prosecution. Pirated materials and counterfeit goods produced in other countries are readily available in all major towns. These materials include prerecorded audiocassette tapes, digital video discs, compact discs, and consumer products.

In November 2006, the American Chamber of Commerce of Kenya (ACCK), in conjunction with the Ministry of Trade and Industry and the Kenya Association of Manufacturers (KAM), held a pioneering regional IPR conference in Nairobi. The ACCK joined with Tanzanian business associations and the government of Tanzania to hold a second regional IPR conference in Dar es Salaam in October 2007. In mid-2007, KAM established an IPR Secretariat, empowered to work with the KCB, the Kenya Bureau of Standards, the Kenya Revenue Authority, and other government agencies in exposing IPR violations.

In July 2006, the Ministry of Trade and Industry reported that Kenyan manufacturers incur an annual net loss of over Ksh 30 billion (over \$400 million) due to counterfeit products, while the government loses Ksh 6 billion (approximately \$80 million) in potential tax revenue due to counterfeit products. Imported drugs, shoes, textile products, office supplies, tubes and tires, batteries, shoe polish, soaps, and detergents are the most commonly counterfeited items. Historically, penalties and enforcement for copyright infringement have been low. According to the KCB, as of October 2007, there were about 20 pending piracy cases in the Kenyan courts, with bails ranging from \$750 to \$4,500. To date, the KCB has conducted anticounterfeit related training for 150 police officers and plans to extend the same training to 40 magistrates and 30 prosecutors by April 2008.

The Anticounterfeit Bill of 2007, designed to raise penalties significantly, was introduced in Parliament in June 2007 but was not enacted before Parliament was dissolved in October 2007. The bill seeks to strengthen the ability of law enforcement agencies to investigate and prosecute manufacturers and distributors of counterfeit and pirated goods. In October 2007, one of the largest manufacturing firms in the region stated that it is losing more than \$5 million annually in potential sales due to fakes. In 2007, another company threatened to cease commercial operations in Kenya if the government did not respond more forcefully in combating the importation of counterfeit shoe polishes.

FOREIGN TRADE BARRIERS

SERVICES BARRIERS

Telecommunications

Privatization of Telkom Kenya, the monopoly fixed line services provider, was initially scheduled for April 2007, but was delayed until the end of the year following ongoing restructuring involving staff retrenchments. In November 2007, France Telecom, as part of a consortium with Dubai-based Alcazar Capital, outbid seven other competitors by offering \$390 million for a 51 percent stake in Telkom Kenya. France Telecom acquired a unified telecommunications license which will allow Telkom Kenya to provide both fixed and wireless services.

The Communications Commission of Kenya (CCK), the national telecommunications regulatory body, is also in the process of considering bids for a second national operator (SNO) license to operate fixed telephone services. In late October 2006, CCK had initially offered a Dubai based company, VTEL Holdings, this SNO license, as well as a license for mobile service. However, the deal fell apart and the second highest bidder, Indian company Reliance, was offered the license. When the company's local partner was unable to pay its share of the requisite license fees, CCK cancelled the tender. It plans to rebid the tender in 2008.

In September 2007, the Kenyan government reached an agreement with a third mobile licensee, Econet Wireless, thus effectively ending an ownership dispute that had prevented Econet Wireless from exercising its rights to begin operations of a new mobile network under a license it had won in 2004. Econet has since paid the full license fee of \$27 million and is expected to begin operations in March 2008.

Although the government has granted Econet frequencies to operate its GSM service, the existing two mobile phone firms, Safaricom (a joint venture of Telkom Kenya and Vodafone) and Celtel Kenya (a joint venture of Celtel International and Sameer Investments), currently command 75 percent and 25 percent of the market share, respectively. Following the privatization of Telkom Kenya in late December 2007, its 60 percent ownership of Safaricom was transferred to the Ministry of Finance, the custodian of public shares in corporations, thus "unbundling" the two corporate entities. The government plans to sell 25 percent of Safaricom through an initial public offer on the Nairobi Stock Exchange in early 2008.

Even as telecommunications reforms and infrastructure projects proceed, various telecommunications operators have voiced concerns about the independence of the CCK, suggesting that the government's ownership of Telkom Kenya has caused it to afford more favorable treatment to Telkom Kenya than to private operators. For example, critics charge that the CCK has not ensured that a level playing field exists in the market since the initiation of Telkom Kenya's Code Division Multiple Access "fixed wireless" service in mid-2006 on a trial basis. Telkom Kenya's fixed wireless service is now competing head-to-head with two existing mobile providers, which contend Telkom Kenya does not have a license to provide wireless telephony.

INVESTMENT BARRIERS

Although Kenya's judicial system has strived to improve its efficiency and timeliness, it is still burdened by a huge and growing backlog of cases, including some that are investment-related. Perceived corruption and inefficiency further reduce the credibility of the judicial system in Kenya. Companies cite

FOREIGN TRADE BARRIERS

these deficiencies as an obstacle to investment, especially since these problems make financial institutions reluctant to make loans and increase the risk premium.

A law passed in 2007 reduced the limit on foreign ownership (personal or corporate) of firms listed on the Nairobi Stock Exchange (NSE) from 75 percent to 60 percent. As a result of the new law, several leading Kenyan firms – including Barclays Bank, Unilever Tea Kenya, and Total Kenya – are now closed to any new foreign investor participation. If foreign ownership in a company is 60 percent at the time of listing on the NSE, the foreign owner is allowed to maintain (or reduce) but not to increase its share. Foreign investors are allowed to increase their investment with prior written approval from the Capital Market Authority if the shares reserved for local investors are not fully subscribed. Foreign brokerage companies and fund management firms must be locally registered companies, with Kenyan ownership of at least 30 percent and 51 percent, respectively. Foreign ownership of equity in insurance and telecommunications companies is restricted to 66.7 percent and 70 percent, respectively. Foreign equity in companies engaged in fishing activities is restricted to 49 percent of the voting shares as stipulated by the Fisheries Act of 1991.

Foreigners are not permitted to hold a freehold land title anywhere in the country, but can be granted leasehold titles, normally 99 years for land in towns and coastal beachfronts and 999 years elsewhere. The cumbersome and opaque process required to purchase land and concerns about security of title because of past abuses relating to the distribution of public land constitute serious impediments to new investment.

Kenya has been slow to open public infrastructure to competition because the state-owned companies that control infrastructure are considered “strategic” enterprises. The reform and partial privatization of the telecommunications, power, and rail sectors have fallen behind schedule but are proceeding.

Kenya applies fees and security bonds in an attempt to discourage the employment of foreign labor. New foreign investors with expatriate staff are required to submit plans for the gradual phasing out of non-Kenyan employees. Some investors continue to complain that it is difficult and expensive to obtain work permits for expatriate staff.

OTHER BARRIERS

Customs Clearance

Allegations of corruption and ongoing delays in cargo handling at the Port of Mombasa, the region’s major trade hub, continue to add unnecessary costs for exporters. In October 2006, the government pledged to begin 24 hour, round-the-clock customs service at the Mombasa port, in response to demands from Kenyan exporters; however, as of end-year 2007 this pledge had not been fulfilled.

Corruption

Transparency International’s (TI’s) 2007 Corruption Perceptions Index places Kenya 150th among 180 countries surveyed. Compared to its 2006 TI rating, Kenya fell five positions and its composite score dipped slightly. According to the International Finance Corporation’s Investment Climate Assessment for Kenya, corruption was rated as a severe or major obstacle by three-quarters of firms surveyed, with two-thirds of respondents stating they were expected to pay bribes for government contracts. On a more positive note, Kenya ranked 15th out of the 48 sub-Saharan African countries on The Ibrahim Foundation’s Index of African Governance, prepared by Harvard’s Kennedy School of Government.

FOREIGN TRADE BARRIERS

The Kenya Anti-Corruption Commission launched several investigations in 2006 and 2007 against senior government officials. However, none of these cases has been successfully prosecuted, in large part due to bottlenecks in the Attorney General's Office and loopholes in the judiciary.

KOREA

TRADE SUMMARY

The U.S. goods trade deficit with Korea was \$12.9 billion in 2007, a decrease of \$499 million from \$13.4 billion in 2006. U.S. goods exports in 2007 were \$34.7 billion, up 7.0 percent from the previous year. Corresponding U.S. imports from Korea were \$47.6 billion, up 3.9 percent. Korea is currently the seventh largest export market for U.S. goods.

U.S. exports of private commercial services (*i.e.*, excluding military and government) to Korea were \$11.5 billion in 2006 (latest data available), and U.S. imports were \$6.4 billion. Sales of services in Korea by majority U.S. owned affiliates were \$5.5 billion in 2005 (latest data available), while sales of services in the United States by majority Korea-owned firms were \$420 million.

The stock of U.S. foreign direct investment (FDI) in Korea was \$22.3 billion in 2006 (latest data available), up from \$18.2 billion in 2005. U.S. FDI in Korea is concentrated largely in the manufacturing, banking, and finance sectors.

FREE TRADE AGREEMENT (FTA) NEGOTIATIONS

The United States and Korea concluded the negotiation of the United States-Korea Free Trade Agreement (KORUS FTA) on April 1, 2007. On June 30, 2007, the United States and Korea signed the KORUS FTA in Washington, D.C., with the United States Trade Representative, Ambassador Susan C. Schwab, signing on behalf of the United States and Korea's Trade Minister, Kim Hyun-chong, signing on behalf of Korea.

The KORUS FTA is the most commercially significant free trade agreement the United States has concluded in the past 15 years and will provide preferential access for U.S. manufacturers, service providers, farmers, ranchers, and workers to the Korean market. Under the KORUS FTA, Korea will eliminate tariffs on a wide range of U.S. manufactured and agricultural goods, address nontariff measures restricting trade in goods and services, and resolve market access restrictions preventing U.S. businesses from entering the Korean market.

Under the FTA, nearly 95 percent of bilateral trade in consumer and industrial products will become duty free within three years of the date the KORUS FTA enters into force, and nearly two-thirds of Korea's agriculture imports from the United States will become duty free immediately. Under the KORUS FTA, Korea will also address nontariff barriers across a wide range of sectors, notably in the areas of automobiles, pharmaceuticals, financial services, and telecommunications. The KORUS FTA contains unprecedented commitments by Korea on market access for services and includes state-of-the-art protections for investors and intellectual property rights, cutting edge competition law provisions, and strong labor and environment provisions that reflect the bipartisan agreement reached with Congress on May 10, 2007. The KORUS FTA also includes commitments related to transparency and regulatory due process that are more far reaching than in any previous U.S. free trade agreement.

In addition to strengthening the two countries' economic partnership, the KORUS FTA will help to solidify the two countries' long standing geostrategic relationship and underscore the U.S. commitment to and engagement in the Asia-Pacific region.

FOREIGN TRADE BARRIERS

Congressional action on legislation approving the FTA, and its entry into force will enhance the ability of U.S. manufacturers, service providers, farmers, ranchers, and workers to participate in the Korean market. Many of the issues discussed below are addressed by provisions in the KORUS FTA. The U.S. Government will address the remaining issues through a variety of means, including through multilateral negotiations and continued bilateral engagement. After the conclusion of the FTA negotiations, the United States established a consultation mechanism with Korea to resolve issues before they become bilateral trade irritants. These meetings are held on a quarterly basis.

IMPORT POLICIES

Tariffs and Taxes

Korea's average Most Favored Nation applied tariff rate in 2006 was 12.1 percent for all products (47.8 percent for agricultural products and 6.6 percent for industrial products). Korea bound 94.5 percent of its tariff lines in the WTO Uruguay Round negotiations.

Korea maintains particularly high tariffs on a number of high value agricultural and fishery products. Korea imposes tariff rates of 30 percent or higher on most fruits and nuts, many fresh vegetables, starches, peanuts, peanut butter, various vegetable oils, juices, jams, beer, and some dairy products. Many products of interest to U.S. suppliers, including apples, beef, certain cheeses, certain fish, grape juice and grape juice concentrate, herbal teas, pears, table grapes, and a variety of citrus fruits, are subject to tariff rates of 35 percent or higher. Other products of interest to U.S. industry on which Korea imposes high tariffs – in many instances despite the absence of domestic production – include cherries, certain distilled spirits, frozen corn, frozen french fries, pepperoni, and prepared or mashed potatoes.

Korea has established tariff-rate quotas (TRQs) intended to provide minimum access to previously closed markets or to maintain pre-Uruguay Round access. In-quota tariff rates may be very low or zero, but the over-quota tariff rates are often prohibitive. For example, natural and artificial honey are subject to an over-quota tariff rate of 243 percent; skim and whole milk powder, 176 percent; barley, 324 percent; malting barley, 513 percent; potatoes and potato preparations, more than 304 percent; and popcorn, 630 percent. In addition, for some agricultural products, such as corn grits, popcorn, and soy flakes, Korea aggregates raw and value added products under the same quota. Korean domestic industry groups, which administer the quotas, frequently allocate the more favorable in-quota tariff rate to their larger members, who import raw ingredients.

Korea uses "adjustment tariffs" and compounded taxes on some agricultural, fishery, and plywood products which increase the applied tariff rates. Most of the adjustment tariffs are imposed on agricultural and seafood products, including frozen croaker, which are products of interest to U.S. exporters. In 2007, Korea renewed adjustment tariffs on 16 items, and reduced the tariff rates for seven of these 16 items, including sea-bream, sea bass, saury (excluding horn fish), croaker, frozen squid, fermented soybean, and plywood.

As a result of its Uruguay Round commitments, Korea has eliminated tariffs on most or all products in the following sectors: paper, toys, steel, furniture, agricultural equipment, construction equipment, and information technology products (as defined by the WTO Information Technology Agreement). Korea has harmonized its chemical tariffs to final rates of zero percent, 5.5 percent, or 6.5 percent, depending on the product. However, Korea does not apply these tariff rates to soda ash, which is dutiable at 8 percent. Korea's bound tariffs on textile and apparel products, however, remain relatively high: 30 percent on

FOREIGN TRADE BARRIERS

several man-made fibers and yarns; 30 percent on many fabrics and most made-up and miscellaneous goods (for example, pillow cases and floor coverings); and 35 percent on most apparel items.

Rice

In the Uruguay Round, Korea negotiated a 10 year exception to tariffication of rice imports in return for establishing a Minimum Market Access (MMA) quota that was set to expire at the end of 2004. Korea subsequently negotiated a ten-year extension of the MMA arrangement that was approved by its trading partners in April 2005. The extension called for Korea to double its total rice imports over the next ten years, increasing the MMA quota from 225,575 metric tons in 2005 to 408,698 metric tons in 2014. Along with the Country-Specific Quota commitments to purchase minimum amounts of imports from China, Thailand, and Australia, Korea also agreed to purchase at least 50,076 metric tons annually from the United States until 2014. In addition, the quality of access has improved as rice marketed to consumers as table rice was for the first time included as a portion of the MMA quota. The table rice portion increases from 10 percent of the quota in 2005 to 30 percent in 2010.

Access to the Korean rice market has improved significantly under the extension agreement. In 2007, the U.S. rice industry obtained 26.9 percent of Korea's total MMA imports by winning tenders for 71,719 metric tons, valued at \$52 million, the highest level of U.S. rice exports since Korea assumed its WTO MMA obligations in 1995. This amount is also 43.2 percent over the United States' baseline of 50,076 metric tons for the country-specific quota. In addition, more than 16,000 metric tons of U.S. rice purchased by Korea in 2007 are set to be auctioned in Korea as table rice.

STANDARDS, TESTING, LABELING, AND CERTIFICATION

Standards and Conformity Assessment Procedures (Sampling, Inspection, Testing, and Certification)

Korea maintains certain standards, technical regulations, and conformity assessment procedures that are burdensome and appear to have a disproportionate effect on imports. For example, the Korean Food and Drug Administration (KFDA) defines product categories for specific food additives narrowly, making it more difficult to obtain approval for food additives. Additionally, KFDA's determination that a product is new if formula ratios are changed or if substitute ingredients are used sets its procedures apart from other Organization for Economic Cooperation and Development member countries. Further, in 2006, KFDA introduced a program for monitoring harmful substances found in certain food products under "recommended criteria," and used these recommended criteria to issue recalls of certain products. KFDA has indicated to the U.S. Government that it would provide information on which substances are currently monitored under the program and the process by which this program is implemented.

Korean law and regulation require that safety testing and certification be conducted by designated certification bodies, which must be "domestic nonprofit organizations equipped with suitable testing equipment and qualified testing personnel...." U.S. industry has argued that the inability of U.S. testing and certification bodies to perform these functions disadvantages U.S. manufacturers that must have their products re-tested in the Korean market, which can be inconvenient, time consuming, and costly.

The U.S. cosmetics industry has noted that Korea's prior approval requirements related to cosmetics are burdensome, and do not appear to enhance product safety, quality, or efficiency. For example, Korea requires that all imported functional cosmetics go through an "import review" process conducted by the Korean Pharmaceutical Trade Association (KPTA). According to industry, this is an unnecessary step

that delays market entry for imported products. In addition, since KPTA's membership includes competitor manufacturers, this process also raises concerns regarding the ability of KPTA to protect the sensitive information that is required to be disclosed as part of the import review process.

In 2007, U.S. industry raised concerns regarding the administration of energy efficiency regulations (EER) for refrigerators in Korea. Specifically, a U.S. manufacturer asserted that the "initiate defrost" test method provided for in Korea's existing EER resulted in inaccurate reporting of energy consumption of Korean manufactured refrigerators. In order to remedy this problem, Korea moved up the adoption date of an internationally-recognized test procedure – ISO15502 – to November 2007. This is a positive step forward, as ISO15502 does not utilize the rated energy performance results provided by the "initiate defrost" test method in Korea's previous EER. Korea will implement the new test standard by April 30, 2008. As part of its implementation, Korea has agreed through an exchange of letters with the United States to require that manufacturers attach energy efficiency rate labels based on the new standard, regardless of whether the product is an existing or new model. Korea has also agreed to consult closely with stakeholders and the United States during the implementation process. The United States continues to monitor closely developments related to the adoption of the new standard to ensure that it will level the playing field for U.S. refrigerator manufacturers in Korea.

Beef

Korea's market has been closed to imports of beef from the United States since the December 2003 detection of a cow with Bovine Spongiform Encephalopathy (BSE) in the State of Washington. Before the ban, Korea was the third-largest export market for beef and beef products from the United States, with exports valued at \$815 million in 2003.

On January 13, 2006, the United States and Korea reached an agreement on a partial market opening which allowed the resumption of exports of deboned beef from cattle less than 30 months of age under certain specific conditions. However, findings of bones and bone chips, which were defined as prohibited materials according to the 2006 protocol, even though they posed no food safety risk, have led the Korean government to open and close the market several times. Since October 5, 2007, quarantine inspection of deboned beef has been suspended due to the detection of an ineligible vertebral column in a beef shipment from the United States. The United States continues to work with Korea to fully reopen its market to all beef and beef products derived from cattle of all ages, consistent with World Organization for Animal Health (OIE) guidelines and the OIE's May 2007 classification of the United States as a "controlled risk" country for BSE. The OIE guidelines provide for conditions under which trade in all beef and beef products from animals of any age can be safely traded. Congress has made it clear that this issue must be resolved to begin the legislative approval process for the KORUS FTA.

Poultry

In recent years, the United States has urged Korea to accept the "regionalization" concept to ensure that imports of U.S. poultry and poultry products are not banned should there be a detection of highly pathogenic avian influenza (HPAI) in U.S. domestic commercial poultry flocks. In July 2007, in a statement issued by the Ministry of Agriculture and Forestry, Korea announced that it would not impose such a ban were HPAI to be detected in wild birds. The United States continues to consult with Korea on this matter.

Convention on Biological Diversity

Korea ratified the Cartagena Protocol on Biosafety to the Convention on Biological Diversity (CPB) on October 2, 2007 and implemented the Living Modified Organisms (LMO) Act (Korea's legislation to implement the CPB) on January 1, 2008. Upon implementation of the LMO Act, environmental risk assessments for biotechnology crops imported for all intended uses became mandatory. The U.S. Government has engaged Korea to request greater transparency and clarity with respect to documentation requirements for vessels containing LMOs. The U.S. Government also has urged Korea to ensure that requirements related to risk assessments for all biotechnology products, including multi-gene "stacked-event" products, are science based and avoid unnecessary or duplicative data submission or review.

Functional Foods

KFDA frequently changes labeling requirements for health functional foods, raising industry concerns about the difficulty and costs of compliance. KFDA requires labels containing information about the content of the products, such as per serving information, to be set out on permanent labels and does not allow the use of nonpermanent labels such as stickers. As a result, manufacturers must replace the entire product label with any change in labeling requirements.

Organic Foods

KFDA only accepts copies of USDA National Organic Program (NOP) certificates issued to producers, manufacturers, or processors even though in the United States, certificates issued to handlers meet the U.S. NOP requirements. The United States has continuously requested Korea to give full recognition to the U.S. NOP and to accept handler certificates. U.S. exporters, who are often handlers or traders, have managed to work with this requirement, but would prefer to have handler certificates recognized.

KFDA maintains a policy of zero tolerance for the presence of biotechnology ingredients in processed food that is labeled as organic. The Codex Alimentarius and the International Federation of Organic Agriculture Movements guidelines, however, stress that organic production is a verifiable, regulated process as opposed to an end product. The United States has urged KFDA to recognize this process-based approach and to reconsider its zero tolerance policy for the presence of biotechnology ingredients in foods that are labeled as organic.

Telecommunications Standards

The Korean government has been an active participant in the development of its telecommunications equipment market, both directly, through licensing conditions that mandate particular technology standards or require the use of particular technologies, and indirectly, through industry associations and quasi-governmental organizations such as government-affiliated research institutes. The U.S. Government has urged the Korean government to adhere to a policy of technology neutrality and to refrain from imposing mandatory standards or requiring the use of particular technologies that restrict trade or discriminate against U.S. suppliers of telecommunications or broadcast technologies or services. (See also Telecommunications section).

Labeling Requirements

U.S. exporters cite Korea's nontransparent and onerous labeling requirements as barriers to entry for a variety of goods. For example, the distilled spirits industry has raised concerns with the cost of

complying with both existing and frequently changing labeling requirements that mandate that labels contain a myriad of data such as the importer's address and instructions for storage.

Korea has recently expanded its mandatory labeling requirements. Products that contain biotechnology enhanced corn, soybeans, cotton, canola, and sugar beets must now be labeled as containing biotechnology ingredients. The United States has expressed concerns to Korea that these labeling requirements are, in principle, unnecessary and not relevant to health and safety.

In 2007, Korea put into effect new labeling rules for apparel, requiring the name of the importer on some form of label or hangtag on every single garment. According to industry, providing such information is particularly onerous, especially when supplying thousands of individual garments to multiple importers.

Hazardous Substances and Resource Recycling Requirements

Korea is in the process of finalizing enforcement regulations for the Act Concerning the Resource Recycling of Electrical/Electronic Products and Automobiles. The Act restricts the use of hazardous materials in, and establishes requirements regarding recycling of, certain electrical and electronic products and automobiles. The Act went into effect on January 1, 2008, but will not be enforced until July 1, 2008. The final regulations also provide a 3 year grace period for all covered existing electrical/electronic products and automobiles.

GOVERNMENT PROCUREMENT

Korea is a signatory to the WTO Agreement on Government Procurement (GPA). For procurement of construction services by sub-central and government enterprises covered under the GPA, Korea has a threshold of approximately \$22 million, which is three times the threshold applied by the United States.

In 2007, in response to concerns expressed by U.S. industry, the Korean National Intelligence Service (NIS) eliminated its policy requiring disclosure of source code and submission of certain Evaluation Test Reports as a precondition for a sale of information technology security products.

INDUSTRIAL SUBSIDY POLICY

The U.S. Government has been concerned with Korean government assistance to targeted industries through its industrial policies and will continue to consult closely with U.S. industry to determine if these policies raise competitiveness concerns. Korea's past promotion and support for its semiconductor industry that eventually resulted in the imposition of countervailing duties by the United States (as well as by the EU and Japan) is emblematic of concerns in this area.

More specifically, the U.S. Government has expressed concerns about the role played by the government-owned Korea Development Bank (KDB) in supporting certain Korean industries. Historically, the KDB, which as a government-owned entity is not necessarily bound by the same constraints as commercial institutions, has been one of the government's main sources of policy-directed lending to favored industries. U.S. industries have reported that lending and equity investments by the KDB have contributed to overcapacity in certain Korean industries and have allowed Korean companies to compete unfairly with U.S. companies. The U.S. Government will continue to monitor the lending policies of the KDB and other government-owned or affiliated financial institutions.

INTELLECTUAL PROPERTY RIGHTS (IPR) PROTECTION

The importance of IPR protection has increased in recent years as the digitization of Korea's economy has significantly increased the opportunity for unauthorized reproductions of copyrighted material. With Korea's products and trademarks enjoying global success, Korean creators of intellectual property would benefit from improvements in Korea's intellectual property regime. The United States continues to urge Korea to strengthen its legal regime to protect intellectual property with respect to issues such as the following: protection of temporary copies, technological protection measures, Internet service providers' (ISP) liability, and copyright term extension. In addition, concerns remain on book piracy in universities, street vendor sales of illegally copied digital video discs (DVDs), counterfeiting of consumer products, protection of pharmaceutical test data, and a lack of coordination between Korean health and IPR authorities to prevent the issuance of marketing approvals for patent-infringing products.

Copyright

The Copyright Act was revised on Dec. 28, 2006, effective June 30, 2007, to strengthen efforts to prevent Internet piracy and increase enforcement mechanisms. For example, the revised Act introduces an obligation requiring peer-to-peer network operators to apply measures against the distribution of infringing copies on their networks when requested by the right holder. The revised Copyright Act, however, does not appear to include technological protection measures (TPMs) that control who can access a work, nor does it prohibit the act of circumventing TPMs; it only prohibits the creation or distribution of circumvention tools. While certain provisions of the Copyright Act that define ISP liability were harmonized with the Computer Program Protection Act (CPPA) in 2003, further clarification is required. In addition, the Copyright Act 2006 amendments still leave unclear the scope of the underlying liability of service providers and the limitations on and exceptions from liability. Industry has remaining concerns that the documentation requirements for the right holders in a "takedown" request are too burdensome.

Over the past few years, the U.S. Government has urged the Korean government to re-examine the private copy exceptions in Article 30 of the Copyright Act in light of the growth of digital technologies. These exceptions generally should not be applicable to the Internet environment, which by its very nature extends far beyond private home use. In the digital environment, the market harm threatened by the unauthorized creation of easily transmittable perfect digital copies far exceeds the harm threatened by analog personal copying.

Other concerns raised with regard to the current Act are that it does not address previous shortcomings in sound recording protections and private copying exceptions; that producers' rights for digital sound transmission are limited to remuneration rights, rather than exclusive rights; and that the current Act provides for broad copying exceptions at the university level.

Protection of Computer Programs

The CPPA was amended on October 4, 2006, effective April 5, 2007, to meet current challenges, as well as to comply with new global norms. The amended CPPA increases the power of the Program Deliberation and Mediation Committee (PDMC) and increases penalties for assorted violations of Korean IPR related laws. However, the U.S. Government believes it is important that the dispute mediation function of the PDMC be performed only when all parties to the dispute have voluntarily agreed to subject themselves to the judgment of the PDMC. Moreover, it is important that mediation by the PDMC not be a prerequisite for any civil, administrative, or criminal adjudication of rights.

FOREIGN TRADE BARRIERS

The U.S. Government continues to urge the Ministry of Information and Communications to further amend the CPPA to provide for protection of temporary copies and improved protection for technological protection measures. The U.S. Government also believes that the amendments should include minimum penalties for offenses under the CPPA. The United States has also recommended that the Korean government clarify the availability of injunctive relief in civil enforcement actions under the CPPA, as required under the TRIPS Agreement.

IPR Enforcement

In 2007, the Copyright Division of the Ministry of Culture and Tourism (MCT) was divided into the Copyright Policy Division and Copyright Industry Division. The Copyright Industry Division was created to increase the emphasis on enforcement. As the amended Copyright Act requires installation of filtering devices for certain online service providers, MCT stepped up enforcement activities for online piracy by coordinating with the Copyright Protection Center, an industry supported monitoring group. MCT is also seeking to get judicial authority so that it can conduct enforcement measures on its own initiative. The amended Copyright Act also gives officials discretion to pursue prosecution over the objections of the right holder when infringements are perpetrated for commercial purposes.

Data Protection

KFDA decided on March 31, 2005, that slightly altered versions (such as using a different “salt”) of original drugs undergoing post-marketing surveillance (PMS) in Korea are subject to Korea’s data protection regulations. This means that the manufacturers of the altered version have to supply a full portfolio of clinical data in order to obtain marketing approval if they intend to market their drug while the original drug is still under PMS in line with Article 39.3 of the WTO TRIPS Agreement. This interpretation of the law, however, is not clearly delineated in Korea’s laws and industry has expressed concern about KFDA taking a different interpretation at a later time.

Book and Video-DVD Piracy

The Publication and Printing Business Promotion Act allows private sector involvement in enforcement measures against book piracy. The U.S. Government has urged Korea’s authorities to coordinate with foreign book publishers and right holders in order to provide effective enforcement against book piracy, especially textbooks, and will continue to monitor implementation of this law.

Pirated audio-visual DVDs sold on the street by unlicensed vendors continue to be a problem in Korea. This type of piracy is increasing due to the growing sophistication of illegal production facilities and advanced distribution technologies. The U.S. Government has urged the Korean government to meet this digital piracy challenge with stronger enforcement efforts and deterrent penalties.

Patent and Trademark Acts, and Trade Secrets

The Korean Intellectual Property Office (KIPO) has amended relevant laws to address U.S. concerns regarding restrictions on patent term extension for certain pharmaceutical, agrochemical, and animal health products that are subject to lengthy clinical trials and domestic testing requirements, see *Standards, Testing, Labeling, and Certification*. An issue of continuing concern, however, has been the lack of coordination between the KFDA and KIPO that has resulted in the granting of marketing approval for products that may infringe existing patents. U.S. firms have also identified concerns with the Korean

courts' apparent unwillingness to provide injunctive relief in cases where a right holder's patent has been infringed, allowing the infringing products to remain on the market until a final determination has been made. Although Korean civil courts have the authority to issue injunctive relief in patent-related cases, in practice, they rarely if ever do so.

Korea's Trademark Act has been amended over the years to strengthen provisions that prohibit the registration of trademarks without the authorization of foreign trademark holders by allowing examiners to reject any registrations made in "bad faith." Despite this change, the complex legal procedures that U.S. companies must follow to seek cancellation discourages U.S. companies from pursuing legal remedies. In particular, problems still arise with respect to "sleeper" trademark registrations filed and registered in Korea without authorization in the late 1980s and early 1990s, when KIPO was still developing a more effective and accurate trademark examination and screening process.

Korean laws on unfair competition and trade secrets provide a basic level of trade secret protection in Korea, but are insufficient in some instances. For example, some U.S. firms, particularly certain manufacturers of chemicals, pet food, cosmetics, and food products, face continuing problems with government regulations requiring submission of very detailed product information, such as formula or blueprints, as part of registration or certification procedures. U.S. firms report that, although the release of business confidential information is forbidden by Korea's law, in some instances, government officials do not sufficiently protect this proprietary information and that the trade secrets were made available to Korean competitors or to their trade associations.

SERVICES BARRIERS

Screen and Broadcast Quotas

On July 1, 2006, the Korean government reduced its screen quota requirement for domestic films to 73 days of the year. Korea had previously required that domestic films be shown on each cinema screen for a minimum of 146 days of the year.

Korea maintains a variety of foreign content quotas for terrestrial, cable and satellite television, and radio broadcasting. Overall, foreign programs may not exceed 20 percent of terrestrial television or radio broadcast time or 50 percent of cable or satellite broadcast time on a quarterly basis. Within those overall quotas, annual broadcast time quotas further limit foreign films to 75 percent of all films for terrestrial, cable, and satellite broadcasters; foreign animation to 55 percent for terrestrial and 65 percent for cable and satellite broadcasters; and foreign popular music to 40 percent. Yet another quota, on a quarterly basis, limits content from any one country to 60 percent of the quota available to foreign films, animation, or popular music. For example, a cable operator may not devote more than 22.5 percent of its total programming to U.S. movies.

Restrictions on Voice-overs and Local Advertisements

The Korean Broadcasting Commission's guidelines for implementation of the Broadcasting Act contain restrictions on voice-overs (dubbing) and local advertising for foreign re-transmission channels. These prohibitions continue to be of concern to U.S. industry, as they limit the profitability of such channels in the Korean market.

FOREIGN TRADE BARRIERS

Legal Services

Presently, only Korean-licensed lawyers may provide any form of legal advice in Korea, including advice on foreign law. Foreign-licensed lawyers therefore may not establish an office or provide advice on the law of the jurisdiction in which they are licensed, nor may they associate with, partner with, or hire Korean-licensed lawyers.

The Korean government plans to open its legal services market in stages. The first step would be to create a legal status for foreign legal consultants and allow foreign law firms to open offices in Korea. Subsequent liberalization stages would address the ability of foreign-licensed lawyers and firms to associate with, partner with, and hire Korean licensed lawyers.

Insurance and Banking

Korea is the second largest insurance market in Asia and the seventh largest in the world. Korea's laws and regulations permit foreign insurance and banking financial service providers to establish as a subsidiary or a branch. Financial services providers see Korea's restrictions on cross-border financial services and unwillingness to liberalize this sector as hindering Korea's progress toward becoming a regional financial hub.

Insurance suppliers remain concerned that Korea Post (a government agency), the National Agricultural Cooperative Federation, and the National Federation of Fisheries Cooperative continue to operate at an advantage in the Korean insurance market as they are not regulated by the Korean Financial Supervisory Commission or the Financial Supervisory Service as are private insurers. In industry's view, this provides these entities with a competitive advantage over private insurers.

Overall, financial services providers seek a mechanism in which to raise their concerns regarding regulatory and market access issues. Although an office specifically set up within Korea's financial regulatory structure exists, foreign companies have not found it adequate to address their concerns. Other regulatory entities, including Korea's insurance consumer complaint mechanism, reportedly hinder foreign insurance providers' position in the market. U.S. service providers assert that reports generated under this system bias consumers toward purchasing insurance from large domestic firms.

Lack of transparency in the financial regulatory system is problematic for all financial services providers. Improvement in notice and comment periods is necessary for foreign suppliers to have input into the regulations that will be imposed upon them. Financial services suppliers remain concerned about the systemic problem of administrative guidance. While some changes in issuing administrative guidance were made in 2007, financial services providers seek additional transparency in the process. In July 2007, Korea's National Assembly adopted the Capital Market and Investment Services Act, which enters into effect in January 2009. This Act allows financial services companies to introduce new products unless explicitly prohibited by law and establishes a clear legal basis for newcomers to apply for commercial licenses.

Korea's strict data privacy rules require financial services suppliers to locate their servers physically in Korea, thus hampering foreign suppliers' ability to take advantage of economies of scale in the region to perform data processing in their daily business activity.

Telecommunications

Korea currently prohibits foreign satellite service providers from selling services (*e.g.*, transmission capacity) directly to end users, without going through a company established in Korea. Given investment restrictions in place (see below), and the fact that establishing a local presence may not make economic sense, this prohibition significantly restricts the ability of foreign satellite service providers to compete in the Korean market. In addition, Korea affords nonfacilities based telecommunications carriers limited rights regarding access to and use of the telecommunications network (*e.g.*, with respect to interconnection), as compared to facilities-based competitors.

INVESTMENT BARRIERS

The Korean government has continued its support for the establishment of an investment climate favorable to facilitating foreign investment in Korea. The positive attitude toward foreign investment on the part of the Korean government, many in private industry, and by a growing number of Koreans is helping to open the Korean economy.

Capital market reforms have eliminated or raised ceilings on aggregate foreign equity ownership, individual foreign ownership, and foreign investment in the government, corporate, and special bond markets. These reforms have also liberalized foreign purchases of short term financial instruments issued by corporate and financial institutions. Some U.S. investors have raised concerns about a lack of transparency in investment related regulatory decisions, including by tax authorities, raising concerns about possible discrimination.

Korea maintains a 49 percent limit on foreign shareholdings of facilities-based telecommunications operators. Foreign investment is not permitted in terrestrial broadcast television operations, and the Korean government also restricts foreign ownership of cable television-related system operators, network operators, and program providers to 49 percent. For satellite broadcasts, foreign participation is limited to 33 percent. In addition, foreign satellite re-transmission channels are limited to 20 percent of the total number of operating channels.

In addition to the numerous investment restrictions in key services sectors described above, as well as in the telecommunications sector, Korea maintains other important restrictions on foreign investment. Specifically, Korea prohibits foreign investment in rice and barley farming and imposes a 50 percent foreign equity limitation on meat wholesaling. Moreover, Korea limits foreign investment in electric power generation, distribution, and sales to 50 percent. It also restricts foreign investment in the areas of news agency services and publishing and printing, where it has foreign equity limitations of 30 percent for enterprises publishing newspapers and 50 percent for enterprises publishing other types of periodicals.

Aside from the sale of a 6 percent stake in Woori Financial Holdings (reducing the Korean government's share to 73 percent), the Korean Government in 2007 continued to postpone privatization of remaining state-run or partially state owned enterprises. The transition team of incoming President Lee Myung-bak has signaled that privatization of Korean government corporations, including of the Korea Development Bank, will be one of its priorities.

The Korean government also has opened Free Economic Zones (FEZs) and has provided a range of investment incentives including tax breaks, tariff free importation, relaxed labor rules, and improved living conditions for expatriates in areas such as housing, education, and medical services. The Korean

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government has promoted these zones as an important step in making Korea's business environment more open, liberal, and responsive to economic needs.

ANTICOMPETITIVE PRACTICES

The Korea Fair Trade Commission (KFTC) has been playing an increasingly active role in enforcing Korea's competition law, and in advocating for regulatory reform and corporate restructuring. In addition to its authority to conduct investigations and to impose penalties, including broad authority over corporate and financial restructuring, KFTC can levy heavy administrative fines for violations or for failure to cooperate with investigations.

A number of U.S. companies have expressed concerns that respondents in KFTC investigations have not been afforded a sufficient opportunity to review and respond to the evidence against them, including an opportunity to cross-examine those who testify in KFTC investigatory hearings. Concerns have also been raised that procedural rules for KFTC hearings have not been sufficiently transparent and that KFTC lacks the authority to enter into settlement agreements with respondents by mutual agreement.

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Regulatory Reform and Transparency

A general lack of transparency in Korea's rule-making and regulatory system is a cross-cutting issue affecting U.S. firms in many different sectors, and continues to be one of the principal problems cited by U.S. businesses seeking to compete in the Korean market.

Korea's Administrative Procedures Act (APA) stipulates that the public comment period for draft regulations subject to the APA shall be no less than 20 days. However, in many cases, the 20 day minimum is insufficient. In addition, in many instances the final versions of regulations do not reflect the comments provided.

Motor Vehicles

Increased access to Korea's automotive market for U.S. suppliers remains a key priority for the U.S. Government. As a result, the U.S. Government continues to urge the Korean government to address concerns in Korea's automotive sector, including its eight percent tariff and a range of nontariff barriers, such as discriminatory taxes based on engine size, standards and regulatory matters, and consumer perception (anti-import bias).

The United States has urged the Korean government to eliminate Korea's eight percent tariff on imported automobiles, which is more than three times the U.S. tariff, and eliminate the discriminatory element of Korea's engine displacement taxes. The effect of the tariff, compounded by the cascading effect of multiple automotive taxes, raises the effective rate to above 12 percent.

The U.S. Government is also urging Korea to create a formal mechanism to consult on automotive regulatory and standards issues in order to enhance transparency and provide early input into the development of these regulations and standards in Korea. In addition, the U.S. Government continues to urge the Korean government to address specific issues of concern in the area of automotive emissions and safety standards.

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In the past, U.S. automotive companies have experienced problems with anti-import campaigns, with imported vehicles often listed as specific targets. The United States is seeking ways to ensure no future anti-import incidents occur.

Motorcycles

Although progress has been made over the past several years to resolve U.S. concerns over Korea's noise standard on motorcycles, several market access issues remain, including a highway ban, tariff and tax levels, and inability for motorcycle owners to obtain ownership titles.

Pharmaceuticals

The United States continues to have concerns regarding Korea's new system for pricing and reimbursement of drugs. The lack of transparency in listing and reimbursement decisions for these products and limited opportunity for the industry to comment on these decisions has restricted U.S. industry's access to the Korean market. In addition, U.S. industry has raised concerns that the lack of clarity in the criteria Korea uses for product evaluation for pricing and reimbursement decisions has had an adverse impact on the number of new products being listed and priced, and has made it difficult for companies to make investment decisions for the introduction of these products.

On December 29, 2006, the Korean Ministry of Health and Welfare put into effect regulations to implement its Drug Expenditure Rationalization Plan (DERP). The main elements of the DERP include a shift from a negative to a positive list system for drug reimbursement (pharmaceuticals with marketing approval had previously qualified automatically for reimbursement unless specifically disallowed; under the "positive list" system, pharmaceuticals will only be reimbursed if specifically authorized) and the introduction of a negotiation procedure for setting the amount of reimbursement for pharmaceuticals.

Business Practices in the Healthcare System

U.S. companies continue to express concern over unethical business practices in the Korean healthcare system. In an effort to address these concerns, the KFTC launched an investigation of such practices by both domestic and foreign companies in September 2006. KFTC announced the results for the first group of pharmaceutical companies in November 2007. Four domestic and one multinational company were cited. The KFTC plans to announce results for the second group of companies later this year. The U.S. Government will continue to work with the Korean government to ensure that Korea's evaluation of the issues and problems in this area is conducted in a fair and nondiscriminatory manner in order to ensure the elimination of improper practices by wholesalers and distributors, and to provide predictability for U.S. companies in pharmaceutical pricing, reimbursement guideline setting, and regulatory affairs in the Korean market.

Medical Devices

Lack of transparency in the pricing and reimbursement decision making and regulatory processes involving medical devices has been a major impediment to medical device companies achieving fair access to the Korean market. In addition, Korea's use of arbitrary pricing methods, requirement for local product testing, and country of manufacture registration requirements continue to impact market access for medical technology products.

Korea employs the so-called “90 percent rule” for pricing medical devices that caps reimbursement for a new medical technology product at 90 percent of the current market price of the most similar product on the market in Korea. U.S. industry has raised concerns that this rule tends to undervalue new technologies, and also serves to discourage introduction of new products into the Korean market.

Korea’s requirement that a local Korean laboratory test each product runs counter to the internationally accepted process-based quality management systems approach and imposes unnecessary costs and delays. In addition, the requirement to work with local laboratories to develop a testing standard based on manufacturers’ internal test specifications has raised concerns about the confidentiality of sensitive proprietary information.

The KFDA’s re-registration requirement for all products transferred to a manufacturing site outside their country of origin is equivalent to the registration requirements for a new product and also runs counter to the internationally accepted practice of requiring notification of a change in origin but not full re-registration. Korea’s Good Manufacturing Practices program, adopted in 2007, fails to address this requirement. The U.S. Government supports expanding existing registration to cover multiple sites and permit notification of the change without the need for re-registration.

Distilled Spirits

On December 28, 2007, the Korean National Assembly adopted a bill to amend Korea’s Liquor Tax Law to provide a 50 percent tax reduction for certain “traditional liquors.” Expected to enter into force on July 1, 2008, this amendment has raised concerns within the distilled spirits industry because of its potential impact on trade by disadvantaging imported liquors that may not fall under the category of “traditional liquors.”

KUWAIT

TRADE SUMMARY

The U.S. goods trade deficit with Kuwait was \$1.6 billion in 2007, a decrease of \$261 million from \$1.9 billion in 2006. U.S. goods exports in 2007 were \$2.5 billion, up 19.1 percent from the previous year. U.S. imports from Kuwait were \$4.1 billion, up 3.5 percent over the corresponding period. Kuwait is currently the 52nd largest export market for U.S. goods.

The stock of U.S. foreign direct investment in Kuwait was \$600 million in 2006 (latest data available).

IMPORT POLICIES

Tariffs

As a member of the Gulf Cooperation Council (GCC), Kuwait applies the GCC common external tariff of 5 percent for most products, with a limited number of GCC approved country specific exceptions. Kuwait's exceptions include 417 food and agriculture items, which remain duty free, as well as tobacco products, which are subject to a 100 percent tariff.

Import Prohibitions and Licensing

Kuwait prohibits the importation of alcohol and pork products, and requires a special import license for firearms. Used medical equipment and automobiles over 5 years old cannot be imported. Also prohibited are any books, periodicals, or movies that insult religion and public morals, and all materials that promote political ideology.

Documentation Requirements

In Kuwait, the import clearing process has historically been time-consuming, requiring large quantities of paperwork, and numerous redundancies. However, the Customs Department is currently undergoing a major privatization effort, contracting with a private company to provide customs support services. The implementation of a state-of-the-art computer system has made the import process less complicated and more efficient. In October 2005, Customs began implementation of the Micro-Clear system at the Kuwait airport and completed implementation at all ports of entry in early 2006.

Customs Valuation

Kuwait began implementation of the WTO Customs Valuation Agreement in September 2003.

Textiles and Apparel

Textiles and apparel products (dutiable at 5 percent) accounted for approximately 10.4 percent of Kuwait's imports in 2005.

FOREIGN TRADE BARRIERS

STANDARDS, TESTING, LABELING, AND CERTIFICATION

Standards

As part of the GCC Customs Union, the six Member States are working toward unifying their standards and conformity assessment systems. However, each member state currently continues to apply either its own standard or a GCC standard, causing confusion among some U.S. businesses. GCC Member States do not consistently notify measures to WTO Members or the WTO Committees on Sanitary and Phytosanitary Measures (SPS) and Technical Barriers to Trade (TBT) or allow WTO Members an opportunity to provide comments.

The GCC Standards Committee has recently approved two new standards that will replace existing standards for the labeling and expiration periods of food products. While the new standards appear to attempt to incorporate international guidelines and address some longstanding issues, particularly in relation to expiration periods, some requirements that have previously complicated the import process remain. All member states are expected to adopt these two standards as national standards in order to implement them.

The GCC shelf life standard establishes mandatory expiration periods for 22 perishable products or product categories such as chilled meats, chilled offal, fresh dairy products, baby foods, fruit juices, and table eggs. This standard also establishes voluntary expiration periods for a range of frozen and processed products. Manufacturers have the option of using the actual expiry period in lieu of the voluntary expiration periods established in the standard. The standard also exempts a number of products from expiration periods, including salt, white sugar, dried legumes, dried vegetables, spices and certain condiments, tea, rice, vinegar, and fresh fruits and vegetables, including potatoes that have not been peeled or cut.

The new standards eliminate the long standing requirement that at least one-half of a product's shelf life be valid when a product reaches the port of entry. However, they would still require both a production date and an expiration date on nonperishable food items, forcing U.S. producers to re-label products exported to the GCC, thereby leading to increased costs. The new standards appear inconsistent with international standards (*e.g.*, the standards do not appear to reflect Codex guidelines) and do not appear to have a clear scientific basis. The United States has outlined its specific concerns with these standards and has established a dialogue between U.S. and GCC technical experts to discuss a possible resolution of the concerns raised.

In May and October 2007, respectively, Bahrain and Oman notified WTO Members of recently proposed procedures meant to harmonize food safety import requirements for all GCC member states. The United States and other WTO Members provided comments outlining significant concerns with the procedures, which, as currently drafted, create unnecessary obstacles to trade and would substantially disrupt food exports to GCC member states from its trading partners. The GCC member states are reportedly developing a response to these comments, and the United States has established a dialogue between U.S. and GCC technical experts to discuss the procedures and potential amendments to address the concerns raised.

Kuwait maintains restrictive standards that impede the marketing of some products. Standards for medical, telecommunications, and computer equipment tend to lag behind technological developments, with the result that government tenders frequently specify the purchase of obsolete, often more costly items.

FOREIGN TRADE BARRIERS

Conformity Assessment

In March 2003, Kuwait implemented its International Conformity Certification Program (ICCP), a pre-shipment certification program requiring that covered products be tested and certified by a single private company before being imported into Kuwait. The program applied to imports of: (1) household appliances and electronics; (2) new and used cars and other vehicles; (3) chemicals, including motor oil and paint; (4) building materials, including cement, gypsum, and bricks; and (5) paper and plastic items.

In July 2004, the Public Authority for Industry (PAI) – the regulatory authority responsible for the ICCP – held a 1 year review of the program. At that time, the PAI stated that over 30,000 individual products had been issued ICCP certificates, and that PAI was considering expanding the types of products requiring certification. Importers and representatives of foreign businesses voiced serious concerns with the program. The United States and other WTO Members raised concerns about the ICCP directly with Kuwait and during meetings of the WTO TBT Committee.

In November 2004, the PAI indicated that it would introduce changes to the ICCP and transition to a new Kuwait Conformity Assessment Scheme (KUCAS). The KUCAS raises the same concerns as the ICCP raised.

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

GOVERNMENT PROCUREMENT

Kuwait's government procurement policies require the purchase of local products, where available, and prescribe a 10 percent price advantage for local firms in government tenders. In 2004, the Council of Ministers agreed to increase this price advantage to 15 percent. However, the increase has not yet been implemented as it requires amendment of the GCC countries' unified agreement, which has not yet occurred.

In 2002, the Kuwaiti government transformed its offset program into a mechanism for promoting foreign investment in Kuwait. In 2006, Kuwait established the National Offset Company to manage, enforce, and review all offset proposals. The company is designed to be a one-stop shop for all matters related to offsets. In October 2007, the National Offset Company launched the Offset Fund with variable capital up to KD 1 billion (\$3.5 billion).

Offset obligations apply to military contracts with a value equal to or above KD3 million (about \$10 million), civil government contracts with a value equal to or above KD10 million (about \$34 million), and oil and gas contracts. Oil and gas exploration and production contracts are excluded from the offset program. Offset obligations amount to 35 percent of contract value with offset multipliers being established to target investment into specified sectors of the Kuwaiti economy. Foreign contractors are subject to an unconditional financial guarantee equal to 6 percent of the contract value.

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

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INTELLECTUAL PROPERTY RIGHTS (IPR) PROTECTION

Kuwait's current intellectual property legislation regarding copyrights, data protection, geographical indications, trademarks, patents, and customs is not fully consistent with its obligations under the WTO TRIPS Agreement.

Although Kuwaiti officials, particularly Kuwait Customs, continue to make progress on copyright enforcement and pursue cases through the judicial process, the lack of deterrent criminal penalties in the copyright law limits their effectiveness. Sales of pirated and counterfeit goods remain high in Kuwait, and the use of unauthorized computer software continues in private enterprises.

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

SERVICES BARRIERS

Banking

Foreign-owned banks are restricted to opening only one branch, can only offer investment banking services, and are prohibited from competing in the retail banking sector. Furthermore, foreign banks are subject to a maximum credit concentration equivalent to less than half the limit of the largest local bank and are expressly prohibited from directing clients to borrow from external branches of the bank or taking any other measures or arrangements to facilitate such borrowing.

Agent and Distributor Rules

According to Kuwait's Commercial Agencies Law of 1964, only Kuwaiti nationals and corporations may act as agents and distributors for foreign companies and exporters.

Telecommunications

A U.S. trade association has expressed concern over actions by Kuwaiti government officials to prevent the use of Voice over Internet Protocol technology for the provision of telephone calls. The government has reportedly been blocking a number of websites offering Internet enabled voice services, denying consumers access to affordable long-distance calling.

INVESTMENT BARRIERS

Kuwait currently maintains a variety of restrictions on foreign direct investment and applies discriminatory taxation policies. In May 2000, Kuwait's National Assembly approved legislation that allows foreign nationals to own up to 100 percent of all companies listed on Kuwait's stock exchange, except banks. In January 2004, the National Assembly gave final approval to a bill permitting 100 percent foreign ownership of banks.

The foreign direct investment law that took effect in February 2003 authorizes majority foreign ownership in new investment projects and 100 percent foreign ownership in the following sectors: infrastructure

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projects such as water, power, waste water treatment, or communications; investment and exchange companies; insurance companies; information technology and software development; hospitals and pharmaceuticals; air, land, and sea freight; tourism, hotels, and entertainment; and housing projects and urban development. The law also authorizes tax holidays of up to 10 years for new investors. Despite the new law, foreign companies still report numerous delays in getting approval to operate in Kuwait and the law left in place several important investment restrictions. For example, foreign firms still may not invest in the upstream petroleum sector, although they are permitted to invest in petrochemical joint ventures. Legislation introduced in Parliament in January 2004 would have allowed for limited, controlled investment in the petroleum sector, but the draft legislation has been shelved. The legislation specifically authorizes investment in, and development of, Kuwait's northern oilfields, but, if enacted, it may cover other investment in the petroleum sector in the future.

OTHER BARRIERS

Corporate Tax Policies

On December 26, 2007, the Kuwaiti National Assembly passed legislation reducing the tax rate on foreign companies from 55 percent to 15 percent.

In 2005, a number of corporations received income tax bills from Kuwaiti tax authorities although the companies had no commercial presence in Kuwait. Bills were typically sent to the companies' Kuwaiti distributors and often included years of back taxes. Some companies have challenged the tax in court, and others are working with the U.S. and Kuwaiti governments to seek a legislative or regulatory solution. Kuwaiti law and judicial decisions are ambiguous in defining what does or does not constitute taxable presence.

LAOS

TRADE SUMMARY

The U.S. goods trade deficit with Laos was \$7 million in 2007, an increase of \$5 million from \$2 million in 2006. U.S. goods exports in 2007 were \$13 million, up 92 percent from the previous year. Corresponding U.S. imports from Laos were \$20 million, up 129.9 percent. Laos is currently the 192nd largest export market for U.S. goods.

IMPORT POLICIES

Tariffs

The Agreement between the United States and the Lao People's Democratic Republic on Trade Relations (or United States-Lao Bilateral Trade Agreement (BTA)) entered into force on February 4, 2005. Under the terms of the BTA, the United States granted NTR treatment to products of Laos, and Laos committed to implement a variety of market access concessions and trade rules, which are discussed in more detail below. Laos is currently in the early stages of WTO accession negotiations. Implementation of the BTA, which is proceeding slowly, will help Laos prepare to undertake the necessary WTO obligations.

Nontariff Barriers

Import Prohibitions: Lao law prohibits the importation of weapons, illegal drugs, toxic chemicals, certain video games, pornography, and literary materials deemed inappropriate or detrimental to national security. It also requires pre-approval for the importation of agricultural products that are grown domestically in quantities sufficient to meet demand and of 24 other specifically designated goods.

Customs: Border control is weak throughout the country and border trade is poorly controlled. Almost every container that enters Laos at a formal border checkpoint is inspected, and foreign businesses regularly complain of corruption. Customs procedures in Laos have improved since the introduction of the ASEAN Harmonized Tariff System. However, a large number of approvals and informal payments are still required to get through the process. Laos is obligated under the terms of the BTA to use the transaction value for customs valuation purposes and the United States continues to closely monitor implementation of this obligation.

Taxes: All goods and services are subject to a turnover tax of either 5 percent or 10 percent. Laos appears to apply turnover tax rates to many domestic products lower than those applied to imported products or to apply turnover tax exemptions to domestic products that it does not apply to imported products. The United States continues to work with Laos to ensure its tax regime complies with its BTA obligations and conforms to Laos' obligations with respect to national treatment in the application of all internal taxes. In addition to the turnover tax, certain goods are subjected to an additional excise tax. These goods include: distilled spirits and beer (50 percent to 70 percent); soft drinks and beverages (30 percent); cigarettes (55 percent); perfume and other cosmetic products (30 percent); and vehicles (65 percent to 90 percent).

FOREIGN TRADE BARRIERS

STANDARDS, TESTING, LABELING, AND CERTIFICATION

Laos has no specific law on standards for imported or exported goods. Imported goods are allowed to enter based on the certification of the country of export. Laos has no special labeling or marking requirements.

INTELLECTUAL PROPERTY RIGHTS (IPR) PROTECTION

Laos provides varying levels of IPR protection. While it accepted international assistance in the drafting of an IPR law, that law has not yet been completed, and implementing regulations are also lacking with respect to those laws that are in force. Laos issued its trademark decree in 1995, which places the recently reorganized Science and Technology Agency (STA), a ministry level agency within the office of the Prime Minister, in charge of the issuance of trademarks. Laos is a first-to-file system. Applicants do not have to demonstrate prior use. There are currently about 15,854 trademarks registered in Laos. A decree protecting patents, petty patents, and industrial designs was approved in January 2002. A draft copyright law was developed in 2005, but it has not yet been enacted, therefore copyrights and related rights are unprotected in Laos.

STA is responsible for IPR administration and enforcement in Laos. While STA personnel are well-trained, they have little authority, and IPR enforcement remains weak. In particular, STA lacks the power to arrest and does not effectively coordinate with the police. Effective IPR enforcement at the border is lacking due to Laos' porous borders.

Laos became a member of the World Intellectual Property Organization in 1995 and a member of the Paris Convention for the Protection of Industrial Property in 1998, but has not yet acceded to the Berne Convention for the Protection of Literary and Artistic Works. As a member of ASEAN, Laos has acceded to all of ASEAN's framework agreements, including the ASEAN Framework Agreement on Intellectual Property Cooperation.

SERVICES BARRIERS

Banking

The Lao financial sector is dominated by the Central Bank of the Lao PDR and three state-owned commercial banks. The new Law on Commercial Banking, passed in December 2006, provides new procedures for the establishment, management, and auditing of commercial banks, and removes the geographic restrictions on bank operations. Foreign banks had previously been restricted to the capital, Vientiane, which severely limited their competitiveness in providing financial services to the southern part of the country where business is concentrated. Following passage of the new banking law, three new private banks, including one that is Lao-owned, began operating.

Education

Foreign entities are prohibited from providing education services in Laos. The Ministry of Education maintains a close watch over the ideological content of curricula.

FOREIGN TRADE BARRIERS

Telecommunications

Laos has a relatively undeveloped telecommunications network (approximately 10 percent per capita penetration), and the Lao government has actively sought foreign investment to develop the sector starting with a Thai joint venture with the monopoly operator. When that joint venture's 5 year exclusivity ended, several foreign-affiliated mobile operators entered the market using both CDMA and GSM technology, accounting for the majority of the growth of the Lao mobile market.

INVESTMENT BARRIERS

Laos has a challenging investment environment due to the lack of the rule of law, opaque regulations, and inefficient infrastructure and services, particularly in financial services.

Required documentation for foreign businesses remains relatively onerous and effectively separates business activity into foreign and domestic categories. The United States has urged Laos to move from a business licensing to a business registration system, chiefly through repeal of the Industrial Processes Law. This law, which requires manufacturers to apply for permission to make even minor changes to their methods of production, lacks clear implementing regulations. Laos still requires a feasibility study for investment by foreign businesses, a requirement better suited to development projects.

The required annual renewal of a Lao business license is contingent upon certification that all taxes have been paid. Foreign investors have complained that taxes are often assessed in an inconsistent and nontransparent manner. Lao officials acknowledge ambiguities in the law. The tax code was streamlined and simplified in January 1999, and again in 2003, but some investors still report significant difficulties in obtaining tax certifications and clearances in a timely manner. U.S. companies have been denied necessary local business licenses despite possessing valid national long term investment permits. The United States continues to urge the Lao government to resolve this issue.

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Corruption: Both giving and accepting bribes are criminal acts in Laos, punishable by fine and/or imprisonment. The Prime Minister's Office issued an anti-corruption decree in November 1999, and at least one official has been arrested for corruption since that time, but implementation remains weak. The Counter-Corruption Committee in the Prime Minister's Office is the Lao government agency responsible for combating corruption. Nonetheless, corruption in Laos continues to be a serious concern. Bribes to low level officials to expedite time-sensitive applications, such as for business licenses or importation of perishable items, are known to occur. There is concern that the problem is growing as a result of increased investment in extractive industries.

FOREIGN TRADE BARRIERS

MALAYSIA

TRADE SUMMARY

The U.S. goods trade deficit with Malaysia was \$21.1 billion in 2007, a decrease of \$2.9 billion from \$24.0 billion in 2006. U.S. goods exports in 2007 were \$11.7 billion, down 6.9 percent from the previous year. Corresponding U.S. imports from Malaysia were \$32.8 billion, down 10.3 percent. Malaysia is currently the 20th largest export market for U.S. goods.

U.S. exports of private commercial services (*i.e.*, excluding military and government) to Malaysia were \$1.6 billion in 2006 (latest data available), and U.S. imports were \$840 million. Sales of services in Malaysia by majority U.S. owned affiliates were \$1.5 billion in 2005 (latest data available), while sales of services in the United States by majority Malaysia-owned firms were not available in 2005 (\$292 million in 1998).

The stock of U.S. foreign direct investment (FDI) in Malaysia was \$12.5 billion in 2006 (latest data available), up from \$10.3 billion in 2005. U.S. FDI in Malaysia is concentrated largely in the manufacturing and mining sectors.

FREE TRADE AGREEMENT NEGOTIATIONS

The United States and Malaysia initiated negotiations on a Free Trade Agreement (FTA) in June 2006. Malaysia is the United States' 10th largest trading partner with more than \$49.1 billion in total trade during 2006. The United States is seeking additional access to the Malaysian market through the FTA as well as to address the wide range of market access barriers U.S. companies' face in the Malaysian market.

The United States has expressed its goal of concluding the FTA by the summer of 2008. While progress has been made toward this objective, significant work remains.

IMPORT POLICIES

Tariffs

Tariffs are the main instrument used to regulate the importation of goods in Malaysia. The simple average applied normal trade relations/Most Favored Nation tariff rate is approximately 8.1 percent, but duties for tariff lines where there is significant local production are often higher.

The level of tariff protection is generally lower on raw materials than for those goods that have value added content. In addition to import duties, a sales tax of 10 percent is levied on most goods. Neither import duties, nor this sales tax is applied to raw materials or machinery used in export production. Beverage alcohol and wine are subject to an effective tariff of up to 500 percent when import duties and excise taxes are combined. Adjustments to excise taxes made each year as part of the budget process can sharply raise costs and make it difficult for U.S. companies to negotiate long-term supply contracts in this sector or market strategically. Bound tariffs range up to 434 percent on imported spirits, 148 percent on beer, and 115 percent on wines and sparkling wines.

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Twenty-seven percent of Malaysia's tariff lines (principally in the construction equipment, agricultural, mineral, and motor vehicle sectors) are also subject to nonautomatic import licensing designed to protect import-sensitive or strategic industries.

Import Restrictions on Motor Vehicles

Malaysia has long protected its automobile manufacturing industry from foreign competition using high tariffs and nontariff trade barriers. Malaysian government policies also distinguish between "national" cars, *i.e.*, domestic producers Proton and Perodua, and "non-national" cars, which include most vehicles manufactured in Malaysia by non-Malaysian owned firms. Significant barriers, including highway bans, also exist to the importation, sale, and usage of large motorcycles.

The Malaysian government has slowly started to dismantle some of its protections in order to meet its commitments under the WTO and the ASEAN Free Trade Agreement (AFTA). In March 2006, the Malaysian government issued a new National Auto Policy (NAP) that paves the way for further sectoral liberalization.

Nonetheless, certain government policies continue to block trade in the automotive and motorcycle sectors. The Ministry of International Trade and Industry oversees a system of approved permits (APs) that allows the holder to import cars and motorcycles and distribute them locally. The AP system was designed to provide *bumiputera* (ethnic Malay) companies easy entry into the automobile and motorcycle distribution and service sector. The AP system acts as a quota by restricting the total number of vehicles that can be imported in a given year. In addition to restricting market access for imports, many of the permits are sold for profit, with the associated costs passed on to consumers, further raising the cost of imported vehicles. APs continue to be capped at an estimated ten percent of the domestic market. Under the NAP, no new APs will be issued to any existing or new company before the AP system's scheduled elimination in 2010.

The Malaysian government amended the automotive tax regime several times from 2004 to 2006 to meet its AFTA commitments. The import duty rate for vehicles with at least 40 percent ASEAN content was lowered from 20 percent to 5 percent in 2006. To compensate for the revenue lost by cutting import tariffs, the Malaysian government, since 2004, has imposed steep automobile excise taxes. The high tax rates continue to excessively burden automakers; however, the NAP eliminated a 50 percent rebate on excise taxes that was available to domestic car manufacturers Proton and Perodua, plus two locally incorporated joint ventures assembling imported kits. On January 1, 2007, the upper limits on excise taxes for most vehicle categories were reduced from 125 percent to 105 percent, and the upper limit on motorcycles was reduced from 50 percent to 30 percent.

The NAP also implemented a support mechanism for locally assembled vehicles called the industrial adjustment fund. Components sourced from locally registered components manufacturing companies are eligible for deduction from the taxable base of locally assembled vehicles for the purpose of calculating excise and sales taxes. Foreign automakers have complained that the new mechanism essentially revives the local content program that had been abolished in 2004. The small scale nature of many foreign carmakers prevents them from sourcing components locally, thus preventing them from benefiting from this fund. A major U.S. automaker exited the Malaysian market in early 2008 because of the discriminatory treatment it faced and its inability to own a controlling share in its Malaysian subsidiary.

Textiles

Import duties on textiles and apparel range between 0 percent and 30 percent. Malaysia does not require import licenses or impose burdensome labeling requirements on the import of textiles.

STANDARDS, TESTING, LABELING, AND CERTIFICATION

Meat Import Licenses and Halal Certification

Malaysia requires that all meat, processed meat products, poultry (except turkey), eggs and egg products originate from plants inspected and approved by the Ministry of Agriculture's Department of Veterinary Services (DVS). The U.S. Food Safety and Inspection Service made a formal request to DVS for equivalence that if approved, would obviate the need for plant-by-plant food safety approval. However, *Halal* (produced in accordance with Islamic practices) approval is required on a plant-by-plant basis.

All meat (except pork), processed meat, poultry (except turkey), egg, and egg product imports require import licenses issued by DVS. DVS often restricts imports of chicken parts through this import licensing requirement, especially when local producers believe they are facing low prices. Similarly, the State of Sarawak has put in place package-size restrictions that have effectively banned imports. (The States of Sarawak and Sabah on the island of Borneo maintain separate quarantine restrictions from those of Peninsular Malaysia.)

All meat, processed meat products, poultry (except turkey), eggs, and egg products must receive *Halal* certification from an approved Islamic Center. Slaughterhouses, meat processors, and egg processors must also be inspected and approved by the Department of Islamic Development (JAKIM) for *Halal* beef, lamb, poultry, and egg exports. Officials from DVS and JAKIM travel together on the inspection visits. U.S. *Halal* product suppliers must be under the supervision of an approved U.S. Islamic Center. Each individual product, rather than the plant, must receive *Halal* certification. U.S. producers have expressed concern that Malaysia's *Halal* certification process is confusing and nontransparent. Malaysia's *Halal* requirements are considered relatively strict compared to those of other countries.

The plant/product approval is issued on the joint recommendation of DVS and JAKIM following an on-site inspection. The Malaysian Government has the right to re-inspect approved plants after 1 year. In practice, 3 or more years may elapse between visits to the United States by a Malaysian inspection team, which limits the opportunities for U.S. companies to obtain certification for new products, as well as for companies to reapply or correct problems if they fail the first inspection.

In September 2007, JAKIM announced that in 2008, all meat and poultry will need to originate from dedicated *Halal* slaughterhouses, requiring them to provide fulltime *Halal* slaughtering and processing operations. This requirement, if implemented, would render all currently approved U.S. plants ineligible to export to Malaysia. The U.S. Government is discussing with DVS and JAKIM possible ways to address this problem, including accepting time based *Halal* slaughter and processing, which is the current practice.

In May 2007, Malaysia announced that it would expand access for U.S. beef and re-authorize U.S bone-in beef and other beef products from cattle of all ages, in accordance with World Organization for Animal Health Bovine Spongiform Encephalopathy guidelines. However, the DVS announcement excluded beef offal since Malaysia does not define offal as edible meat. U.S. officials are working with DVS to clarify that the definition for edible beef products includes edible offal.

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Pork imports are controlled by licensing and restrictions on the types of cuts that can be imported. Import levels of chicken meat generally exceed the minimum access commitments of 6,552.5 tons that Malaysia established during the Uruguay Round of Multilateral Trade Negotiations. In the Uruguay Round, Malaysia negotiated for a number of tariff-rate quotas (TRQs), but has never implemented them. Ministry of Agriculture officials have indicated that TRQs will be implemented in April 2008.

Biotechnology

Malaysia's Parliament passed the Biosafety Bill in the summer of 2007, which mandates labeling of products derived in part from genetically modified (GM) organisms. The Ministry of Natural Resources and Environment is the lead Ministry for implementation and is currently in the process of drafting regulations stipulated in the Biosafety bill.

Malaysia currently places no restrictions on the import of bioengineered food or feed. To date, the only GM product officially approved to be imported into Malaysia is 'Roundup Ready' soybeans. The value of U.S. exports to Malaysia of soy, soybean meal, and oil is about \$100 million.

Malaysia also has yet to produce a biotechnology crop commercially; however, several genetically modified crops have been produced at the experimental stage.

EXPORT TAXES

Malaysia is the second largest producer and largest exporter of palm oil and products made from palm oil, accounting for approximately 15 percent of world production and 30 percent of world trade in vegetable oils. Malaysia uses export taxes to discourage the export of crude palm oil and to encourage development of the local refinery sector, taxing it at 10 percent to 30 percent *ad valorem*. Refined palm oil and products are currently not subject to export taxes. The Malaysian government waives export taxes on exports of crude palm oil to Malaysia-invested foreign vegetable oil refineries that include investment by Malaysian persons, giving Malaysia-invested plants a decided competitive advantage in foreign markets, including the United States.

GOVERNMENT PROCUREMENT

Malaysia is not a party to the WTO Agreement on Government Procurement. Malaysia's official policy calls for procurement to be used to support national public policy objectives. These objectives include encouraging greater participation of *bumiputera* (ethnic Malays) in the economy, transferring technology to local industries, reducing the outflow of foreign exchange, creating opportunities for local companies in the services sector, and enhancing Malaysia's export capabilities. Generally, international tenders are invited only where domestic goods and services are not available. In domestic tenders, preferences are provided for *bumiputera* suppliers and other domestic suppliers. In most procurement foreign companies are required to take on a local partner before their bids will be considered. In October 2003, Prime Minister Abdullah Badawi announced that the Malaysian government would introduce open tenders for government procurements and major projects, with direct negotiations limited to special cases.

Malaysia's government procurement system lacks transparency and competitive bidding. The U.S. Government has voiced concerns about the nontransparent nature of the procurement process in Malaysia. The Malaysian government's central tender website provides links to other ministries' websites, but not all of them provide relevant information on government tenders. In September 2005, the Ministry of

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Finance announced that the purchase of roadway, decorative, and outdoor lighting fittings, together with equipment and accessories for all government projects, must be sourced from one of three local *bumiputera* manufacturers. In October 2007, press reports highlighted several recent government directives instructing relevant ministries to award contracts for certain products only to bumiputera-owned businesses, in one case naming a specific company to receive the contract.

EXPORT SUBSIDIES

Malaysia offers several export allowances. Under the export credit refinancing scheme operated by the Central Bank, commercial banks and other lenders provide financing to all exporters at a preferential rate for both pre-shipment and post-shipment. Malaysia also provides tax incentives to exporters, including double deduction of expenses for overseas advertising and travel, supply of free samples abroad, promotion of exports, maintaining sales offices overseas, and research on export markets.

In addition, Malaysia provides investment incentives through the Pioneer States and Investment Tax Allowance programs. Malaysia has not submitted a notification of its subsidies to the WTO Committee on Subsidies and Countervailing Measures since 1995. The United States recently submitted questions to Malaysia, pursuant to Article 25.8 of the WTO Agreement on Subsidies and Countervailing Measures, requesting that Malaysia provide further information regarding these programs.

INTELLECTUAL PROPERTY RIGHTS (IPR) PROTECTION

Malaysia is a member of the World Intellectual Property Organization (WIPO) and is a party to the Berne Convention for the Protection of Literary and Artistic Works and the Paris Convention for the Protection of Industrial Property. In 2006, Malaysia acceded to the Patent Cooperation Treaty. Malaysia has not ratified the WIPO Copyright Treaty or the WIPO Performance and Phonograms Treaty (which extend traditional copyright principles to the digital environment) but has indicated its intention to accede to these conventions.

Optical Media Piracy

The piracy of copyrighted materials, particularly those stored on optical media, is a serious concern in Malaysia. Malaysia's production capacity for compact discs (CDs) and digital video discs (DVDs) significantly exceeds local demand plus legitimate exports, despite the Malaysian government's efforts to revoke optical disc factory licenses in the past two years. Moreover, the resulting surplus is alleged to be exported globally. Retail piracy also continues to be a problem.

The International Intellectual Property Association estimates 2006 industry losses in Malaysia due to piracy at \$59 million. Malaysia has remained on the Special 301 Watch List since October 2001, due in part to its failure to substantially reduce pirated optical disc production and export.

The Optical Disc Act of 2000 established a licensing and regulatory framework to control the manufacture of optical discs and to fight piracy. Under the Act, manufacturers are required to obtain licenses from both the Ministry of International Trade and Industry and the Ministry of Domestic Trade and Consumer Affairs (MDTCA), to place source identification (SID) codes on each disc and to allow regular inspections of their operations. U.S. industry is seeking changes in the law that would ensure that inspection authority covers any time, day or night, for all locations where optical media production may occur and also include as offenses acts such as "gouging" or tampering with the SID codes and "burning" of recordable discs.

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Enforcement

In 2007, the Malaysian government continued to make progress in IPR enforcement, including by establishing a specialized Intellectual Property court in mid 2007 to help alleviate the backlog of infringement cases. Both judges and prosecutors have been assigned to handle IPR cases on a full time basis. The Malaysian government is registering significantly more IPR cases in court; 538 cases had been registered by mid 2007, more than in all of 2006. Malaysia's courts have also imposed sentences of imprisonment and/or fines for convicted offenders. In 2007 Prime Minister Abdullah Badawi announced a new national IP policy that includes some 5 billion ringgit (\$1.5 billion) earmarked for spending over the next several years.

Pharmaceuticals and Medical Devices

Sales of counterfeit pharmaceutical products are a continuing concern in Malaysia. The Ministry of Health and the MDTCA have sought to improve their enforcement efforts, sharing information, and collaborating with industry in their efforts. The new specialized IP court is expected to improve prosecution of crimes that involve counterfeit pharmaceutical products.

In April 2007, the Ministry of Health announced that Malaysia would provide data protection for pharmaceuticals for 5 years for new chemical entities, and 3 years for new indications. The Malaysian government does not have an effective patent linkage mechanism to prevent the regulatory approval of versions of pharmaceutical products that are still covered by a patent; U.S. industry has reported several cases involving the registration of generic versions of pharmaceuticals which are still subject to patent protection.

Trademarked Consumer Products

A number of U.S. consumer product companies have also suffered significant losses due to the manufacture and sale of counterfeit trademarked products in Malaysia. The U.S. Government has discussed with Malaysia the importance of strengthening enforcement against trademark counterfeiting.

SERVICES BARRIERS

Malaysia's services sector constitutes about 59 percent of the national economy and remains highly protected.

Telecommunications

Under the GATS, Malaysia made limited commitments on most basic telecommunications services and partially adopted the WTO reference paper on regulatory commitments. Foreign companies are entitled to acquire only up to a 30 percent equity stake in existing licensed public telecommunications operators, and foreign participation is limited to facilities-based suppliers. However, in certain instances Malaysia has allowed greater than 30 percent equity participation in the telecommunications market. For example, one foreign company was allowed to invest up to 61 percent in a wireless telecommunications company. Yet it had to reduce its equity holding down to 49 percent after 5 years.

Distribution Services, including Direct Selling

Malaysia's requirements for the licensing and operation of direct selling companies include a provision that a locally incorporated direct selling company must allow for 30 percent *bumiputera* equity. The MDTCA also "recommends" local content targets. Local companies that seek direct selling licenses require paid-in capital of RM1.5 million (approximately \$397,000), while companies with foreign shareholders must have paid-in capital of RM5 million (approximately \$1.3 million).

The Malaysian government also included local content requirements in the "Guidelines on Foreign Participation in the Distributive Trade Services," which went into effect in December 2004. Among other provisions, department stores, supermarkets, and hypermarkets must reserve at least 30 percent of shelf space in their premises for goods and products manufactured by *bumiputera*-owned small and medium size industries. The guidelines also require that at least 30 percent of a store's sales consist of *bumiputera* products. The Malaysian government continues to consider changes to these guidelines, in response to complaints from both domestic and foreign businesses.

Legal Services

Foreign lawyers may not practice Malaysian law, nor may they affiliate with local firms or use the name of an international firm. Foreign law firms may not operate in Malaysia except as minority partners with local law firms and their stake in any partnership is limited to 30 percent. Under the Legal Profession Act of 1976, the practice of Malaysian law is normally restricted to Malaysian citizens or permanent residents who have apprenticed with a Malaysian lawyer, are competent in *Bahasa* Malaysia (the official language), and have a local law degree or are accredited British Barristers at Law. The Attorney General has authority to grant limited exceptions on a case-by-case basis, provided the applicant has 7 years of legal experience. Malaysian law does not allow for foreign legal consultancy except on a limited basis in the Labuan International Offshore Financial Center (see "Banking" below). Malaysia limits such foreign attorneys' scope of services to advice concerning home country and international law. Persons not licensed as lawyers are subject to criminal penalties if they directly or indirectly undertake activities relating to the Malaysian legal system, including drafting documents.

Architectural Services

A foreign architectural firm may operate in Malaysia only as a joint-venture participant in a specific project with the approval of the Board of Architects. Malaysian architectural firms may not have foreign architectural firms as registered partners. Foreign architects may not be licensed in Malaysia but are allowed to be managers, shareholders, or employees of Malaysian firms. Only licensed architects may submit architectural plans.

Engineering Services

Foreign engineers may be licensed by the Board of Engineers only for specific projects and must be sponsored by the Malaysian company carrying out the project. The license is only valid for the duration of a specific project. In general, a foreign engineer must be registered as a professional engineer in his or her home country, have a minimum of 10 years experience and have a physical presence in Malaysia of at least 180 days in one calendar year. To obtain temporary licensing for a foreign engineer, a Malaysian company often must demonstrate to the Board that they cannot find a Malaysian engineer for the job. Foreign engineers are not allowed to operate independently of Malaysian partners or serve as directors or shareholders of an engineering consulting company. A foreign engineering firm may establish a

nontemporary commercial presence if all directors and shareholders are Malaysian. Foreign engineering companies may collaborate with a Malaysian firm but only the Malaysian company may submit the plans for domestic approval.

Accounting and Taxation Services

Foreign accounting firms may provide accounting and taxation services in Malaysia only through affiliates. All accountants who wish to provide auditing and taxation services in Malaysia must register with the Malaysian Institute of Accountants (MIA) before they may apply for a license from the Ministry of Finance. Citizenship or permanent residency is required for registration with MIA. Malaysian citizens or permanent residents who received degrees from local universities or are members of at least one of the 11 overseas professional bodies recognized by Commonwealth countries may apply for registration. The American Institute of Certified Public Accountants is not recognized by Commonwealth countries.

Banking

The Malaysian government's banking policies are based on the belief that limiting foreign participation in financial services will encourage the development of domestic financial services providers. Its policies are guided by the Banking and Financial Institutions Act of 1989 and the 10 year Financial Sector Master plan, unveiled in 2001, which sets out a three phase strategy for developing the Malaysian banking sector. Phase I focused on developing a core set of domestic banking institutions through mergers of commercial banks with merchant banks, discount houses, and stock brokerage firms. Within the first 4 years of the Plan, the number of domestic financial institutions declined from 63 to 9. According to the Plan, Phase II was to include the removal of many restrictions on incumbent foreign financial institutions; implementation of such reforms has been mixed. During Phase III the Malaysian government will "consider" introducing new foreign competition.

Foreign institutions are limited to an equity stake in investment banks of 49 percent. Currently, foreign participation in commercial banks is still restricted to an aggregate maximum stake of 30 percent. In 1994 Bank Negara revoked authorization of foreign banks to operate in Malaysia, unless they incorporated locally. Foreign banks currently operate in Malaysia under a grandfathering provision, but with all-Malaysian Boards of Directors. New licenses are considered on a case-by-case basis for foreign banks, with a clear preference for foreign Islamic banks. Bank Negara generally requires all banks, including U.S. banks, to maintain their back office and computer operations in Malaysia, citing data privacy concerns as well as claiming that any operations outside of Malaysia are "outsourcing," even for foreign banks based elsewhere. This decision prevented some foreign banks from keeping up with global trends in Internet banking, but Bank Negara has waived the requirement on a case-by-case basis for foreign banks willing to reinvest sufficiently in Malaysia.

On December 28, 2005, Bank Negara announced that locally incorporated foreign banking institutions currently operating in Malaysia would be allowed to open four additional branches in 2006, with one branch in a market center, two in semi-urban centers, and one in a nonurban center. Each location must be approved by Bank Negara. Some foreign banks have obtained permission to open more than four, particularly if the new branches will be in underserved areas. Standard Chartered, for example, announced its intention to open six more branches. Foreign Islamic banks are exempt from branching restrictions.

On October 14, 2004, Bank Negara completed the issuance of three Islamic banking licenses to three Middle Eastern Islamic banks. Bank Negara encourages all commercial banks operating in Malaysia to

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set up full-fledged Islamic banking subsidiaries in which foreigners may take a 49 percent equity stake. The government of Malaysia continues to offer various tax incentives and other measures to achieve its stated goal of becoming a global hub for Islamic Banking. In June 2005, Bank Negara established the Fund for Shariah Scholars in Islamic Finance to provide funding for research grants and scholarships. In August 2006, Bank Negara announced the launch of its three-pronged Malaysia International Islamic Financial Center Initiative, including special tax and regulatory treatment, scholarships, and efforts to work toward global harmonization of Islamic banking and insurance practices. This was acted upon, in part, in the Malaysian government's 2007 budget, released September 1, 2006, which proposes a 10 year tax exemption on Islamic financial products in foreign currencies and tax relief for persons engaged in Islamic finance studies. Malaysia's 2008 budget provides further incentives to the Islamic finance industry.

The Federal Territory of Labuan was established as an International Offshore Financial Center in October 1990. Businesses receive preferential tax treatment for offshore banking activities, trust and fund management, offshore insurance and offshore insurance-related businesses, and offshore investment holding businesses. On September 16, 2006, Bank Negara lifted the requirement to maintain a physical presence in Labuan for existing and new financial institutions licensed to conduct Islamic financial business in international currencies. Islamic banks and insurance companies will be given greater flexibility to open operation offices anywhere in Malaysia. They may choose to remain subject to regulation by the Labuan Offshore Financial Services Authority in order to retain the favored tax treatment extended to offshore businesses in Labuan, 3 percent or RM20,000 (approximately \$5,970), whether or not they maintain a physical presence there. This option is not available for conventional banks that are required to maintain a physical presence in Labuan in order to retain the favorable tax treatment.

The Malaysia Deposit Insurance Corporation (MDIC) was established in August 2005. Membership is compulsory for commercial banks licensed under the Banking and Financial Institutions Act of 1989 and Islamic banking institutions licensed under the Islamic Banking Act of 1983. Eligible deposits are insured for up to RM60000 (approximately \$17,910). The MDIC maintains and administers two separate deposit insurance funds for conventional and Islamic deposits. Investments held in the Islamic Deposit Insurance Fund are made in accordance with Shariah principles.

Insurance

The 2001 Financial Sector Master plan recommended phased liberalization of the insurance industry, including increasing caps on foreign equity, fully opening the reinsurance industry to foreign competition, and lifting existing restrictions on employment of expatriate specialists. Foreign equity caps for insurance companies remain limited to 49 percent. In 1998 branches of foreign insurance companies must incorporate locally although a few companies were granted extensions until they could formulate a workable plan for local incorporation. Foreign shareholding exceeding 49 percent is permitted only with Malaysian government approval. As part of the 1997 WTO Financial Services Agreement, Malaysia agreed to allow existing foreign shareholders of locally incorporated insurance companies to increase their shareholding to 51 percent. New entry by foreign insurance companies is limited to equity participation in locally incorporated insurance companies and aggregate foreign shareholding in such companies may not exceed 30 percent. However, this limit has been subject to negotiation.

The Malaysian government continues to promote Islamic insurance (*takaful*) as part of its strategy to make Malaysia a global hub for Islamic financial services, including through new tax breaks announced in the 2007 budget. On September 16, 2006, Bank Negara announced that international *takaful* operators,

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both domestic and foreign, could apply for licenses to conduct business in international currencies as either incorporated entities or branches. Operations would receive a full tax exemption for 10 years beginning in 2007. International *takaful* operators will not be subject to foreign equity caps. On August 29, 2007, Bank Negara invited qualified local and foreign players to apply for licenses to provide reinsurance under Islamic principles (re-takaful) in Malaysia and to make Malaysia their center for re-takaful activities. New re-takaful operators will be given flexibility to conduct business in the country as a corporation, branch office, or joint venture with a Malaysian company.

Securities

Malaysia currently limits foreign ownership in stock brokerage firms to 49 percent and to 30 percent in unit trusts. The Securities Commission's 10 year Capital Market Master Plan, released in February 2001, proposed liberalizing foreign participation limits by 2003, at which time foreigners would be permitted to purchase a limited number of existing stockbrokerage licenses and to take a majority stake in unit trust management companies. Fund management companies may be 100 percent foreign-owned if they provide services only to foreigners, but they are limited to 70 percent foreign ownership if they provide services to both foreign and local investors. In March 2005, the Malaysian government allowed five foreign stock brokerage firms and a foreign fund management company to set up operations in Malaysia. More foreign fund management companies are expected to utilize four of the remaining licenses. In September 2003, the Securities Commission began allowing foreign firms operating in Malaysia to seek listing on the Kuala Lumpur stock exchange (Bursa Malaysia). Futures brokerage firms may now be 100 percent foreign owned. At the unveiling of its 2008 budget in September, the Malaysian Government announced its intention to permit the establishment of wholly foreign-owned Islamic fund management companies that would be permitted to invest all of their assets abroad. Fees received from the management of Islamic funds are tax exempt for 10 years. The Malaysia government provides tax incentives for existing stock brokerage firms to set up Islamic brokerage subsidiaries and will issue three new licenses to brokers that attract Middle Eastern funds.

Advertising

Only 20 percent of commercials in Malaysia can include foreign content. The Malaysian government recently relaxed enforcement of regulations governing the appearance of foreign actors in commercials shown in Malaysia. The government of Malaysia has an informal and vague guideline that commercials cannot "promote a foreign lifestyle."

Audio-Visual and Broadcasting

The Malaysian government maintains broadcast content quotas on both radio and television programming. Eighty percent of television programming is required to originate from local production companies owned by ethnic Malays. However, in practice, local stations have been granted substantial latitude in programming due to a lack of local programming. Sixty percent of radio programming must be of local origin. Foreign investment in terrestrial broadcast networks is prohibited and in cable and satellite operations is limited to 20 percent equity share. As a condition for obtaining a license to operate, video rental establishments are required to have 30 percent local content in their inventories. Malaysia regularly censors movies and television shows deemed offensive on religious or sexual grounds.

INVESTMENT BARRIERS

Malaysia encourages FDI in export-oriented manufacturing and high-technology industries, but retains considerable discretionary authority over individual investments and restricts foreign investment in other sectors. Especially in the case of investments focused on producing goods or services for the domestic market, the Malaysian government has used its authority to restrict foreign equity (normally to 30 percent) and to require foreign firms to enter into joint ventures with local partners. Foreign investment in the financial services industry is restricted and foreign investment in terrestrial broadcasting is prohibited. To alleviate the effects of the regional economic crisis, Malaysia in 1998 temporarily relaxed foreign ownership and export requirements in the manufacturing sector for those companies that did not directly compete with local producers. In June 2003, the Malaysian government permitted 100 percent foreign ownership of new investments aimed at expanding existing investments in manufacturing concerns. In September 2004 it announced that venture capital firms could be 100 percent foreign owned.

Malaysia's announced goal with regard to attracting and retaining FDI is to "move up the value chain." It is renewing tax abatements primarily for manufacturers of higher-technology products and other targeted industries, but not for manufacturers of more labor-intensive products, some of which have moved to China or elsewhere. FDI in Malaysia improved significantly in 2006 after a 2005 downturn. The Malaysian government has shifted its focus from attracting lower-wage and labor-intensive manufacturing to attract higher value manufacturers and service-related manufacturing industries. According to UNCTAD's World Investment Report, FDI inflows to Malaysia rebounded in 2006, rising to more than \$6 billion, a 53 percent increase from 2005, and a 31 percent increase over 2004 inflows. However, outward flows of FDI more than doubled in 2006 to \$6.04 billion, nearly equaling Malaysia's inward flows of \$6.06 billion, suggesting a degree of disinvestment.

Malaysian government policies that have led to shortages of skilled and technical employees remain, particularly in the electronics and financial services sectors. While it has lifted quotas on the number of expatriate workers that financial services companies are allowed to employ, the requirement that each expatriate be approved by Bank Negara remains a bureaucratic impediment. In its 2008 budget, the Government announced its intention to exempt Islamic finance experts from the Middle East from paying income tax in an effort to attract talent from those countries (many of which do not tax income). This year, it established four additional immigration units intended to expedite visa approvals for expatriates. In September 2006, it announced its intention to allow professional spouses of expatriates to work; however, to date no such provisions have been implemented. Manufacturing companies with foreign paid-up capital of at least \$2 million receive automatic approval for up to 10 expatriate posts.

In February 2007, the Malaysian government established "Pemudah," a task force of experts from the private sector and government, to promote faster reform in the delivery of government services, targeted at facilitating business and overhauling unnecessary licensing and bureaucratic procedures. The task force has been successful in reducing processing time for land transfers by 60 percent and tax refunds from one year to between 14 days and 30 days. Various registration and approval requirements with the Companies' Commission of Malaysia which ranged from one to 14 days have been reduced to a range of 1 hour to 5 days. The processing of expatriate visas now takes seven days, and the duration of "professional visit" visas has been extended from three months to 6 months.

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OTHER BARRIERS

Transparency

The lack of transparency in government decision-making and procedures in Malaysia has served to impede U.S. access to the Malaysian market. The Malaysian government has taken steps to fight corruption, including through the Anti-Corruption Agency (ACA) which is part of the Office of the Prime Minister. The ACA has the independent power to conduct investigations and is able to prosecute cases with the approval of the Attorney General. However, relatively few senior officials or politicians have been prosecuted for corruption, despite the fact that Malaysia has slipped in its ranking on Transparency International's corruption perceptions index from 33 in 2002 to 44 in 2006, and was at 43 in 2007. Malaysia has signed but not yet ratified the UN Convention against Corruption.

MEXICO

TRADE SUMMARY

The U.S. goods trade deficit with Mexico was \$74.3 billion in 2007, an increase of \$10.0 billion from \$64.3 billion in 2006. U.S. goods exports in 2007 were \$136.5 billion, up 1.9 percent from the previous year. Corresponding U.S. imports from Mexico were \$210.8 billion, up 6.3 percent. Mexico is currently the 2nd largest export market for U.S. goods.

U.S. exports of private commercial services (*i.e.*, excluding military and government) to Mexico were \$22.4 billion in 2006 (latest data available), and U.S. imports were \$14.8 billion. Sales of services in Mexico by majority U.S.-owned affiliates were \$11.4 billion in 2005 (latest data available), while sales of services in the United States by majority Mexico-owned firms were \$1.7 billion.

The stock of U.S. foreign direct investment (FDI) in Mexico was \$84.7 billion in 2006 (latest data available), up from \$75.1 billion in 2005. U.S. FDI in Mexico is concentrated largely in the manufacturing, finance, and nonbank holding companies sectors.

North American Free Trade Agreement

The North American Free Trade Agreement (NAFTA), signed by the United States, Canada, and Mexico, entered into force on January 1, 1994. This free trade Agreement progressively eliminates tariffs and nontariff barriers to trade in goods, improves access for services trade, establishes rules on investment, strengthens protection of intellectual property rights, and creates an effective dispute settlement mechanism. The NAFTA is accompanied by supplemental agreements that provide for cooperation to enhance and enforce labor standards and to encourage environmentally friendly practices and bolster environmental protection in North America.

IMPORT POLICIES

Tariffs and Market Access

Pursuant to the terms of the NAFTA, on January 1, 2003, Mexico eliminated tariffs on all remaining industrial and most agricultural products imported from the United States. On January 1, 2008, Mexico eliminated remaining tariffs and tariff-rate quotas on all U.S. agricultural exports. (See the section on agriculture below for additional details on specific farm products.)

A number of U.S. exports, both agricultural and nonagricultural, are subject to antidumping duties that limit access to the Mexican market. Products subject to these duties currently include beef, hydrogen peroxide, epoxidized soy oil, apples, liquid caustic soda, ammonium sulfate, polyvinyl chloride, bond paper, industrial fatty acids, stearic acid, ethylene glycol monobutyl ether, and carbon steel pipe and tube.

Agricultural Products

The United States exported \$12.7 billion in agricultural products to Mexico in 2007, compared to \$10.9 billion in 2006. Since 2004, Mexico has been the United States' second largest agricultural market. On January 1, 2008, Mexico lifted the final tariffs and tariff-rate quotas on U.S. corn, dry beans, nonfat dry milk, and orange juice.

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During the past year, Mexico's Secretariat of Economy (SECON) issued a new decision relating to ongoing antidumping cases affecting U.S. apples. Mexico is the largest export market for U.S. apples. On November 2, 2006, SECON announced the final results of its investigation and imposed final duties ranging from 6.4 percent to 47.05 percent on red and golden delicious apples from members of the Northwest Fruit Exporters (NFE). On July 3, 2007, SECON ruled that the initial antidumping duty on U.S. apples established in 2002 is without effect, leaving the November 2006 decision in place for NFE members only and no duties for non-NFE members.

In April 2006, SECON decided to continue antidumping duties on U.S. beef and beef by-products for an additional 5 years after completing a sunset review investigation of the initial duties imposed in 2000. In addition, Mexico's modifications of the beef dumping duties in 2004 in response to the findings of a NAFTA Chapter 19 panel, which determined that SECON did not sufficiently demonstrate that U.S. beef imports had damaged Mexico's beef industry, were finalized in May 2007 when the Chapter 19 panel decided the modifications were consistent with its earlier findings. In addition, in September 2007, SECON declined to initiate an annual review requested by a U.S. exporter of beef. Mexican policies in this area have reduced the number of U.S. suppliers and altered product trading patterns. Industry representatives assert that \$100 million to \$500 million in revenue is lost each year due to antidumping duties in the beef sector.

December 31, 2007 marked the end to safeguard measures Mexico had put in place on U.S. chicken leg quarters. As of January 1, 2008, there are no tariffs or trade related restrictions on U.S. chicken leg quarter imports into Mexico.

Sanitary and Phytosanitary Issues

In recent years, Mexican sanitary and phytosanitary measures have created barriers to exports of certain U.S. agricultural goods, including grains, seed products, apples, stone fruit, pork, beef, poultry, citrus, wood and wood products, dry beans, avocados, potatoes, and eggs. In addition, procedural requirements regarding sanitary and phytosanitary inspections at port of entry do not always reflect agreements reached between U.S. Department of Agriculture (USDA) officials and the Mexican Secretariat of Agriculture, resulting in unnecessary delays at border points of entry, seaports, and airports. Despite continued work during 2007 to minimize these types of barriers, significant quantities of U.S. agricultural goods were still subject to rejection or delays at the Mexican border. For example, in December 2007, Mexico closed 10 ports of entry for pork and did not provide a satisfactory explanation.

Mexico banned imports of U.S. beef in December 2003, following the detection of a positive case of Bovine Spongiform Encephalopathy (BSE) in the State of Washington. In March 2004, Mexico announced that it would accept U.S. deboned beef from cattle less than 30 months of age and it subsequently lifted restrictions on a number of offals and processed deboned beef products. In early 2006, Mexico lifted its ban on U.S. bone-in beef from cattle less than 30 months of age and in October 2006, the United States and Mexico reached an agreement allowing the import of U.S. dairy breeder cattle into Mexico. Mexico currently continues to ban or restrict U.S. exports of some live cattle, ground beef, and certain offals. The United States is working intensively to fully reopen the market for live cattle and beef products based on the guidelines of the World Organization for Animal Health (OIE) as quickly as possible.

In 2003, Mexico agreed to a gradual opening of its market to U.S. potatoes. This opening had been delayed following a rise in nematode interceptions on potato shipments; however, U.S. producers have

taken successful steps to reduce pests, and are now seeking Mexico's fulfillment of its 2003 agreement to grant access beyond a 26 kilometer zone within the international border.

On November 21, 2007, the Secretariat of Health informed USDA that Mexico would lift the ban on imports of U.S. spinach. In September 2006, Mexico had banned U.S. spinach from entering Mexico due to an outbreak of *Escherichia coli* in spinach produced in California. The lifting of the ban stipulates that the U.S. industry will provide on each shipment a USDA/APHIS phytosanitary certificate that specifies the state of origin in which the product was produced and that the product (if produced in California) was produced under the "Commodity Specific Food Safety Guidelines for the Production and Harvest of Lettuce and Leafy Greens," and by a producer that has signed the California Leafy Green Products Handler Marketing Agreement (LGMA). Finally, the bill of lading must bear the LGMA Service Mark.

In June 2004, despite the lack of a protocol for returning live animals or adequate inspection facilities in Mexico, the Mexican Congress approved a measure requiring that the inspection of imported live animals take place in Mexico. The lack of adequate inspection facilities has hampered the importation of live animals. On July 25, 2007, Mexico published modifications under its new Animal Health Law which included a provision that allows inspections for live animals to resume on the U.S. side of the border.

In October 2005, Mexico lifted its Low Pathogenic Avian Influenza (LPAI) restrictions on poultry imports from nine U.S. States, but restrictions on 11 counties in Texas stemming from the 2004 detection of High Pathogenic Avian Influenza remained in place until they were finally lifted on July 19, 2007. In August 2006, Mexico briefly closed its border to poultry shipments from the state of Michigan due to a LPAI finding in wild birds, but swiftly removed the restriction after receiving additional information from U.S. officials demonstrating that there was no danger to commercial poultry operations. U.S. officials continue to work with Mexican officials to ensure that no unnecessary measures or restrictions are taken.

Beginning in May 2007, Mexico suspended the approval of any new U.S. meat processing facility to export product into Mexico. A growing number of companies are now effectively excluded from shipping into Mexico despite meeting all sanitary and health guidelines outlined by the USDA Food Safety Inspection Service. The United States provides access to all Mexican meat processing facilities that are approved to export by Mexico's competent authorities.

Biotechnology

Mexico has not established any significant barriers to the importation of crops or food derived from biotechnology. While Mexico currently lacks implementing regulations for its Biosafety Law passed in February 2005, the implementing regulations are expected in the next few months. These regulations will establish the respective responsibilities and jurisdiction of the Mexican ministries and agencies that monitor and/or enforce biotechnology related experiments, production, and commercialization. These regulations will also pave the way for increased research, investment, and commercialization of agricultural products derived from biotechnology.

Administrative Procedures and Customs Practices

U.S. exporters continue to be concerned about Mexican customs' administrative procedures, including: insufficient prior notification of procedural changes, inconsistent interpretation of regulatory requirements at different border posts, and uneven enforcement of Mexican standards and labeling rules. There have been relatively few specific complaints, however, and Mexican customs has been putting procedures in place to address issues of nonuniform application of requirements at border ports of entry. Agricultural

exporters note that Mexican inspection and clearance procedures for some agricultural goods are long, burdensome, nontransparent, and unreliable. Customs procedures for express packages continue to be burdensome, although Mexico has raised the *de minimis* level from \$1 to \$50. However, Mexican regulations still hold the courier 100 percent liable for the contents of shipments. U.S. exporters have highlighted the benefits of harmonizing the hours of customs operation on the U.S. and Mexican sides of the border. Similarly, they cite the delays stemming from the lack of pre-clearance procedures, which the Mexican government claims are not permitted under current law.

To be eligible to import well over 400 different items, including agricultural products, textiles, chemicals, electronics and automotive parts, Mexican importers must apply to the Secretariat of Finance and Public Credit and be listed on a special industry sector registry. U.S. exporters complain that registering is bureaucratically difficult, and this requirement sometimes causes costly customs clearance delays when new products are added to the list of subject items with immediate effect, thereby denying importers sufficient notice to apply. They also report that certain importers have been summarily dropped from the registry without prior notice or subsequent explanation, effectively preventing some U.S. exporters from shipping goods to Mexico.

Mexico requires import licenses for a number of commercially sensitive products. It also uses estimated prices for customs valuation of a wide range of products imported from the United States and other countries, including apples, milled rice, beer, distilled spirits, chemicals, wood, paper and paperboard products, textiles, apparel, toys, tools, and appliances.

Since October 2000, the Mexican government has imposed a burdensome guarantee system for goods subject to estimated prices. Importers cannot post bonds to guarantee the difference in duties and taxes if the declared value of an entering good is less than the official estimated price. Instead they must deposit the difference in cash at a designated Mexican financial institution or arrange one of two alternative sureties (a trust or line of credit). The cash deposit is not returned for 3 months and is only returned if the Mexican government has not initiated an investigation and if the supplier in the country of exportation has provided an invoice certified by its local chamber of commerce. Mexican banks charge as much as \$500 to open an account for this purpose and \$50 for each transaction, making this a burdensome and costly regulation for businesses on both sides of the border.

STANDARDS, TESTING, LABELING, AND CERTIFICATION

Under the NAFTA, Mexico is required to recognize conformity assessment bodies (*i.e.*, certification bodies or testing laboratories) in the United States and Canada on terms no less favorable than those applied to conformity assessment bodies in Mexico.

Applications by two U.S. certification bodies for accreditation by the Entidad Mexicana de Acreditacion (EMA), the body responsible for accrediting conformity assessment bodies for Mexican Official Standards, have been held up for years due to resistance from the existing Mexican conformity assessment bodies. However, the Mexican government announced it would create a “trust fund” into which accredited bodies would contribute 10 percent of the revenue from conformity certificates issued for the development of standards in Mexico. The two U.S. bodies in question recently signed an accord, agreeing to contribute to the trust fund. In December 2007, one U.S. body was accredited to perform conformity assessments related to one Mexican regulation. The potential increase in U.S. exports of electrical and electronics goods could be significant. There are estimates that the two U.S. companies with pending applications could each generate \$2 million to \$3 million annually in the product certification business in the electrical and electronic sectors.

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In the telecommunications sector, Mexico has yet to implement Phase I of the Inter-American Telecommunications Commission's (CITEL) Mutual Recognition Agreement (MRA), which it was scheduled to do by June 2006, and implementation of Phase II, due to be completed by March 2008, is unlikely. Phase I of the CITEL MRA provides for the mutual acceptance of test results, while Phase II provides for the mutual acceptance of certifications concerning conformity of equipment with technical regulations. Mexico's implementation of Phase I would allow recognized U.S. testing laboratories to test equipment for compliance with Mexican technical requirements, whereas implementation of Phase II would allow recognized U.S. certification bodies to certify equipment as meeting Mexican technical requirements. Mexico, however, did not meet the June 2006 goal or its amended target of the second quarter of 2007. Mexican implementation of Phase I and II of the CITEL MRA remains a key issue for U.S. testing and certification bodies, as well as for U.S. exports to Mexico, and the United States will continue to press the Mexican government on this issue.

Mexico has over 700 technical regulations called Normas Oficiales Mexicanas (NOMs) issued by a number of different agencies. Often, conformity assessment procedures are either included in the NOM, or the agency publishes its own general procedures. Some agencies, notably the Ministry of Health, have not published their procedures.

As a result of a trade dispute with El Salvador over Mexico's "plant requirement," Mexico was compelled to remove (via a Presidential decree) from its health regulations the requirement for Salvadoran drug companies to have a manufacturing plant in Mexico in order to be able to register, and therefore import and sell, pharmaceutical products. A draft amendment to extend this treatment to other foreign pharmaceutical manufacturers was shelved near the end of 2007, leaving El Salvador as the only country that does not face the "plant requirement."

GOVERNMENT PROCUREMENT

Mexico's efforts to make its government procurement regime more transparent through policy reform and the application of technology have resulted in increased competition as well as savings for the government. The Mexican government has established several "electronic government" Internet sites to increase transparency of government processes and to establish guidelines for the conduct of government officials. "Compranet" provides on-line government procurement and contracting. While implementation has been successful, there is still a need for further regulatory and technological improvements throughout the Mexican government.

The NAFTA limits the total value of contracts that Mexico's parastatal petroleum and electricity monopolies, PEMEX and the Federal Electricity Commission, respectively, may remove from coverage under the NAFTA. Mexico provides an annual notice of the set-aside calculation, along with the methodology used in the calculation, to the United States and Canada. The 2006 value of the set aside for these entities was \$380 million.

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

INTELLECTUAL PROPERTY RIGHTS (IPR) PROTECTION

Despite a fairly extensive set of IPR laws and a clear commitment to stronger enforcement on the part of the Mexican government, the extent of IPR violations in Mexico remains significant. Monetary sanctions, when imposed, are low, and criminal convictions, though up from last year, remain rare due to

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legal and judicial barriers to effective IPR protection. Mexican prosecutors say they have shifted the focus of their enforcement efforts from confiscation of infringing goods to seizures of more valuable assets, such as real estate and equipment, and to higher quality arrests. In 2007, the special IPR unit of the Attorney General's Office (PGR), which was formed in 2003, reported seizures of more than 190 million infringing articles, versus 332 million articles seized in 2006. It also reported the dismantling of 291 small-scale laboratories and 11 large-scale factories for production of various sorts of infringing products, and the seizure of 16 buildings. Of the seized goods, 7,667 were disc burners being used to pirate music, movies, and software. This number exceeds seizures of burners from the previous 6 years combined. In addition, the special IPR unit indicted 166 persons for criminal IPR infringement in 2007, versus 158 in 2006. However, in 2007, only five of these persons were convicted and sent to jail, compared to two in 2006. Many of those indicted spent up to several months in jail awaiting a verdict on their cases. Administrative enforcement in Mexico is handled by the Mexican Institute of Industrial Property (IMPI). In 2007, IMPI increased its administrative enforcement staff and conducted 3,798 inspection visits, seized over \$1 million worth of infringing products, and imposed fines worth more than \$3 million.

The United States remains concerned about the continuing high levels of piracy and counterfeiting in Mexico and closely monitors how the Mexican government is addressing these problems. Mexico was taken off the Special 301 "Watch List" in 2000, but returned to the list in 2003, where it has remained to date due to inadequate enforcement. Well-known markets selling pirated and counterfeit goods, such as Tepito in Mexico City, San Juan de Dios in Guadalajara, and others in Monterrey and San Luis Potosi, continue to operate openly. In the past year, Mexico City authorities have removed unlicensed vendors from certain parts of the historic center of the city and seized two properties that were being used for illicit commerce in Tepito, but these actions were narrowly targeted. Industry estimates that trade losses due to copyright piracy (not including movie industry losses) in Mexico totaled \$1.2 billion in 2007, with pirated products taking the majority of the following markets: music, business software, home videos, and the entertainment software market.

In June 2006, the Mexican federal government and concerned industries signed a national agreement in which all committed to cooperation in combating intellectual property infringement. President Calderón has publicly pledged his administration's commitment to combat intellectual property crimes and other forms of illegal commerce. In March 2007, the government of the State of Mexico signed a similar state-level accord. The municipal government of Toluca (the capital of the State of Mexico) signed a city-level accord subsequently. Industry representatives report significant cooperation between federal agencies and State of Mexico and Toluca authorities in protecting IPR since then. Other state and city governments, starting with Morelos and Ciudad Juarez, are expected to sign such agreements in 2008. In a separate initiative, the government of the State of Jalisco signed an agreement with IMPI and the Business Software Alliance in 2007 to ensure that all the software used by state government offices is properly licensed.

An initiative to give PGR the power to prosecute intellectual property crimes *ex officio* (i.e., without first receiving complaints from right holders or their legal representatives) was approved by the Mexican Senate in April 2007 and is awaiting action in the Chamber of Deputies, Mexico's lower house.

U.S. pharmaceutical companies are concerned about the lack of coordination between IMPI and other Mexican agencies with regard to government procurement of unauthorized copies of patented pharmaceuticals. In 2003, the Secretariat of Health modified Mexican health regulations to require that, starting with purchases scheduled for delivery on January 1, 2003, IMSS (Mexican Social Security Institute) and ISSSTE (Social Security Institute for Government Workers) would purchase only

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authorized versions of products patented in Mexico. However, it appears the new regulations are not being fully implemented, possibly due to financial constraints at IMSS and ISSSTE.

In September 2003, the Secretariats of Health and Economy implemented a Presidential decree regarding cooperation between the two agencies to ensure that marketing approval is not granted for unauthorized copies of patented pharmaceuticals. Since the beginning of 2007, there have been no new reports of registrations of unauthorized copies of pharmaceuticals, though several cases of registrations granted in 2006 to patent-infringing products remain to be resolved.

Mexico published another Presidential decree in May 2006 that amended the Mexican Health Law and the Mexican Penal Code to raise to the felony level the act of selling, distributing, or transporting counterfeit pharmaceuticals, or fostering the forgery of, or tampering with, pharmaceuticals, medicines, active ingredients, raw materials, or additives used in products for human consumption. This law also applies felony status to committing or fostering the forgery of, or tampering with, the packaging of such products, as well as to the selling, distributing, or transporting of such forged or tampered packaging.

U.S. companies holding trademarks in Mexico have cited problems with trademark enforcement and administration. Although Mexican federal administrative actions are supposed to be completed within 4 months, administrative actions related to trademark enforcement (*e.g.*, fines and closures) often take as long as 18 months. The time can be lengthened by jurisdictional and procedural disputes within the Mexican government, as well as by internal coordination problems within IMPI and PGR.

SERVICES BARRIERS

Telecommunications

The OECD's October 2007 Economic Survey of Mexico stated that Mexico remains one of the OECD countries with the highest telecommunications charges, especially for business. The report recommended improving mandatory access to the local loop, regulating fixed-to-mobile termination charges and introducing mandatory roaming to enable smaller mobile companies to use Telcel's (Mexico's largest mobile phone company) network at a regulated price. The report also suggested that industry regulator Cofetel (Federal Telecommunications Commission) needs greater independence from leading companies in the sector and should be held accountable to the government for the design and implementation of access pricing rules that are pro-competition. Promoting competitiveness in the telecommunications market continues to be a challenge for Mexico. The Calderon Administration has stated that increasing competition in Mexico's telecommunications sector is a top priority.

The Mexican company Telmex dominates the Mexican telecommunications market and is perceived to exercise some influence over the legislative process, the courts, governmental policy departments and Cofetel.

In August 2007, the Mexican Supreme Court (SCJN) ruled that Article 28 of the April 2006 Radio and Television Law was anticompetitive. Article 28 allowed broadcasting companies to keep and use at no cost the spectrum freed through digitalization. The Court ruled that spectra have to be granted through public bidding to ensure competition and prevent the creation of monopolies. Currently the Mexican Legislature is working on a new media law, based on the SCJN ruling. The Court also ruled that Cofetel commissioners should be appointed by the President and could not be rejected by the Senate.

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Regarding Cofetel, there is still much uncertainty regarding its future leadership. The SCJN is expected to decide whether two officials who were rejected as Cofetel commissioners by the Senate in late 2006 will be reinstated. The current Cofetel leadership has been applauded by pro-competition analysts for insisting that Telmex comply with interconnection, interoperability and number portability requirements before receiving permission to complete its triple-play offering and provide video. Telmex has repeatedly stalled in signing interconnection agreements with many large cable television operators.

The Federal Competition Commission (Cofeco) has been strengthened and announced that it will conduct a formal investigation to determine if there are monopolistic activities taking place in both the fixed and mobile telephone sectors.

In October 2007, the Mexican Secretariat for Communications and Transport (SCT) published its plan for spectrum auctions for wireless frequencies with the goal of encouraging private sector investment in the deployment of wireless broadband throughout the country. The bands being auctioned are 1.9 GHz, 3.4-3.7GHz, 1.7-2.1 GHz and 71-76/81-86 GHz. Because the spectrum is for wireless utilization, foreign companies are welcome to participate.

Regarding fixed line telephony, the relevant committee in the Mexican Chamber of Deputies is currently analyzing a proposal to eliminate the existing restrictions to foreign investment.

Television and Radio

As in telecommunications, there are concerns that the two dominant television companies, Televisa and TV Azteca, who share duopoly status in the sector, continue to exercise influence over Mexican legislative, policy, and regulatory bodies to prevent competition. The Radio and Television Law passed in April 2006 (mentioned above with regard to telecommunications) has been criticized as catering to the interests of dominant industry players by imposing permanent disadvantages on new entrants as compared to the current dominant duopoly.

ANTICOMPETITIVE BARRIERS

Mexico passed a new competition law in June 2006 that gave Cofeco additional authority to regulate market concentration and anticompetitive behavior in both the private and public sectors. Cofeco has administrative enforcement powers, but no criminal enforcement powers. The head of Cofeco and key members of the Calderon administration have called for opening up sectors of the Mexican economy currently dominated by monopolies or duopolies, and some progress has occurred (see section on services barriers). Still, it remains to be seen whether the new law and the new administration will be able to make these sectors truly competitive.

INVESTMENT BARRIERS

Ownership Reservations

Mexico's oil and gas policy is highly restrictive with regard to private equity investment. The sector remains closed to foreign investment, with the exceptions of the Liquefied Natural Gas sector and in the marketing of petroleum products. Only Mexican nationals may own gas stations.

The Mexican constitution mandates state ownership of hydrocarbons and provides that no concessions or other types of production sharing agreements or risk contracts shall be granted in regard to hydrocarbon

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exploitation. The Mexican government has explored ways of allowing additional foreign investment in the energy sector that are consistent with its constitution, hoping to attract capital that will strengthen the highly-leveraged national oil company, Pemex. So far the reform efforts have had little success, although the Calderon administration has identified energy reform as a priority.

Other laws limit participation in certain sectors or activities (*e.g.*, forestry exploitation) to Mexican nationals. Investment restrictions prohibit foreign ownership of residential real property within 50 kilometers of the nation's coasts and 100 kilometers of its land borders. However, foreigners may acquire the effective use of residential property in the restricted zones through trusts administered by Mexican banks. A national foreign investment commission reviews foreign investment in Mexico's restricted sectors, as well as investments in nonrestricted sectors that exceed a 49 percent share of an investment with a value greater than \$165 million (as adjusted each year for growth in Mexico's nominal GDP). Mexico included all of these restrictions into its NAFTA commitments.

MOROCCO

TRADE SUMMARY

The U.S. goods trade surplus with Morocco was \$733 million in 2007, an increase of \$376 million from \$357 million in 2006. U.S. goods exports in 2007 were \$1.3 billion, up 52.9 percent from the previous year. Corresponding U.S. imports from Morocco were \$610 million, up 17.0 percent. Morocco is currently the 64th largest export market for U.S. goods.

The stock of U.S. foreign direct investment in Morocco was \$311 million in 2006 (latest data available), up from \$302 million in 2005.

FREE TRADE AGREEMENT

The United States-Morocco Free Trade Agreement (FTA) entered into force on January 1, 2006, eliminating duties on more than 95 percent of all goods and services. In addition to key U.S. export sectors gaining immediate duty free access to Morocco, the Agreement includes commitments for increased regulatory transparency and government commitment to the protection of intellectual property rights. Through foreign assistance programs, the United States continues to provide targeted technical assistance supporting FTA compliance and Moroccan regulatory reform. Issues relating to the definition of direct shipment and Moroccan application of wheat quotas have arisen since the FTA's implementation. These concerns are under discussion. The Joint Committee (the FTA's governing body) plans to meet in 2008.

IMPORT POLICIES

In addition to the United States-Morocco FTA, Morocco has entered into an Association Agreement with the European Union (EU), an FTA with Turkey, and the Pan-Arab Agreement with 17 Arab countries. While in general, the United States-Morocco FTA provides for equal or preferential treatment for most U.S. goods and services, Morocco recently agreed with the EU to accelerate reduction of certain textile tariffs that provides a more preferential schedule than what was negotiated in the United States-Morocco FTA.

Due to the United States-Morocco FTA, key U.S. sectors, such as information technologies, machinery, construction equipment, chemicals, and textiles, enjoy either duty free or preferential duty treatment when entering Morocco. Certain other originating products are subject to tariff-rate quotas (TRQs), which increase over time. Originating textile and apparel goods receive preferential duty treatment according to a 10 year tariff reduction schedule. Specified originating apparel products that do not conform to the FTA's rules of origin may still qualify under a Tariff Preference Level quota established for nonoriginating articles.

Direct Shipment Issues

Moroccan interpretation of permissible transshipment under the FTA's rules of origin has resulted in denial of preferential treatment for some originating goods. Moroccan customs officials continue to insist that shipments of originating goods through a third country must be preceded by an order (as reflected in an invoice or bill of lading) from a Moroccan customer before departing the United States. This interpretation effectively prevents U.S. companies from pre-staging U.S. originating goods in Europe,

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prior to receiving an order from a Moroccan customer. The United States is seeking a resolution to this situation through the Joint Committee process.

Agriculture

Under the FTA, Morocco provides U.S. exporters preferential access through tariff reductions and elimination, with tariff phase-outs ranging from immediate (upon entry into force) to 25 years. In 2007, Moroccan tariffs on corn and most feeds were temporarily reduced to zero because of dry conditions and an acute need for animal feed.

In addition, on products that are particularly import-sensitive for Morocco, the FTA provides access to Morocco's market for U.S. agricultural exporters through TRQs, including on beef, poultry, wheat, almonds, and apples.

Wheat TRQs

The United States-Morocco FTA provides for new preferential access to Morocco for U.S. durum and common wheat exports through two TRQs. In 2006, these TRQs were not filled due to the way in which they were administered. In 2007, as a result of the country's short domestic supply of wheat, the government of Morocco eliminated tariffs on all imported wheat through May 31, 2008, effectively rendering the preferential TRQs under the FTA meaningless. U.S. officials have raised concerns with the Moroccan government about its administration of the FTA wheat TRQs, which has led to significant difficulty for U.S. producers attempting to avail themselves to the new preferential access under the FTA. Efforts to resolve issues surrounding access for U.S. wheat continue.

Biotechnology

Morocco has officially banned agricultural biotechnology. Over 60 percent of Moroccan agricultural exports are destined for the EU, and the official ban on agricultural biotechnology reflects EU/Morocco trade sensitivities. Imports of bioengineered seeds are prohibited and a "genetically modified organism (GMO)-free" certificate is required for customs clearance of products used directly for human consumption. Morocco has formed a National Biosecurity Committee, but implementing an agricultural biotechnology regulatory framework may take several years to develop and receive approval through appropriate government channels.

STANDARDS, TESTING, LABELING, AND CERTIFICATION

The Moroccan Industry Normalization Service (SNIMA) and the Laboratory for Public Tests and Studies (LPEE) are the two government organizations responsible for developing standards and testing. SNIMA provides all product norms and standards certification, while LPEE performs product testing to international ISO/IEC 65 standards. Included in the United States-Morocco FTA is a reaffirmation of the WTO Agreement on Technical Barriers to Trade.

As a result of commitments made in the FTA, Morocco has improved transparency in its government rule making. Prior to the FTA, Morocco generally provided inadequate notice of new proposals or changes to standards, technical regulations, and conformity assessment procedures, which effectively denied U.S. parties the opportunity for comment. The FTA builds on WTO obligations, which Morocco has applied to improve the transparency of its government rule-making process. In particular, Morocco now invites foreign participation and comment in the development of standards, technical regulations, and conformity

assessment procedures. In addition, Morocco includes explanations of how external comments have been treated in the final drafting.

Morocco and the United States are working to reach agreement on sanitary certificates to accompany U.S. exports of meat and poultry products to Morocco, consistent with international standards.

GOVERNMENT PROCUREMENT

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

The United States-Morocco FTA requires the use of fair and transparent procurement procedures, including advance notice of purchases and timely and effective bid review procedures for procurement covered by the Agreement. Under the FTA, U.S. suppliers are permitted to bid on procurements for most Moroccan central government entities, as well as the vast majority of Moroccan regional and municipal governments, on the same basis as Moroccan suppliers. The anticorruption provisions in the FTA require each government entity to ensure that bribery in government procurement is treated as a criminal offense or is subject to comparable penalties.

SERVICE BARRIERS

In the past, Morocco effectively prevented U.S. services firms from competing in large segments of its services sector. The government either stipulated outright bans on foreign participation in the domestic services market and/or included onerous ownership requirements and business operating practices.

The FTA accords U.S. firms substantial market access across Morocco's entire services sector, subject to very few exceptions. Key services sectors covered by the Agreement include audiovisual, express delivery, financial, insurance, telecommunications, distribution, computer, mining, construction, and engineering. The FTA provides benefits for businesses wishing to supply cross-border services, as well as businesses wishing to establish a local presence in the other country.

Under the Agreement, Morocco is required to permit U.S. financial services firms to establish subsidiaries and joint ventures in Morocco. In addition, banks and insurance companies are permitted to establish branches, subject to a 4 year phase-in for most insurance services.

Although U.S. companies enjoy the same treatment in the insurance market as their Moroccan counterparts, the policies and practices of Morocco's insurance regulatory body have effectively prevented U.S. insurance companies from introducing competing products. In practice, only applications that bring new products to the sector are likely to be approved.

In the FTA, the United States also gained enhanced access to the telecommunications market, including the right to interconnect with a dominant carrier in Morocco at nondiscriminatory, cost based rates. U.S. firms seeking to build a physical network in Morocco have nondiscriminatory access to key telecommunications facilities and are able to lease lines from Morocco's dominant carrier and resell telecommunications services to build a customer base.

INVESTMENT BARRIERS

The United States and Morocco have a Bilateral Investment Treaty (BIT) which entered into force in 1991 and remains in force. The FTA also contains investment provisions. All forms of investment –

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such as enterprises, debt, concessions, contracts, and intellectual property – are protected under the FTA. The FTA requires Morocco to remove certain restrictions and prohibits the imposition of other restrictions, such as requirements to buy Moroccan rather than non-Moroccan inputs for goods manufactured in Morocco. Although foreigners are not permitted to own agricultural land in Morocco, foreigners can lease land and were recently invited to bid on long-term leases for Sogeta and Sodega land (government owned land nationalized from French citizens in the early 1970's).

INTELLECTUAL PROPERTY RIGHTS (IPR) PROTECTION

The United States-Morocco FTA includes strong intellectual property protections and led Morocco to strengthen its own IPR laws. Included in the Agreement are strong anti-piracy provisions and the right for authorities to seize, forfeit, and destroy counterfeit and pirated goods, as well as the equipment used to make them. The Agreement also requires each government to provide criminal liability for Internet piracy, even if there is no motivation of financial gain.

Pursuant to its FTA obligations, Morocco enacted legislation that increased protection of trademarks, copyrights, patents, and undisclosed test data. Included are state-of-the-art elements such as provisions concerning disputes over Internet domain names, strong anti-circumvention provisions to prohibit tampering with technologies designed to prevent copyright infringement, and specific protections for temporary copies, which are critical in the digital environment.

OTHER OBSTACLES

The greatest obstacles to trade in Morocco are irregularities in government procedures, lack of transparent governmental and judicial bureaucracies, inefficient transport systems, language and cultural barriers, and low level corruption. According to the World Bank's Ease of Doing Business 2008 report, Morocco ranks 129th out of 178 countries surveyed. Among the measures cited in the report is a 33 day long process required for imported goods to reach their final destination after arrival at a Moroccan port. Although the government is diligently working to liberalize the business environment and improve its business efficiency, foreign corporations still complain about these market access issues.

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NEW ZEALAND

TRADE SUMMARY

The U.S. goods trade deficit with New Zealand was \$302 million in 2007, an increase of \$115 million from 2006. U.S. goods exports in 2007 were \$2.8 billion, down 3.9 percent from the previous year. Corresponding U.S. imports from New Zealand were \$3.1 billion, roughly the same as in 2006. New Zealand is currently the 49th largest export market for U.S. goods.

U.S. exports of private commercial services (*i.e.*, excluding military and government) to New Zealand were \$1.4 billion in 2006 (latest data available), and U.S. imports were \$1.5 billion. Sales of services in New Zealand by majority U.S.-owned affiliates were \$2.0 billion in 2005 (latest data available), while sales of services in the United States by majority New Zealand-owned firms were \$3 million.

The stock of U.S. foreign direct investment (FDI) in New Zealand was \$5.7 billion in 2006 (latest data available), up from \$4.9 billion in 2005. U.S. FDI in New Zealand is concentrated largely in the finance, manufacturing, and wholesale trade sectors.

IMPORT POLICIES

Tariff rates in New Zealand are generally low as a result of several rounds of unilateral tariff cuts that began in the mid-1980s and continued until the current Labour government, first elected in 1999, froze further reductions until July 2005. The New Zealand government announced in September 2003, that it would resume unilateral tariff reductions starting July 1, 2006. Under this unilateral tariff reduction program, New Zealand has begun implementing gradual reductions of its highest tariff rates (currently 17 percent), which will reduce these tariffs to 10 percent by July 1, 2009. These top rates apply mostly to clothing, footwear, and carpeting. *Ad valorem* tariffs on all other dutiable goods will be reduced to 5 percent by July 1, 2008.

STANDARDS, TESTING, LABELING, AND CERTIFICATION

Biotechnology Regulations

New Zealand's Environmental Risk Management Authority (ERMA), an independent body, reviews applications for the release of new organisms, including biotechnology products that contain living organisms. ERMA assesses applications on a case-by-case basis and can issue four types of approvals: initial development in containment (such as in a laboratory or glasshouse), outdoor development of field tests (in containment), conditional release, and full, unconditional release (with no controls). Biosecurity New Zealand, part of the Ministry of Agriculture and Forestry (MAF), carries out compliance and enforcement of all indoor and outdoor containment and conditional release approvals. When assessing a containment application, ERMA focuses on the adequacy of containment to mitigate any potential effect of the organism on the environment.

Since 1998, ERMA has granted approximately 15 approvals for contained field trials of genetically modified crops. Of these, approximately five have been completed, six are still ongoing, and the remaining approvals have either ceased or were unused for various reasons. To date, there have been no applications for either a conditional or a full release of products derived by the use of biotechnology in New Zealand. The most recent approval granted by ERMA was in May 2007, for Crop and Food

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Research to conduct a contained field test for broccoli, cabbage, cauliflower, and forage kale derived by the use of biotechnology and engineered for pest resistance. Three years ago, ERMA approved an application from the same organization to field test onions derived by the use of biotechnology.

Release approvals include both conditional release, where controls can be placed on the organism to manage risks, and full release where no controls are imposed. The process for outdoor containment, conditional and full release of biotechnology products is much more onerous than for an indoor containment application. Among other things, applicants must provide ERMA with detailed information and analysis that enables them to conduct a full scale risk assessment taking into account a broad range of scientific, economic, cultural, and ethical factors in the decision making process. This includes the possible impact of a release on New Zealand's "clean green" image and the potential impact on the Maori culture. All outdoor containment, conditional and full release applications must be publicly notified. In addition, a Maori consultation is required.

Until October 2003, New Zealand maintained a voluntary 2 year moratorium on the introduction of all biotechnology products, which precluded applications for the commercial planting of biotechnology crops, the commercial importation of seeds derived by the use of biotechnology, the release into the environment of animals derived by the use of biotechnology, and, to a lesser extent, some human and veterinary medicines containing biotechnology products. The moratorium, however, did not apply to the use and sale of processed foods and ingredients derived by the use of biotechnology. With the moratorium's expiration and the report of the Royal Commission on Genetic Modification, Parliament amended the Hazardous Substances and New Organisms Act 1996 to make the regulation of biotechnological research more workable and to facilitate controlled release of biotechnology products. The amendment, the New Organisms and Other Matters Bill of 2003, introduced the conditional release category for the approval of new organisms.

The United States has raised concerns about New Zealand's biotechnology regulatory policies in meetings under the United States-New Zealand Trade and Investment Framework Agreement (TIFA) and other fora and will continue to press New Zealand on these issues.

Biotechnology Food Approval

Foods with genetically modified content can be offered for sale and consumption in New Zealand after being assessed and approved by Food Standards Australia New Zealand (FSANZ), which is the binational food regulatory authority for New Zealand and Australia. FSANZ is responsible for the development of regulations in the Australia-New Zealand Food Standards Code (Code). The New Zealand Food Safety Authority (NZFSA) is responsible for implementation and enforcement of the Code within New Zealand.

A mandatory standard for foods produced using modern biotechnology came into effect in mid-1999. The standard, which was established under the Food Act of 1981, prohibits the sale of food produced using biotechnology unless such food has been assessed by FSANZ and listed in the food code standard. As of November 2007, FSANZ has received a total of 39 applications for the assessment of genetically modified foods. Of these, 33 applications had been approved and 4 are under review. Two requests had been withdrawn.

Biotechnology Food Labeling

Mandatory labeling requirements for genetically modified (GM) foods took effect in December 2001. With few exceptions, a food in its final form that contains detectable DNA or protein derived from

genetic modification must be so labeled. Meeting New Zealand's food labeling regulations for genetically modified foods can be extremely burdensome for U.S. agricultural exporters who deal primarily in processed food. New Zealand wholesalers and retailers frequently demand GM-free declarations from their suppliers. This effectively places liability for any GM labeling noncompliance on the importer. New Zealand food legislation requires businesses to exercise due diligence in complying with food standards, which usually is defined as maintaining a paper or audit trail similar to a quality assurance system.

The NZFSA conducts periodic compliance audits. Violators of food labeling requirements can be assessed penalties under the Food Act 1981. As part of the Domestic Food Review, the New Zealand government is reviewing the entire Food Act, and a new version is expected to be introduced to parliament in the first quarter of 2008.

Sanitary and Phytosanitary Measures (SPS)

New Zealand maintains a regimen of SPS controls for virtually all imported agricultural products. The United States and New Zealand continue to discuss specific SPS issues that negatively impact trade in products supplied by the United States as part of the annual TIFA dialogue and in other fora.

In 2006, New Zealand implemented new processes for undertaking risk analyses and developing import health standards. This initiative is intended to streamline existing processes and provide consistency in the way New Zealand undertakes these tasks. As of July 1, 2006, New Zealand also implemented a new system for funding, prioritizing, and managing the development of import health standards. In December 2007, New Zealand announced new procedures for publishing for comment and for approving draft and final import risk analyses. The new system is intended to be more transparent, direct government resources to the highest priorities, and increase the resources available for developing import health standards. The new process is also likely to expand the review time for new access proposals.

During the 2006 United States-New Zealand TIFA discussions, the U.S. Government requested that New Zealand develop an import standard for Pacific Northwest stone fruit (plums, peaches, nectarines, and apricots). In response to the U.S. request, New Zealand has added Pacific Northwest stone fruit to its import health standard development work program. The work program also includes a review of import requirements for citrus from the United States.

New Zealand completed a risk assessment of U.S. high value pork in June 2006. To date this product has been subject to a pre-cooking requirement because of the presence of Porcine Reproductive and Respiratory Syndrome (PRRS) in the United States. While the analysis confirmed that there is a risk of PRRS disease entering New Zealand, the Ministry of Agriculture and Forestry (MAF) is recommending that high value chilled cuts of pork is allowed entry without any sanitary treatment. In response to the risk assessment, MAF received 44 submissions, including 2 from the United States. MAF completed the review of submissions in June 2007, and re-issued new draft import health standards for pig meat and pig products in November 2007. The comment period on these draft standards closed in February 2008.

NZFSA requires case-by-case assessment of U.S. bovine products before importation due to concerns over Bovine Spongiform Encephalopathy (BSE). In February 2007 NZFSA announced a move to modernize its food safety importing requirements for beef and beef products in light of the new science that surrounds BSE. Among other things, the new measures will enable New Zealand to categorize the BSE risk status of countries exporting to New Zealand. Once these measures are finalized, the current requirement to assess U.S. products on a case-by-case basis is expected to be eliminated.

New Zealand continues to suspend imports of U.S. poultry meat (except canned product) due to its restrictions on countries that have infectious bursal disease.

GOVERNMENT PROCUREMENT

New Zealand is not a signatory to the WTO Government Procurement Agreement and is not an observer to the WTO Committee on Government Procurement. The New Zealand Government is keeping the issue of its participation in the Government Procurement Agreement under review.

INTELLECTUAL PROPERTY RIGHTS (IPR) PROTECTION

Copyrights

The New Zealand government introduced the Copyright Amendments Bill at the end of 2006, which passed its first reading. In 2007 the legislation was sent to the Select Committee for a comment period. During this comment period, industry raised concerns that the draft legislation would put New Zealand at odds with the growing international consensus regarding protection of copyrights and related rights in the online environment, as provided for by the WIPO Performances and Phonograms Treaty to which New Zealand is not a Party.

Among the concerns highlighted were that the bill fails to adequately protect technological protection measures (TPMs), which prevent unauthorized access to digital content. The bill inadequately protects against the distribution of circumvention (hacking) devices and only prohibits trafficking in circumvention devices where the trafficker has knowledge, or reason to believe, that the device will, or is likely to be, used for infringement.

In addition, concerns have been raised about the liability provisions in the bill for Internet service providers. The U.S. Government will continue to monitor the status of these provisions as the legislation moves forward.

Patent Protection

The New Zealand government released an initial draft patents bill in early 2005 for consultation, but the bill has not yet had its first reading in New Zealand's legislature. The bill is intended to replace the Patents Act of 1953 and to bring New Zealand's patent law into closer conformity with developments in other countries including patent term restoration. On average, the patent and regulatory approval processes for new drugs in New Zealand takes about twelve years. As a result, many drugs have very few years of patent protection remaining after the regulatory authority grants marketing approval.

SERVICES BARRIERS

Media

Radio and television broadcasters have adopted voluntary local content targets after the New Zealand government made it clear that it would otherwise pursue mandatory quotas. New Zealand government officials have said they are sensitive to the implications of quotas under the GATS, but nonetheless they reserve the right to impose them.

FOREIGN TRADE BARRIERS

Telecommunications

New Zealand has, over the past decade, moved from relying primarily on the courts to regulate the telecommunications sector under general antitrust statutes (that proved time consuming and ineffective) to the introduction of enforceable sector specific rules.

New Zealand amended the 2001 Telecommunications Act in 2006 (the Act), separating Telecom New Zealand (Telecom) into separate access network services, wholesale, and retail business units. The separation is aimed at promoting competition in the telecommunications market. The Act requires Telecom to operate its Access Network Services unit on a stand-alone basis and its wholesale and retail units at arms-length from one another.

As part of the operational separation process, the Minister of Communications and Information Technology (Minister of Communications) issued a determination on September 26, 2007, requiring Telecom to prepare a draft separation plan. Telecom submitted a plan that was opened for public comment in January 2008. Taking into account comments received, the Minister of Communications is required to approve or amend the plan “as soon as practicable.” The determination also set requirements for providing Access Network Services over existing copper, and future fiber and wireless access networks to ensure comprehensive service coverage and a forward-looking approach.

Other key features of the Act require Telecom to provide unbundled local loop and unbundled bit stream access, “naked” DSL services, and unbundled backhaul services; improve transparency of Telecom’s costs and pricing by requiring separate wholesale and retail accounting; and enhance the Telecommunications Commissioner’s ability to enforce effective and timely access to regulated services. The Act also empowers the Commerce Commission to set terms and conditions of supply for regulated services and to resolve supply terms and conditions for regulated services, rather than only for individual operators. It empowers the Telecommunications Commissioner to initiate determinations of the terms and conditions of regulated multi-network services. In addition, the Act requires Telecom to make relevant services, especially unbundled local loops and unbundled bit stream, available to all market participants on equivalent terms.

With respect to mobile termination rates, the Economic Development Minister announced in April 2007, that he would accept voluntary and separate binding commitments from Vodafone and Telecom to reduce such rates to more reasonable levels. The commitments require operators benefiting from such reductions to pass through reductions to their customers.

Based on such commitments and over a five year period, Telecom has offered to reduce its mobile termination rate from 20 New Zealand cents per minute (cpm) to 12 cpm, and Vodafone has offered to reduce its mobile termination rate from 20 cpm to 14 cpm. This outcome contrasts with the 2005 Commerce Commission recommendation that rates be reduced immediately to 15 cpm by 2006, which was not implemented due to legal challenges brought by mobile operators.

INVESTMENT BARRIERS

Investment Screening

New Zealand maintains investment screening requirements, but has not blocked any foreign investments since 1984.

FOREIGN TRADE BARRIERS

New Zealand's Overseas Investment Office (OIO) screens foreign investments that exceed NZ\$100 million and represent 25 percent or more of the equity in a New Zealand enterprise, foreign investments in land defined as sensitive within the Overseas Investment Act 2005, and foreign investment in fishing. In August 2005, the New Zealand government enacted The Overseas Investment Act that liberalized the investment screening regime by refocusing screening on assets of critical interest. The review also strengthened the monitoring and enforcement of conditions of consent made under the Act.

Investors also are required to satisfy an "investor test." In particular, an investor must be of good character, must not be excluded from entering New Zealand under the Immigration Act, and must be able to display both financial commitment and business acumen.

The United States has raised concerns about the continued use of this screening mechanism.

OTHER BARRIERS

Pharmaceuticals

The U.S. Government continues to raise concerns regarding New Zealand's relatively weak support for research and development of innovative pharmaceutical products. New Zealand's Pharmaceutical Management Agency (PHARMAC), a stand-alone Crown entity, administers a Pharmaceutical Schedule that lists medicines subsidized by the New Zealand government. The schedule also specifies conditions for prescribing a product listed for reimbursement. PHARMAC accounts for 73 percent of New Zealand's expenditures on prescription drugs. The New Zealand government also supports hospitals' pharmaceutical expenditures, bringing its share of total spending on prescription drugs in the country to about 80 percent.

New Zealand does not restrict the sale of nonsubsidized pharmaceuticals in the country. However, private medical insurance companies will not cover the cost of nonsubsidized medicines and doctors are often reluctant to prescribe them to patients who would have to pay the cost themselves. Thus, PHARMAC's decisions have a major impact on the availability and price of nonsubsidized medicines and the ability of pharmaceutical companies to sell their products in the New Zealand market.

In addition, U.S. industry continues to have concerns about the transparency, predictability, and accountability of PHARMAC's processes. In October 2005, the United Future Party announced that it had secured an agreement from the Labour Party to develop a national medicines policy as part of Labour's coalition negotiations to form a government. In doing so, they will focus on three areas: access to medicines; quality use of medicines; and the rational use of medicines. The national medicines policy, anticipated to be released through the Ministry of Health as a consultation document, will offer some principles and proposals in these areas. Changes are expected to be implemented later in 2008.

NICARAGUA

TRADE SUMMARY

The U.S. goods trade deficit with Nicaragua was \$713 million in 2007, a decrease of \$61 million from \$774 million in 2006. U.S. goods exports in 2007 were \$890 million, up 18.5 percent from the previous year. U.S. imports from Nicaragua were \$1.6 billion, up 5.1 percent over the corresponding period. Nicaragua is currently the 72nd largest export market for U.S. goods.

The stock of U.S. foreign direct investment in Nicaragua was \$261 million in 2006 (latest data available), up from \$245 million in 2005.

IMPORT POLICIES

Free Trade Agreement

On August 5, 2004, the United States signed the Dominican Republic–United States–Central America Free Trade Agreement (CAFTA-DR or Agreement) with five Central American countries (Costa Rica, El Salvador, Guatemala, Honduras, and Nicaragua) and the Dominican Republic.

During 2006, the Agreement entered into force for the United States, El Salvador, Guatemala, Honduras, and Nicaragua. The CAFTA-DR entered into force for the Dominican Republic on March 1, 2007. Costa Rica approved the CAFTA-DR through a national referendum on October 7, 2007, but the Agreement has not entered into force, as Costa Rica has not yet completed the process of adopting implementing legislation and regulations.

In 2007, the Parties agreed to amend several textile-related provisions of the CAFTA-DR, including, in particular, changing the rules of origin to require the use of U.S. or regional pocket bag fabric in originating apparel. The textile amendments have not entered into force.

Under the Agreement, the Parties remove barriers to trade and investment in the region, which will strengthen regional economic integration. The CAFTA-DR also includes important disciplines relating to customs administration and trade facilitation, technical barriers to trade, government procurement, investment, telecommunications, electronic commerce, intellectual property rights (IPR), transparency, and labor and environmental protection.

Tariffs

As a member of the Central American Common Market (CACM), Nicaragua agreed in 1995 to reduce its common tariff to a maximum of 15 percent.

Under CAFTA-DR, approximately 80 percent of U.S. industrial and consumer goods now enter Nicaragua duty free, with remaining tariffs phased out over 10 years, starting in 2006. Nearly all textile and apparel goods that meet the Agreement's rules of origin now enter duty free and quota free, promoting new opportunities for U.S. and regional fiber, yarn, fabric, and apparel manufacturing companies.

FOREIGN TRADE BARRIERS

Under the CAFTA-DR, more than half of U.S. agricultural exports now enter Nicaragua duty free. Nicaragua will eliminate its remaining tariffs on nearly all agricultural goods over 15 years to 20 years, including those on pork, rice, and yellow corn. Nicaragua will eliminate its tariffs on chicken leg quarters and rice within 18 years and on dairy products within 20 years. For certain products, tariff-rate quotas (TRQs) will permit some duty free access for specified quantities during the tariff phase out period, with the duty free amount expanding during that period. Nicaragua will liberalize trade in white corn through expansion of a TRQ, rather than by tariff reductions.

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

Nontariff Measures

The government levies a “selective consumption tax” on some luxury items that is 15 percent or less, with a few exceptions. The tax is not applied exclusively to imports; however, domestic goods are taxed on the manufacturer’s price, while imports are taxed on the cost, insurance, and freight value. Alcoholic beverages and tobacco products are taxed on the price charged to the retailer.

STANDARDS, TESTING, LABELING, AND CERTIFICATION

On February 18, 2005, the government of Nicaragua issued a decree authorizing the Ministry of Agriculture to recognize the equivalency of foreign meat and poultry sanitary measures. After auditing the U.S. meat and poultry inspection system, the government of Nicaragua recognized the equivalence of the U.S. food safety and inspection systems for meat and poultry, thereby eliminating the need for plant-by-plant inspections in the United States.

The U.S. Department of Agriculture’s Animal and Plant Health Inspection Service has entered into protocols with Nicaragua for the export of U.S. rice, wheat, yellow corn, and seed potatoes. All packaged food products must be registered with the Ministry of Trade, Industry, and Development. If a product is imported in bulk and packaged in Nicaragua, a phytosanitary or sanitary certificate is required from the country of origin and the Nicaraguan Ministry of Health. Such certificates issued by Nicaragua are not required for products packaged in the United States. However, at this point, Nicaragua continues to maintain bans on U.S. boneless beef from animals over 30 months of age, bone-in-beef, and live cattle, which are inconsistent with the World Organization for Animal Health (OIE) guidelines.

Under the CAFTA-DR, Nicaragua reaffirmed its commitment to abide by the terms of the World Trade Organization’s (WTO) Import Licensing Agreement. Import licenses are required to import alcoholic beverages and all brands of alcoholic beverages must be registered annually with the Ministry of Health. U.S. industry has expressed concern about Nicaragua’s proposed standards for alcoholic beverages distilled from sugarcane. However, Nicaragua and the other Central American countries are developing common standards for the importation of several key products, including distilled spirits, an effort that may eventually facilitate trade.

Law 291, approved in 1998, regulates the importation of products of agricultural biotechnology. The law was modified in 2003 to establish the Commission on Risk Analysis for Genetically Modified Organisms (CONARGEN), a panel composed of representatives from government and the academic community. According to the law, the Minister of Agriculture and Forestry, taking into consideration risk analysis

FOREIGN TRADE BARRIERS

conducted by CONAGREN, makes a final decision on biotechnology imports. Through this process, Nicaragua has allowed the entry of yellow corn for animal feed. Law 291 also addresses the field-testing of biotechnology crops.

Two bills that would regulate the importation of products of agricultural biotechnology are pending in the National Assembly. The former Bolanos administration submitted a bill including science-based provisions to the National Assembly in 2005, known as the Law on the Prevention of Risks from Living Organisms Modified through Molecular Biotechnology. This bill comprehensively defines the technical criteria and procedures needed to conduct the risk analysis currently required by Law 291. The Ortega Administration has submitted a competing bill on Sovereignty, Food Security, and Nutrition that would prohibit the government from accepting food aid containing agricultural biotechnology products. The proposal would also establish a National Commission headed by the President, to regulate all food aid donations and to draft, implement, and evaluate food security policies.

Nicaragua is a signatory of the Cartagena Protocol on Biosafety. As mandated by the protocol, Nicaragua requires that agricultural goods containing living modified organisms (LMOs) – unless they include 95 percent or greater non-LMO content – be labeled to indicate that they “may contain” LMOs.

GOVERNMENT PROCUREMENT

The CAFTA-DR requires the use of fair and transparent government procurement procedures, including advance notice of purchases and timely and effective bid review procedures for procurement covered by the Agreement. Under the CAFTA-DR, U.S. suppliers may bid on procurements of most Nicaraguan government entities, including key ministries and state-owned enterprises, on the same basis as Nicaraguan suppliers. To make its bidding process more transparent and efficient, Nicaragua launched a computer-based procurement system in 2006. The anti-corruption provisions of the CAFTA-DR require each government to ensure under its domestic law that bribery in matters affecting trade and investment, including government procurement, is treated as a criminal offense, or is subject to comparable penalties. Procurement by government entities not covered by the CAFTA-DR, such as the National Electricity Company, remains subject to nontransparent and irregular procurement practices.

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

EXPORT SUBSIDIES

Nicaragua does not provide export financing. However, all exporters receive tax benefit certificates equivalent to 1.5 percent of the free on board value of the exported goods. Under the CAFTA-DR, Nicaragua is not permitted to adopt new duty waivers or expand existing duty waivers that are conditioned on the fulfillment of a performance requirement (*e.g.*, the export of a given level or percentage of goods). However, Nicaragua may maintain such duty waiver measures for such time as it is an Annex VII country for the purposes of the WTO Agreement on Subsidies and Countervailing Measures (SCM Agreement). Thereafter, Nicaragua must maintain any such measures in accordance with Article 27.4 of the SCM Agreement.

INTELLECTUAL PROPERTY RIGHTS (IPR) PROTECTION

The CAFTA-DR provides improved standards for the protection and enforcement of a broad range of IPR, which are consistent with U.S. and international intellectual property standards, as well as with emerging international standards of protection and enforcement. Such improvements include state-of-the-

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art protections for digital copyrighted products such as software, music, text, and videos; stronger protection for patents, trademarks, and test data, including an electronic system for the registration and maintenance of trademarks, and further deterrence of piracy and counterfeiting.

However, Nicaraguan efforts to enforce intellectual property law remain limited. During the first 10 months of 2007, the Nicaraguan government conducted only 20 raids and the police seized 58,547 pirated DVDs, 21,629 CDs, 13 computers, 3 multi-purpose copiers, and other audiovisual equipment worth approximately \$123,000. In July 2007, the Nicaraguan Government successfully prosecuted a case in a local court against a Nicaraguan citizen selling pirated music CDs, but the offender's sentence of 2 years in prison was reduced to parole and a 5,000 Córdobas (\$267) fine. The Prosecutor General and National Police are currently investigating 28 intellectual property cases for possible prosecution.

SERVICES BARRIERS

Financial Services

The CAFTA-DR ensures that U.S. financial services companies have full rights to establish subsidiaries, joint ventures, or bank branches, and U.S. insurance suppliers enjoy full rights to establish subsidiaries and joint ventures, with a phase-in provision for branches of financial services companies. Nicaragua allows U.S. based firms to supply insurance on a cross-border basis, including reinsurance; reinsurance brokerage; marine, aviation, and transport insurance; in addition to other insurance services.

Other Services Issues

Nicaragua accords substantial market access across its entire services regime, including financial services, subject to very few exceptions. The Law on Promotion of National Artistic Expression and on Protection of Nicaraguan Artists (Law 215, 1996) requires that foreign production companies contribute 5 percent of total production costs to a national cultural fund. In addition, the law requires that 10 percent of the technical, creative, and/or artistic staff be locally hired. Under the CAFTA-DR, Nicaragua does not require U.S. film productions to contribute to the cultural fund or hire locally. Under the CAFTA-DR, Nicaragua opened its telecommunications sector to U.S. investors, service providers, and suppliers. U.S. exports of telecommunications equipment receive duty free treatment. The telecommunications sector is fully privatized and open to competition. Enitel, the former state telephone company, is now 99 percent owned by a Mexican telecommunications company. The mobile telephone industry in Nicaragua is served by two nationwide operators. Enitel controls switching for all cellular service and, therefore, may exercise leverage over companies seeking interconnection. The telecommunications regulator, TELCOR, has generally encouraged competition in its licensing and regulatory practices. However, a legal dispute between the executive and legislative branches over the country's public regulatory framework has resulted in a leadership stalemate at TELCOR.

INVESTMENT BARRIERS

The CAFTA-DR establishes a more secure and predictable legal framework for U.S. investors operating in Nicaragua. Under the Agreement, all forms of investment are protected, including enterprises, debt, concessions, contracts, and intellectual property. U.S. investors enjoy, in almost all circumstances, the right to establish, acquire, and operate investments in Nicaragua on an equal footing with local investors. Among the rights afforded to U.S. investors are due process protections and the right to receive fair market value for property in the event of an expropriation. Investor rights are protected under the CAFTA-DR by an impartial procedure for dispute settlement that is fully transparent and open to the

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public. Submissions to dispute panels and dispute panel hearings will be open to the public, and interested parties will have the opportunity to submit their views.

During the 1980s, the Sandinista government confiscated some 28,000 real properties. Since 1990, thousands of individuals have filed claims for the properties' return or for compensation. Compensation is most commonly granted via low-interest bonds issued by the government. As of September 2007, the Nicaraguan government had settled more than 4,500 U.S. citizen claims. A total of 677 Embassy registered U.S. claims remain outstanding. The United States continues to press the Nicaraguan government to resolve outstanding claims.

In August 2007, the Nicaraguan government seized, via judicial order, several petroleum storage tanks owned by a U.S. company, claiming that the company had not paid value added taxes associated with the importation of crude oil, even though crude oil is not subject to this tax. The government then used the tanks to store petroleum products imported from Venezuela under the terms of a state-to-state financing agreement. The government subsequently purchased the storage tanks from the company and paid the company for the government's use of the storage tanks during the period prior to the purchase. In a separate instance, the courts declared oil exploration concessions invalid, forcing companies, including some U.S. companies, to renegotiate the terms of concession agreements that had been tendered and awarded in a transparent manner by the previous administration.

ELECTRONIC COMMERCE

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

OTHER BARRIERS

The anti-corruption provisions in the CAFTA-DR require each government to ensure under its domestic law that bribery in matters affecting trade and investment is treated as a criminal offense, or is subject to comparable penalties. Voices within and outside Nicaragua have raised concerns that Nicaragua's legal system is weak, cumbersome, and lacks independence. Many members of the judiciary, including those at high levels, are widely believed to be corrupt or subject to outside political pressures. Enforcement of court orders is uncertain and sometimes subject to nonjudicial considerations. Courts have granted orders (called an "amparo") to protect criminal suspects of white collar crime by enjoining official investigatory and enforcement actions almost indefinitely. Foreign investors are not specifically targeted, but may find themselves at a disadvantage in any dispute with Nicaraguan nationals.

Law 364

U.S. companies and the U.S. Chamber of Commerce have voiced concern that Nicaraguan Law 364, enacted in 2000 and implemented in 2001, retroactively imposes liability on foreign companies that manufactured or used the chemical pesticide DBCP in Nicaragua. DBCP was banned in the United States after the Environmental Protection Agency cancelled its certificate for use (with exceptions) in 1979. U.S. companies have expressed concern that the law and its application under Nicaragua's judicial system lack due process, transparency, and fundamental fairness. In particular, the law allows for retroactive application of no-fault liability related to a specific product, waiver of the statute of limitations, irrefutable presumption of causality, truncated judicial proceedings, imposition of a \$100,000 nonrefundable bond per defendant as a condition for firms to mount a defense in court, and escrow

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requirements of approximately \$20 million earmarked for payment of awards and minimum liabilities as liquidated damages (ranging from \$25,000 to \$100,000). A November 2006 court order lifted a January 2006 embargo placed by the National Assembly on the trademark rights of a U.S. company allegedly involved in the distribution and use of this pesticide. Some plaintiffs seek to lay claim to U.S. company assets in other countries. The U.S. Government has been working with the affected companies and the Nicaraguan government to facilitate resolution of this issue.

NIGERIA

TRADE SUMMARY

The U.S. goods trade deficit with Nigeria was \$30.0 billion in 2007, an increase of \$4.4 billion from \$25.6 billion in 2006. U.S. goods exports in 2007 were \$2.8 billion, up 24.8 percent from the previous year. Corresponding U.S. imports from Nigeria were \$32.8 billion, up 17.6 percent. Nigeria is currently the 50th largest export market for U.S. goods.

The stock of U.S. foreign direct investment (FDI) in Nigeria was \$339 million in 2006 (latest data available), down from \$1.2 billion in 2005. U.S. FDI in Nigeria is concentrated largely in nonbank holding companies and the wholesale trade sectors.

IMPORT POLICIES

Tariffs

In October 2005, the Nigerian government adopted the Economic Community of West African States (ECOWAS) Common External Tariff (CET). Though not yet implemented, the CET would reduce the number of tariff bands in Nigeria from 20 to 4. The four CET tariff bands are: zero duty on capital goods, machinery, and essential drugs not produced locally; 5 percent on imported raw materials; 10 percent on intermediate goods; and 20 percent on finished goods. Nigeria has proposed a fifth band that would impose a 50 percent duty on goods in specific industries that the government seeks to protect. The 50 percent tariff would cover many items currently subject to import bans. Adoption of the CET is part of the ongoing economic reforms aimed at improving Nigeria's trade and investment environment and harmonization of economic policies in the subregion.

Companies state that high tariffs, nontransparent valuation procedures, frequent policy changes and unclear interpretations by the Nigerian Customs Service (NCS) continue to make importing difficult and expensive, and often create bottlenecks for commercial activities. Some importers complain that tariffs are excessively high and that the Nigerian government sometimes uses arbitrary reference prices for valuation purposes. This problem is aggravated by Nigeria's dependence on imported raw materials and finished goods and affects both foreign and domestic manufacturers. Reportedly, many importers resort to undervaluing and smuggling to avoid paying full tariffs. Some of the products that incur very high tariffs include sparkling wine (100 percent), rice (110 percent), and tomato puree (50 percent).

Nontariff Trade Barriers

Despite adoption of the ECOWAS CET, the government continues to ban certain imports, citing the need to protect local industries. Items on the import prohibition list include: maize (corn); bird's eggs; cocoa butter, powder, and cakes; millet; pork; beef; live birds; frozen poultry; fresh and dried fruit; wheat flour; sorghum; vegetable oil and fats; cassava; bottled water; biscuits; spaghetti; noodles; fruit juice in retail packs; beer; nonalcoholic wine; alcoholic beverages; certain textile products; and bagged cement.

Nigeria's uneven application of import and labeling regulations make importing high value perishable products difficult. Disputes between Nigerian agencies over the interpretation of regulations often cause delays, and frequent changes in customs guidelines slow the movement of goods through Nigerian ports.

FOREIGN TRADE BARRIERS

These factors can contribute to product deterioration and may translate into significant losses for importers of perishable goods.

Customs Administration

Nigerian port practices continue to present major obstacles to trade. Importers report erratic application of customs regulations, long clearance procedures, high berthing and unloading costs, and corruption. Customs exemptions granted to U.S. firms as a concession for setting up operations in Nigeria have not always been honored. Under a new physical destination inspection regime that began in 2006, all imports are inspected on arrival into Nigeria, rather than at the ports of origin.

STANDARDS, TESTING, LABELING, AND CERTIFICATION

Rules concerning sanitary and phytosanitary standards, testing, and labeling are well defined, but bureaucratic hurdles slow the import approval process. Regardless of origin, Nigeria requires that all food, drug, cosmetic, and pesticide imports be accompanied by certificates of analysis from manufacturers and appropriate national authorities; and specified animal products, plants, seeds, and soils must be accompanied by proper inspection certificates. By law, items entering Nigeria must be labeled exclusively in the metric system. U.S. producers and exporters note that relabeling goods to meet this requirement would be expensive and would limit U.S. exports to Nigeria. The NCS is charged with preventing the entry of products with dual or multiple markings, but such items are often found in Nigerian markets.

The National Agency for Food and Drug Administration and Control (NAFDAC) is charged with protecting Nigerian consumers from fraudulent or unhealthy products. The agency continues to focus special attention on eliminating the illicit importation of counterfeit and expired pharmaceuticals, particularly from East and South Asia. NAFDAC's limited capacity for carrying out inspections and testing contributes to what critics have characterized as an occasionally heavy handed or arbitrary approach to regulatory enforcement which has sometimes led to delays in clearance of legitimate food imports.

Although Nigeria has no laws governing agricultural biotechnology or biosafety, the government is generally supportive of biotechnology. An enabling regulatory framework for biotechnology is in the early stages of consideration. The Federal Ministry of Environment has presented draft biosafety legislation to the National Council on Environment, the highest decision-making body on environmental issues. If approved by the Council on Environment, the legislation will be sent forward to the National Executive Council of Ministers for ratification and then, if ratified, to Congress for its consideration. The draft bill generally portrays products of biotechnology as safe for animal and human consumption; however, it includes a mandatory labeling requirement.

GOVERNMENT PROCUREMENT

Nigeria is not a signatory to the GPA. The government has made modest progress on its pledge to conduct an open and competitive bidding process for government procurement. The Public Procurement Act, which was signed into law in June 2007, established the Bureau of Public Procurement (BPP) in place of the Budget Monitoring and Price Intelligence Unit. The public procurement reforms are aimed at ensuring that the procurement process for public projects adheres to international standards for competitive bidding. The BPP acts as a clearing house for government contracts and monitors the implementation of projects to ensure compliance with contract terms and budgetary restrictions.

FOREIGN TRADE BARRIERS

Procurement above 50 million naira (\$419,000) is subject to review by the BPP. The 36 state governments have also agreed to pass the Public Procurement Act in their respective states.

Foreign companies incorporated in Nigeria receive national treatment, government tenders are published in local newspapers, and a “tenders” journal is sold at local newspaper outlets. U.S. companies have won government contracts in several sectors. Unfortunately, many companies that have won contracts have subsequently had difficulty in getting paid, usually as a result of delays in the national budget process.

The National Petroleum Investment and Management Services agency's approval is required for all procurement in the energy sector above \$500,000. Approval processes are slow and can significantly increase the time and resources required for a given project.

EXPORT SUBSIDIES

Nigeria's government administers various export incentives such as tax concessions, export development funds, capital asset depreciation allowances, and foreign currency retention programs in addition to operating Free Trade Zones, and Export Processing Zones. In September 2007, the government announced a freeze on new tax and duty waivers, exemptions, and other incentives, and ordered an investigation of their implementation. Businesses that were granted incentives before the freeze will continue to enjoy the incentives granted until the investigation is concluded and the government acts on the recommendations.

INTELLECTUAL PROPERTY RIGHTS (IPR) PROTECTION

Nigeria is a party to the World Intellectual Property Organization (WIPO) Convention, the Berne Convention, and the Paris Convention for the Protection of Industrial Property, the Patent Cooperation Treaty, and the Patent Law Treaty and has signed the WIPO Copyright Treaty and the WIPO Performances and Phonograms Treaty. Legislation intended to establish a legal framework for an IPR system that complies with WTO obligations is pending in the National Assembly.

The government's lack of institutional capacity to address IPR issues is a major constraint to enforcement. Relevant Nigerian institutions suffer from low morale, poor training, and limited resources. Fraudulent alteration of IPR documentation is common. Despite Nigeria's active participation in the conventions cited above and growing interest among Nigerians in seeing their intellectual property protected, piracy is rampant. Counterfeit automotive parts, pharmaceuticals, business and entertainment software, music and video recordings, and other consumer goods are sold openly, and piracy of books and optical disc products is also a problem. Industry reports that intellectual property infringers from other countries appear increasingly to be using Nigeria as a base for the production of pirated goods. Efforts to combat the sale of counterfeit pharmaceuticals have yielded some results.

Patent and trademark enforcement remains weak, and judicial procedures are slow and reportedly subject to corruption. (See “Other Barriers” section.)

Nigeria's broadcast regulations do not permit rebroadcast or excerpting of foreign programs unless the station has an affiliate relationship with a foreign broadcaster. This regulation is generally respected, but some cable providers illegally transmit foreign programs. The National Broadcasting Commission monitors the industry and is responsible for punishing infractions.

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Almost no foreign feature films have been legally distributed in the country in the last two decades. Widespread pirating of foreign and domestic videotapes discourages the entry of licensed distributors. In 2004, the Nigerian Copyright Commission (NCC) launched an anti-piracy initiative named “Strategy against Piracy” (STRAP). The Nigerian police force, working closely with the NCC, has raided enterprises producing and selling pirated software and videos and a number of high profile charges have been filed against IPR violators. The Nigerian Economic and Financial Crimes Commission has also been active in IPR enforcement.

SERVICES BARRIERS

Foreign energy services suppliers are confronted with a number of barriers in Nigeria, particularly with respect to movement of personnel. Nigeria imposes quotas on foreign personnel based on the issued capital of firms. Such quotas are especially strict in the oil and gas sector and may apply to both production and services companies. Oil and gas companies must hire Nigerian workers unless they can demonstrate that particular positions require expertise not found in the local workforce. Positions in finance and human resources are almost exclusively reserved for Nigerians. Certain geosciences and management positions may be filled by foreign workers with the approval of the National Petroleum Investment and Management Services (NAPIMS) agency. Each oil company must negotiate its foreign worker allotment with NAPIMS. Significant delays in this process and in the approval of visas for foreign personnel present serious challenges to the energy industry in acquiring the necessary personnel for their operations.

INVESTMENT BARRIERS

Investment in the petroleum sector is limited to existing joint ventures or production-sharing agreements. Foreign investors may buy shares of any Nigerian firm except firms on a “negative list” (such as manufacturers of firearms, ammunition, and military and paramilitary apparel). Foreign investors must register with the Nigerian Investment Promotion Commission after incorporation under the Companies and Allied Matters Decree of 1990. The Decree prohibits nationalization or expropriation of a foreign enterprise, except when necessary to protect the national interest.

Potential investors must contend with poor infrastructure, complex tax administration procedures, confusing land ownership laws, arbitrary application of regulations, corruption, and crime. The sanctity of contracts is often violated and Nigeria’s court system for settling commercial disputes is weak and sometimes biased.

Foreign oil companies are under significant pressure to increase procurement from domestic firms. The Nigerian government, through the Nigerian Content Division (NCD) of the Nigerian National Petroleum Corporation (NNPC), set a target of 45 percent local content for oil related projects by 2006 and 70 percent by 2010. In many cases, sufficiently trained personnel and physical infrastructure do not currently exist to meet the government’s local content targets. Although some domestic firms possess adequate technical expertise, managerial and financial capabilities are often lacking. Legislation to codify various levels of Nigerian content in specific petroleum activities failed to pass the National Assembly in 2007. The bill’s sponsors plan to reintroduce it in 2008.

OTHER BARRIERS

The Nigerian government has increased its efforts to eliminate financial crimes such as money laundering and advance fee fraud (also known as “419 fraud,” named after the relevant section of the Nigerian

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Criminal Code). With the encouragement and cooperation of U.S. law enforcement agencies, the Nigerian government is now prosecuting more “419” perpetrators. In May 2007, Nigeria was admitted into the Egmont Group of Financial Intelligence Units. In June 2006, the Financial Action Task Force removed Nigeria's name from the list of noncooperating countries and territories in the fight against money laundering and other financial crimes.

International monitoring groups routinely rank Nigeria among the most corrupt countries in the world. Some U.S. suppliers believe they lose sales when they refuse to engage in illicit or corrupt behavior. Other U.S. exporters say Nigerian businessmen and officials understand that U.S. firms must adhere to the U.S. Foreign Corrupt Practices Act, and they believe that the law's restrictions help minimize their exposure to corruption.

NORWAY

TRADE SUMMARY

The U.S. goods trade deficit with Norway was \$4.3 billion in 2007, a decrease of \$425 million from \$4.7 billion in 2006. U.S. goods exports in 2007 were \$3.1 billion, up 27.5 percent from the previous year. Corresponding U.S. imports from Norway were \$7.3 billion, up 3.3 percent. Norway is currently the 46th largest export market for U.S. goods.

U.S. exports of private commercial services (*i.e.*, excluding military and government) to Norway were \$2.5 billion in 2006 (latest data available), and U.S. imports were \$2.0 billion. Sales of services in Norway by majority U.S. owned affiliates were \$3.0 billion in 2005 (latest data available), while sales of services in the United States by majority Norway-owned firms were \$617 million.

The stock of U.S. foreign direct investment (FDI) in Norway was \$10.3 billion in 2006 (latest data available), up from \$8.8 billion in 2005. U.S. FDI in Norway is concentrated largely in the mining and manufacturing sectors.

IMPORT POLICIES

Industrial Goods

Norway, along with Switzerland, Iceland, and Liechtenstein, is a member of the European Free Trade Association (EFTA). EFTA members, with the exception of Switzerland, participate in the European Union (EU) single market through the European Economic Area (EEA) accord. Norway grants preferential tariff rates to EEA members. As an EEA signatory, Norway assumes most of the rights and obligations of EU member states. The exceptions are in the agricultural and fishery sectors, in addition to finance and foreign policy, none of which are covered by the EEA accord. As a non-EU member, Norway's ability to influence EU decisions is limited.

Although Norway maintains a liberal trade and investment regime with respect to industrial products, its agricultural sector remains highly protected. Some of Norway's agriculture trade restrictions are more severe than those of the EU, such as nontariff barriers related to approval for agricultural products derived from biotechnology. As a general matter, Norway has implemented or is in the process of implementing most EU trade policies and regulations. Therefore, U.S. exports to Norway face many of the same trade and investment barriers that limit U.S. access to the EU, such as the ban on hormone-treated meat products.

Norway's market, except for agricultural products and processed foods, is generally transparent and open. Norway has continued on a unilateral basis to dismantle import tariffs on industrial products. The average Most Favored Nation (MFN) tariff on nonagricultural products has fallen from 2.3 percent in 2000 to less than 1 percent today. More than 90 percent of industrial tariff lines are currently duty free.

Agricultural Products

Although agriculture accounts only for about 1 percent of Gross Domestic Product (GDP), Norway maintains strict protections that shelter the sector from global competition. As justification for this policy, Norway emphasizes the importance of "nontrade concerns," which include food security,

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environmental protection, rural employment, and the maintenance of human settlement in sparsely populated areas. One of Norway's leading concerns in the WTO Doha Development Round has been the preservation of its highly subsidized and protected agricultural sector. Norway remains committed to advocating tariff, sensitive product, and special product protections for its agricultural sector.

Agricultural Tariffs

Norway bound its tariffs for agricultural commodities in 1995 as part of its WTO commitments. Tariffication of agricultural nontariff barriers as a result of the Uruguay Round led to the replacement of quotas with high *ad valorem* product tariffs. Although Norway is only 50 percent self-sufficient in agricultural production, it maintains a protective system that assures that domestic producers – farmers and the food processing industry – have little competition until all domestic production has been consumed. Tariff rates on agricultural products currently average about 38 percent – in comparison to less than 1 percent for nonagricultural products – and can range as high as several hundred percent.

Domestic agricultural shortages and price surges have been offset by temporary tariff reductions. Lack of predictability in tariff adjustments and insufficient advance notifications of these adjustments – generally only 2 days to 5 days before implementation – favor nearby European suppliers and make imports from the United States, especially of fruits, vegetables, and other perishable horticultural products, very difficult. For a number of processed food products, tariffs are applied based on their recipes, requiring the Norwegian importer to provide a detailed disclosure of product contents. Many exporters to the Norwegian market refuse to give all requested details and their products are, as a result, subjected to maximum tariffs.

Agricultural Tariff-Rate Quotas

Norwegian tariff-rate quotas (TRQs) are divided into two categories – minimum access quotas and Generalized System of Preferences quotas. TRQs exist for grains and a number of horticultural products. In 2001, Norway also implemented auction quotas for grain and other carbohydrate feed. All quotas are traded at auctions held by the Norwegian Agricultural Authority, a Ministry of Agriculture agency that controls all agricultural imports. Interest in the quotas among Norwegian importers is limited, except for grain, despite the substantial reductions in duties for some products. Compared with domestic consumption and production, the quotas are very small. Most of the interest in Norway's quota auction comes from smaller importers who use their quotas for niche products.

Auction participation is inexpensive, and those who secure a quota are not required to actually import. Although about 98 percent of the quotas each year are sold on these auctions, only 40 percent to 60 percent of the quotas auctioned are usually filled. There is no system to reallocate unused import quotas, also hindering foreign exporters seeking access to the Norwegian market for these products.

Raw Material Price Compensation

Though Norway uses high import tariffs to protect domestic commodities from foreign competition, the situation is more complex for certain processed goods. Although the EEA does not generally apply to agricultural products, it includes provisions on raw material price compensation that are meant to increase trade in processed food. Norway has a special agreement with the EU within the EEA framework that grants some EU processed food products a preferential duty. In 2003, this agreement extended coverage to bread and baked goods, breakfast cereals, chocolate and sweets, ice cream, pasta, pizza, soups, and

sauces. This scheme disadvantages U.S. exporters in the Norwegian market for the covered processed foods.

Norway also maintains a price reduction scheme that includes subsidies for using certain domestically-produced raw materials in processed foods. Products for which such subsidies are paid include chocolate, sweets and ice cream (for milk and glucose), and pizza (for cheese and meat). The purpose of the system is to help compensate the domestic food processing industry for high domestic raw material costs.

EU Based Agricultural Regulations

In addition to its own requirements related to the import of food products, Norway has generally implemented EU regulations since 1999. The majority of Norwegian sanitary and phytosanitary measures related to trade in plants, animals, and foodstuffs are harmonized with EU legislation through the EEA Agreement. An exception is plant health legislation and the approval and use of pesticides. Some EU regulations that Norway has adopted inhibit trade, such as EU regulations on veterinary control of animals and animal products requiring that meat products entering the country come from an EU-approved plant and be accompanied by the necessary health certificates. The importer in Norway must be registered and notify authorities in advance of the arrival of any shipment (24 hours in advance for plants and 30 days in advance for animals). Except for fish products, shipments must enter through either Oslo harbor or Oslo airport. Twenty entrance locations exist for fish products.

Norway also implements EU regulations that bar imports of meat from animals treated with growth hormones. However, the market for U.S. beef for consumption on cruise ships based in, or calling on, Norwegian ports is burgeoning, as beef consumed on board is not subject to such import restrictions.

Biotechnology

Norway's strict limitations on imports of agricultural biotechnology products have had an adverse impact on U.S. producers. Before the limitations took effect in 1996, U.S. exporters usually supplied 60 percent to 80 percent of the Norwegian soybean market. As a result of the limitations, the entire market has been lost.

Although not a member of the EU, as an EEA member Norway is required to implement EU legislation with regard to food, feed, and seed produced from genetic engineering. However, the Norwegian Gene Technology Act of 1993 is more restrictive than EU legislation, as it requires proof that agricultural biotechnology products were developed with an ethical justification, provide a societal benefit, and accord with sustainable development goals. This difference in the assessment of products of bioengineering for licensing has led to Norway's rejection of several biotechnology products approved in the EU. Only four biotechnology products have actually received approval for marketing in Norway – one line of tobacco and three lines of carnations. In 2004, the EU implemented Regulation 1829/2003 on Genetically Modified Food and Feed, as well as Regulation 1830/2003 on Traceability and Labeling of Genetically Modified Organisms and the Traceability of Food and Feed Products produced from Genetically Modified Organisms. These polices were integrated into Norwegian regulations in September 2005.

All food and feed produced from genetic engineering – including products that no longer contain detectable traces of agricultural products derived from biotechnology – must be labeled. The allowable adventitious presence level is set at 0.9 percent for EU-approved products and 0.5 percent for products that have not yet been approved but have successfully completed an EU or Norwegian risk assessment.

All products testing above these levels must be labeled. The regulation does not require labeling of products that are not food ingredients, such as processing aids. Meat, milk, or eggs obtained from animals fed with products derived from biotechnology or treated with medicinal products derived from biotechnology do not require additional labeling.

Flame Retardants

On the recommendation of the Norwegian Pollution Control Authority, on May 3, 2007, Norway proposed a regulation restricting the import or export of 18 chemical substances – including the brominated flame retardants, Tetrabromobisphenol-A (TBBPA) and Hexbromocyclododecane (HBCD) – despite risk assessments conducted by the EU demonstrating a lack of consumer risk for both TBBPA and HBCD. The proposed legislation was due to enter into force on January 1, 2008. However, implementation has been indefinitely postponed due to the magnitude of comments and concerns on the legislation sent to the Norwegian government from domestic and foreign industry and foreign governments.

Separately, on January 17, 2008, Norway announced the decision to ban the flame retardant DecaBDE in all applications apart from transport as of April 1, 2008. This extends an existing ban on DECA in electric and electronic equipment to applications such as textiles, upholstered furniture and cables. Norway did not implement the EU's exemption of DecaBDE as granted under the restriction on Hazardous Substances Directive. U.S. companies are concerned that Norway's nonimplementation of EU standards means that they must now comply with a separate set of non-EU standards.

The proposed legislation was due to enter into force on January 1, 2008. However, implementation has been indefinitely postponed due to the magnitude of comments and concerns sent to the Norwegian government from domestic and foreign industry and foreign governments.

Wines and Spirits

The wine and spirits retail market in Norway is controlled by the government monopoly Vinmonopolet, with a stated social mission of contributing toward curbing alcohol consumption, regulating spirit access, and adhering to a system of social control. There were 212 Vinmonopolet stores throughout Norway at the end of 2007, with over 10,000 products sold. The market share of U.S. wine offered through the Vinmonopolet in 2007 is less than 2 percent. Wine and spirits sales through ordinary retail stores are not allowed. An approved importer/agent and distributor are required in order to enter the market. Gaining approvals to include wines and other alcoholic beverages on Vinmonopolet's retail list is cumbersome, contributing to the limited variety of U.S. wines available to Norwegian consumers. Vinmonopolet relies on a rather subjective tender system, with set specifications and conditions for quality, price and delivery, to acquire most new products. Products chosen for sale through Vinmonopolet must meet annual minimum sales quotas or they are dropped from the basic list inventory. Advertising of alcoholic beverages is strictly prohibited. In 2007, U.S. and Norwegian authorities held constructive discussions as to raising the awareness of U.S. wines and increasing the number of quality U.S. wines in Norway.

GOVERNMENT PROCUREMENT

Norway is a signatory to the WTO Agreement on Government Procurement (GPA). Norway's government procurement procedures are nondiscriminatory and based on open, competitive bidding for procurement above certain threshold values. A similar set of national rules applies to public contract tenders below these thresholds. Exceptions for defense procurement leave a "gray area" for dual use

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items such as search and rescue helicopters that can also be used in military operations. National law regulates defense procurement. Although disputes may be settled by the European Surveillance Authority (ESA) or by the courts, the process can be unduly lengthy.

INTELLECTUAL PROPERTY RIGHTS (IPR) PROTECTION

Enforcement of IPR in Norway is inconsistent. Norwegian police and judicial authorities are generally committed in principle to taking action against piracy, counterfeiting, and other forms of IPR infringement, to the extent authorized by Norwegian law, and have successfully prosecuted a number of high profile cases. However, the authorities lack the capability and resources to handle complaints about IPR violations in many cases. Given limited resources, Norwegian law enforcement authorities have placed more priority on areas like computer crime than traditional IPR violations. For example, local business representatives indicate that complaints about copyright infringement usually either remain unaddressed or are given low priority. The Norwegian government will review its IPR laws in 2008 in preparation for a future White Paper.

Internet piracy and cable/satellite decoder and smart card piracy have risen in Norway. Broadband Internet is standard, making peer-to-peer downloads of music and video easy and common. Peer-to-peer networks using Direct Connect systems or BitTorrent to share pirated files are popular. Groups that release early copies of motion pictures (including so-called “encoding groups,” “release groups,” and “top sites”) on the Internet are problematic. Television and cable companies are active in combating decoder and smart card piracy, and satellite operators have introduced conditional access technologies that have mitigated the problem. Private organizations like the Motion Picture Association are working to raise public awareness of Internet and video piracy, for example, by running anti-piracy advertisements in movie theaters. Affected organizations have also advocated that Internet Service Providers (ISPs) be obligated to disclose the identity of customers committing piracy to rights-holders. They claim that Norwegian authorities have not undertaken any serious public relations efforts to combat Internet or other piracy of copyrighted works.

Norway does not expressly ban imports of counterfeit or pirated goods. In September 2007, legislation was enacted providing Norwegian customs officials with discretionary authority to inform rights holders of seized goods that are suspected of being counterfeit or pirated. Previously, Norway’s strict privacy laws barred customs authorities from informing rights holders when such suspected shipments arrive at the border. The new legislation provides rights holders with a 5 day window, following notice of the seized goods, to decide whether to proceed with an injunction request. Should that request fail, the rights holder is liable for all legal fees associated with that request. Although counterfeit and pirated goods are not commonly available domestically, counterfeiters and intellectual property pirates have used Norway as a “gateway” to third countries – importing illicit goods, paying applicable import duties, and reshipping the goods to EU nations.

In June 2005, Norway enacted legislation based on the EU’s 2001 Copyright Directive that combats Internet piracy and addresses some gaps in Norway’s IPR protections. The legislation bans unauthorized peer-to-peer file sharing and requires that creative works can be downloaded from the Internet only with the artist’s prior approval. However, contrary to the EU Copyright Directive, Norway has failed to provide rights holders the ability to seek injunctive relief against ISPs that allow pirate websites to operate on their networks. The Ministry of Church and Cultural Affairs informed rights-holder representatives that rights holders are allowed to seek such injunctive relief under existing Norwegian law. Despite such assurances, industry representatives have voiced concern that the Ministry’s interpretation would not be

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sustained in the Norwegian court system. The EFTA Surveillance Authority may review whether Norway has correctly implemented the EU Copyright Directive.

Norwegian legislation also grants legal protection to technological protection measures designed to prevent unauthorized use of a creative work. The law bars the intentional circumvention of such systems in most circumstances. However, an exception is made for the “private use” of music compact disc (CD) content on certain playback equipment. This exception allows music CD owners to circumvent protection measures on their CDs in order to transfer copyrighted music to an MP3 player. Although not expressly stated in the law, the legislative history of this provision suggests that “private use” also includes providing free copies to family and friends. Norway budgeted NOK 33.5 million in 2006 and NOK 34.8 million in 2007 for compensation payments to adversely affected music and motion picture rights holders. Norway plans to make such payments annually from future government budgets. However, the funds will be paid only to artists in the EU and EFTA countries, though copyrighted U.S. products undoubtedly comprise a high percentage of downloaded material. The funds are distributed by a nongovernmental organization, the Norwegian Organization of Rightholders in Audio-visual Works, which uses radio air time statistics to determine their allocation among EU and EFTA artists.

Significant public attention has developed in Norway with respect to the demands of some consumer advocates to mandate interoperability among consumer electronic devices used for downloading and playing recorded music. While it is not clear whether Norwegian law will be amended to address interoperability of digital rights management (DRM) technologies, this issue merits continued monitoring to ensure that the intellectual property rights of DRM developers, and of artists whose copyrighted works are protected by DRM technologies, remain fully respected.

Different sets of taxes/levies are imposed on home video sales in Norway, including a fixed levy assessed on videocassettes and optical discs, paid by distributors. Industry representatives voice concerns that rights holders do not receive any benefit from such a levy.

SERVICES BARRIERS

Financial Services

Current regulations require that the Norwegian Financial Supervisory Authority grant permission for ownership levels in local financial institutions that exceed certain thresholds. The Authority assesses the acquisitions to ensure that prospective buyers are financially stable and the acquisition does not unduly limit competition. The Authority applies national treatment to nonbank foreign financial groups and institutions, but applies nationality restrictions to bank ownership. At least half the members of the board and half the members of the corporate assembly of a financial institution must be nationals and permanent residents of Norway or another EEA nation. On January 1, 2005, Norway removed the ceiling on foreign equity in a Norwegian financial institution, provided the Authority has granted a concession.

Telecommunications

Telenor, a company in which the government holds a 54 percent stake, is the dominant operator in the Norwegian telecommunications market. In 2005, the Norwegian Post and Telecommunications Authority (NPTA), in line with the EU’s telecommunications regulatory framework, declared that Telenor had significant market power in a number of segments in the telecommunications sector including: leased lines; call origination; transit services; wholesale unbundled access to metallic loops and sub-loops for the purpose of providing broadband and voice services; wholesale broadband access; and wholesale

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transmission services for national radio, local television, and national television on analog terrestrial networks. The NPTA imposed regulatory requirements on Telenor in order to facilitate competitors' entry into, and further access to these markets.

Telenor's dominant position in the Norwegian broadcasting market has been raised as a growing concern by the Norwegian telecommunications and broadcasting sector, media and Parliamentarians. Telenor is currently the Norwegian market leader in both cable and satellite broadcasting through its subsidiary content provider Canal Digital. Telenor's reported television channel holding expansion is raising market dominance concerns given its already significant market position in the Norwegian television, Internet, and wireless industries. Compared to the printed press, there is weaker legislation in the telecommunications and broadcast industry regulating market position exploitation.

INVESTMENT BARRIERS

Norway welcomes foreign investment as a matter of policy and grants national treatment to foreign investors, except in financial services, mining, hydropower, and property acquisition. Foreign companies are required to obtain concessions for the right to own or use various kinds of real property, including forests, mines, tilled land, and waterfalls. However, foreign companies do not need concessions to rent real estate, provided that the rental contract is made for a period of fewer than 10 years.

Norway's petroleum concession process still operates on a discretionary basis, with the government awarding licenses based on subjective factors rather than competitive bidding. The Norwegian government rarely allows foreign investment in hydropower production, and such investments, if approved, are limited to 20 percent equity participation.

Energy Sector Competition

Norway's two major petroleum producers and the largest Norwegian Continental Shelf (NCS) operators – the government controlled Statoil and Norsk Hydro – merged on October 1, 2007. The new entity, StatoilHydro, will control 80 percent of NCS operatorships. Following the merger, the Norwegian government has a 62.5 percent share in the merged firm, and stated that it will increase ownership to a 67 percent share. Given the two Norwegian petroleum firms' previous dominant and competitive NCS operatorship roles, the merger may have ramifications for foreign competitors seeking to operate and/or develop the NCS. The Norwegian government contends that the merger will not reduce NCS value creation, even though the government recognizes that the merger requires governmental monitoring to ensure a balance in future NCS development.

On June 22, 2007, the Norwegian government also bought a 30 percent share in the Norwegian company Aker Holding AS, which in turn is a 40 percent owner of the largest Norwegian-owned company in the country's oil and gas industry, AkerKvaerner. AkerKvaerner is the largest equipment supplier to Norway's oil and gas industry. The approximately \$800 million investment was prompted by the government's call to ensure national ownership in key businesses. The impact on market access to U.S. companies resulting from both the StatoilHydro merger, and AkerKvaerner buy-in, is unclear.

Government Pension Fund

In 2004, the Norwegian Ministry of Finance adopted ethical guidelines for the "Government Pension Fund - Global" (the Fund), one of Norway's sovereign wealth funds. The Fund is composed of 78 percent tax revenue the government of Norway receives from petroleum profits and from returns on its

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direct interests in petroleum production licenses; this capital is then invested entirely through small holdings in foreign financial instruments. At the end of 2007, assets accumulated in the Fund were projected to reach \$388 billion. The ethical guidelines state that the Norwegian Central Bank, which manages the Fund, may exclude investments in, or divest itself from, companies that: (1) produce weapons, such as nuclear arms or cluster bombs, that may violate humanitarian principles; or (2) contribute to serious violations of fundamental ethical norms, such as through human rights violations, severe environmental damage or gross corruption. In 2006, the Finance Ministry, on the recommendation of the Fund's Council on Ethics, instructed the Central Bank to divest shares in a number of companies, the majority of which are from the United States. In 2007, one additional (non-U.S.) company was excluded from the Fund's investment portfolio. In 2008, the government will begin preparations of a White Paper on the ethical review process.

OTHER SECTORAL POLICIES

Pharmaceuticals

Foreign pharmaceutical firms continue to experience significant difficulties in the Norwegian market. Until 1992, Norway limited patent protection for pharmaceuticals to the manufacturing process for a drug's active ingredient. Although Norway introduced product patents for pharmaceuticals in 1992, the previous system has left a difficult legacy for pharmaceutical companies as competitors claiming to use nonpatented processes have recently entered the market. Several U.S. pharmaceutical companies are involved in legal actions in Norwegian courts alleging infringement by these new entrants. One U.S. company was denied a preliminary injunction in a patent infringement case in 2006, which allowed the copycat drug to enter the market immediately, cost the company significant revenue, and led to layoffs of local employees. The United States has supported a proposal, advanced by affected multinational pharmaceutical companies, that Norway amend the public health care system's drug reimbursement regulations to bar pharmacies from substituting generics for branded drugs that are protected by process patents. The Norwegian government has so far rejected these appeals. The U.S. Government has consistently urged Norway to recognize and address the negative consequences to foreign pharmaceutical companies resulting from the country's reliance on process, rather than product, patent protections. U.S. pharmaceutical companies have surmised that 50 percent to 60 percent of their local sales are at risk due to this policy.

Norway's procedures governing the reimbursement of drug costs lack transparency. U.S. pharmaceutical products often face lengthy delays in securing approval for their products' inclusion in the state health care reimbursement scheme. Reimbursement and approval decisions are complex and political, with the Parliament making final decisions as part of its budget process, rather than leaving reimbursement decisions to the discretion of the Norwegian Medicines Agency (NMA). The NMA is the government body responsible for supervising the production, trials, marketing, and cost-effectiveness of medicines.

U.S. pharmaceutical manufacturers cite Norway's total prohibition of supplying product information to consumers – ranging from advertising to scientific data – as an additional barrier to market entry and expansion. As a direct result of such prohibitions, consumers are not fully informed about pharmaceutical innovations, often delaying consumer access to the latest medicines.

The Norwegian Association of Pharmaceutical Manufacturers, which includes U.S. pharmaceutical firms, has complained about Norway's inadequate implementation of EU directives on transparency of measures regulating medicinal products for human use. Although Norway complies with the letter of EU requirements that reimbursement applications be acted on within 180 days, Norwegian authorities often

reject applications as the period expires, giving them an unlimited amount of time to consider applications once appealed.

Automotive Sector

The general vehicle taxation system that Norway implemented in 1996 – under which taxes are calculated progressively on the basis of vehicle weight, engine horsepower, and engine displacement – has had a strong negative impact on sales of U.S. vehicles in Norway. These parameters tend to be unfavorable to vehicles manufactured in the United States, which are generally heavier and equipped with engines with more horsepower and higher displacement than vehicles manufactured in other nations. In the year before this tax regime went into effect, approximately 9,500 American vehicles were sold in Norway, nearly 8 percent of the market. Since that time, sales of U.S. vehicles in Norway have steadily declined, to less than 1,500 in 2005 (about 1 percent of the market), most of which were light trucks. However, in its 2006 budget, the Norwegian government imposed new taxes on light trucks that, in effect, eliminated the last significant remaining market for U.S. vehicles in Norway. More than 1,000 U.S. light trucks were sold in Norway before the tax went into effect. Post-tax sales plummeted to several dozen vehicles.

Effective January 1, 2007, Norway substituted a new carbon dioxide (CO₂) emissions factor for the engine displacement parameter in its vehicle taxation regime. All non-EU tested cars are subject to an engine displacement factor when taxes are formulated. Certain American cars exported to Norway, which are neither tested in Europe, nor use EU test cycles, must now use the displacement factor (which increased by 23 percent from 2006 levels), resulting in higher taxes. The new system encourages sales of diesel powered passenger vehicles, which generally are not manufactured in the United States. Moreover, Norway will not accept any foreign emission standards, including those of the U.S. Environmental Protection Agency, in the new tax regime, adhering only to EU standards for measuring CO₂ emissions. Norway announced that it would lift the light truck tax in 2007 for trucks with cargo space above certain limits, but the space limitations deny most U.S. light trucks the benefit of the restored exemption. Estimates indicate a 50 percent reduction in the number of exported American cars, specifically affected by the new tax, since the newly-factored tax rate was instituted.

OMAN

TRADE SUMMARY

The U.S. goods trade balance with Oman went from a deficit of \$80 million in 2006 to a surplus of \$18.4 million in 2007. U.S. goods exports in 2007 were \$1.1 billion, up 27.8 percent from the previous year. U.S. imports from Oman were \$1.0 billion, up 14.6 percent over the corresponding period. Oman is currently the 70th largest export market for U.S. goods.

The stock of U.S. foreign direct investment in Oman in 2006 was \$819 million (latest data available), up from \$528 million in 2005.

After consultations with Congress, the United States began free trade agreement (FTA) negotiations with Oman in March 2005. On January 19, 2006, the United States and Oman signed the United States-Oman Free Trade Agreement. The President signed legislation approving and implementing the FTA on September 26, 2006. The FTA will be brought into force when Oman has enacted the necessary implementing legislation and regulations.

IMPORT POLICIES

Tariffs

As a member of the Gulf Cooperation Council (GCC), Oman applies the GCC common external tariff of 5 percent for most products, with a limited number of GCC-approved country-specific exceptions. Oman's exceptions include tariff rates of 100 percent on pork, alcohol products, and cigarettes, and 25 percent on edible oils sold in retail packaging, as well as protective duties on a limited number of agricultural products such as dried lemons, bananas, dates, and ghee.

Upon entry into force of the United States-Oman FTA, 100 percent of bilateral trade in industrial and consumer products, with the exception of certain textile and apparel products, will become duty free. Oman will provide immediate duty free access on virtually all products in their tariff schedule and will phase out tariffs on the remaining handful of products within 10 years. On agricultural products, Oman will provide immediate duty free access for U.S. agricultural products in 87 percent of agricultural tariff lines. Oman will phase out tariffs on the remaining products within 10 years.

Import Licensing

In Oman, companies that import goods must be registered with the Ministry of Commerce and Industry. Importation of certain classes of goods, such as alcohol, livestock, poultry, and their respective products, as well as firearms, narcotics, and explosives, requires a special license. Media imports are subject to censorship.

Documentation Requirements

Except for food products, Oman does not require legal documents to be authenticated if the importing company has an existing agency agreement with a U.S. exporter. In 1996, Oman began the process of simplifying customs clearance documentation to expedite the flow of goods and promote its ports and

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airports. Only Omani nationals and companies of WTO Members that are registered as importers are permitted to submit documents to clear shipments through customs.

Customs Valuation

Oman implemented the Customs Valuation Agreement when it joined the WTO in 2000, and is working to further enhance its customs valuation system.

STANDARDS, TESTING, LABELING, AND CERTIFICATION

Standards

As part of the GCC Customs Union, the six Member States are working toward unifying their standards and conformity assessment systems. However, each member state currently continues to apply either its own standard or a GCC standard, causing confusion among some U.S. businesses. GCC member states do not consistently notify measures to WTO Members and the WTO Committee on Sanitary and Phytosanitary Measures (SPS) and Technical Barriers to Trade (TBT) or allow WTO Members an opportunity to provide comments.

The GCC Standards Committee has recently approved two new standards that will replace existing standards for the labeling and expiration periods of food products. While the new standards appear to incorporate international guidelines and address some longstanding issues, particularly in relation to expiration periods, some requirements that have previously complicated the import process remain. All Member States are expected to adopt these two standards as national standards in order to implement them.

The GCC shelf life standard establishes mandatory expiration periods for 22 perishable products or product categories such as chilled meats, chilled offal, fresh dairy products, baby foods, fruit juices, and table eggs. This standard also establishes voluntary expiration periods for a range of frozen and processed products. Manufacturers have the option of using the actual expiry period in lieu of the voluntary expiration periods established in the standard. The standard also exempts a number of products from expiration periods including salt, white sugar, dried legumes, dried vegetables, spices and certain condiments, tea, rice, vinegar, and fresh fruits and vegetables including potatoes that have not been peeled or cut.

The new standards eliminate the long standing requirement that at least one-half of a product's shelf life be valid when a product reaches the port of entry. However, they would still require both a production date and an expiration date on nonperishable food items, forcing U.S. producers to re-label products exported to the GCC, thereby leading to increased costs. The new standards appear inconsistent with international standards and do not appear to have a clear scientific basis. Specifically, the standards do not appear to reflect Codex guidelines. The United States has outlined its specific concerns with these standards and has established a dialogue between U.S. and GCC technical experts to discuss a possible resolution of the concerns raised.

In May and October 2007, respectively, Bahrain and Oman notified WTO Members of recently proposed procedures meant to harmonize food safety import requirements for all GCC member states. The United States and other WTO Members provided comments outlining significant concerns with the procedures, which, as currently drafted, create unnecessary obstacles to trade and would substantially disrupt food exports to GCC member states from its trading partners. The GCC member states are reportedly

developing a response to these comments, and the United States has established a dialogue between U.S. and GCC technical experts to discuss the procedures and potential amendments to address the concerns raised.

Conformity Assessment

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

GOVERNMENT PROCUREMENT

Oman provides a 10 percent price preference to tenders that contain a high content of local goods or services, including direct employment of Omani nationals. The government considers the quality of a product or service, as well as cost, in evaluating bids. For most major tenders, Oman typically invites bids from firms either already registered in Oman or pre-selected by project consultants. Oman advertises tenders in the local press, international periodicals, and on the Oman Tender Board's website. Bidders are requested to be present at the opening of bids, and interested persons may view the process on the Tender Board's website. U.S. industry has reported that bidders' costs can sometimes increase dramatically when award decisions are delayed, sometimes for years, or the bidding is reopened with modified specifications and, typically, short deadlines. Oman's Ministry of Defense may require that companies involved in defense-related transactions participate in its offset program, entitled "Partnership for Development."

When the United States-Oman FTA enters into force, procuring entities in Oman will be required to conduct procurement covered by the FTA in a fair, transparent, and nondiscriminatory manner. In accordance with its commitment in WTO accession, Oman began the process of acceding to the WTO Agreement on Government Procurement in 2001, but the negotiations have been inactive since 2003.

INTELLECTUAL PROPERTY RIGHTS (IPR) PROTECTION

In the United States-Oman FTA, Oman has committed to provide strong IPR protection and enforcement. Oman is finalizing revisions to its industrial property and copyright laws, as well as decrees regulating optical discs and the government's use of software, to implement these obligations prior to the FTA's entry into force. Through the FTA, Oman has committed to provide increased IPR protection for copyrights, trademarks, geographical indications and patents. Oman will also improve enforcement and protection of undisclosed test data from unfair commercial use. Oman acceded to the World Intellectual Property Organization (WIPO) Copyright Treaty and the WIPO Performances and Phonograms Treaty in September 2005.

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

FOREIGN TRADE BARRIERS

The Government of Oman has indicated that it will not adopt legislation that is inconsistent with its TRIPS and FTA obligations, and will work with its GCC counterparts to resolve any discrepancies.

SERVICES BARRIERS

Telecommunications

As part of its WTO commitments, Oman agreed to allow unlimited market access in telecommunications services no later than January 1, 2004, and also signed the Reference Paper on Regulatory Principles, thereby agreeing to implement a pro-competitive regulatory regime. To date, however, Oman has not fully established its licensing criteria and has not yet licensed any carriers to compete with Omantel, the former monopoly operator.

Through the United States-Oman FTA, Oman has committed to ensuring reasonable and nondiscriminatory access to essential facilities, the ability to resell telecommunications services, and broad-based transparency and due process in the development and implementation of its telecommunications regulations. Oman is in the process of completing changes to its regulatory regime which will enable the FTA to come into force, providing opportunities for U.S. companies interested in providing telecommunications services to and from the country.

Banking

Oman does not permit representative offices or offshore banking.

INVESTMENT BARRIERS

The investment chapter of the United States-Oman FTA sets out a secure, predictable legal framework for U.S. investors operating in Oman. Among other things, Oman will have to provide U.S. investors in Oman Most Favored Nation treatment and national treatment, the right to make financial transfers freely and without delay. In addition, Oman will have to apply international law standards for expropriation and compensation, and access to international arbitration. All forms of investment will be protected under the FTA, including enterprises, debt, concessions, contracts, and intellectual property rights. As a result, U.S. investors in almost all circumstances will be able to establish, acquire, and operate investments in Oman on an equal footing with Omani investors and with investors of other countries. The FTA also prohibits the imposition of certain restrictions on U.S. investors, such as requirements to buy Omani rather than U.S. inputs for goods manufactured in Oman. Finally, U.S. investors are permitted to purchase freehold property in designated residential areas in accordance with regulations promulgated by the government in 2007.

FOREIGN TRADE BARRIERS

PAKISTAN

TRADE SUMMARY

The U.S. goods trade deficit with Pakistan was \$1.5 billion in 2007, a decrease of \$141 million from \$1.7 billion in 2006. U.S. goods exports in 2007 were \$2 billion, up 2.3 percent from the previous year. Corresponding U.S. imports from Pakistan were \$3.6 billion, down 2.6 percent. Pakistan is currently the 59th largest export market for U.S. goods.

The stock of U.S. foreign direct investment in Pakistan was \$1.2 billion in 2006 (latest data available), up from \$1.1 billion in 2005.

IMPORT POLICIES

Since 1998, Pakistan has progressively and substantially reduced tariffs and liberalized its import policies. This effort culminated in June 2002 with the establishment of four maximum import tariff bands of 5 percent, 10 percent, 20 percent, and 25 percent. In its 2007-08 budget, the government expanded the number of import tariff bands from four to six, adding a 0 percent and a 15 percent band. Generally, Pakistan's applied tariffs are below WTO bound commitments, with its simple average applied tariff at 14.3 percent.

In 2005, Pakistan further reduced duties on imported automobiles to between 50 percent and 75 percent from the previous range of 75 percent to 150 percent. The 2007-08 budget removed the capital value tax (CVT) on imported cars. (Domestically manufactured vehicles were previously exempt from CVT.) However, the government raised customs duties by 5 percent to 15 percent to maintain an equivalent level of protection and tax revenue. As a result, custom duties on vehicles including tractors now range between 10 percent and 90 percent, depending on engine capacity. Pakistan has imposed a 55 percent duty on imported automotive parts that are also manufactured domestically and a 35 percent duty on those automotive parts that it does not manufacture domestically. Pakistan also further reduced duties on instant print film and instant print cameras to 5 percent from the prior 30 percent to 200 percent range in order to eliminate incentives for smuggling. U.S.-made textile products may be imported into Pakistan, although the tariff on certain synthetic fibers (scheduled to expire in 2008) remains relatively high.

The government of Pakistan reserves the right to grant sector-specific duty exemptions, concessions, and protections under Statutory Regulatory Orders (SROs). The government in 2006 exempted all domestically-produced and imported pharmaceutical-related inputs from its General Sales Tax. An SRO issued in August 2002 exempted the pharmaceutical products from General Sales Tax. In recent years, the use of SROs has decreased. SROs and other trade policy and regulatory documents are published on the Central Board of Revenues website: <http://www.cbr.gov.pk>.

In January 2000, the Pakistani government began implementing a transactional valuation system, under which 99 percent of import valuation is based on invoice value, in accordance with the WTO's Customs Valuation Agreement. Currently, about 90 percent to 95 percent of imports are assessed duties pursuant to the transactional valuation system, including Pakistan's major imports such as industrial and power equipment, petroleum and petroleum products, and chemicals. A number of traders in food and nonfood consumer products, however, report the system is not uniformly applied. A few major U.S. multinational companies in the machinery and materials sector claim Pakistan Customs applies customs valuation

FOREIGN TRADE BARRIERS

methods using minimum or arbitrary values, which appears to be inconsistent with the WTO's Customs Valuation Agreement.

Pakistan is still not enforcing, because of practical difficulties, a 2005 regulation requiring that the commercial invoice and the packing list be included inside a container. The inclusion of invoice and packing lists is difficult in situations when shipments originate in a different location from where the invoice and packing list are created, or when invoices are created after the shipment departs, or when several companies are involved.

STANDARDS, TESTING, LABELING, AND CERTIFICATION

The Pakistan Standards and Quality Control Authority (PSQCA) is the national standards body. The functions of PSQCA include the establishment and enforcement of national standards, registration of inspection agencies, and assessment of industrial raw materials and finished products for compliance with international standards. As of June 30, 2007 (the end of Pakistan's 2007 fiscal year), PSQCA had adopted over 22,000 standards (including 16,500 ISO standards) for agriculture, food, chemicals, civil and mechanical engineering, electronics, weights and measures, and textile products. Current estimates indicate that there are 12 certification bodies operating in Pakistan, and close to 3000 enterprises have been issued ISO 9000 certificates. All the certification bodies operating in Pakistan are foreign-based. U.S. industry contends that inconsistent application of PSQCA requirements occasionally results in discrimination against U.S. agricultural products.

Generally, U.S. exporters have not reported significant problems due to the application of standards and technical regulations. Pakistan allows the import of U.S. products that meet U.S. standards in cases where there are no Pakistani standards or where the Pakistani standards (some of which are based on U.S. standards) do not conflict with the U.S. standards. As a result, Pakistan allows the import of most U.S. products that meet U.S. standards.

The government of Pakistan approved biosafety guidelines and rules in April 2005 and also approved an action plan to implement these guidelines. As part of the action plan, the government has established a National Biosafety Committee within the Environment Ministry. The Committee has the mandate to approve applications to sell biotechnology based products in Pakistan and register biotechnology products. To date, the Committee has received 12 applications for genetically modified organisms, which are under review for registration. Currently there are no restrictions on importing genetically modified products from the United States as long as they meet U.S. standards.

GOVERNMENT PROCUREMENT

Pakistan is not a signatory to the WTO Agreement on Government Procurement. The government uses an open procurement process, but the bidders have to register with government organizations in order to be awarded contracts. The registration is required to ensure that legitimate businesses are bidding for contracts. The Public Procurement Regulatory Authority, which was established in 2002, is an autonomous body responsible for prescribing regulations and procedures for public procurement by public sector entities and for monitoring procurement by such organizations. In 2004, the Authority enacted a Regulatory Framework for public procurement which is aimed at establishing transparent public procurement practices. Pursuant to the 2004 Regulatory Framework, international tender notices are publicly advertised and sole source contracting using company-specific qualifications has been eliminated. There are no official "buy national" policies.

FOREIGN TRADE BARRIERS

Political influence on procurement decisions, charges of official corruption and long delays in bureaucratic decision making are common. Suppliers have reported instances where the government used the lowest bid as a basis for further negotiations, rather than accepting the lowest bid under its tender rules. Pakistan State Oil Company (Pakistan's largest gasoline retailer), which is the sole supplier of gasoline to aviation and energy sectors, invites tenders from private companies for transportation of crude oil. Other public sector companies like the Water and Power Development Company also invite tenders from private companies to meet their gasoline requirements.

EXPORT SUBSIDIES

Pakistan actively promotes the export of Pakistani goods with measures such as tariff concessions on imported inputs and income and sales tax concessions. Subsidies in Pakistan's 2007 fiscal year were confined mostly to wheat and totaled roughly \$2 million, according to government sources; this export subsidy appears to be in violation of WTO regulations, which do not contain provisions for grain export subsidies. The Pakistan government also provides freight subsidies to some products and these subsidies totaled close to \$5 million in the 2007 fiscal year. The government provided \$157 million as a Research and Development subsidy to the textile sector in FY 2007. Pakistan established its first Export Processing Zone (EPZ) in Karachi in 1989, with special fiscal and institutional incentives available to encourage the establishment of exclusively export-oriented industries. The government subsequently established additional EPZs in Risalpur, Gujranwala, and Sialkot in Punjab Province, and Saindak and Duddar in Balochistan Province. Principal government incentives for EPZ investors include an exemption from all federal, provincial, and municipal taxes for production dedicated to exports; exemption from all taxes and duties on equipment, machinery, and materials (including components, spare parts and packing material); indefinite loss carry-forward; and access to Export Processing Zone Authority One Window services, including facilitated issuance of import permits and export authorizations.

INTELLECTUAL PROPERTY RIGHTS (IPR) PROTECTION

Pakistan is a party to the Berne Convention for the Protection of Literary and Artistic Works and is a member of the World Intellectual Property Organization (WIPO). In July 2004, Pakistan acceded to the Paris Convention for the Protection of Industrial Property. Pakistan has not yet ratified the WIPO Copyright Treaty nor the WIPO Performance and Phonograms Treaty. After a two year delay, a draft plant breeders' rights law is likely to be passed in 2008 by the new National Assembly and Senate now that all provinces have approved it.

The government of Pakistan continued to take steps during 2006 and 2007 to improve copyright enforcement, especially with respect to optical disc piracy. Nevertheless, Pakistan does not provide adequate protection of all intellectual property. Book piracy, weak trademark enforcement, lack of data protection for proprietary pharmaceutical and agricultural chemical test data, and problems with Pakistan's pharmaceutical patent protection remain serious barriers to trade and investment. Pakistan does not have a formal system to prevent marketing approval of unauthorized copies of drugs nor does Pakistan provide safeguards to protect test and other data submitted by pharmaceutical companies seeking marketing approval for their products. In addition, a patent ordinance that removed an 18 month processing requirement appears to have slowed the processing of pending patent applications.

The government of Pakistan has identified intellectual property protection as a key area for its second generation economic reforms. Since 2000, Pakistan has enacted five major new laws relating to patents, copyrights, trademarks, industrial designs and layout designs for integrated circuits, but their impact has been limited by weaknesses in the legislation and/or enforcement.

FOREIGN TRADE BARRIERS

According to the International Federation of Phonographic Industry, after a crackdown by the government of Pakistan in 2005, there has been a significant decline in the quantity of infringing products being manufactured and smuggled out of Pakistan. Of the seven known optical disc manufacturers, five remain shut. The remaining two produce fully licensed products for the local and international market. However, Pakistan is now reportedly being used as a conduit for infringing products coming from Russia, Malaysia, Singapore, China, Bangladesh, and Sri Lanka for onward distribution.

Pakistan's Intellectual Property Rights Organization (IPO), an autonomous body under Pakistan's Cabinet Division, consolidates authority over trademarks, patents, and copyrights – areas that were previously handled by three separate ministries. The IPO is beginning to monitor the enforcement and protection of intellectual property rights through cooperation with law enforcement agencies, in addition to dealing with other IPR related issues. The Federal Investigation Agency (FIA) has primary responsibility for IPR enforcement.

SERVICES BARRIERS

Pakistan generally permits foreign investment in services, subject to certain provisions, including a minimum initial capital investment of \$150,000 for most sectors, except banking for which there are special rules described below. Foreign investors may hold up to a 100 percent equity stake and are allowed 100 percent repatriation of profits in most sectors. The requirement that foreign investors accumulate 40 percent local equity within 5 years of initial investment has been eliminated and the cap on repatriation of profits at a maximum of 60 percent of total equity or profits has been abolished. Foreign investors in services and other nonmanufacturing sectors (including international food franchises) are allowed to remit royalties and technical fees, subject to certain conditions. In information technology services, including software development, foreign investors are not subject to requirements for minimum initial investment.

Telecommunications

In 2003, the Pakistani government deregulated the telecommunications sector in an effort to comply with its WTO commitments and encourage growth in the sector. Pakistan Telecommunication Company Limited (PTCL) lost its monopoly on basic telephone services and the government issued 14 licenses to long distance telephone companies (13 are in use), 72 licenses to local loop regional telephone companies (ten are in operation) and 92 licenses to wireless local loop companies (four are in operation). The ability of telecommunications companies to operate in Pakistan will continue to depend on access to PTCL infrastructure, however. In 2005-2006 the government combined 15 value added services including Internet service provision, vehicle tracking system, and data network operations into one license, the Class Value Added (CVA) license. The government gave those who applied prior to announcement of this policy the option either to continue their old licenses or convert to CVA licenses. To date the government has issued 124 new CVA licenses and converted 93 old licenses to CVAs. At present, the government does not issue licenses specifically for Voice-over-Internet Protocol (VoIP), but long distance telephone license holders may also provide VoIP services.

Limitation on Foreign Films

The government of Pakistan prohibits the importation of films that are deemed inconsistent with local religious and cultural standards. Films from neighboring India are routinely denied entry via cable transmission or video/digital media, but are widely available in pirated form.

FOREIGN TRADE BARRIERS

Banking and Insurance

Under the WTO Financial Services Agreement, Pakistan grants foreign firms the right to establish new banks as well as grandfathering acquired rights of established foreign banks and foreign securities firms. Foreign banks are permitted to open banking companies via the establishment of branches as well as wholly owned, locally incorporated subsidiaries subject to the condition that they have a global tier-1 (*e.g.*, equity and retained earnings) paid up capital of \$5 billion or more or they belong to countries which are part of regional groups and associations of which Pakistan is a member (*e.g.*, the Economic Cooperation Organization (ECO) or the South Asian Association for Regional Cooperation (SAARC)). Foreign banks not meeting these conditions are capped at a 49 percent equity stake with a mandatory 51 percent local ownership.

The State Bank of Pakistan (SBP), Pakistan's central bank, has changed its branch licensing policy and has eliminated restrictions on the number of branches foreign banks may have. Currently, foreign banks, like local banks, have to submit an annual branch expansion plan to the SBP for approval. The SBP approves new branch openings based on the bank's net worth, adequacy of its capital structure, future earning prospects, credit disciplines, and the needs of the local population. However, all banks including foreign banks are now required to open 20 percent of their new branches in small cities, towns and villages. The SBP established the paid up capital requirements for commercial banks increasing them by Rs.1 billion every year. Currently banks are required to have Rs.3 billion as paid up capital, which will increase to Rs.5 billion by the end of 2007 and to Rs.6 billion by 2009.

Foreign brokers, like their Pakistani counterparts, must register with the Securities and Exchange Commission of Pakistan. Over the past several years, Pakistan has privatized the majority of its commercial banks (most of which previously had been nationalized). As of January 2007, approximately 80 percent of the commercial banking sector was privately-owned, and the government of Pakistan only retains an ownership stake in the National Bank of Pakistan, the nation's largest commercial bank.

The government has opened the insurance market as one of its financial sector reforms. A recent change has allowed foreign investors to hold up to a 100 percent equity share of companies operating in the life and general insurance sectors. Foreign investors are also required to bring in a minimum of \$2 million in foreign capital and are not required to raise an equal amount of equity in the local market if they bring in \$4 million in foreign capital. There are no restrictions on the repatriation of profits and capital investment made in this sector can be repatriated with the permission of the SBP. Pakistan does not regulate insurance premiums. The government permits only the parastatal National Insurance Company to underwrite and insure public sector firms. Private sector firms must meet their reinsurance needs within the country. Firms may seek foreign reinsurance facilities only if domestic insurance companies cannot meet these needs. Market domination in the life insurance sector may pose a significant barrier to entry, as the state-owned State Life Insurance Company holds over 76 percent of this market, although that number has been declining over the past several years. Five domestically-owned companies account for 78 percent of the general insurance (property, casualty, and health) market.

Other Services

Foreign professionals may provide legal and engineering consultancy services with 100 percent equity participation. This reflects a 2004 change that eliminated the requirement that Pakistanis hold 40 percent local equity for 5 years and reduced the minimal capital requirement from \$300,000 to \$150,000.

INVESTMENT BARRIERS

Foreign investors are generally free to establish and own business enterprises in Pakistan, with the exception of five restricted areas: arms and munitions, high explosives, currency/mint operations, radioactive substances, and new nonindustrial alcohol plants. There are no ownership limits in other sectors of the economy, except for Pakistan's foreign equity limits in banking (described above). There is no minimum investment requirement for manufacturing. There is a \$150,000 minimum foreign investment requirement in nonfinancial services (except information technology services), and a minimum investment requirement of \$300,000 in agriculture, infrastructure projects, and social services (such as education and health).

The government's investment policy allows for full repatriation of capital, capital gains, dividends, and profits with the approval of the SBP. No requirements exist for technology transfer. The law provides for expropriation only upon adequate compensation and it prohibits changes in benefits and incentives. Incentives, including tax breaks and first year depreciation allowance, will not be changed in a way to disadvantage foreign investors versus domestic investors.

Pakistan has eliminated all local content requirements including those in the automobile sector. Until 2006, the automobile sector was the only sector that was subject to the so-called deletion program mandating the use of domestic inputs. The deletion program for the automotive sector was replaced with the Tariff Based System (TBS) in 2006. The TBS provides for the imposition of higher tariffs on imported automotive parts that are also manufactured domestically; likewise, it provides for lower tariffs on imported automotive parts that are not also manufactured in Pakistan.

In late 2004, the United States and Pakistan launched negotiations on a Bilateral Investment Treaty (BIT). A small but significant number of issues remain outstanding, and these negotiations are currently suspended.

ANTICOMPETITIVE PRACTICES

Although Pakistan has enacted a Monopolies and Restrictive Trade Practices Ordinance, and established the Monopoly Control Authority (MCA), regulatory oversight suffers from resource constraints. Moreover, state-owned firms are exempt from the provisions of this law. Thus, where state-owned firms dominate sectors, competition regulation remains underdeveloped. To address these problems, the MCA has finalized a competition law with technical assistance from the World Bank, which entails capacity building and creation of a new competition authority. The new competition law was approved by the Pakistani Cabinet in June 2007, but it is not in effect until the law either is passed by parliament or is enacted as an ordinance by the President. The Prime Minister has advised the President to promulgate the law as an ordinance; however, to date, the government has not taken either action. According to the MCA the new law will not grant any exemptions and will be applicable to public sector organizations as well.

The sale of major state assets during the last few years has reduced the government's role in the power and telecommunications sectors. The state, however, continues to hold important equity stakes in the oil and gas, civil aviation, electric power, and steel sectors. In the fiscal year ending June 2007, the Privatization Commission carried out 7 transactions including floating global depository receipts of the Oil and Gas Development Company Ltd (OGDCL), floating global depository receipts of United Bank Ltd, making a special public offering of OGDCL, and the selling of Pak American Fertilizers, Javedan Cement Limited, Lyallpur Chemical & Fertilizers and Lasbella Textile Mills.

FOREIGN TRADE BARRIERS

The amount earned through privatizations during this period totaled Rs.104.34 billion (\$1.71 billion), 46.7 percent lower than in the previous year. The government's privatization program has stalled to some extent following a series of Supreme Court decisions, and the government has recently offered global depository receipts of major public sector companies, rather than a transfer of ownership. Pakistan earned Rs.83.6 billion (\$1.37 billion) of Rs. 104 billion (\$1.71 billion) from the capital market transactions.

In an effort to create market competition in former monopoly sectors, the government of Pakistan has issued licenses to long distance and local telephone operators, as well as to cellular and wireless local loop operators, ending PTCL's monopolies. It has also licensed two private airlines to compete with state-owned Pakistan International Airlines. In retail food sales, the government has used below market prices in its chain of several hundred Utility Stores to create price competition in essential foodstuffs such as flour, rice, and lentils.

ELECTRONIC COMMERCE

There are no trade restrictions, duties, or taxes on electronic commerce in Pakistan. Electronic commerce is, however, not well developed. In 2002, the Pakistani government enacted an Electronic Transactions Ordinance that adopted international standards and provided for the establishment of a certification authority. In 2005, one certification authority began functioning (as outlined in the ordinance) in the private sector. The government of Pakistan also established a certification authority in the public sector, the Electronic Certification and Accreditation Council, to meet governmental needs. Recently the Cabinet approved the Electronic Crimes Bill. However, it needs to be enacted either as an ordinance or passed by the parliament in order to be implemented. The government blocks certain websites that contain content which it deems as conflicting with Pakistani religious and cultural norms.

OTHER BARRIERS

Businesses operating in Pakistan have repeatedly called for strengthening law and order. Corruption and a weak judicial system remain recurrent and substantial disincentives to investment. Pakistani laws targeting corruption include the 1947 Prevention of Corruption Act, the 1973 Efficiency and Discipline Rules, and most recently the 1999 National Accountability Bureau (NAB) Ordinance. Previously, the NAB, the Federal Investigation Agency, and Provincial Anti-Corruption Departments shared official responsibility for combating corruption. In October 2002, Pakistan's cabinet approved a National Anti-Corruption Strategy (NACS) that identified areas of pervasive corruption and recommended time-bound measures and reforms to combat corruption. The NACS also named the NAB as the sole anticorruption agency at the federal level.

Contract enforcement can be difficult for U.S. and other foreign investors in Pakistan. For example, a long standing investment dispute between a major U.S. multinational company and a local partner has raised concerns about the sanctity of international arbitration awards regarding contracts between private parties. In June 2005, the Lahore Civil Court ruled in favor of the U.S. multinational company, upholding the original arbitration settlement. However, the local partner has exercised its right to file an appeal in the Lahore High Court, and the case has been pending with no date set for action on the case.

In 2004, Pakistan's Cabinet approved the country's joining the 1958 New York Convention on Recognition and Enforcement of Foreign Arbitral Awards (New York Convention). Pakistan's Cabinet ratified the New York Convention on July 14, 2005 and conveyed the instrument of ratification to the United Nations Secretary General, who is the depository of such instruments. To implement the New

FOREIGN TRADE BARRIERS

York Convention, Pakistan issued an ordinance, valid for only 120 days, that has been re-promulgated various times. The government intends to continue renewing the ordinance until Parliament approves implementing legislation. Legislation to implement the New York Convention is currently with the National Assembly, the lower house of the parliament.

PANAMA

TRADE SUMMARY

The U.S. goods trade surplus with Panama was \$3.4 billion in 2007, an increase of \$1.1 billion from \$2.3 billion in 2006. U.S. goods exports in 2007 were \$3.7 billion, up 38.5 percent from the previous year. U.S. imports from Panama were \$366 million, down 3.4 percent over the corresponding period. Panama is currently the 42nd largest export market for U.S. goods.

The stock of U.S. foreign direct investment (FDI) in Panama was \$5.7 billion in 2006 (latest data available), down from \$5.8 billion in 2005. U.S. FDI in Panama is concentrated largely in the nonbank holding companies and finance sectors.

TRADE PROMOTION AGREEMENT

On June 28, 2007, the United States and Panama signed a trade promotion agreement (TPA). Panama approved the TPA on July 11, 2007. The U.S. Congress has not yet enacted legislation approving the TPA.

The TPA is a comprehensive free trade agreement. When implemented, the TPA will result in significant liberalization of trade in goods and services, including financial services. The TPA also includes important disciplines relating to: customs administration and trade facilitation, technical barriers to trade, government procurement, investment, telecommunications, electronic commerce, intellectual property rights, and labor and environmental protection. Under the TPA, Panama will be obligated to liberalize the services sector beyond its commitments under the WTO General Agreement on Trade in Services by adopting a negative list approach where all sectors are covered except where it has made specific exceptions. Moreover, in connection with the TPA, Panama agreed to become a full participant in the WTO Information Technology Agreement, and entered into an agreement with the United States that resolved a number of regulatory barriers to trade in agricultural goods ranging from meat and poultry to processed products, including dairy and rice.

IMPORT POLICIES

Tariffs

Panama's maximum tariff on industrial goods is 20 percent. Panama's tariffs on agricultural goods range from 10 percent to more than 250 percent.

When the TPA enters into force, 88 percent of U.S. exports of consumer and industrial goods will enter Panama duty free, with remaining tariffs phased out over 5 years or 10 years. The TPA includes "zero-for-zero" immediate duty free access for key U.S. sectors and products, including agricultural and construction equipment, information technology products, and medical and scientific equipment. Other key U.S. export sectors such as motor vehicles and parts, paper and wood products, and chemicals also will obtain significant access to Panama's market as duties are phased out.

The TPA provides for immediate duty free treatment for more than half of U.S. agricultural exports to Panama, including high quality beef, certain pork and poultry products, cotton, wheat, soybeans and soybean meal, most fresh fruits and tree nuts, distilled spirits and wine, and a wide assortment of

FOREIGN TRADE BARRIERS

processed products. Duties on other agricultural goods will be phased out within 5 years to 12 years, and for the most sensitive products within 15 years to 20 years. The TPA also provides for expanded market access opportunities through tariff-rate quotas (TRQs) for agricultural products such as pork, chicken leg quarters, dairy products, corn, rice, refined corn oil, dried beans, frozen French fries, and tomato products. These TRQs will permit immediate duty free access for specified quantities that will increase as over-quota duties are phased out over the course of the implementation period.

Apparel products made in Panama will be duty free under the TPA if they use U.S. or Panamanian fabric and yarn, thereby supporting U.S. fabric and yarn exports and jobs. Strong customs cooperation commitments between the United States and Panama under the TPA will allow for verification of claims of origin or preferential treatment, and denial of preferential treatment or entry if claims cannot be verified.

Nontariff Measures

In addition to tariffs, all imports into Panama are subject to a 5 percent transfer (ITBM) tax levied both on the cost, insurance, and freight value as well as on import duties and other handling charges. Pharmaceuticals, foods, school supplies, goods that will be re-exported and all products related to transactions occurring in any free zone are exempt from the transfer tax. Currently, importing entities are required to hold a commercial or industrial license to operate in Panama in order to import manufactured goods into the country without an import license. The commercial or industrial license may be obtained through Panama's online business registration service (<http://www.panamaemprende.gob.pa>). Importing entities holding a license are not required to have a separate import license, with the exception of imports of certain controlled products such as weapons, medicine, pharmaceutical products, and certain chemicals.

STANDARDS, TESTING, LABELING, AND CERTIFICATION

In the past, Panama has required that its health and agriculture officials certify individual U.S. plants and/or shipments as a precondition for the importation of beef, poultry, pork, dairy, and other agricultural products. In addition, Panama has restricted imports of U.S. meat and poultry and other U.S. agricultural products through non-science based sanitary and phytosanitary (SPS) requirements. Certain agricultural products (*e.g.*, processed food products) also faced lengthy and costly product registration requirements.

Under a far reaching bilateral agreement on SPS measures and technical standards signed with the United States in December 2006, Panama recognized the equivalence of the U.S. meat and poultry inspection systems and the U.S. regulatory system for processed food products, thereby eliminating plant-by-plant and shipment-by-shipment inspection requirements. In addition, Panama provided access for all U.S. beef and beef products (including pet food), and all U.S. poultry and poultry products, consistent with international standards. Panama lifted all import certification and licensing requirements, except those agreed with the United States (specifically, sanitary certificate requirements) and formalized its recognition of the U.S. beef grading system and cuts nomenclature. Additionally, Panamanian authorities have committed to notifying U.S. authorities within 24 hours of any detention of a U.S. shipment due to suspected SPS concerns. Finally, Panama eliminated its time consuming and costly product registration procedures, and established an automatic, cost free and quick registration process for the small group of agricultural products not exempted from this process.

Labeling and testing requirements are primarily limited to food products. Products that comply with U.S. labeling and marketing requirements are generally accepted for sale in Panama.

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GOVERNMENT PROCUREMENT

Panamanian Law 22 of 2006 regulates government procurement and other related issues. Law 22 streamlined and modernized Panama's contracting system. It established, among other things, an Internet-based procurement system (<http://www.panamacompra.gob.pa>) and requires publication of all proposed government purchases on the Internet, the evaluation of proposals and monitoring of the procurement process, and advance public notice of intended procurement, including technical specifications and tender documents. Law 22 also created an administrative court to handle all public contracting disputes. The rulings of this administrative court are subject to review by the Panamanian Supreme Court. The Panamanian government has generally handled bids in a transparent manner, although occasionally U.S. companies have complained that certain procedures have not been followed.

When it enters into force, the TPA will require Panama's procuring entities to use fair and transparent procurement procedures, including advance notice of purchases and timely and effective bid review procedures, for procurement covered by the TPA. U.S. suppliers will be permitted to bid on procurement above certain thresholds of most Panamanian government entities, including key ministries and state-owned enterprises, on the same basis as Panamanian suppliers. In particular, U.S. suppliers will be permitted to bid on procurement by the Panama Canal Authority, including for the \$5.25 billion Panama Canal expansion project. The anti-corruption provisions in the TPA require Panama to ensure under its domestic law that bribery in matters affecting trade and investment, including in government procurement, is treated as a criminal offense or is subject to comparable penalties.

While Panama committed to become a party to the World Trade Organization (WTO) Agreement on Government Procurement (GPA) at the time of its WTO accession, its efforts to accede to the GPA have stalled.

EXPORT SUBSIDIES

Panamanian Law 3 of 1986 allows any company to import raw materials or semi-processed goods at a duty of 3 percent for domestic consumption or processing (pending certification that there is no national production) or duty free for export production, except for sensitive agricultural products, such as rice, dairy, pork, corn, and tomato products. Companies are allowed a tax deduction of up to 100 percent of their profits from export operations through 2010.

In the context of its WTO accession, Panama revised its export subsidy policies in 1997-98. The government originally had stated its intention to phase out its Tax Credit Certificates (CAT) program, which provides tax credits to firms producing certain nontraditional exports, by the end of 2001. However, during the WTO Ministerial Conference in November 2001, the government of Panama asked for and received an extension of the waiver permitting the use of CATs. The WTO subsequently extended this waiver through September 30, 2009. Under the program, exporters receive CATs equal to 10 percent of the goods' national value added for exports made in 2008 and 5 percent of the good's national value added for exports made through September 30, 2009. The certificates are transferable and may be used to pay tax obligations to the government, or they can be sold in secondary markets at a discount. The government has, however, become stricter in defining national value added, in an attempt to reduce the amount of credit claimed by exporters.

In addition, a number of export industries, such as shrimp farming and tourism, are exempt from paying certain types of taxes and import duties. The government of Panama established this policy to attract

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foreign investment, especially in economically depressed regions, such as the city of Colon. Companies that benefit from these exemptions are not eligible to receive CATs for their exports.

Other Export-Related Items

Law 25 of 1996 provides for the development of export processing zones (EPZs) as part of an effort to broaden the Panamanian manufacturing sector while promoting investment, particularly in former U.S. military bases. There are 15 EPZs in Panama, 2 of which are inactive. 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. Under the TPA, Panama may not adopt new duty waivers or expand existing duty waivers conditioned on the fulfillment of a performance requirement (*e.g.*, the exportation of a given level or percentage of goods or the use of domestic content in the production of goods). Panama is permitted to maintain existing measures that are inconsistent with this obligation through 2009, provided that it maintains the measures in accordance with its obligations under the WTO Agreement on Subsidies and Countervailing Measures.

INTELLECTUAL PROPERTY RIGHTS (IPR) PROTECTION

An interagency committee that consists of representatives from six government agencies and operates under the leadership of the Ministry of Commerce and Industry is responsible for Panama's intellectual property law and policy. The committee coordinates enforcement actions and develops strategies to improve compliance with the law. The creation of a specialized prosecutor for intellectual property-related cases has strengthened the protection and enforcement of IPR in Panama. However, given Panama's role as a transshipment point, U.S. industry remains concerned that Panama will become susceptible to trading in pirated and counterfeit goods.

The TPA provides for improved standards for the protection and enforcement of a broad range of intellectual property rights, which are consistent with U.S. and international standards of protection and enforcement as well as with emerging international standards. Such improvements include stronger protection for U.S. patents, trademarks, and test data, including an electronic system for the registration and maintenance of trademarks and further deterrence of piracy and counterfeiting.

Panama has ratified or acceded to the Berne Convention for the Protection of Literary and Artistic Works, the Brussels Convention Relating to the Distribution of Programme-Carrying Signals Transmitted by Satellite, the Convention Establishing the World Intellectual Property Organization (WIPO), the Convention for the Protection of Producers of Phonograms against Unauthorized Duplication of their Phonograms, the International Convention for the Protection of New Varieties of Plants, the Paris Convention for the Protection of Industrial Property, the WIPO Copyright Treaty, and the WIPO Performances and Phonograms Treaty. Under the TPA, Panama will be obligated also to ratify or accede to the Patent Cooperation Treaty and the Budapest Treaty on the International Recognition of the Deposit of Microorganisms for the Purposes of Patent Procedure by the date the TPA enters into force and the Trademark Law Treaty by January 1, 2011.

Copyrights

Though Panama's 1994 copyright law modernized copyright protection and amendments to the law in 2004 provided for a special Copyright Office with anti-piracy enforcement powers, piracy remains a significant problem. Panama has taken police and legal actions that have significantly reduced the rate of DVD piracy. Internet piracy, however, is quickly emerging in Panama. Films in theatrical release are

often downloaded to DVDs and videos, reproduced on optical discs, and then distributed by street vendors.

Implementation of the TPA will require Panama: (i) to provide copyright protection for the life of the author plus 70 years (where the term of protection is measured by a person's life) or 70 years (where the term of protection is not measured by a person's life, *i.e.*, for corporate works); (ii) to require government agencies to use only legitimate computer software; and (iii) to protect encrypted program-carrying satellite signals.

Patents

Panama is a Party to the Paris Convention for the Protection of Industrial Property. Panama's 1996 Industrial Property Law provides a term of 20 years of patent protection from the date of filing. The Industrial Property Law provides specific protection for trade secrets.

Under the TPA, Panama will be required to adjust the patent term for products (other than pharmaceutical products) to compensate for unreasonable delays that occur while granting a patent. For pharmaceutical products, Panama may, but is not required to, adjust the patent term if there is an unreasonable delay in granting a patent or providing marketing approval for a product. The TPA will also require Panama to protect test data submitted to regulators for the purpose of seeking marketing approval for a product.

Trademarks

Law 35 of 1996 provides trademark protection, simplifies the process of trademark registration, and allows for renewal of a trademark for 10 year periods. It appears that this law provides *ex-officio* authority to government agencies to conduct investigations and to seize materials suspected of being counterfeited. The Trademark Registration Office has undertaken significant modernization; including creating a searchable computerized database of registered trademarks that is open to the public, and providing for online registration.

Under the TPA, Panama will be required to protect trademarks and geographical indications, including by refusing protection or recognition of a geographical indication that is likely to be confusingly similar to a preexisting trademark. Panama will also be required to have a system of registration that provides efficient and transparent procedures governing applications to protect trademarks and geographical indications.

SERVICES BARRIERS

Services represent approximately 80 percent of Panama's gross domestic product. In general, Panama maintains an open regulatory environment for services.

Under the TPA, Panama will accord substantial market access across its entire services regime, including financial services. Panama agreed to provide improved access in sectors like express delivery and to grant new access in certain professional services that previously had been reserved exclusively to Panamanian nationals. Panama also agreed that portfolio managers in the United States would be able to provide portfolio management services to both mutual funds and pension funds in Panama. Under the TPA, U.S. insurance suppliers will be permitted to provide certain types of insurance services in Panama and to open branches or subsidiaries in Panama.

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With respect to telecommunications, investments have been hampered by the reluctance of Cable & Wireless Panama (one of the two cellular telecommunications companies operating in Panama and the principal wire-line carrier) to negotiate and/or implement interconnection agreements with new entrants. Under the TPA, Panama will be required to ensure that its major telecommunications suppliers provide interconnection to U.S. suppliers on nondiscriminatory terms and conditions.

INVESTMENT BARRIERS

Panama maintains an open investment regime and is generally receptive to foreign investment. There are no measures in place that prohibit the acquisition of Panamanian companies by foreign nationals.

The Panamanian government was, until recently, often unresponsive to concerns raised by U.S. investors. For example, in highly regulated sectors or in sectors where the government grants a concession, companies have encountered a lack of cooperation from Panamanian government officials and been subjected to changes to the terms of their concession contracts. One such example related to pricing changes and a cancellation of contracts without consideration for existing law.

The United States - Panama Bilateral Investment Treaty (BIT) entered into force in 1991 (with additional amendments in 2001). The BIT ensures that, with some exceptions, U.S. investors receive fair, equitable, and nondiscriminatory treatment and that both Parties abide by international law standards such as for expropriation and compensation and free transfers. Under the TPA, the BIT would be suspended after a period of 10 years. Investors will continue to have important investment rights and protections under the investment provisions of the TPA.

The TPA will establish a more secure and predictable legal framework for U.S. investors operating in Panama. Under the TPA, all forms of investment will be protected, including enterprises, debt, concessions, contracts, and intellectual property. U.S. investors will enjoy, in almost all circumstances, the right to establish, acquire, and operate investments in Panama on an equal footing with local investors. Among the rights that will be afforded to U.S. investors are due process protections and the right to receive fair market value for property in the event of an expropriation. Investor rights will be protected under the TPA by an impartial procedure for dispute settlement that is fully transparent and open to the public. Submissions to dispute settlement panels and hearings before such panels will be open to the public and interested parties will have the opportunity to submit their views. In particular, Panama agreed to eliminate certain measures that restrict investment in retail trade to Panamanian nationals (specifically allowing U.S. companies to engage in the retail sale of goods and services; full access to investments in the retail sector will be permitted after 2010 if the investment is at least \$3 million).

ELECTRONIC COMMERCE

In mid-2001, Panama became the first country in Central America to adopt a law specific to electronic commerce. Panama's electronic commerce law has several important features: it gives legal force to any transaction or contract completed electronically; it created the National Directorate of Electronic Commerce to oversee the enforcement of the law; it defines certification organizations; and it establishes a voluntary registration regime. In 2004, Panama issued regulations to facilitate the registration of certification organizations, particularly in the maritime sector.

Under the TPA, Panama will be obligated to provide nondiscriminatory treatment of digital products transmitted electronically and not to impose customs duties, fees or other charges on digital products

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transmitted electronically. Additionally, the TPA requires procedures for resolving disputes about trademarks used in Internet domain names.

OTHER BARRIERS

Corruption

The judicial system can pose a problem for investors due to poorly trained personnel, huge case backlogs, and a lack of independence from political influence. Amid persistent allegations of corruption in the government, particularly in the judiciary, the Torrijos administration campaigned in 2004 on a promise to “eradicate corruption.” Although the government continues to assert its commitment to combating corruption as part of its overall agenda of institutional reform, it has been slow to deliver concrete results. The anti-corruption provisions in the TPA will require Panama to ensure that bribery in matters affecting trade or investment is treated as a criminal offense or is subject to comparable penalties under its law.

PARAGUAY

TRADE SUMMARY

The U.S. goods trade surplus with Paraguay was \$1.2 billion in 2007, an increase of \$316 million from \$853 million in 2006. U.S. goods exports in 2007 were \$1.2 billion, up 35.8 percent from the previous year. Corresponding U.S. imports from Paraguay were \$68 million, up 17.2 percent. Paraguay is currently the 69th largest export market for U.S. goods.

The stock of U.S. foreign direct investment in Paraguay in 2006 was not available, (\$115 million in 2003).

IMPORT POLICIES

Tariffs

Paraguay's import tariffs range from 0 percent to 20 percent, with an average applied tariff rate of 10.7 percent in 2007. Paraguay is a member of MERCOSUR, a customs union formed in 1991 and comprised of Argentina, Brazil, Paraguay, and Uruguay. MERCOSUR's common external tariff (CET) averages 13.6 percent and ranges from 0 percent to 20 percent *ad valorem*, with a limited number of country-specific exceptions. Currently, Paraguay maintains 399 exceptions to the CET. Tariffs may be imposed by each MERCOSUR member on products imported from outside the region which transit at least one MERCOSUR member country before reaching their final destination. Full CET product coverage, which would result in duty free movement within MERCOSUR, was originally scheduled for implementation in 2006, but has been deferred until 2009.

Customs Procedures

Paraguay requires specific documentation, such as the commercial receipt, certificate of origin, and cargo manifest, regarding exports to be certified by the Paraguayan consulate in the country of origin. The United States is urging Paraguay to eliminate this consularization requirement.

Paraguay frequently makes changes in customs procedures. This makes it difficult for exporters to ensure they are following the most current procedures, which can delay shipments and lead to unexpected costs. The burden of compliance is most often borne by importers. Paraguay has recently announced its intention to simplify import procedures.

For virtually all imports of textile and apparel products and footwear, Paraguay requires that the name of the manufacturer and the name and fiscal number of the importer be included on the label. Industry reports that such information is difficult, if not impossible, to know during the construction process when permanent labels are attached. Re-labeling products upon entry to meet these requirements results in additional costs and delays. On another apparel issue, since 2000, Paraguay has explicitly prohibited the importation of used clothing.

GOVERNMENT PROCUREMENT

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

FOREIGN TRADE BARRIERS

INTELLECTUAL PROPERTY RIGHTS (IPR) PROTECTION

Paraguay's president has declared the fight against piracy and counterfeiting and contraband a national priority. However, the U.S. Government continues to have serious concerns over the lack of effective border enforcement, most notably because Paraguay continues to be a transshipment point for pirated and counterfeit goods to Brazil and other neighboring markets. The International Intellectual Property Association estimated that losses to industry in Paraguay's domestic market due to the piracy of copyrighted material such as movies, music, books, and entertainment and business software totaled \$134 million in 2007.

Paraguay's efforts to improve IPR performance are guided in part by a Memorandum of Understanding (MOU) with the United States, concluded following Paraguay's 1998 designation as a Priority Foreign Country under the Special 301 provisions of the Trade Act of 1974. Implementation of the MOU is subject to ongoing monitoring under U.S. trade law. The MOU details Paraguayan commitments to implement institutional and legal reforms and to strengthen intellectual property rights enforcement and prosecution. In addition, Paraguay agreed to ensure that its government ministries use only authorized software.

In December 2007, the U.S. and Paraguay agreed to revise and update the MOU and to extend the term of the revised MOU to the end of 2009.

While the Paraguayan government has made important efforts to implement the current MOU and has met regularly with U.S. Government officials to review and discuss the progress achieved in addressing IPR-related concerns, additional progress is needed in order to address significant challenges, particularly in the area of enforcement against the transshipment of pirated and counterfeit goods.

Under the terms of the current MOU, the United States will continue to work closely with Paraguay to address IPR-related concerns, particularly with regard to increasing the penalties for IPR infringement under Paraguay's new penal code, strengthening border enforcement measures, and increased enforcement activity with respect to market-places known for the prevalence of trafficking in pirated and counterfeit goods. The United States is also concerned about the protection of undisclosed pharmaceutical test data submitted for the drug marketing approval process.

INVESTMENT BARRIERS

Law 194 of 1993 established the legal framework that governs relationships between foreign companies and their Paraguayan representatives. The law requires that foreign companies prove just cause in a Paraguayan court to terminate, modify, or fail to renew contracts with Paraguayan distributors. Severe penalties and high fines may result if the court determines that the foreign company ended the relationship with its distributor without just cause, which often leads to expensive out-of-court settlements. In a few cases, the courts have upheld the rights of foreign companies to terminate representation agreements after just cause was established, mainly on the basis of lack of sales performance by local representatives. This law may discourage U.S. investment through concerns about potential lawsuits and interference with contractual relations.

FOREIGN TRADE BARRIERS

Privatization

Paraguay has an uneven record on privatization. As part of its May 2006 Stand-By Arrangement with the International Monetary Fund, the government committed to undertake independent audits of state-owned firms and develop business plans for them with the aim of eventually increasing private sector involvement in the management and ownership of the companies. The audits were completed and the government moved to establish performance criteria for the companies in order to increase efficiency. The government suggested that some form of private sector participation, whether through management contracts or equity participation, would be considered in the future. However, all such efforts have stalled; with presidential elections now scheduled for April 20, 2008, there is no guarantee that President Duarte's successor will pursue these commitments to advance privatization.

PERU

TRADE SUMMARY

The U.S. goods trade deficit with Peru was \$1.1 billion in 2007, a decrease of \$1.9 billion from \$ 3billion in 2006. U.S. goods exports in 2007 were \$4.1 billion, up 40.8 percent from the previous year. Corresponding U.S. imports from Peru were \$5.2 billion, down 11.5 percent. Peru is currently the 40th largest export market for U.S. goods.

The stock of U.S. foreign direct investment (FDI) in Peru was \$5 billion in 2006 (latest data available), up from \$4.2 billion in 2005. U.S. FDI in Peru is concentrated largely in the mining sector.

United States-Peru Trade Promotion Agreement (PTPA)

The United States and Peru signed the United States-Peru Trade Promotion Agreement (U.S.-Peru TPA) on April 12, 2006. The Peruvian Congress ratified the Agreement in June 2006, and a protocol of amendment in June 2007. On December 14, 2007 President Bush signed the United States-Peru Trade Promotion Agreement Implementation Act. The Agreement will enter into force after Peru has taken the necessary steps to implement its obligations.

IMPORT POLICIES

Tariffs

Peru applies tariffs to virtually all goods imported from the United States with an average applied rate of 10 percent. Most imported goods are subject to tariff rates which range from 4 percent to 20 percent. There is an additional 5 percent “temporary” tariff surcharge on many agricultural goods. Peru has also applied a price band or variable levy on the following sensitive agricultural products: rice, corn, sugar, and dairy products.

Under the PTPA, 80 percent of U.S. exports of consumer and industrial products will become duty free immediately upon entry into force of the agreement. Within 5 years, an additional 6 percent will become duty free and another 4 percent within 7 years. Duties on the remaining 10 percent will be phased out over 10 years. Peru is in the process of joining the World Trade Organization (WTO) Information Technology Agreement, removing tariffs and nontariff barriers to information technology products.

In addition, more than two-thirds of current U.S. farm exports to Peru will become duty free immediately upon entry into force of the PTPA, including high quality beef, cotton, wheat, soybeans and soybean products, key fruits and vegetables, almonds, and many processed food products. Peru also will immediately eliminate its price band system on trade with the United States. These benefits, coupled with a preference clause included in the PTPA, will enable the United States to better compete with countries, both within and outside of the region, for Peru’s market. Tariffs on other agricultural products will be eliminated gradually, most within 5 years to 15 years. Within 17 years, all U.S. agricultural exports will enter the Peruvian market duty free.

FOREIGN TRADE BARRIERS

Nontariff Measures

The government of Peru has eliminated many nontariff barriers, and under the PTPA will subject remaining measures, including subsidies and import licensing requirements, to additional disciplines. Peru currently restricts imports of certain used goods, including used clothing and shoes (except as charitable donations, which are subject to the 19 percent value added tax), used tires, cars over 5 years old and heavy trucks (weighing three tons or more) over 8 years old. Used cars and trucks that are granted import permits must pay a 45 percent excise tax – compared to 20 percent for a new car – unless they are refurbished in an industrial center in the south of the country after importation, in which case they are exempted entirely from the excise tax. Additionally, Peru’s prohibitions on the importation of used goods apply to U.S. remanufactured goods. Under the PTPA, Peru affirmed that it would not adopt or maintain prohibitions or restrictions on trade in remanufactured goods, and that certain existing prohibitions on trade in used goods would not apply to remanufactured goods. Upon entry into force of the Agreement, this commitment will provide new and significant export opportunities for firms involved in remanufactured products such as engines, automotive parts, mining and construction equipment, transportation machinery, medical equipment, and computers.

For textile and apparel products and footwear, Peru requires that products bear a label that, in addition to the name of the manufacturer, includes the name and address of the importer or distributor. Industry reports that such information is difficult if not impossible to know during the manufacturing process when permanent labels are attached. The re-labeling of products upon entry to meet these requirements results in additional costs and delays.

In 2006, the United States Government and the government of Peru resolved a number of significant sanitary and phytosanitary (SPS) and technical standards issues. Specifically, the two governments reached agreements addressing Peru’s bans or restrictions on imports of U.S. beef and beef products (related to Bovine Spongiform Encephalopathy), poultry and poultry products (related to avian influenza), pork and pork products, and rice. The government of Peru has implemented these agreements through a series of resolutions and decrees. For example, in October 2006, Peru issued a Supreme Decree permitting the importation of all U.S. beef and beef products, except high risk materials, when accompanied by a sanitary certificate issued by the U.S. Department of Agriculture’s Food Safety and Inspection Service. In addition, Peru formalized its recognition of the equivalence of the U.S. meat and poultry inspection systems, and eliminated a rice quality standard that discriminated against imports of U.S. rice. Restrictions still exist with regard to trade in live cattle. U.S. officials continue to engage Peruvian authorities in pursuit of science-based import requirements with respect to such trade.

GOVERNMENT PROCUREMENT

Since 2002, Peru has applied a 20 percent price preference to bids by Peruvian firms on government procurement contracts. The PTPA will require the use of fair, nondiscriminatory, and transparent procurement procedures for procurement covered by the PTPA. Under the PTPA, U.S. suppliers will be permitted to bid on the procurement of most Peruvian central government entities, including state owned enterprises such as Peru’s oil company and Peru’s public health insurance agency. When the PTPA is implemented, the price preference will no longer be applied to U.S. companies in procurement covered by the PTPA. The anti-corruption provisions in the PTPA will require each government to ensure under its domestic law that bribery in trade-related matters, including in government procurement, is treated as a criminal offense or is subject to comparable penalties. Peru is not a signatory to the WTO Agreement on Government Procurement.

FOREIGN TRADE BARRIERS

INTELLECTUAL PROPERTY RIGHTS (IPR) PROTECTION

Peru's implementation of the provisions in the PTPA's IPR chapter will bring about a number of important improvements in IPR protection, including: protection of trademarks used in Internet domain names; strengthened measures to prevent the circumvention of technological devices for preventing Internet-based copyright piracy; protection of test data and other undisclosed information submitted in connection with regulatory approval for pharmaceutical and agricultural chemical products; and provision of deterrent penalties against piracy and counterfeiting.

There have been government efforts to improve enforcement, including increased raids on large-scale distributors and users of pirated material, but piracy remains a problem. U.S. industry has called for increasing anti-piracy efforts in Peru with enhanced support from the Peruvian National police, and increased coordination between Peru's copyright office (INDECOPI) and local municipalities in order to revoke licenses granted to vendors selling pirate products.

Patents and Trademarks

Peru's 1996 Industrial Property Rights Law provides the framework for patent protection. In 1997, Peru addressed several inconsistencies with the WTO TRIPS Agreement provisions on patent protection and Most Favored Nation treatment for patents. U.S. industry representatives are pleased that INDECOPI has shifted the burden of proof in patent infringement cases from the patent holder to the alleged copier. INDECOPI has issued preliminary injunctions against presumably illegal copies and in 2006, U.S. pharmaceutical companies won several important patent infringement court cases. However, the U.S. pharmaceutical and agrochemical industries continue to have concerns about Peru's protection of undisclosed test and other data submitted in connection with marketing approval procedures. The PTPA contains provisions to address these concerns.

Enforcement

Despite some Peruvian government efforts to improve enforcement, including increased raids on large-scale distributors and users of pirated material, piracy remains widespread, due notably to a failure to apply deterrent penalties vigorously. The judicial problems should improve now that Peru has five courts and three prosecutors' offices that can specialize in IPR cases.

SERVICES BARRIERS

Under the services chapter of the PTPA, Peru will assume commitments to provide nondiscriminatory treatment and market access in a substantial number of services sectors. These commitments significantly improve upon Peru's WTO commitments in terms of sectors covered and elimination of restrictions in sectors such as advertising, construction and engineering, energy, information, express delivery, and entertainment, including audiovisual services and broadcasting. The chapter also commits Peru to increased regulatory transparency and to free transfers associated with the supply of a service.

Financial Services

The financial services chapter of the PTPA provides for secure access and nondiscriminatory treatment across most banking, insurance and securities sectors, and improves U.S. companies' ability to provide portfolio advice and certain kinds of insurance on a cross-border basis.

FOREIGN TRADE BARRIERS

Telecommunications

Peru is continuing the process of developing a competitive telecommunications market. OSIPTEL, Peru's telecommunications regulator, has established a time frame to lower average mobile termination rates by more than half over a period of 4 years, from 2005 levels of roughly \$0.21 to under \$0.10 by January 2009. U.S. companies continue to complain that the rates should be further reduced and that unconstrained pricing by the dominant supplier has created significant barriers to competition in the wireless sector. Continued oversight and review of these rates by OSIPTEL will be important to achieving progress in addressing concerns raised by suppliers.

INVESTMENT BARRIERS

Under the investment chapter of the PTPA, Peru will assume obligations relating to national treatment and Most Favored Nation treatment; assure the right of U.S. investors to make financial transfers freely and without delay; apply international legal standards for expropriation and compensation; and provide access to binding international arbitration.

Peruvian law restricts majority ownership of broadcast media to Peruvian citizens. Foreigners are also restricted from owning land or investing in natural resources within 50 kilometers of a border, but they can operate within those areas with special authorization. Under current law, foreign employees may not comprise more than 20 percent of the total number of employees of a local company (whether owned by foreign or Peruvian persons) or more than 30 percent of the total company payroll. Under the PTPA, Peru has agreed not to apply most of its nationality-based hiring requirements to U.S. professionals and specialty personnel.

U.S. firms sometimes complain that executive branch ministries, regulatory agencies, the tax agency, and the judiciary often lack the resources, expertise, or impartiality necessary to carry out their respective mandates. Peru's weak judicial branch is a particular problem. The resolution of commercial disputes that end up in Peruvian courts is often delayed, and judicial proceedings can yield results that are not foreseeable based on a review of relevant precedents. U.S. investors have also complained about the reinterpretation of rules and the imposition of disproportionate fines by the tax agency.

The Peruvian government has tried to address institutional weaknesses in the executive branch and has also offered plans for judicial reform. In July 2005, the Supreme Court issued an edict stating that final binding arbitration awards cannot be disputed in the domestic judicial system. The U.S. Government has worked with the government of Peru both before and in parallel with the PTPA negotiations to ensure the fair resolution of U.S. investor disputes, consistent with Peruvian law.

THE PHILIPPINES

TRADE SUMMARY

The U.S. goods trade deficit with the Philippines was \$1.7 billion in 2007, a decrease of \$383 million from \$2.1 billion in 2006. U.S. goods exports in 2007 were \$7.7 billion, up 1.3 percent from the previous year. Corresponding U.S. imports from Philippines were \$9.4 billion, down 3.0 percent. The Philippines is currently the 29th largest export market for U.S. goods.

U.S. exports of private commercial services (*i.e.*, excluding military and government) to the Philippines were \$1.9 billion in 2006 (latest data available), and U.S. imports were \$1.8 billion. Sales of services in Philippines by majority U.S.-owned affiliates were \$1.9 billion in 2005 (latest data available), while sales of services in the United States by majority Philippines-owned firms were \$18 million.

The stock of U.S. foreign direct investment (FDI) in the Philippines was \$7.0 billion in 2006 (latest data available), up from \$6.4 billion in 2005. U.S. FDI in the Philippines is concentrated largely in the manufacturing and finance sectors.

The United States and the Philippines meet regularly under their Trade and Investment Framework Agreement to discuss outstanding issues and possible initiatives to further deepen trade and investment relations as well as to coordinate on regional and multilateral issues.

IMPORT POLICIES

Tariffs

The Philippines simple average bound tariff was 25.6 percent in 2006, while its simple average applied tariff was 6.3 percent. However, only two-thirds of the Philippines' tariff lines are bound under WTO rules. The Philippine government reviewed its tariff program and released a 5 year (2006 to 2010) tariff program schedule, which took effect in April 2007. To meet its commitments under the ASEAN Free Trade Area, the Philippines has reduced duties to 5 percent or below on 99 percent of total ASEAN Harmonized Tariff Nomenclature tariff lines.

The average tariff on agricultural products remained at 11.8 percent in 2006. High tariffs are still maintained on politically sensitive agricultural products, such as grains, livestock, poultry and meat products, sugar, frozen and processed potatoes, onions, coffee, and fresh citrus, including oranges, lemons, and grapefruit.

Automobile Sector Tariffs

The Motor Vehicle Development Program (MVDP) is intended to rationalize the automotive industry and transform the Philippines into a regional hub for automotive production. To promote local assembly under the program, tariffs on automotive vehicle components have been reduced while imports of finished automobiles and motorcycles have been subject to the highest duty rates applied to nonagricultural products. The importation of used vehicles is prohibited.

Under the tariff schedule that took effect in April 2007, tariffs on high engine displacement vehicles are set at 30 percent until 2010. A 1 percent duty is applied on all Completely Knocked down Kit (CKD)

FOREIGN TRADE BARRIERS

importations by MVDP-registered participants, except for CKD intended for the assembly of alternative fuel vehicles, which are duty free. In addition, tariffs for imported finished automobiles that qualify under the Automotive Export Program, with certification from the Board of Investments, are levied a preferential rate of 10 percent.

Under ASEAN Free Trade Agreement-Common Effective Preferential Tariffs (AFTA-CEPT), tariffs on automobile components are set at 3 percent for CKD and 5 percent for completely built-up units. A subsequent executive order further reduced these preferential rates to zero under the ASEAN Framework Agreement for the Integration of Priority Sectors of the AFTA-CEPT.

Excise Tax on Automotive Vehicles

In August 2003, the Philippine Congress passed legislation changing the automotive excise tax structure from one based on engine displacement to a system based on vehicle value. Under the revised excise tax scheme, vehicles are divided into four brackets based on their price: (1) for vehicles with a manufacturer's/importer's selling price of 600,000 pesos and below, the tax is 2 percent; (2) for those priced over 600,000 pesos to 1.1 million pesos, the tax is 12,000 pesos plus 20 percent of the amount in excess of 600,000 pesos; (3) for those priced over 1.1 million pesos to 2.1 million pesos, the tax is 112,000 pesos plus 40 percent of the amount in excess of 1.1 million pesos; and (4) for those over 2.1 million pesos, the tax is 512,000 pesos plus 60 percent of the amount in excess of 2.1 million pesos.

Safeguards

In response to concerns raised by the United States and other governments in 2007, the Philippines lengthened the 5 day period afforded to foreign industry to comment on proposed safeguards, granting stakeholders a period of several weeks to present comments. The Philippines has drafted amendments to the Safeguards Measures Act extending the period to file answers by interested parties from 5 days to 30 days, but these changes have not yet been enacted.

Import Licensing

The U.S. Government continues to monitor the operation of the Philippine tariff-rate quota (TRQ) or Minimum Access Volume (MAV) system closely, including the allocation and distribution of import licenses. In particular, the U.S. Government is monitoring the Philippine government's application of its Veterinary Quarantine Clearance (VQC) certificates for meat and poultry imports, as well as its import permit system for fresh vegetables. The Philippine Department of Agriculture maintains a VQC import licensing scheme for imported meat and poultry. A VQC is valid for 60 days from the date of issuance, within which time the meat or meat products must be shipped from the country of origin. Each VQC must be surrendered upon arrival of a shipment of a covered product, creating the appearance of discretionary licensing.

On October 14, 2007, the Philippine government announced that it would defer the application and distribution for the 2008 Beginning Year Pool for MAV licenses, including for poultry, while it reviews its current MAV procedures. Philippine meat importers have requested that the Philippine Department of Agriculture continue the issuance of licenses while the review continues so trade remains uninterrupted. As of late 2007, the review had not been concluded.

The Philippine Department of Agriculture Bureau of Plant Industry (BPI) regulates imports of fresh fruits and vegetables, requiring phytosanitary clearances from BPI for each shipment. Like meat and meat

products, import permits for fruits and vegetables need to be secured prior to exportation from the United States. The date of shipment cannot be earlier than that of the import permit.

The Philippine Fisheries Code permits importation of fresh, chilled, or frozen fish and fish products only when certified as necessary by the Secretary of Agriculture and upon issuance of an import permit by the Department of Agriculture. The Secretary issues a certificate of necessity when he deems imports are essential for achieving food security and the import will not cause serious injury or threat of injury to a domestic industry that produces like or directly competitive products.

Excise Tax on Distilled Spirits and Tobacco Products

In 2004, under Republic Act 9334, the Philippine government raised taxes on alcohol and tobacco products and stipulated further biennial increases until 2011. The law maintains the imposition of significantly lower excise taxes on locally produced spirits made from indigenous raw materials than it does on imports. The U.S. Government continues to urge the Philippines to address this issue.

Quantitative Restrictions

Among sensitive agricultural products, 15 items are subject to a MAV administered through TRQs. The Philippines' 10 year minimum access commitments under the Uruguay Round expired in June 2005. Final-year TRQ commitments are being maintained until such time as the products are liberalized or new commitments negotiated at the WTO.

In 2004, the Philippine government applied for the extension of Quantitative Restrictions on rice under Annex 5 of the WTO Agreement of Agriculture until 2012. The National Food Authority, a state trading enterprise, controls rice imports and administers the import quota. In 2006, the request for extension of its WTO waiver was approved by WTO members subject to certain concessions. Accordingly, in June 2007, the Philippine government lowered tariff rates on rice and various other agricultural products including mechanically separated or deboned turkey meat from 30 percent to 5 percent and deboned chicken meat from 40 percent to 5 percent. The minimum market access (quota) for rice was increased from 239,000 MT to 350,000 MT for the extension period. Annual rice imports are much higher, usually over a million metric tons, and they are expected to continue growing.

Several other products with significant market potential for the United States are subject to TRQs. These include: corn, with an in-quota tariff rate of 35 percent and an out-of-quota tariff rate of 50 percent; turkey meat, with an in-quota tariff of 30 percent and out-of-quota tariff of 35 percent to 40 percent; pork, with an in-quota rate of 30 percent and out-of-quota rate of 40 percent; and chicken meat, with an equalized in-quota and out-of-quota tariff rate of 40 percent. Moreover, since 2002, the Philippines has imposed a special safeguard on out-of-quota chicken imports, which has effectively doubled the protection rate for chicken meat.

Other Import Restrictions

The Philippines maintains import restrictions on a number of goods, basing the restrictions on grounds of morals, national security, and meeting international treaty obligations regulating certain products. Clearances and permits are required for a range of products, including essential and precursor chemicals included in the U.N. Convention Against Illicit Drug Trafficking; penicillin and its derivatives; sodium cyanide, chlorofluorocarbons and other ozone depleting substances; coal and its derivatives; color reproduction machines; various chemicals for the manufacture of explosives, fireworks and firearms;

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pesticides including agricultural chemicals; used motor vehicle parts and motorcycle components; warships of all kinds; radioactive materials; used clothing and rags; used tires; toy firearms and explosives; laundry and industrial detergents containing hard surfactants; all government importation; and Philippine currency in amounts exceeding P10,000,000, coin blanks, and bank notes.

Customs Barriers

The Philippine government has made some progress during the last several years toward bringing its customs regime into compliance with its WTO obligations, including implementation of the WTO Agreement on Customs Valuation, but corruption and other irregularities remain commonplace.

The Philippine government has taken steps to eliminate private sector involvement in the valuation process and to clarify that reference values may be used as a risk management tool, but not as a substitute for valuation. The U.S. Government remains concerned, however, about reports of continued private sector involvement in the valuation process, particularly in the activities of the Customs Bureau's Import Specialist Team, which has the authority to review all green lane entries for possible valuation-related offenses. The Philippines has made improvements to the valuation system, but periodic procedural irregularities continue to occur, including requests by Customs officials for the payment of unrecorded facilitation fees. The U.S. Government also continues to have concerns about inconsistent application of customs rules and procedures, undue and costly processing delays, and corruption. The United States has regularly urged the Philippine government to improve the administration of its customs regime and is supporting reform and modernization of the customs regime through technical assistance by USAID and several other donor organizations, including the Millennium Challenge Account Threshold Program.

STANDARDS, TESTING, LABELING, AND CERTIFICATION

Industrial Goods

Local inspection for compliance with mandatory Philippine national standards is required for 91 products, including automotive and motorcycle batteries, cosmetics, medical equipment, lighting fixtures, fire extinguishers, electrical wires and cables, cement, pneumatic tires, sanitary wares, and household appliances. For goods not subject to such standards, U.S. manufacturers' self certification of conformity is accepted. Labeling is mandatory for textile fabrics, ready-made garments, household and institutional linens, and garment accessories. Mislabeling, misrepresentation, or misbranding may subject an entire shipment, rather than just the offending goods, to seizure and disposal. The Generic Act of 1988 aims to encourage the use of generic drugs by requiring that the generic name of a pharmaceutical appear above its brand name on all packaging.

Agricultural Goods

The Philippine Department of Agriculture established plant health regulations in 1995 that allow the import of U.S. apples, grapes, oranges, potatoes, onions, and garlic, provided these products, when necessary, undergo a specified cold treatment to control targeted pests. Florida grapefruit and U.S. cherries are permitted, but the United States and the Philippines are still negotiating the import protocols for broccoli, cauliflower, lettuce, carrots, cabbage, and celery. The Agriculture Department's target date for completion of the pest risk analysis for these vegetables is undetermined. In the interim, the Philippines has continued to allow these products to enter into the country provided that they are intended for "high-end markets" only.

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On September 28, 2007, the Philippine government lifted import restrictions on beef and beef products from the United States and Canada. Following the World Organization for Animal Health (OIE) decision in May 2007 recognizing the controlled risk classification status of the United States for Bovine Spongiform Encephalopathy, U.S. beef and beef products derived from cattle of all ages, including bone-in and boneless beef; processed beef; and beef offal (*i.e.*, tongue, tripe, hearts, liver, cheek meat, and collagen casings) may now be exported to the Philippines, provided that the products come from healthy ambulatory animals and are free of specified risk materials.

On December 23, 2006 the Agriculture Department issued new regulations on the accreditation of foreign meat establishments (FMEs) from which meat and meat products are sourced for exports to the Philippines. The new guidelines would require all exporting countries or individual FMEs to obtain either systems or individual accreditation to be eligible as legitimate suppliers. At present, all U.S. meat establishments that are regulated and inspected by the USDA Food Safety and Inspection Service are still eligible to export meat and poultry to the Philippines.

GOVERNMENT PROCUREMENT

The Philippines is not a signatory to the WTO Agreement on Government Procurement. However, the Philippine government has taken some steps to reform its procurement process. In January 2003, the Government Procurement Reform Act consolidated procurement laws and issuances and standardized guidelines, procedures, and forms across Philippine government agencies, government-controlled corporations, and local governmental units. The Act simplified prequalification procedures, introduced more objective, nondiscretionary criteria in the selection process, and established an electronic procurement system to serve as the single portal for government procurement activities. The Government Procurement Reform Act also mandated greater transparency of the procurement process to promote competition, enhance the flow of information, and lessen discretion among agencies.

Nevertheless, the Government Procurement Reform Act's Implementing Rules and Regulations for locally funded government projects continue to favor purchases from Philippine and Philippine-controlled companies. As a general rule, goods and supplies for locally funded projects must be purchased from enterprises that are at least 60 percent Philippine-owned, infrastructure services from enterprises with at least 75 percent Philippine ownership, and consulting services with at least 60 percent Philippine-controlled entities. For infrastructure projects, the Law also provides that contractors whose head office is located in the province where the project will take place have the right to match the lowest offer by a nonprovince-based bidder, though this provision is set to expire in January 2008.

The Philippine government has not yet issued implementing rules and regulations covering procurement for projects with foreign financing or assistance, reportedly because of strong pressure to favor local suppliers, which may contradict donor procurement policies. The Official Development Assistance (ODA) Act waived the preference for local suppliers for projects involving ODA. Foreign donors have been able to apply their procurement regulations in accordance with the ODA Act. The build-operate-transfer law allows investors in build-operate-transfer (BOT) projects to engage the services of either Philippine firms or foreign firms for the construction of BOT infrastructure projects.

The Philippines also provides for preferential treatment of Philippine consultants in public sector infrastructure projects. Where foreign funding is indispensable, foreign consultants are required to enter into joint ventures with Philippine partners. U.S. companies also continue to raise concerns about corruption in government procurement.

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The Philippine government issued an executive order in 1993 mandating a countertrade requirement for procurements by government agencies and government-owned or controlled corporations that entail the payment of at least \$1 million in foreign currency. Implementing regulations set the level of countertrade obligations at a minimum of 50 percent of the import price and set penalties for nonperformance of countertrade obligations.

EXPORT SUBSIDIES

Enterprises and exporters engaged in activities under the Philippine government's Investment Priorities Plan (IPP) may register with the Board of Investments (BOI) for fiscal incentives, including 4 year to 6 year income tax holidays, a tax deduction equivalent to 50 percent of the wages of direct-hire workers, and tax and duty exemptions for the importation of breeding stock and genetic materials. BOI-registered firms that locate in less developed areas may be eligible to claim a tax deduction of up to 100 percent of outlays for infrastructure works and 100 percent of incremental labor expenses. As a general rule, an enterprise must be at least 60 percent Philippine-owned and, if export-oriented, export at least 50 percent of its production to qualify for BOI incentives. Enterprises with less than 60 percent Philippine equity may qualify provided they engage in projects listed as "pioneer" under the IPP or they export at least 70 percent of production. Firms in government administered export processing zones, free trade zones, and other special industrial estates registered with the Philippine Economic Zone Authority (PEZA) enjoy similar incentives, as well as tax and duty free imports of capital equipment and raw materials, and exemption from customs inspection. In lieu of national and local taxes, PEZA-registered firms are subject to a 5 percent tax on gross income. Firms that earn at least 50 percent of their income from exports may register with BOI or PEZA for certain tax credits under the Philippines' Export Development Act, including a tax credit on incremental annual export revenue.

Automotive Export Subsidies

With the intention of promoting the local assembly and export of vehicles, the Philippine government launched the Philippine Automotive Export Program (AEP) in 2003 and modified it in 2004. The export incentives program offers automobile manufacturers registered under the AEP preferential tariff rates in the importation of finished automobiles on the basis of equivalent net foreign exchange earnings (NFEE) from their finished vehicle exports. An equivalent NFEE, \$400 per unit exported for year one to two of the program, \$300 for year 3, declining to \$100 by year 5, will be credited. Export performance is required to take advantage of preferential tariff rates. The net foreign exchange earning chargeable against imports is on a per unit basis and continues until the credit has been exhausted, after which the manufacturer pays the normal tariff rates on its imports.

INTELLECTUAL PROPERTY RIGHTS (IPR)

In February 2006, the United States moved the Philippines from the Special 301 "Priority Watch List" (where it had been listed for 5 consecutive years) to the "Watch List" to acknowledge steps the Philippines has taken to strengthen its IPR regime. Following the announcement, President Arroyo and other senior government officials pledged continued momentum and increased effort on IPR initiatives. However, there has been limited progress since and there are some signs that the IPR climate may be deteriorating. Counterfeit goods such as brand name and designer clothing, handbags, cigarettes, and other consumer goods are widely available. Optical media piracy, including piracy of DVDs and CD-Rs, also continues to be a problem. In addition, there are widespread unauthorized transmissions of motion pictures and other programming on cable television systems. The Intellectual Property Office (IPO) and the National Telecommunications Commission have brought criminal charges against cable companies

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that distribute programming without the consent of copyright holders, but the Department of Justice has experienced difficulties in prosecuting the cases.

While the Philippines has made progress in combating optical media piracy through passage of the 2004 Optical Media Act (OMA), it has generally failed to improve the prosecution and conviction of IPR violators. Print piracy and end-user piracy of business and entertainment software also are serious problems. The United States has urged the Philippines to further improve and sustain enforcement efforts and to take steps to enhance judicial capacity.

Intellectual Property Laws

The 1997 Intellectual Property Code provides the basic legal framework for IPR protection in the Philippines. The 2000 Electronic Commerce Act extends this framework to the Internet. However, the Code contains ambiguous provisions relating to the rights of copyright owners over broadcast, rebroadcast, cable retransmission, or satellite retransmission of their works, and burdensome restrictions affecting contracts to license software and other technology. The Philippine government has nonetheless taken positive steps in recent years to address legislative deficiencies in its IPR regime. In 2001, the Philippines enacted a new law to protect layout designs (topographies) of integrated circuits. In January 2002, the Philippine Supreme Court handed down a decision with respect to *ex parte* seizure authority in civil cases of IPR infringement (seizure without notice to the suspected infringer).

The Philippines is a member of the World Intellectual Property Organization (WIPO) and is party to the following international IP agreements: the Berne Convention for the Protection of Literary and Artistic Works; the Budapest Treaty on the International Recognition of the Deposit of Microorganisms for the Purposes of Patent Procedure; the Paris Convention for the Protection of Industrial Property; the Patent Cooperation Treaty; and Rome Convention for the Protection of Performers, Producers of Phonograms and Broadcasting Organizations. Most recently, the Philippines acceded to the WIPO Copyright Treaty and the WIPO Performances and Phonograms Treaty (known collectively as the WIPO Internet Treaties), which took effect in the Philippines in October 2002. However, the Philippine government has not yet enacted necessary amendments to its Intellectual Property Code that would fully implement the requirements of these two WIPO treaties into domestic law. The U.S. Government continues to urge the Philippines to enact this needed legislation.

As of January 2008, the Philippine Congress is in the process of working on the passage of legislation to amend the Intellectual Property Code with respect to patent registration for pharmaceuticals, placing additional and more burdensome requirements on pharmaceuticals vis-à-vis other products. If passed, this legislation would weaken some patent protection provisions in the Intellectual Property Code related to pharmaceutical products and increase uncertainty in the market for U.S. pharmaceutical companies.

Enforcement

The United States continues to have serious concerns regarding the lack of consistent, effective and sustained IPR enforcement in the Philippines. In 2007, U.S. distributors continued to report high levels of piracy of optical discs of films and musical works, computer games, and business software, as well as widespread unauthorized transmissions of motion pictures and other programming on cable television systems. Trademark infringement in a variety of product lines is also widespread, with counterfeit merchandise openly available from both legitimate and illegitimate vendors.

The U.S. Government continues to encourage effective action and full funding support for IPR enforcement efforts and judicial capacity building. The U.S. Government has urged the Philippines to adopt laws that would extend further IPR protection to the Internet by accommodating electronic commerce and outlawing online piracy, and to take further steps to combat piracy of textbooks and other printed materials. To support Philippine efforts, the U.S. Government continues to provide technical assistance and training to the Philippine agencies responsible for IPR protection.

Serious problems nonetheless continue to hamper the effective operation of agencies tasked with IPR enforcement. Interagency coordination within the Philippine government is generally weak, though improving. Many enforcement agencies continue to suffer from a lack of resources. Enforcement efforts such as raids and seizures have increased in frequency over the past three years. The Optical Media Board (OMB), created to enforce the OMA, continues to work towards full operational capability in its efforts to combat domestic production of pirated optical media, despite persistent inadequate funding. The OMB continues to conduct numerous raids against optical media production lines and retail outlets, resulting in increasing seizures of production equipment and finished products. The legal system in the Philippines remains inadequate, however, and courts often release suspects picked up in OMB raids and drop their cases on technical grounds.

The Philippine government has taken some administrative steps intended to strengthen enforcement. The Intellectual Property Code of the Philippines stipulates that the IPO has jurisdiction to resolve disputes concerning alleged infringement. The IPO has implemented a more robust leadership role on enforcement issues in the Philippines, and, in February 2006, was granted oversight authority over IPR-related law enforcement efforts. A November 2006 directive from President Arroyo assigned the IPO the responsibility for coordinating intellectual property protection among executive agencies. Components of the IPO's strategy include a greater emphasis on interagency coordination, enforcement campaigns in partnership with private industry, and sustained outreach efforts to inform the public on IPR issues.

A Bureau of Customs (BOC) administrative order in September 2002 strengthened the ability of the BOC to prohibit the importation of pirated and counterfeit products and created an Intellectual Property Unit within the BOC. The BOC maintains an IPR registry where rights holders may record relevant information regarding their products in order to facilitate enforcement. However, the Intellectual Property Unit is an *ad hoc* entity and does not have adequate institutional or resource support to fulfill its mandate effectively. The Unit is handicapped by inadequate staffing, limited resources, and lack of access to critical Customs computer information systems.

In late 2005, the Supreme Court created a Task Force on Intellectual Property Rights, which identified three judges and a team of prosecutors who will focus on IPR cases and receive specialized training. Over the past year, those judges and several of the prosecutors received training from the U.S. Patent and Trademark Office. The Task Force was reorganized in July 2006 and is composed of entirely new personnel. In 2006, 15 judges were identified for specialized IPR training. While these judges handle other commercial and criminal cases such as money laundering, their primary responsibility is IPR cases. Frequent changes in personnel and structure have limited the effectiveness of this mechanism. If appealed, IPR cases continue to go through the current appellate system, which permits numerous interlocutory appeals and can result in long delays. There continue to be proposals to create special courts to deal with IP cases exclusively.

Among those cases that have made it to court, there have been relatively few successful prosecutions. While companies have invested significant resources in investigations and litigation, some cases remain unresolved for as long as two decades after the initial complaint. The Philippines has failed to establish

punitive sanctions sufficient to serve as a deterrent to IPR infringement. The nominal damages awarded by the Philippine courts in IPR cases add little to the cost of doing business for IPR infringers, and thus far there has been no risk of imprisonment for offenders.

SERVICES BARRIERS

Basic Telecommunications

The Philippine Constitution of 1987 limits the operation of certain utilities to firms with at least 60 percent ownership by Philippine citizens and defines telecommunications services as a public utility, thereby limiting foreign ownership to 40 percent. This restricts market entry, particularly in more capital-intensive applications, such as broadband, where foreign firms are reluctant to invest without majority control. In addition, foreigners are restricted from serving as executives or managers of telecommunications companies and the number of foreign directors in telecommunications companies must be proportionate to its aggregate share of foreign capital. Foreign equity in the private radio communications network is constitutionally limited to 20 percent. Operation of cable television and other forms of broadcasting and media are also reserved for Philippine nationals.

Financial Services

The Philippines has yet to ratify the Fifth Protocol to GATS, embodying its obligations under the WTO Financial Services Agreement.

Insurance

Although current regulations permit up to 100 percent foreign ownership in the insurance sector, the Philippines only committed in the GATS to a maximum of 51 percent equity participation and grandfathered existing insurers with more than 51 percent foreign equity. Under current regulations, minimum capitalization requirements increase with the degree of foreign equity. As a general rule, only the state owned Government Service Insurance System (GSIS) may provide coverage for government-funded projects. Administrative Order 141, issued in August 1994, also required proponents and implementers of build-operate-transfer projects and privatized government corporations to secure their insurance and bonding from the GSIS at least to the extent of the government's interests. Private insurance firms, both domestic and foreign, regard this as a significant trade barrier. Current regulations require all insurance/professional reinsurance companies operating in the Philippines to cede to the industry-owned National Reinsurance Corporation of the Philippines at least 10 percent of outward reinsurance placements.

Banking

Under the Foreign Bank Liberalization Act of 1994, a maximum of 10 additional foreign banks were permitted to open full service branches in the Philippines within 5 years from the effective date of the Act. All slots have been filled. Without time limit, the Foreign Bank Liberalization Act allowed foreign banks to own up to 60 percent of a new or existing local subsidiary. Foreign branch banks were limited to six branches each. Four foreign-owned banks that had been operating in the Philippines prior to 1948 were each allowed to operate up to six additional branches. The Philippines only committed to foreign ownership at a 51 percent level in its 1997 WTO financial services offer and included a reciprocity test for authorization to establish a commercial presence. The General Banking Law of 2000 created a seven-year window (which closed in June 2007) during which foreign banks could acquire up to 100 percent of

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one locally incorporated commercial or thrift bank (up from the previous 60 percent foreign equity ceiling). Since September 1999, foreign investments have been allowed only in existing banks because of a central bank moratorium on the issuance of new bank licenses to encourage consolidation in the banking system. Current laws mandate that majority Philippine-owned domestic banks should, at all times, control at least 70 percent of total banking system assets. Rural banking remains completely closed to foreigners.

Existing laws require financial institutions to set aside loans for certain preferred sectors. The Agr-Agra Law requires banks to earmark at least 25 percent of their loan portfolios for agricultural credit in general, with at least 10 percent dedicated to agrarian reform program beneficiaries. The Magna Carta for Small Enterprises requires banks to set aside at least 8 percent of their loan portfolios for small and medium-sized enterprises (SMEs). Although these mandatory lending requirements lapsed in August 2007, a pending bill seeks to continue mandatory lending for SMEs. In the interim, the central bank has issued a circular letter encouraging banks to maintain their present level of lending to the SME sector on the request of the Small and Medium Development Council (the lead government agency for SME promotion and development). The mandatory lending provisions are more burdensome for foreign branches because of their limited branch networks and because constitutionally-mandated foreign land ownership restrictions impede their ability to accept land as collateral.

Securities and Other Financial Services

Membership in the Philippine Stock Exchange is open to foreign-controlled stock brokerages that are incorporated under Philippine law. Foreign equity in securities underwriting companies is limited to 60 percent. Securities underwriting companies not established under Philippine law may underwrite Philippine issues for foreign markets, but not for the domestic market. Although there are no foreign ownership restrictions governing acquisition of shares of mutual funds, current law restricts membership on a board of directors to Philippine citizens. The Philippines took an MFN exemption on foreign equity participation in securities firms, stating that Philippine regulators would approve applications for foreign equity only if Philippine companies enjoy similar rights in the foreign investor's country of origin. A 60 percent foreign ownership ceiling applies to financing companies and a 30 percent cap applies to pawnshops. The Lending Company Regulation Act – signed into law in May 2007 to establish a regulatory framework for credit enterprises that do not clearly fall under the scope of existing laws – requires majority Philippine ownership.

Advertising

The Philippine Constitution limits foreign ownership of advertising agencies to 30 percent. All executive and managing officers of advertising agencies must be Philippine citizens.

Public Utilities

The Philippine Constitution specifically limits the operation of certain utilities (water and sewage, electricity transmission and distribution, telecommunications, and public transport) to firms with at least 60 percent ownership by Philippine citizens. All executive and managing officers of such enterprises must be Philippine citizens. These limitations also apply to the operation of public utilities under build-operate-transfer and similar arrangements.

Practice of Professions

As a general rule, the Philippine Constitution reserves the practice of licensed professions (*e.g.*, law, medicine, nursing, accountancy, engineering, architecture, and customs brokerage services) to Philippine citizens.

Shipping

Under Philippine cabotage laws, foreign-flagged vessels cannot engage in the carriage of domestic trade cargoes. In specific cases, Philippine-registered ships engaged in international trade may be issued a special permit to engage temporarily in domestic trade services. These permits can only be issued if: there is no existing Philippine-flagged vessel operating on the proposed route; there is no suitable local vessel available; the vessel is contracted by private or public utilities; and it involves tourist passenger vessels, when the itinerary includes calls at domestic ports. Philippine government cargo is reserved to Philippine-flagged vessels, though exemptions are permitted if these vessels are unavailable at “reasonable” freight rates. Only Philippine nationals or locally incorporated entities authorized to engage in overseas shipping and with a maximum of 40 percent foreign equity may register a vessel. Philippine-registered vessels must be manned by Philippine crews.

Express Delivery Services

Foreign air express couriers and airfreight forwarding firms must either contract with a 100 percent Philippine owned business to provide local delivery services, or establish a domestic company with a minimum of 60 percent Philippine equity. While there has been some liberalization of international cargo services, U.S. carriers already benefited from cargo provisions in the U.S.-Philippines Air Transport Agreement that allowed them to establish hub operations in the Philippines.

The Civil Aeronautics Board (CAB) expanded international nonscheduled or chartered services for specific airports based on a 2005 resolution to allow unlimited flight frequencies over and above the existing entitlement provided in bilateral air services agreements. This resolution applies to Diosdado Macapagal International (Clark) Airport, Subic Bay International Airport, Davao International Airport, Mactan, Cebu International Airport, Laoag International Airport, Zamboanga International Airport, and other developmental gateways.

INVESTMENT BARRIERS

The 1991 Foreign Investment Act contains two “negative lists” (list A and List B), collectively called the “Foreign Investment Negative List” (FINL), enumerating areas where foreign investment is restricted. The Foreign Investment Act requires the Philippine government to update and publish the FINL every two years. The most recent FINL was signed in December 2006.

List A restricts foreign investment in certain sectors by mandate of the Constitution and specific laws. For example, enterprises engaged in retail trade (with paid up capital of less than \$2.5 million, or less than \$250,000 for retailers of luxury goods), mass media, small-scale mining, private security, cock fighting, utilization of certain marine resources, and manufacture of firecrackers and pyrotechnic devices are reserved for Philippine nationals.

The Philippine government allows up to 25 percent foreign ownership for enterprises engaged in employee recruitment and for public works construction and repair, with the exception of build-operate-

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transfer and foreign-funded or foreign-assisted projects (that is, projects that benefit from foreign aid, for which there is no upper limit on foreign ownership). Foreign ownership of 30 percent is allowed for advertising agencies, while 40 percent foreign participation is allowed in natural resource extraction (although the President may authorize 100 percent foreign ownership for large scale projects), educational institutions, public utilities, commercial deep sea fishing, certain government procurement contracts, ownership of condominium units, and rice and corn production and processing. Full foreign participation is allowed for retail trade enterprises with paid up capital of \$2.5 million or more, provided that investment for establishing each store is not less than \$830,000, or specializing in high end or luxury products, provided that the paid up capital per store is not less than \$250,000. Financing companies and investment houses are limited to 60 percent foreign ownership.

List B restricts foreign ownership (generally to 40 percent) for reasons of national security, defense, public health, safety, and morals. Sectors covered include explosives, firearms, military hardware, massage clinics, and gaming activities. This list also addresses local small- and medium-sized firms by restricting foreign ownership to no more than 40 percent in nonexport firms capitalized at less than \$200,000.

In addition to the restrictions noted in lists “A” and “B”, firms with more than 40 percent foreign equity that qualify for BOI incentives must divest to the 40 percent level within 30 years from registration date or within a longer period determined by the BOI. Foreign-controlled companies that export 100 percent of production are exempt from this divestment requirement. As a general policy, the Philippine Department of Labor and Employment allows the employment of foreigners, provided there are no qualified Philippine citizens who can fill the position. BOI-registered companies may employ foreign nationals in supervisory, technical, or advisory positions for five years from registration, extendable for limited periods at the discretion of the BOI. The positions of elective officers of majority foreign-owned enterprises (*i.e.*, president, general manager, and treasurer or their equivalents) are not subject to this limitation.

The Philippine Constitution of 1987 bans foreigners from owning land in the Philippines. The 1994 Investors’ Lease Act allows foreign companies investing in the Philippines to lease land for 50 years, renewable once for another 25 years, for a maximum 75 years. Deeds are often difficult to establish and are poorly reported and regulated. The deeds and property infrastructure is full of ambiguities, which makes it difficult to establish clear ownership. The court system does not settle cases in a timely manner. Land ownership issues need to be clarified for domestic landowners.

Trade Related Investment Measures

Under a 1987 Executive Order, the soap and detergent (surfactant) industry is required to use a minimum of 60 percent locally produced raw materials that do not endanger the environment. The intent of the law is to compel soap and detergent manufacturers to use coconut-based surface active agents (soft surfactants) of Philippine origin. In 1999, the Philippine Department of Justice determined that this Executive Order conflicts with the Philippines’ obligations under the WTO Agreement on Trade-Related Investment Measures. Subsequent to the ruling, the order has not been enforced, but it has not been repealed. Moreover, a 2000 law prohibits manufacture, importation, distribution, and sale of laundry and industrial detergents containing hard surfactants. Only natural oleo chemicals, including those derived from coconut, palm, palm kernel, sunflower, and rapeseed oils are allowed.

The United States continues to monitor other of the Philippines’ trade-related investment measures. Regulations governing the provision of BOI-administered incentives impose a higher export performance

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requirement for foreign owned enterprises (70 percent of production should be exported) than for Philippine-owned companies (50 percent). A 1984 measure, which requires mining firms to prioritize the sale of copper concentrates to the then government-controlled Philippine Associated Smelting and Refining Company (PASAR), has yet to be repealed despite PASAR's privatization in 1998. In addition, there appear to be unwritten "trade balancing" requirements for firms applying for approval of ventures under the ASEAN Industrial Cooperation scheme. A 1982 executive order with guidelines issued by the Bureau of Foods and Drugs, which requires pharmaceutical firms to purchase semi-synthetic antibiotics from a specific local company except when these firms can show that the landed cost of imports are at least 20 percent cheaper, is currently dormant as the said local company has closed and there is no other local company that manufactures semi-synthetic antibiotics.

Retail Trade

The Retail Trade Liberalization Act of 2000 requires that foreign retailers, for 10 years after the bill's enactment, source at least 30 percent (for retail enterprises capitalized at no less than \$2.5 million) or 10 percent (for retail enterprises specializing in luxury goods) of their inventory, by value, in the Philippines. Foreign retailers are likewise prohibited from engaging in trade outside their accredited stores. At the same time, retail enterprises with foreign ownership exceeding 80 percent of equity are required to offer 30 percent of their shares to the public within 8 years after the start of operations. In addition, prospective investors in the retail sector face a reciprocity requirement. The Retail Trade Liberalization Act states that only nationals from, or juridical entities formed or incorporated in, countries that allow the entry of Philippine retailers, shall be allowed to engage in retail trade in the Philippines.

Public Utilities

The Philippine government's most important privatization effort, the June 2001 Electric Power Industry Reform Act, provided that the National Power Corporation (NPC) was aimed at privatizing at least 70 percent of its generating assets located in Luzon and Visayas within 3 years. Thus far, some 39 percent of generating assets have been sold. By the end of 2007, the Power Sector Assets and Liabilities Management Corporation expects to have privatized 50 percent of these assets. Seventy-five percent of the funds used to acquire NPC assets must be inwardly remitted and registered with the BSP (central bank). However, foreign participation may be restricted pursuant to a constitutional provision regarding utilization of certain natural resources (such as water and geothermal resources) and power generation as well as provisions requiring a minimum of 60 percent Philippine ownership to obtain water rights for hydropower generation under the implementing rules of the 1976 Water Code of the Philippines.

Licensing of Technology

The Philippine government defines technology transfer arrangements as: (1) contracts involving the transfer of systematic knowledge for the manufacture of a product; (2) the application of a process, or rendering of a service including management contracts; and, (3) the transfer, assignment, or licensing of all forms of intellectual property rights, including computer software (except for software developed for the mass market). The Intellectual Property Office requires that all technology transfer arrangements comply with provisions outlined in Republic Act 8293, including the prohibition of the use of certain clauses in such arrangements. The scope of these provisions is extremely broad and serves to obstruct the normal contracting process between unrelated parties or as part of intra-company business.

Mining

The Philippine Supreme Court, in a decision issued in December 2004, reversed its January 2004 ruling that declared key provisions of the Mining Act of 1995 unconstitutional and prohibited majority foreign-owned firms from mining in the Philippines. The reversal opened the sector to direct foreign investment. As such, mineral exploration and processing licenses are open to full foreign equity participation for large projects valued at over \$50 million; small and medium-scale mining is reserved for Philippine nationals. Mining output is currently about \$500 million per year. There are nine million hectares where mineral deposits may be found, although the Philippine government has issued exploration permits to only 25 companies as of end July 2007 covering 81,820 hectares of those lands. Significant barriers to investment remain, such as unresolved disputes regarding land claims and a paucity of progress in implementing key regulatory and administrative reforms.

Other Investment Issues

The Supreme Court ruled in June 2005 that the Bases Conversion Development Act of 1992 did not explicitly provide incentives for the Clark Special Economic Zone, as it did for the Subic Special Economic and Freeport Zone. Unforeseen taxes, including retroactive taxation, threatened the operations of more than 350 investors in Clark, including 10 U.S. firms. In March 2007, President Arroyo signed amendatory legislation restoring incentives for Clark locators and also a law granting a one time tax amnesty to shield Clark investors from having to pay back taxes.

ANTICOMPETITIVE PRACTICES

The Philippine Constitution provided the Philippine government with the authority to regulate or prohibit monopolies, and it also banned combinations of entities in restraint of trade and unfair competition. However, the Philippines has no comprehensive competition law to implement this constitutional provision. Instead, there are a number of laws dealing with competition. However, enforcement agencies do not effectively enforce these laws, as they do not have the resources or capability to challenge entrenched economic and political interests.

ELECTRONIC COMMERCE

The 2000 Electronic Commerce Law provides that business transactions through an automated electronic system such as the Internet are functionally and legally equivalent to a written document governed by existing laws on commerce. Business to business transactions include domestic and international exchange of information, arrangements, and contracts for procurement, payments, supply management, transportation, and facility operations. An Internet service provider (ISP) generally is not criminally liable for unlawful activities conducted using its services if the ISP does not directly commit any infringement or other unlawful activities or does not cause another party to commit any unlawful act. The law includes provisions to penalize, among other offenses, hacking or cracking (unauthorized access into or interference in a communications system) and piracy (or the unauthorized reproduction, distribution, importation, use, removal, alteration, downloading, or broadcasting of copyrighted works including legally protected sound recordings). Electronic transactions are not currently subject to any tax measures. However, a reciprocity clause specifies that all benefits, privileges, and advantages established under the act will be enjoyed only by parties whose country of origin grants the same benefits and privileges or advantages to Philippine citizens.

FOREIGN TRADE BARRIERS

OTHER BARRIERS

Corruption has been recognized as a pervasive and longstanding problem in the Philippines. The Philippine Revised Penal Code, the Anti-Graft and Corrupt Practices Act, and the Code of Ethical Conduct for public officials are intended to combat corruption and related anticompetitive business practices. The Office of the Ombudsman investigates cases of alleged graft and corruption involving public officials. The Sandiganbayan (anti-graft court) prosecutes and adjudicates cases filed by the Ombudsman. In addition, a Presidential Anti-Graft Commission is tasked with investigating and hearing administrative cases of presidential appointees in the executive branch and government-owned and controlled corporations.

Soliciting or accepting any offering or giving a bribe are criminal offenses, punishable by imprisonment of between 6 years and 15 years, a fine, and/or disqualification from public office or business dealings with the government. As with many other laws, however, enforcement of anticorruption laws has been inconsistent. The Philippine government launched an initiative to strengthen public and private governance, including anticorruption efforts, in cooperation with bilateral and multilateral aid donors in May 2000. The Philippine government has worked in recent years to reinvigorate its anticorruption drive. In November 2004, the Philippines became eligible for the Millennium Challenge Account Threshold Program. In June 2006, the Millennium Challenge Corporation approved a 2 year \$21 million grant to implement the Philippines Threshold Country Plan which focuses on strengthening the anticorruption capabilities of the Office of the Ombudsman and tax collection agencies.

Both foreign and domestic investors express concern over the propensity of Philippine courts and regulators to stray beyond matters of legal interpretation into policymaking and about the lack of transparency in these decision making processes. In addition, there are many reports that courts influenced by bribery improperly issue temporary restraining orders impeding the conduct of legitimate commerce. Investors also have raised concerns that regulators rarely have any background in economics, business, or a competitive economic system, which enables entrenched interests to manipulate the legal system and regulatory process, whether by bribery or through exploiting the lack of expertise among regulators, to protect market positions.

FOREIGN TRADE BARRIERS

QATAR

TRADE SUMMARY

The U.S. goods trade surplus with Qatar was \$2.3 billion in 2007, an increase of \$1.3 billion from \$1 billion in 2006. U.S. goods exports in 2007 were \$2.8 billion, up 116 percent from the previous year. Corresponding U.S. imports from Qatar were \$479 million, up 82.9 percent. Qatar is currently the 51st largest export market for U.S. goods.

The stock of U.S. foreign direct investment in Qatar was \$5.1 billion in 2006 (latest data available), down from \$5.3 billion in 2005.

IMPORT POLICIES

Tariffs

As a member of the Gulf Cooperation Council (GCC), Qatar applies the GCC common external tariff of 5 percent for most products, with a limited number of GCC approved country-specific exceptions. Qatar's exceptions include basic food products such as wheat, flour, rice, feed grains, and powdered milk. The tariff on alcoholic beverages and tobacco products is 100 percent. Qatar also has a 20 percent tariff on iron bars and rods, nonalloy hot-rolled steel, and 12 millimeter steel bars.

Projects funded by the Qatar Industrial Development Bank (QIDB) can be granted a customs duty waiver for the import of machinery, raw materials and other industrial inputs. Qatar is not a signatory to the WTO Information Technology Agreement.

Import Licensing

Qatar requires importers to have a license for most products, and only issues import licenses to Qatari nationals. Only authorized local agents are allowed to import goods produced by the foreign firms they represent in the local market. However, this requirement may be waived if the local agent fails to provide the necessary spare parts and backup services for the product. Pork and pork derivatives may not be imported.

The government has on occasion established special import procedures via government-owned companies to help ease demand pressures. For example, in 2006, the government established the Qatar Raw Materials Company which imports construction materials and sells them to companies in Qatar at a marginal markup (to cover its operating expenses). The company is seeking partnerships with other governments to obtain dedicated sources for building materials.

Documentation Requirements

In Qatar, a letter of credit is the most common instrument for controlling exports and imports. When a letter of credit is opened, the supplier is required to provide a certificate of origin for the product. The Qatari embassy, consulate, or chamber of commerce in the United States should notarize the certificate of origin. To clear goods from customs zones at ports or land borders in Qatar, importers must submit a variety of documents, including a bill of lading, certificate of origin, *pro forma* invoice and an import license. All imported beef and poultry products require a health certificate from the United States and a

FOREIGN TRADE BARRIERS

Halal slaughter certificate issued by an approved Islamic center in the United States. The Qatari embassy, consulate, or chamber of commerce in the United States must authenticate all shipping documents.

The Ministry of Economy and Commerce is planning a reorganization for 2008 which will include the establishment of a new department as a “one-stop shop” to handle all services and required documentation for foreign investors and importers present in Qatar. This office will reportedly assign a case manager to each businessperson who can then review, sign, and process all required health and labor regulations, residency permits, *etc.* The reorganization was agreed upon by the Council of Ministers and will reportedly be formally announced by the Minister of Economy and Commerce after the Ministry has signed memoranda of understanding with the relevant ministries.

STANDARDS, TESTING, LABELING, AND CERTIFICATION

Standards

As part of the GCC Customs Union, the six Member States are working toward unifying their standards and conformity assessment systems. However, each member state currently continues to apply either its own standard or a GCC standard, causing confusion among some U.S. businesses. GCC Member States do not consistently notify measures to WTO Members and the WTO Committee on Sanitary and Phytosanitary Measures (SPS) and Technical Barriers to Trade (TBT) or allow WTO Members an opportunity to provide comments.

The GCC Standards Committee has recently approved two new standards that will replace existing standards for the labeling and expiration periods of food products. While the new standards appear to incorporate international guidelines and address some longstanding issues, particularly in relation to expiration periods, some requirements that have previously complicated the import process remain. All Member States are expected to adopt these two standards as national standards in order to implement them.

The GCC shelf life standard establishes mandatory expiration periods for 22 perishable products or product categories such as chilled meats, chilled offal, fresh dairy products, baby foods, fruit juices, and table eggs. This standard also establishes voluntary expiration periods for a range of frozen and processed products. Manufacturers have the option of using the actual expiry period in lieu of the voluntary expiration periods established in the standard. The standard also exempts a number of products from expiration periods including salt, white sugar, dried legumes, dried vegetables, spices and certain condiments, tea, rice, vinegar, and fresh fruits and vegetables including potatoes that have not been peeled or cut.

The new standards eliminate the long standing requirement that at least one-half of a product’s shelf life be valid when a product reaches the port of entry. However, they would still require both a production date and an expiration date on nonperishable food items, forcing U.S. producers to re-label products exported to the GCC, thereby leading to increased costs. The new standards appear inconsistent with international standards and do not appear to have a clear scientific basis. Specifically, the standards do not appear to reflect Codex guidelines. The United States has outlined its specific concerns with these standards and has established a dialogue between U.S. and GCC technical experts to discuss a possible resolution of the concerns raised.

In May and October 2007, respectively, Bahrain and Oman notified WTO Members of recently proposed procedures meant to harmonize food safety import requirements for all GCC member states. The United States and other WTO Members provided comments outlining significant concerns with the procedures, which, as currently drafted, create unnecessary obstacles to trade and would substantially disrupt food exports to GCC Member States from its trading partners. The GCC Member States are reportedly developing a response to these comments, and the United States has established a dialogue between U.S. and GCC technical experts to discuss the procedures and potential amendments to address the concerns raised.

Qatar established a General Authority for Standards and Specification in October 2002. However, most Qatari standards are derived from standards developed by the GCC. The National Health Authority provides input on the development of standards related to public health issues. All imported food products are randomly sampled and tested at central government laboratories.

Qatar restricted the import of beef from the United States in response to the discovery of Bovine Spongiform Encephalopathy in a single dairy cow in Washington State in 2003. Qatar still maintains this restriction. Qatar's National Food Regulation Committee decided in November 2007 to lift a previous complete ban on U.S. beef imports, and permit imports of beef and beef products from cattle younger than 30 months of age. The U.S. Embassy continues to engage the Government of Qatar to secure a full lifting of the ban.

Conformity Assessment

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

GOVERNMENT PROCUREMENT

Qatar gives preferential treatment to contractors that include high local content in bids for government tenders. Qatar also gives a 10 percent price preference to local firms and a 5 percent price preference to GCC firms in all government procurement. While, as a rule, Qatar requires that suppliers be 51 percent Qatari-owned or that foreign firms have a local agent in order to submit tenders, in practice certain exceptions exist. Qatar is not a signatory to the WTO Agreement on Government Procurement.

INTELLECTUAL PROPERTY RIGHTS (IPR) PROTECTION

In recent years, the government of Qatar has demonstrated renewed commitment to protecting and enforcing IPR pursuant to its WTO obligations. Qatar joined the World Intellectual Property Organization Copyright Treaty and Performances and Phonograms Treaty in April 2005 and is drafting the necessary implementing legislation and regulations.

Qatar has implemented the GCC patent law, and derogates from it, when necessary, to ensure compliance with its obligations under the WTO Trade Related Aspects of Intellectual Property Rights Agreement (TRIPS Agreement). It also established a joint committee between the Ministry of Economy and Commerce and the National Health Authority to coordinate their efforts and ensure that only patented products or authorized copies of pharmaceutical products are registered for sale.

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

SERVICES BARRIERS

Agent and Distributor Rules

Qatari laws state that only Qatari nationals can act as local agents, distributors, or sponsors. However, there are exceptions granted for 100 percent foreign-owned firms in the agriculture, industry, tourism, education, and health sectors. One notable exception is the Qatar Science and Technology Park, which allows for the establishment of local companies or branches of foreign companies with 100 percent foreign ownership. There are no taxes, and trade can be conducted without a local agent or sponsor. Goods and services can be imported duty free, and there is unrestricted repatriation of profits. The other currently operating "free zone" is the Qatar Financial Center (QFC) which allows 100 percent ownership by foreign companies registered at the Center, and includes financial services such as banking, insurance, and securities businesses. Foreign firms are also allowed to establish marketing offices in Qatar without a local agent.

The 2002 Commercial Agents Law grants agents and distributors exclusive rights to import, market and distribute particular goods and services, though it also allows individuals other than exclusive agents to import products provided they pay up to a 5 percent commission to the registered agent or distributor. In practice, some Qatari ministries waive the local agent requirement for foreign companies that have contracts directly with the government of Qatar. The Qatar Distribution Company has the exclusive right to import and distribute alcohol.

Banking

In 2003, the Qatar Central Bank allowed foreign banks to establish representational offices and allowed existing foreign banks in Qatar to open new branches through a case-by-case waiver by Amiri Decree. In 2004, Law No. 31/2004 amended the Organization of Foreign Capital Investment Law to allow foreign investment in the banking sector with approval by decree from the Cabinet of Ministers. Qatari regulations for local and foreign bank practices are the same, with new licenses available through the Qatar Central Bank application process. In 2005, Qatar authorized foreign banks to open branches in the Qatar Financial Center (QFC). Foreign banks are authorized to conduct all types of business out of the QFC, including provision of Islamic banking services, but are informally "advised" to stay out of the retail banking business. Laws and regulations applied to foreign banks registered in the QFC are different from, and more closely resemble international standards than the ones adopted by the Qatar Central Bank. The QFC tribunal is completely independent of the existing Qatari legal system and has jurisdiction for any dispute involving a registered QFC business.

Insurance

In 2004, Law No. 31/2004 amended the Organization of Foreign Capital Investment Law to allow foreign investment in the insurance sector with approval by decree from the Cabinet of Ministers. Foreign insurance companies wishing to operate in Qatar are subject to the same laws that apply to foreign firms

in all other sectors. The QFC can also accommodate insurance companies, and firms registered in the QFC have begun to offer retail insurance services.

Telecommunications

Qatar has begun to liberalize its telecommunications sector to permit outside private investment, starting with the issuance in December 2007 of a second mobile license to a consortium including Vodafone and the Qatar Foundation. Currently, Qatar Telecommunications (Q-Tel), which is 55 percent government-owned, has a monopoly on land-line services, and until an Amiri decree in 2006, had a monopoly on mobile services as well. The 2006 decree allows foreign telecommunications companies to enter the local market as Internet service providers and cable television providers, as well as to establish mobile phone networks. The law also restructured the telecommunications industry by providing authority to the Supreme Council for Communications and Information Technology (ictQatar) to issue, amend, cancel, or renew all individual licenses in this sector. IctQatar is also responsible for adopting and implementing a comprehensive national plan for the telecommunications sector, including furthering policies that promote competition. IctQatar plans to award a second fixed-line license in April 2008.

INVESTMENT BARRIERS

The Organization of Foreign Capital Investment Law (Law No. 13/2000) allows foreign investors, upon receiving government approval, to own up to 100 percent of projects in the agriculture, tourism, education, industry, health, and energy sectors. Foreign equity is limited to 49 percent in other sectors. Qatar amended the law in 2004 to allow foreign investment in the banking and insurance sectors upon approval by a decree from the Cabinet of Ministers. Moreover, foreign financial services firms are allowed 100 percent ownership at the QFC.

The investment law permits foreign investors to lease land for up to 50 years, renewable upon government approval. A law enacted in 2004 allows foreigners to own residential property in select projects, including the Pearl (the largest real estate development project in Qatar), the West Bay Lagoon, and the Al-Khor resort project. A 2006 law allows foreigners to be issued residency permits without a local sponsor if they own residential or business property in Cabinet-designated “investment areas.”

OTHER BARRIERS

Corporate Tax Policies

Qatar levies corporate income taxes on foreign firms at rates from 5 percent to 35 percent of net profits, including profits from foreign majority-owned Qatari joint ventures exceeding 100,000 Qatari riyals (\$27,000). All Qatari owned firms and joint ventures are exempt from corporate income taxes. Under Law No. 13/2002, the Ministry of Finance may grant a tax holiday of up to 10 years for new foreign investments in key sectors. Companies established in the QFC are exempt from taxes until April 30, 2008 (in accordance with the law establishing the centre, which provided a 3 year tax free period after the start of operations). The future tax rate is still being finalized but will tax local business profits at no more than 10 percent. Other foreign companies may be granted tax exemptions on a case-by-case basis by Amiri Decree.

FOREIGN TRADE BARRIERS

RUSSIA

TRADE SUMMARY

The U.S. goods trade deficit with Russia was \$12.0 billion in 2007, a decrease of \$3.1 billion from \$15.1 billion in 2006. U.S. goods exports in 2007 were \$7.4 billion, up 56.7 percent from the previous year. Corresponding U.S. imports from Russia were \$19.4 billion, down 2.4 percent. Russia is currently the 30th largest export market for U.S. goods.

The stock of U.S. foreign direct investment (FDI) in Russia was \$10.1 billion in 2006 (latest data available), up from \$8.6 billion in 2005. U.S. FDI in Russia is concentrated largely in the mining sector.

Russia's efforts to negotiate the terms for its accession to the World Trade Organization (WTO), begun in 1993, are well-advanced. Russia has completed its bilateral market access negotiations with most interested WTO Members, including the United States. Currently, the only outstanding bilateral negotiations are with Georgia, Saudi Arabia, and the United Arab Emirates. Russia is now focused on multilateral negotiations regarding other terms for accession. Discussions are ongoing on a number of issues including sanitary/phytosanitary measures, agriculture (including domestic support levels), intellectual property rights protection, and the operation of state-owned and state trading enterprises on a commercial basis. Russia also must enact the legislation to implement its commitments.

IMPORT POLICIES

Russia continues to maintain a number of restrictions with respect to imports, charges and fees that exceed the cost of the service, and licensing, registration and certification regimes that are burdensome. Discussions continue on eliminating other border measures or modifying them so that they are consistent with WTO requirements and internationally-accepted practices. Russia also maintains tariff-rate quotas (TRQs) on exports of interest to the United States.

Tariff-Rate Quotas

Consistent with the United States-Russia Meat Agreement, in December 2005 the Russian government established country specific tariff-rate quota volumes (including for the United States) and reduced tariff rates for beef, pork, and poultry meat imports from 2006 to 2009. Later, in June 2007, under its "Government Program for Agriculture and Market Regulation 2008-2012", the government announced that after 2009, country allocations would be abolished and out-of-quota tariff rates raised. Russia has committed that its agricultural policies will be consistent with its bilateral and multilateral commitments, including the United States-Russia WTO Bilateral Market Access Agreement that includes a framework and a time schedule for negotiating how these meat products will be treated after 2009.

Import and Activity Licenses

Import licenses and activity licenses for wholesaling and manufacturing activities are necessary to import a number of products, including alcoholic beverages, pharmaceuticals, products with encryption capability, explosive substances, narcotics, nuclear substances, hazardous wastes, and some food products (e.g., unprocessed products of animal origin). While some of these requirements address legitimate health and safety concerns, others appear to be an unnecessary additional requirement for imported goods and to burden unfairly importation of these products.

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For example, all importers of alcoholic products must have a license to produce or distribute and store such products, placing a burden on importers that should be applied only to distributors. Importers of vodka and tequila must also obtain a “white spirits” license, which can take up to two months for the Ministry of Economic Development and Trade (MEDT) to issue. Application for the license requires submission of documents that can take an additional two months to obtain, some of them from Russian government offices. This costly and time-consuming endeavor is not required of domestic distributors and specifically targets vodka imports. (Additional burdens imposed on importers of alcohol-containing products are described below in the section on Nontariff Barriers.)

In a November 2006 bilateral agreement with the United States, the Russian government agreed to set up a streamlined system for the import of goods containing encryption capability with transparent, nondiscriminatory procedures. The Russian government also agreed to allow the importation of most commercially-traded information technology and telecommunications goods after a one-time notification, or in some cases, with no licensing or notification requirements at all. The United States continues to work actively with the Russian government on addressing its licensing barriers to trade in goods containing encryption capability and ensuring the full implementation of the terms of our bilateral agreement.

Customs Issues, Taxes, and Tariffs

In addition to tariffs, there are two types of taxes applied to goods at the time of importation: the Value Added Tax (VAT) and selective excise taxes, both of which are also applied to similar domestic goods. Pharmaceutical importers have complained that new pharmaceuticals imported in the clinical trial stage (prior to registration) were improperly assessed the VAT because they could not produce a certificate of registration. The U.S. government has raised this issue with MEDT and the Ministry of Finance.

Excise taxes apply to a number of luxury goods, such as liquor and cigarettes. Wine of 15 percent alcohol or less is assessed at 2.20 rubles per liter, whereas wines exceeding 15 percent alcohol are presumed to be fortified and are assessed at 112 rubles per liter of ethyl alcohol content. Because some California wines exceed 15 percent alcohol without fortification, U.S. industry contends that this differential tax rate constitutes a discriminatory tax against U.S. wine. Excise taxes on other goods can total as much as 570 percent *ad valorem*.

Import tariffs on automobiles, aircraft, and aircraft parts have presented particular obstacles to U.S. exports to Russia. The effect of the tariff, VAT, and customs handling fees on aircraft was equivalent to a 40 percent tax, making it virtually impossible for Russian airlines to afford to purchase foreign planes. When Russia joins the WTO, tariffs on aircraft and aircraft parts will be substantially reduced. Tariffs on civil aircraft parts, including engines, will be reduced to an average of 5 percent. In particular, the bilateral agreement on leased aircraft, which entered into force on November 19, 2006, obligated the Russian government to reduce immediately tariffs on narrow body leased aircraft. As a result, in January 2007, the Russian Interdepartmental Commission for Protective Measures in Foreign Trade and Customs Policy approved the decision to cut import duties on foreign leased aircraft from 20 percent to 8 percent for aircraft with 50 seats and fewer and from 20 percent to 10 percent for aircraft between 115 seats and 160 seats. The measure would apply to planes leased for no more than 3 years and would remain in force until January 1, 2011. However, the necessary decree implementing this tariff reduction has not yet been signed.

FOREIGN TRADE BARRIERS

The current import duty on new passenger vehicles is 25 percent, which, when combined with the excise tax based on engine displacement and the VAT, increases the price of larger U.S. passenger cars and sport utility vehicles by 70 percent. Similarly, for motorcycles, Russia imposes a 20 percent special duty on large motorcycles, plus an additional 18 percent VAT, increasing prices significantly on imported large motorcycles.

In a bilateral agreement signed in November 2006, Russia committed to revert to and maintain the previously applied 5 percent duties on imports of combine harvesters and threshers and to bind the rates upon accession to the WTO. In February 2008, MEDT announced a safeguards investigation in response to increased imports of agricultural combine harvesters. As of March 2008, it is not clear whether or not this investigation will lead to additional import barriers for these products.

Customs authorities in Russia continue to assess duties on the royalty value of imported audiovisual materials, such as television master tapes, DVDs, *etc.*, rather than solely on the physical value of the carrier medium. Industry has indicated that this practice is contrary to international and European legal standards, and that it represents a form of double taxation, since royalties are also subject to withholding, income, value added, and remittance taxes.

U.S. industries also complain of high tariffs on agricultural products such as sugar, fruit, processed food, and forest products. Once Russia is a WTO Member, it must bind its tariffs on all agricultural products, thereby providing more predictability on its tariff rates.

A new Customs Code, intended to bring Russia's customs regime into compliance with WTO requirements, has been in force since 2004. It simplified customs processes and established specific procedures for the application and payment of tariffs. Russia also amended its Customs Tariff Law to update its customs valuation practices to implement provisions of the WTO. However, significant problems remain. Reportedly, the Russian government issues unpublished recommendations on import valuations to customs posts to help combat undervaluation of imports. However, these recommendations can also be applied as reference prices for customs valuation or substituted for the invoice value of the imports. U.S. industry also reports that Russia does not publish all regulations, judicial decisions, and administrative rulings of general application to customs matters. In addition, U.S. exporters report that customs enforcement varies by region and port of entry, and that frequent changes in regulations are unpredictable, adding to costs and delays at the border. Russia recognizes that it will need to revise elements of its customs fees. In addition, the United States is working with Russia in the multilateral WTO Working Party process to make substantial improvements on these customs issues and ensure full implementation of the WTO Customs Valuation Agreement into Russia's laws.

Nontariff Barriers

U.S. companies continue to face a number of nontariff trade barriers when exporting to Russia. Nontariff barriers are a topic of detailed discussions in Russia's WTO accession negotiations.

Pharmaceuticals

Russia's pharmaceutical market has seen some of the fastest growth in the world over the last three years. Foreign firms account for 75 percent to 80 percent of total sales in the Russian market. Despite the impressive growth prospects in almost all segments of the market, the government's drugs benefit program for social welfare beneficiaries has slowed imports in 2007. The program, known as the Additional Drug Supply or "DLO" was plagued by deficit spending and distribution problems in late

2006 and early 2007. The DLO market share represented 10 percent of the entire pharmaceutical market in 2007 and is forecast to account for 20 percent of the market in 2008. U.S. industry reports that higher priced imports, which are often safer and of a higher quality than locally produced pharmaceuticals, are often absent from reimbursement lists and state purchases because the government focuses more on price concerns than on the quality and safety of the products.

Experts estimate that sales of counterfeit drugs in Russia are at least \$200 million to \$300 million per year, with some 70 percent of the fake drugs being produced domestically.

Alcohol

Alcohol trade in Russia is governed by a burdensome array of no fewer than 105 laws, decrees, and regulations. The complete list can be found in Russian at: <http://alcogol-info.ru/?page=normativ>.

Importers of alcohol face a variety of discriminatory measures. As part of the Law on Production and Turnover of Alcohol, as amended in April 2006, all customs duties, excise taxes and VAT on alcohol must be paid in advance using a bank guarantee and deposit. These funds must be deposited twice, once for import and once for transit (the second “transit” guarantee has purportedly been eliminated, but Russian customs has, for procedural reasons, ignored its revocation). The advance payment requirement for duties and taxes has the effect of limiting trade volumes due to the amount of money that must be tied up in guarantees. The deposit requirement also discriminates against imports because the bank guarantee required of domestic producers is equal to only the excise taxes. Furthermore, the customs registration fee, 7000 rubles, exceeds user fee levels for such services in other countries

Importers face additional burdensome and discriminatory procedures under the current regulatory regime. The United Federal Automated Information System (UFAIS) requires importers and domestic manufacturers to print Universal Product Code (UPC) data on a small paper excise stamp attached to each bottle. This system, comprising both hardware and software, is expensive to purchase, difficult to use and has failed thus far to fulfill its purpose to track alcohol from manufacture or import to the retail sales point. The importer is responsible for marking the imported alcohol products with excise stamps before the products enter the Russian Federation. To do this, the importer must provide for registration of the imported alcohol product in the UFAIS system, as well as print data about the alcohol product on the excise stamps, procure such stamps, and attach them to the consumer packaging. The importer bears responsibility for the authenticity of the data as well as for the correctness of their placement on the excise stamps.

Not only is the process burdensome and expensive, but as implemented, it discriminates against imported spirits. Most notably, imported beverage alcohol products are required to use and report sequentially numbered strip stamps while domestically produced products may use and report stamps by batches of products. Importers are required to record by hand the strip stamp sequential number of each bottle, in blue ink, in a special notebook, every page of which has been hand stamped by tax authorities, when the bottle enters the warehouse. When bottles leave the warehouse, the strip stamp sequential number must again be recorded by hand, in blue ink, in the book. Moreover, importers must report the strip stamp sequential numbers contained on every packaging size (from the bottle to the case, pallet, batch, consignment, *etc.*). Finally, whereas domestic manufacturers/distributors are required to report only to the Tax Authorities (and only by batches of products, not individual strip stamp sequential number), importers must also report their more detailed data to Russian Customs, and in a different format, increasing the reporting cost as well as the possibility for error.

Since the UFAIS system was first introduced, numerous problems have arisen in its implementation. For much of 2006, the new stamps were not available and then the stamping machinery did not work. Wholesalers were not legally allowed to apply the stamps on behalf of importers. It was not until March 9, 2007, that the Russian government passed the necessary amendment that allowed bottles to receive new excise tax stamps in wholesalers' warehouses with a March 30, 2007, deadline to re-stamp the bottles. Although the backlog of U.S.-origin products has been re-stamped and released from warehouses, logistical challenges continue. Problems include the difficulty in stamping miniature, food service-sized bottles; the frailty of the stamps which tear easily; the discriminatory reporting requirements imposed on importers; and software glitches causing importers' data to be corrupted, costing time and money.

Notwithstanding the initial and ongoing problems with the strip stamps, the Russian government is considering adding a second stamp across the top of the bottle to combat empty bottles being refilled and sold, raising tax avoidance and health issues. The U.S. Government has discouraged such a step, noting the chaos in the market caused with the introduction of the original stamp, and the failure of the stamp to meet the intended goals.

The requirements on spirits alcohol – information reporting requirements, usage of the UFAIS system, payment of the excise tax, application of the excise stamp, and import and licensing requirements – were also imposed on products such as perfumes, cosmetics, household cleaners, and solvents containing more than 1.5 percent alcohol, severely disrupting trade. In 2007, the Russian government amended the Law on Production and Turnover of Alcohol to exempt permanently cosmetics, perfumes, and personal care products in packages of up to 500 ml. The United States is encouraging further amendment of the law to exempt permanently all nonfood goods containing alcohol from the alcohol related requirements above.

Development of Nuclear Power Generation

Russia continues to pursue the expansion of its nuclear power generation capabilities and will commission a total of 9.8 GW of additional reactor capacity by 2015. In November 2007, the State Duma passed legislation approving the creation of Rosatom Corporation, a 100 percent government-owned corporation, to replace the existing Federal Atomic Energy Agency. Nearly all of the country's civilian nuclear industry assets (mining, enrichment, fuel production, equipment manufacturing, and nuclear power plant construction and operation) are being transferred to the Rosatom Corporation. The concept is that such a corporation will be better positioned to implement the ambitious domestic nuclear power expansion program and be more competitive on the world market. This new entity will report directly to the President of the Russian Federation, will be funded by the state budget, and will retain all profits from its activities.

Russia has also increased its efforts to reach supply agreements with other uranium supplying countries, such as Australia, which could allow Russia to utilize fully its uranium enrichment capacity and become the world's leading exporter of reactor fuel and other enriched uranium products. The export arm of Russia's nuclear power sector, Atomstroyexport, is a significant competitor to U.S. companies. Russia's lack of a nuclear liability law to provide adequate legal protection for U.S. firms creates a high risk to U.S. suppliers of equipment, fuel, and nuclear energy services to Russia and has impeded their entry into Russia's market.

Other

In October 2007, Deputies in the State Duma's Economic Policy Committee introduced a draft law that envisioned creation, as an anti-counterfeiting measure, of a complicated product tracking system, similar

to the controversial UFAIS system now used for alcohol-containing products. Under the draft bill, a similar system would be applied to a broad range of traded goods including: audio and visual works, sound recordings, and computer software and databases on any media; pharmaceuticals; biologically active supplements; cosmetics and perfumery products (originally excluded from the reporting requirements); building materials; cars, aircraft, railway carriages, and spare parts thereof; and explosives. This draft bill was not brought up for a first reading in the State Duma during 2007, but U.S. industry and the U.S. government continue to monitor this issue.

EXPORT POLICIES

The price of gas for Russian industrial consumers is held artificially low by law. The downstream effects of this pricing policy are significant, because gas sells on Russia's domestic market for approximately \$75/tcm to \$95/tcm, with gas exported to Europe fluctuating between \$230/tcm and \$350/tcm over the past year (estimates of cost-recovery levels are at roughly \$35/tcm to \$40/tcm). The Russian government recently approved a plan that proposes increases in domestic prices to European levels by 2011. If implemented, over time higher domestic prices should provide incentives for both gas producers (greater investment and reallocation of resources) and consumers (greater energy conservation). The gas sector and Gazprom, Russia's near-monopoly supplier, play a significant role in Russia's economy and the Russian government is proceeding slowly and cautiously with reform of the sector.

Although Russia has eliminated export duties on a few products, it maintains export duties on nearly 450 types of products for both revenue and policy purposes. Russia has indicated that it intends to eliminate gradually most of these duties, except for products deemed as strategic, such as hydrocarbons and scrap metals. For example, Russia has agreed to reduce its 15 percent duty on ferrous steel scrap to one-third of current levels within 5 years after it becomes a WTO Member. Russia also currently maintains a 10 percent export duty on copper cathode while no export duty is charged on copper wire rod. As part of the bilateral WTO market access agreement, Russia has agreed to eliminate its export duty on copper cathode within four years after it becomes a WTO Member.

A variety of agricultural products are subject to export licensing and/or tariffs, such as certain fish products, grains, oilseeds, and wood products. Russia was not permitted to export beluga caviar in 2006, but a limited quota was approved under the Convention on the International Trade in Endangered Species (CITES) for 2007. No export quota was approved for other types of Russian caviar.

In November 2007, a prohibitive export tariff of 30 percent *ad valorem* was imposed on barley exports and 10 percent *ad valorem* on wheat exports. This policy is intended to insulate Russia's internal grain market from rising world grain prices, as the government of Russia seeks to constrain domestic inflation.

The Russia government is also pursuing a policy of raising export tariffs on round wood in order to encourage domestic processing and export of sawn lumber and finished goods. In 2007, the government increased the export tariff on coniferous logs to 20 percent, but not less than 10 euros for one cubic meter. On April 1, 2008, the tariff will increase to 25 percent, but not less than 15 euros per cubic meter, and as of January 1, 2009, up to 80 percent, but not less than 50 euros per cubic meter.

STANDARDS, TESTING, LABELING, AND CERTIFICATION

U.S. companies cite technical regulations and related product testing and certification requirements as major obstacles to U.S. exports of industrial and agricultural goods to Russia. Russian authorities require product testing and certification as a key element of the product approval process. Opportunities for

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testing and certification performed by competent bodies outside Russia that are recognized by Russian authorities are limited, and some view the procedures associated with Russia's approach to "supplier's declaration of conformity" as unnecessarily burdensome. Manufacturers of telecommunications equipment, oil and gas equipment, and construction materials and equipment, in particular, have reported serious difficulties in obtaining product approvals within Russia. The current classification and approval system for food supplement and dietetic products is costly and lengthy. Food and dietetic products that are sold legally in the United States and the European Union are subject to an expensive and lengthy certification process in Russia that takes between three months and five months. Products are also subject to redundant technical reviews conducted by both the Nutrition Institute and the Ministry of Health, which take between 6 months and 12 months.

In an attempt to move to a system of self-certification of pharmaceutical products, the Russian government has, since January 1, 2007, required imported pharmaceutical products to be accompanied by a complex declaration of conformity rather than a certification. Under the applicable regulations, the declaration of conformity has to be prepared by a Russian legal entity, acting on the basis of an agreement with the foreign manufacturer. The Russian legal entity has to obtain a license for the manufacture of medicines, register in its own name all of the medicines supplied, and obtain the right to use the intellectual property (patents and trademarks) with respect to the medicines that it will be releasing onto the Russian market. In addition, the system discriminates against importers by requiring them to provide a Declaration of Conformity for each batch of medicines, while Russian manufacturers are permitted to provide a declaration for a full series. Industry has alleged that the new requirements are not an improvement over the previous complicated certification practice and have increased costs. The Russian government has argued that the new regulations are a useful anti-counterfeiting measure.

The United States continues to work with the Russian government to bring its product regulations and certification requirements into conformity with international standards and practices. The Russian government is attempting to put in place the necessary legal and administrative framework to establish transparent procedures for developing and applying standards, technical regulations, and conformity assessment procedures to accomplish this goal. The December 2002 Law on Technical Regulation provides a framework for the development of specific requirements for industrial goods, as well as sanitary and phytosanitary requirements for agricultural commodities, processed foods, and plants. The Law was amended in May 2007, resulting in the expansion of the methods by which technical regulations can be adopted. In addition to the current legal process requiring State Duma approval, regulations can now be adopted by government decree without State Duma approval.

Russian sanitary and phytosanitary (SPS) measures have had a major negative effect on U.S. trade. Russia often blocks the import of products deemed "sensitive," seemingly without a scientific basis for the measure. In 2007, the Russian government issued resolutions directing that international standards, guidelines, and recommendations of the World Organization for Animal Health (OIE) and the International Plant Protection Convention (IPPC) be followed. There is, however, currently no corresponding resolution that states Russia will follow Codex Alimentarius recommendations and guidelines. In November 2006, the United States and Russia signed bilateral agreements to address SPS issues related to the trade in frozen pork; the certification of pork and poultry facilities for exporting products to Russia; trade in beef and beef by-products; and trade in products of modern biotechnology. Notwithstanding progress on implementation of these bilateral agreements, U.S. exporters of poultry and pork continue to have product rejected at the border for the presence of salmonella and other requirements that lack scientific justification. We are continuing our engagement with Russia's officials on these issues.

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Pork

Historically, Russia had accepted only freezing as mitigation for trichinae for U.S. frozen pork destined for further processing. Costly testing for trichinae was required for all U.S. pork imported for retail sale. Russia now accepts freezing as mitigation for trichinae for U.S. pork for retail sale as well as for further processing. As a result, imports from certified plants are permitted when accompanied by the export certificate that was agreed upon between Russia's veterinary service and the U.S. Department of Agriculture's Food Safety and Inspection Services (FSIS).

Inspection of Facilities Producing Pork and Poultry

Previously, Russian and U.S. officials jointly audited all pork or poultry facilities that wanted to export products to Russia. This process delayed exports from new plants or plants needing to remedy a deficiency found during a previous joint audit. U.S. exporters also noted concerns about the time it took Russian officials to provide formal approval for facilities after an audit and to provide an updated list of approved facilities to its customs officials so trade could begin. The U.S. Food Safety and Inspection Service (FSIS) is now authorized to certify new facilities and/or facilities needing to remedy a deficiency based on agreed inspection criteria. The Russian government also agreed to specific time frames to respond to requests to list facilities FSIS has inspected and determined to be in compliance with requirements to export to the Russian Federation, and to a new process for selecting plants for a joint audit. During the first joint inspection under the new agreement, Russian inspectors at times continued to inspect based on unapproved standards (standards not agreed to by both sides and contained in the Act of Inspection). The U.S. Government has been addressing this issue directly with Russia's veterinary service. Plants have been certified for export based on an FSIS inspection.

Beef and Beef By-Products

The Russian market for U.S. beef was reopened following the negotiation of a bilateral agreement and a new veterinary health certificate in November 2006. Under the certificate, de-boned beef, bone-in beef, and beef by-products from cattle over 30 months of age can be exported from plants that have been inspected and certified to export to the Russian Federation. In October 2007, as a result of a U.S.-Russian joint audit, 18 U.S. beef processing and cold storage facilities were approved to export to Russia. The November 2006 bilateral agreement calls for negotiation of a new export certificate for beef and beef by-products to reflect the May 2006 OIE designation of the United States as a controlled-risk country. Negotiations on this new certificate are ongoing. Under this certificate, export of beef and beef by-products from cattle of all ages (excluding specified risk materials that the OIE requires to be removed) would be permitted.

Products of Modern Biotechnology

In accordance with a bilateral agreement between the United States and Russia signed in November 2006, Russia will establish a permanent biosafety regulatory system for products of modern biotechnology consistent with the WTO SPS Agreement. Until a permanent system is in place, Russia will maintain an interim approval and registration system for products of modern biotechnology that is science-based, transparent, predictable, and consistent with the WTO SPS Agreement. The United States is continuing to follow-up on the registration process for biotechnology products to ensure that all pending applications are indeed addressed. Russia and the United States agreed to consult annually on the status of applications for re-registration of products whose registrations have expired during the year and to establish an ongoing bilateral consultative mechanism to discuss issues of regulatory development in the

area of agricultural biotechnology. The United States also continues to press the Russian government on the significant reservations that U.S. industry has expressed regarding Russia's food labeling policy, including the substance of draft legislation on that subject.

Rice

In September 2006, Russia imposed a ban on imports of all U.S. rice, citing the discovery of genetically modified rice seeds not approved for import in shipments of U.S. long-grain rice. The ban was imposed without prior notice or sufficient justification. In December 2006, Russia also imposed a *de facto* ban on all rice from all origins, noting a variety of sanitary and phytosanitary concerns. Since the bans were imposed, the United States has been working both bilaterally and multilaterally to resolve this issue.

Systemic Issues

In addition to these specific issues, exporters of agricultural goods to Russia face systemic issues related to the certification of agricultural products. Russian authorities require phytosanitary and/or sanitary (veterinary) certificates for nearly all agricultural and processed food products. Producers are required to seek certificates from their domestic regulatory authorities for certain products for which Russia has not provided scientific evidence of an alleged risk. For example, Russia requires certificates for bulk shipments of roasted coffee, which due to the nature of the processing process, does not present a pest risk and consequently does not receive a phytosanitary certification from the U.S. Government. Russian authorities also require a sanitary-epidemiological certificate or certificate of state registration for the importation of nonfood items such as styrofoam cups, bulk shipments of cardboard boxes, and furniture. The Russian government issued revised regulations in February 2008 to bring its SPS regime into conformity with WTO requirements.

GOVERNMENT PROCUREMENT

The Russian government spends over a third of its budget on procurement. The 2005 Law On Placement of Orders for Delivery of Goods, Performances of Works and Provision of Services for State and Municipal Needs, which regulates tenders on all government purchases over \$8,000 (except for those made in commodity exchanges) was amended in 2007. The amendments, in force as of October 1, 2007, improve the law to make the process of procurement more transparent.

INTELLECTUAL PROPERTY RIGHTS (IPR) PROTECTION

U.S. industries continue to be concerned about the IPR situation in Russia. The copyright industry, in particular, continues to have serious concerns about the high level of piracy in Russia, which reportedly resulted in losses of nearly \$1.5 billion to the industry in 2007. Reported levels of piracy of works, *e.g.*, motion pictures, records, musical compositions, business and entertainment software, and books, range from a low of about 50 percent to a high of 83 percent.

In 2007, Russia's optical disc production capacity continued to be far in excess of domestic demand with pirated products apparently intended not only for domestic consumption, but also for export. The U.S. copyright industries estimate that approximately 65 percent of sound recordings, 70 percent of business software, and 89 percent of information software on the Russian market are pirated. However, legitimate DVD sales are on the rise, in part due to increased law enforcement action against pirates and a growing preference by the middle class for high quality products.

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Internet piracy continues to be a serious concern. Criminal investigations are ongoing against operators of some of the notorious Russia-based websites. Western and Russian recording companies have initiated, and won, several civil suits against Internet pirates, although damages resulting from these victories have been minimal by U.S. standards. Overall, gaps remain in Russian law and enforcement efforts for adequately addressing Internet piracy.

U.S. and multinational companies continue to report counterfeiting of trademarked goods as a problem, especially for consumer goods, wine, distilled spirits, agricultural chemicals and biotechnology, and pharmaceuticals. Several U.S. firms have experienced problems with trademark “squatting” or counterfeiting, with Russian enterprises attempting to appropriate well-known foreign trademarks not currently registered or active in Russia. However, rights holders have been moderately successful in countering these schemes through the Russian court system or with the Russian Federal Service for Intellectual Property, Patents, and Trademarks (Rospatent).

The United States is working to ensure that Russia takes appropriate actions to protect intellectual property rights. The November 2006 bilateral IPR agreement between the United States and Russia includes an agreement that sets forth actions that Russia will take to improve protection and enforcement of intellectual property rights. As part of the agreement, the Russian government has committed to fight optical disc and Internet piracy, protect pharmaceutical test data, deter piracy and counterfeiting through criminal penalties, strengthen border enforcement, and bring Russian laws into compliance with WTO and other international IPR norms. The U.S. and Russian governments have an ongoing dialogue to ensure the full implementation of this binding agreement. In addition, the United States is reviewing Russia’s status as a beneficiary country under the U.S. Generalized System of Preferences (GSP) program. Russia was also on the 2007 Special 301 Priority Watch List and is subject to an out-of-cycle review.

The most significant legislative development over the last 2 years was the State Duma’s consideration and adoption of Part IV of the Civil Code, which replaced most of Russia’s civil IPR legislation with a single code as of January 1, 2008. Part IV improves some aspects of IPR protection, *e.g.*, elimination of the reciprocity requirement for protection of geographical indications and stronger rules on collecting societies, but still contains some provisions that raise concerns regarding consistency with WTO and other international agreements. The Russian government has pledged to ensure that Part IV and other IPR measures will be fully consistent with the TRIPS Agreement, and the United States continues to work with the Russian government toward this goal.

Under Article 39.3 of the TRIPS Agreement, Russia must protect against unfair commercial use of undisclosed data submitted to government authorities to obtain marketing approval of pharmaceutical and agricultural chemical products. Russia currently does not provide such protection for pharmaceutical products. Legislative changes to address these concerns are being considered by the Russian government.

Enforcement

Poor enforcement of IPR in the Russian Federation has been a pervasive problem. The November 2006 bilateral IPR agreement committed Russia to improve IPR enforcement, and the United States to intensify training programs for customs and law enforcement officials. In 2007, the U.S. Patent and Trademark Office completed three training programs with Russian Federal Customs to help Russian customs officials strengthen their enforcement efforts. In 2007, Russian law enforcement agencies carried out raids on optical disc production facilities suspected of engaging in pirate activities, including a major raid in St. Petersburg that involved increased cooperation between the St. Petersburg and Moscow police forces.

However, U.S. industry reports that some raided plants have been allowed to resume operation and that inspections of licensed facilities have been infrequent. The November 2006 agreement committed Russia to enhance its supervision of both licensed and unlicensed optical disc factories.

Judicial System

While the Russian government has intensified the investigation and criminal prosecution of intellectual property rights infringers, cases often fail at the prosecution stage and few convictions for IPR violations ever result in prison sentences. Production lines and equipment used for IPR infringing activities are often put back into operation and not destroyed, allowing pirates to continue their illegal activities either elsewhere or under a different corporate entity. In the vast majority of cases, alleged infringers receive small fines or suspended prison sentences. As part of the November 2006 bilateral IPR agreement with the United States, the Russian government committed to take criminal actions against commercial scale piracy, with the objective of permanently closing down the production of optical media containing pirated and counterfeit material. The Russian government has also agreed to work with the State Duma to enact legislative amendments to make other improvements to the IPR legislative framework.

Russia took some action against Internet piracy websites in 2007, reportedly closing 242 websites in the past year. Also in 2007, investigation and prosecution of the operators of the pirate website <http://www.allofmp3.com> continued. Denis Kvasov, the former director of Media Services, the parent company that operates the website, was tried and acquitted in a district court in Moscow, due to a finding of insufficient evidence of his personal involvement in the operation of the site. The verdict was upheld on appeal. Law enforcement officials stated that they are continuing to investigate others associated with the site, which has been shut down by court order pending the result of ongoing prosecution of others involved with the site. Other similar sites remain operational.

U.S. investors generally consider the Russian legal system ill-prepared to handle sophisticated patent cases. However, a specialized higher patent chamber at Rospatent has brought greater expertise and efficiency to the adjudication of patent and trademark disputes.

During 2007, amendments to the Criminal Code strengthening penalties for IPR violations took effect. Specifically, Article 146, which criminalizes copyright infringement, was shifted from the category of “crimes of medium seriousness” (which carry a penalty of 2 years to 5 years incarceration) to the category of “serious crimes” that would carry a penalty of 6 years to 10 years incarceration. The shift also allows the use of additional investigative tools in the investigation of IPR crimes. Russian law enforcement officials assert that these changes made it easier to investigate and prosecute IPR offenses and are beginning to have some deterrent effect.

Russian administrative and judicial review bodies are beginning to become active in protecting IPR, and the number of judges with relevant expertise, though still small, is expanding. In April 2007, the Supreme Court issued a resolution providing the appropriate needed guidance to lower courts on imposition of penalties for IPR infringements and other IPR issues. Among other things, the resolution clarifies the rules on the calculation of damages and the burden of proving ownership and infringement. Rights holders and law enforcement officials report that this resolution has also facilitated IPR enforcement.

SERVICES BARRIERS

Russia's services market is relatively open to U.S. services suppliers, including in areas such as financial, education, legal services, and distribution, although specific problems remain in particular areas. The ability to provide services to public utilities and certain energy-related services (see discussion on energy in the section on Investment Barriers) remains limited. The process for an individual or a company to obtain a license to provide a service remains difficult and limitations on the form of commercial establishment affect some sectors. As of December 2007, U.S. companies were monitoring Russian proposals to develop new, draft legislation on retail trade which, if passed, could have potentially significant regulatory and legal implications for a wide range of retail trade and distribution activity.

As part of the bilateral WTO market access agreement with the United States, Russia has accepted commitments across a broad range of services sectors. Once Russia is a WTO Member and the United States grants permanent normal trade relations status to goods from Russia, U.S. firms will have improved access to services sectors including banking and securities, insurance, telecommunications, audio-visual services, distribution, express delivery, energy services, environmental services, and professional services.

Financial Services and Insurance

The 1996 federal law "On Banks and Banking Activity" permits foreign banks to establish subsidiaries in Russia. Once Russia is a WTO Member and the United States grants permanent normal trade relations status to goods from Russia, U.S. firms will be allowed to operate through subsidiaries, including 100 percent foreign-owned subsidiaries, and offer all types of noninsurance financial services and to supply, cross-border, many financial services, such as financial leasing, financial information and data processing, credit cards and other types of payments, and advisory services. However, Russia has not committed to allow foreign banks to establish branches in Russia.

In addition, the Russian government will retain the prerogative to limit the foreign sourced element of charter capital in the banking sector to 50 percent of the total charter capital. Nonetheless, if the ratio of foreign sourced to total charter capital in the banking sector ever exceeds the 50 percent cap, Russia's regulators have the discretion to take only those actions specified in Russia's WTO commitments.

In the insurance sector, foreign insurance firms are subject to a 49 percent equity restriction. Foreign firms that were active in Russia when this requirement came into effect, however, were grandfathered and are not subject to the foreign equity limit. U.S. insurance companies will be allowed to operate through subsidiaries, including 100 percent foreign-owned non-life insurance companies, and will be able to open direct branches at the end of a 9 year transition period. However, as in the banking sector, Russia will maintain the discretion to limit foreign sourced charter capital in the insurance sector and if the ratio of foreign sourced to total charter capital in the insurance sector exceeds the 50 percent cap, Russia's regulators will have the discretion to take certain actions specified in Russia's WTO commitments.

Telecommunications

Amendments to the 2003 Federal Law on Communications entered into force on January 1, 2007. The law's impact on competitive alternative (nonincumbent) telecommunications operators, many of which involve large amounts of foreign investment, has been substantial since these companies are now under tight government regulation. In particular, regulations on interconnection – the process by which alternative operators connect their networks to the Russian public telephone network – place

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interconnection contracts and fees under the regulatory authority of the Ministry for Information Technologies and Communications.

Many in the telecommunications industry have been disappointed that the amended federal law has not improved transparency in the licensing process, and have criticized the 5 year to 10 year license validity period, which they argue does not allow them sufficient time to recoup their investment. The Federal Anti-Monopoly Service has challenged in court the manner in which the Ministry for Information Technologies and Communications issues licenses to Russian mobile phone operators. As a result, the Ministry has been ordered to issue licenses on a nondiscriminatory basis for all operators, which may benefit companies with foreign investment.

On April 20, 2007, the Ministry of Information Technologies and Communications awarded the eagerly-anticipated licenses for third generation (3G) mobile services. Losers in the 3G license competition asked that a fourth 3G license be awarded to a regional alliance of mobile operators using the networks of companies that obtain the licenses. The license fees have been set at 2.64 million rubles (roughly \$100,000), but criteria for the winning bidder(s) include requirements for significant investment in network infrastructure development under specific deadlines. In addition, successful bidders are required to begin offering commercial 3G services within 2 years of gaining their licenses. Potential opportunities for U.S. companies will most likely be as subcontract suppliers to the successful bidders.

In 2006, the Federal Agency for Networks started granting WiMAX licenses in the 2.5-2.7 GHz range. However, a major hurdle to WiMAX services countrywide is the lack of available frequencies. In mid-December 2007, Comstar announced plans to cooperate with Intel in developing the first WiMAX network in Russia, starting in the Moscow region with subsequent expansion to other areas. This development would capitalize on the spread of personal computers and the estimated 23 percent rise in Internet users in Russia over the September 2006 to September 2007 period, the fastest pace in Europe.

There are significant barriers in the provision of satellite telecommunications services in Russia. In particular, satellite regulation is not transparent. The legal requirements and administrative responsibilities associated with the provision of these services appear to be discriminatory, with the Russian government demonstrating a preference for Russian satellite communications systems.

Certification of new products in the telecommunications industry takes an average of 2 months, down from 4 months a few years ago, but the process still suffers from a lack of transparency. The satellite industry, in particular, reports that there is a burdensome certification process in place and a local presence requirement further creates barriers to doing business in Russia.

INVESTMENT BARRIERS

Russia's foreign investment regulations and notification requirements can be confusing and contradictory, which has an adverse effect on foreign investment. According to an industry report issued in March 2007, Russian companies raise up to one-fifth less money than foreign counterparts as international equity markets perceive Russia's legal regime as offering little protection for investors. Only 52 percent of Russian companies considering an initial public offering abroad have independent directors, a condition considered essential for an international listing. Independent foreign nationals make up only 3 percent of board seats at Russian companies currently planning to list.

U.S. investors and others cite corruption in commercial and bureaucratic transactions as another barrier to investment. In 2007, reports by the World Bank, Transparency International, the Foreign Investment

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Advisory Council, Russia's Higher School of Economics, and Columbia University found that corruption had worsened and had become a greater concern for Russia's businessmen. Reasons cited for these trends were slowing reforms and government complacency fostered by oil revenues.

Telecommunications and media services companies also report investment restrictions. Russian entities with more than 50 percent foreign ownership are prohibited from sponsoring television and video programs or from establishing television organizations capable of being received in more than 50 percent of Russia's territory or by more than 50 percent of the population.

Further obstacles to increased U.S. investment in Russia include inadequate dispute resolution mechanisms, weak protection of minority stockholder rights, the absence of international accounting standards, and the failure of companies to adhere to business codes of conduct. Initiatives to address these shortcomings, either through regulation, administrative reform, or government-sponsored voluntary codes of conduct, have made little headway in countering endemic corruption. Inadequate transparency in the implementation of customs, taxation, licensing, and other administrative regulations also discourages investment.

The United States and Russia have just begun to engage in exploratory bilateral investment treaty discussions.

National Treatment

The 1999 Investment Law codifies principles of national treatment for foreign investors, including the right to purchase securities, transfer property rights, pursue rights in Russian courts, repatriate funds abroad after payment of duties and taxes, and receive compensation for nationalizations or illegal acts of Russian government bodies. However, the law goes on to state that federal law may provide for a number of exceptions, including, where necessary, "the protection of the constitution, public morals and health, and the rights and lawful interest of other persons and the defense of the state." Thus, a large number of broadly-defined exceptions give the Russian government considerable discretion in prohibiting or inhibiting foreign investment. The law includes a "grandfather clause" that stipulates that existing (as of 1999) "priority" foreign investment projects with foreign participation of over 25 percent be protected from unforeseeable changes in the tax regime or new limitations on foreign investment. The law defines "priority" projects as those with a foreign charter capital of more than \$4.1 million and with a total investment of more than \$41 million. However, the lack of corresponding tax and customs regulations means that any protection afforded investors by this clause is only theoretical.

The government submitted the draft Law on Strategic Sectors to the State Duma in September 2007, where it has languished since then as different ministries have raised objections to the current draft. The draft law introduces a list of 39 "strategic" sectors in which foreign investment will be restricted, including: enterprises in the nuclear industry or involved in handling radioactive materials; enterprises involved in work on infectious diseases; arms, munitions and military equipment production, maintenance or repair; the aviation and space industries; data-transmission infrastructure; production and distribution of encryption technologies and equipment; and production and sales of goods and providing services under conditions of a "natural monopoly" (e.g., activities such as operating certain gas networks); among other sectors. The State Duma committee chair overseeing the draft law expects passage of the law to be delayed until at least April 2008.

Taxes

In response to investor concerns over the arbitrary and heavy-handed application of the tax code, the Russian government initiated a package of tax reforms in 2005 that was designed to limit aggressive tax collection practices while lowering the overall tax burden. The State Duma continues to work on a series of measures that are expected to introduce tax benefits for the high technology sector, protect the rights of investors with licenses to work in the energy sector, and raise the transparency of the tax audit process. The corporate profit tax has been 24 percent since 2002, 11 percentage points higher than Russia's flat 13 percent tax on personal income.

Companies report that VAT refunds to a Russia-based exporter, which should be provided within three months after a claim is submitted, often do not occur on time, with customs and tax authorities applying a number of burdensome additional requirements. In addition, leasing companies find that input VAT is often not refunded at all, for a number of reasons. In some cases, local tax inspectorates have initiated audits and attempted to seize bank accounts of the leasing companies, thus forcing exporters to seek very expensive and time consuming court enforcement. VAT refunds on exports are also the source of significant fraud, making it even more difficult for legitimate exporters to obtain refunds. Legislation to simplify VAT reimbursements took effect on January 1, 2007. Under the new law, VAT refund processing time was expected to fall from three months to two weeks, but anecdotal reports from Russian and U.S. companies indicate that the new law has not helped reduce refund processing time, and that in many cases, companies have to resort to court action to receive their VAT reimbursements. In addition, during the course of their audits, Federal Tax Service officials now have the authority to confiscate improperly disbursed VAT refunds, with penalties.

Energy Sector

In 2007, the Russian government decided to amend the current Law on Subsoil Use rather than include "strategic" sub-soil fields in the proposed Strategic Sectors Law it has been working on for several years. In these amendments, the Russian government may include language that would restrict foreign company participation to minority stakes in certain "strategic" fields, including the activity of natural resource extraction. The proposed amendments indicate that foreigners can participate only in a minority position in strategic field development.

The Russian government continues its policy of not entering into any further Production Sharing Agreements (PSAs - designed for energy projects that require high capital expenditures and a long period before profits or significant tax revenues are generated). Prior to 2003, three PSA regimes were in place: the Sakhalin I and II consortia, and Kharyaga. In 2006, the operator of Sakhalin II, Sakhalin Energy, was criticized by the government for alleged environmental violations that occurred during pipeline construction and came under pressure from the government for cost over-runs. In the wake of this pressure, members of the Sakhalin Energy consortium (led by Royal Dutch Shell) agreed to reduce their stakes by selling Gazprom a controlling share.

In addition, the Caspian Pipeline Consortium (CPC) pipeline, operational as of 2001, continues to seek authorization from the Russian government to allow expansion of the pipeline's capacity. CPC stockholders, however, do not appear to support expansion. An agreement was reached in September 2007 to lower the interest rate on CPC's debt and to raise transportation tariffs, with a 1 year timeline for agreement on expansion.

Aviation

Many of the Russian-flagged carriers continue to operate aging fleets with outmoded avionics and engines, but several are undertaking significant purchases or “wet-leases” (covering the aircraft, complete crew, maintenance, and insurance) of foreign aircraft in an attempt to be more competitive with Western airlines. Despite continuing high import duties, several Russian airlines purchased new and used Western aircraft in the last year and this trend promises to continue over the next few years. Russia’s aircraft manufacturers only produce 10 planes per year on average and therefore cannot keep up with Russian airlines’ projected demand for 1500 additional planes in the next 20 years. The Russian government has backed Sukhoi’s Superjet project in an effort to revive Russia’s civil aviation manufacturing industry.

Current Russian law provides preferential treatment (tax holidays, guarantees on investment, *etc.*) for Russian and foreign investors in aviation-related research and manufacturing ventures. However, it limits the share of foreign capital in aviation enterprises to less than 25 percent and requires that board members and senior management staff be Russian citizens. There is speculation that the 25 percent limit could be raised or eliminated to make way for further investment, although even then foreign firms will not be allowed to acquire more than 49 percent of any Russian aviation-related enterprise. The government is also looking to reorganize and revitalize Russia’s aircraft industry in the context of a larger restructuring plan for Russia’s defense industry.

ELECTRONIC COMMERCE

Electronic commerce remains an embryonic market in Russia. Russia’s law does not currently provide identical legal status to both electronic and paper documents. Because of this discrepancy, electronic settlement of outstanding charges is problematic, and currency control provisions may apply when paying in a currency other than rubles. The tax aspects of electronic commerce are virtually unexplored, and this area of the law is still developing. A draft law on electronic trade has been stalled in the State Duma for several years. While closely following an International Chamber of Commerce model bill, the draft before the State Duma has significant problems, including limiting electronic transactions to the sale and purchase of moveable goods, services agreements, and shipments.

A law on electronic digital signatures went into effect on January 14, 2002. This law does not follow the Model Law on Electronic Signatures of the U.N. Commission on International Trade Law, but rather defines electronic signatures narrowly, making public-key technology the sole acceptable digital signature technology. It also requires that hardware and software used in digital signature authentication programs be certified in Russia. This requirement gives the Russian government the right to insist on the decompilation of electronic signature programs. These requirements, in addition to the licensing requirements related to goods with encryption technology, present serious obstacles to trade in goods that Russia requires for further development of electronic commerce.

The relationship between trademarks and domain names is addressed in Part IV of the Civil Code which went into effect on January 1, 2008. Trademark owners have experienced cyber-squatting where intellectual property rights infringers register domain names that are identical or similar to established trademarks in hopes of illicit financial gain. The courts have taken divergent approaches to litigation arising from such disputes.

In 2007, the Russian Government announced plans to adopt an electronic government policy, which could potentially streamline paper-intensive processes involving the government, such as tenders, licenses, and permits, but the plan will not take effect until 2010.

FOREIGN TRADE BARRIERS

OTHER BARRIERS

The U.S. logging industry reports that illegal logging accounts for as much as 20 percent to 30 percent of Russia's timber harvest; this percentage continues to increase, particularly in the Far East, due to its proximity to China. Supplies of illegally harvested timber in China's market adversely affect U.S. exports to that market. The Russian government is taking steps to combat illegal logging, having adopted a National Plan initiative in 2006 with the objective of reducing timber poaching by 20 percent to 30 percent. However, poor socio-economic conditions in remote forest areas, lack of transparent regulations, and weak law enforcement make effective control difficult.

SAUDI ARABIA

TRADE SUMMARY

The U.S. goods trade deficit with Saudi Arabia was \$25.2 billion in 2007, an increase of \$1.2 billion from \$24.0 billion in 2006. U.S. goods exports in 2007 were \$10.4 billion, up 36.1 percent from the previous year. U.S. imports from Saudi Arabia were \$35.6 billion, up 12.4 percent over the corresponding period. Saudi Arabia is currently the 22nd largest export market for U.S. goods.

U.S. exports of private commercial services (*i.e.*, excluding military and government) to Saudi Arabia were \$2.1 billion in 2006 (latest data available), and U.S. imports were \$446 million. Sales of services in Saudi Arabia by majority U.S.-owned affiliates were \$532 million in 2005 (latest data available), while sales of services in the United States by majority Saudi Arabia-owned firms were \$454 million.

The stock of U.S. foreign direct investment (FDI) in Saudi Arabia in 2006 was \$4.3 billion (latest data available), up from \$3.8 billion 2005. U.S. FDI in Saudi Arabia is concentrated largely in the nonbank holding companies sector.

IMPORT POLICIES

Tariffs

As a member of the Gulf Cooperation Council (GCC), Saudi Arabia applies the GCC common external tariff of 5 percent for most products, with a limited number of GCC-approved country-specific exceptions. Saudi Arabia's exceptions include 452 products that may be imported duty free, including aircraft and most livestock. The Saudi government also applies a 12 percent tariff on 434 products, in some cases to protect local industries. Certain textile imports are among the products to which the 12 percent rate applies. Confectionary products with cocoa and other bulk cocoa products are subject to a 15 percent tariff. A number of Saudi products enjoy 20 percent tariff protection, including certain textile and apparel products, poultry meat, table eggs, ice cream, sesame extract, furniture, cooking salt, edible offal, rabbit meat, mineral water, and plastic pipes. In addition, long-life milk and nine other agricultural products are subject to a 25 percent tariff on a seasonal basis. Saudi Arabia imposes a 40 percent tariff on all dates. Saudi Arabia also imposes a 100 percent tariff on cigarette and other tobacco imports.

Import Prohibitions and Licensing

In Saudi Arabia, the importation of certain articles is either prohibited or requires special approval from competent authorities. Specifically, the importation of alcohol, firearms, pork products, and used clothing is prohibited. Imports of agriculture seeds, live animals, books, periodicals, audio or visual media, religious materials that do not adhere to the state-sanctioned version of Islam or that relate to a religion other than Islam, chemicals and harmful materials, pharmaceutical products, wireless equipment, horses, radio-controlled model airplanes, products containing alcohol, natural asphalt, and archaeological artifacts require special approval.

FOREIGN TRADE BARRIERS

Documentation Requirements

Pursuant to Saudi Arabia's World Trade Organization (WTO) Accession Protocol, Saudi Arabia agreed to eliminate the requirement to authenticate documentation no later than December 31, 2007. The U.S.-Saudi Arabian Business Council is not required to certify legal documents, but will do so if requested.

Some products, most notably agricultural biotechnology products, need a certificate from the country of origin attesting to the product's fitness for human consumption and that it is sold widely in the country of origin. All nonfood consumer products must have a certificate of conformity issued under the guidelines of Saudi Arabia's Conformity Certificate Program (COCP) before entering the country.

STANDARDS, TESTING, LABELING, AND CERTIFICATION

Standards

As part of the GCC Customs Union, the six Member States are working toward unifying their standards and conformity assessment systems. However, each Member State currently continues to apply either its own standard or a GCC standard, causing confusion among some U.S. businesses. GCC Member States do not consistently notify measures to WTO Members or the WTO Committees on Sanitary and Phytosanitary Measures (SPS) and Technical Barriers to Trade (TBT) or allow WTO Members an opportunity to provide comments.

The GCC Standards Committee has recently approved two new standards that will replace existing standards for the labeling and expiration periods of food products. While the new standards appear to attempt to incorporate international guidelines and address some longstanding issues, particularly in relation to expiration periods, some requirements that have previously complicated the import process remain. All Member States are expected to adopt these two standards as national standards in order to implement them.

The GCC shelf life standard establishes mandatory expiration periods for 22 perishable products or product categories such as chilled meats, chilled offal, fresh dairy products, baby foods, fruit juices, and table eggs. This standard also establishes voluntary expiration periods for a range of frozen and processed products. Manufacturers have the option of using the actual expiry period in lieu of the voluntary expiration periods established in the standard. The standard also exempts a number of products from expiration periods including salt, white sugar, dried legumes, dried vegetables, spices and certain condiments, tea, rice, vinegar, and fresh fruits and vegetables, including potatoes that have not been peeled or cut.

The new standards eliminate the long standing requirement that at least one-half of a product's shelf life be valid when a product reaches the port of entry. However, they would still require both a production date and an expiration date on nonperishable food items, forcing U.S. producers to re-label products exported to the GCC, thereby leading to increased costs. The new standards appear inconsistent with international standards (*e.g.*, the standards do not appear to reflect Codex guidelines) and do not appear to have a clear scientific basis. The United States has outlined its specific concerns with these standards and has established a dialogue between U.S. and GCC technical experts to discuss a possible resolution of the concerns raised.

In May and October 2007, respectively, Bahrain and Oman notified WTO Members of recently proposed procedures meant to harmonize food safety import requirements for all GCC member states. The United

States and other WTO Members provided comments outlining significant concerns with the procedures, which, as currently drafted, create unnecessary obstacles to trade and would substantially disrupt food exports to GCC Member States from its trading partners. The GCC Member States are reportedly developing a response to these comments, and the United States has established a dialogue between U.S. and GCC technical experts to discuss the procedures and potential amendments to address the concerns raised.

Saudi Arabia requires an animal protein-free certificate for imports of poultry, beef, and lamb and their by-products. For beef and poultry meat imported from the United States, Saudi Arabia recognizes a two-certificate approach: (1) an official U.S. Food Safety Inspection Service (FSIS) export certificate issued for beef and poultry meat; and (2) a producer or manufacturer self-certification to cover any additional requirements not related to food safety or animal health issues, such as an animal protein-free feed declaration. In addition, the Saudi government bans the import of therapeutic medicines used in animal feed.

In December 2001 and January 2004, respectively, the Saudi Arabian Ministries of Commerce and Industry (MOCI) and Agriculture (MOA) implemented biotechnology labeling decrees on animal feed and processed foodstuffs. The decrees require a positive biotechnology label if a product contains more than 1 percent of genetically modified vegetable (plant) ingredients. For U.S. grains, the MOA has accepted a one-time biotechnology grains certification statement submitted by the U.S. Grain Inspection, Packers, and Stockyards Administration (GIPSA) in 2003. The statement certifies that exported transgenic grains are the same as those consumed in the United States. The approved statement eliminates the need for a shipment-by-shipment positive biotechnology certification for corn and soybean meal exported to Saudi Arabia. In 2004, the MOA banned imports of all types of biotechnology seeds.

The MOCI randomly samples imported foodstuffs at ports of entry to test for undeclared biotechnology presence. According to reports from MOCI, rarely have food products declared biotechnology free tested positive. However, there have been some cases of undeclared biotechnology presence detected in foodstuffs imported from Asia and a few cases from the United States. Those companies involved in exporting biotechnology foodstuffs without proper labeling are banned from exporting any food products to Saudi Arabia. Thus far, the Saudi biotechnology labeling requirement has not drastically affected imports of U.S. agricultural products. The Kingdom is currently reviewing the Ministerial biotechnology labeling decrees to establish a comprehensive biotechnology standard to govern imports of all agricultural products.

Conformity Assessment

In accordance with Ministers Decision No. 213, as of August 28, 2004, Saudi Arabia abolished the Saudi Arabian Standards Organization's (SASO) International Conformity Certification Program (ICCP), a pre-shipment certification program initiated in 1995 to monitor and control the importation of certain products. In place of the ICCP, in 2006 the Ministry of Commerce implemented the COCP. The COCP requires a document certifying that the product conforms to the relevant Saudi Arabian technical regulation or standard ("conformity certificate") to accompany every shipment of products sold in Saudi Arabia. The requirement applies to all products, including domestic products, except those subject to the Kingdom's sanitary and phytosanitary regulations. COCP does not require a conformity certificate if documentation has been provided that assures the product conforms to Islamic religious requirements. There are no fees for the conformity certificate. The conformity certificate may be submitted by a conformity assessment body, an independent third party, or a manufacturer to declare compliance with the relevant Saudi Arabian technical regulations or standards. The entity submitting the document is

responsible for the information contained in the certificate. SASO's role, which previously included governance of certificates of conformity, is now limited to issuance of Saudi standards for consumer products. U.S. exporters reported continued problems with customs officers at ports of entry failing to apply the new COCP procedures and insisting instead on the previously required ICCP certificates.

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

GOVERNMENT PROCUREMENT

When Saudi Arabia acceded to the WTO in December 2005, it committed to initiate negotiations for accession to the WTO Agreement on Government Procurement (GPA) and to complete its GPA negotiations within one year of becoming a WTO Member. Saudi Arabia became an observer to the GPA in December 2007, but it has not begun negotiations for GPA membership. Saudi Arabia published its revised government procurement procedures to bring them in line with GPA requirements in August 2006.

Several royal decrees that strongly favor GCC nationals apply to Saudi Arabia's government procurement. However, most Saudi defense contracts are negotiated outside these regulations on a case-by-case basis. Under a 1983 decree, contractors must subcontract 30 percent of the value of any government contract, including support services, to firms majority-owned by Saudi nationals. An exemption is granted where no Saudi-owned company can provide the goods and services necessary to fulfill the procurement requirement.

The tender regulations give a preference to products of Saudi origin that satisfy the requirements of the procurement. In addition, Saudi Arabia gives priority in government purchasing to GCC products. These items receive up to a 10 percent price preference over non-GCC products in all government procurements in which foreign suppliers participate.

Foreign suppliers that participate in government procurement are required to establish a training program for Saudi nationals. In addition, the Saudi government may favor joint venture companies with a Saudi partner over foreign firms and will also support companies that use Saudi goods and services. For large military projects, there is frequently an offset requirement; this is determined on a project-by-project basis.

Foreign companies can provide services to the Saudi Arabian government directly without a Saudi service agent and can market their services to other public entities through an office that has been granted temporary registration. Foreign suppliers working only for the government, if not already registered to do business in Saudi Arabia, are required to obtain a temporary registration from the Ministry of Commerce and Industry within 30 days of contract signing. Foreign investment regulations also allow foreign companies to establish a branch office.

In 2003, the Saudi Council of Ministers required increased transparency in government procurement. The contract information to be made public includes: parties, date, financial value, brief description, duration, place of execution, and point of contact information.

FOREIGN TRADE BARRIERS

INTELLECTUAL PROPERTY RIGHTS (IPR) PROTECTION

Saudi Arabia remained on the Special 301 Watch List in 2007. As of the end of 2007, Saudi Arabia has enacted laws that cover a range of IPR issues, including patents, trademarks, copyright, trade names, commercial data, border protection of IPR, and protection of undisclosed information relating to pharmaceuticals. The laws also increased penalties for IPR infringement, including instituting fines and prison sentences.

Although Saudi Arabia has made some progress on IPR enforcement over the past few years, further improvements are still needed with respect to copyright enforcement. Copyright owners have expressed frustration with the lack of transparency in the enforcement system, procedural hurdles to judicial enforcement, and failure to impose punishment at the higher end of deterrent penalties. Another area of concern involves counterfeiting of U.S. trademarked products. The Saudi government is aware of these problems and is considering options to combat them.

To speed the processing of patent applications, Saudi Arabia passed new patent legislation and has taken measures to hire and train more examiners, translators, and clerks. However, the implementation of the Patent Law, especially in relation to the concept of novelty, is a matter of concern for the U.S. pharmaceutical industry, which has expressed concern that the new Patent Law does not provide protection for their products subject to pending patent applications that were filed under provisions of the old law. The U.S. Government and industry are working with the Saudi government to try to find solutions to these concerns.

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

SERVICES BARRIERS

Insurance

In the last few years, the Saudi Arabian government has implemented a series of laws regulating what had been an essentially unregulated sector and requiring certain types of insurance coverage within the Kingdom. For example, in November 2002, third party liability motor vehicle insurance became mandatory in the Kingdom. In October 2003, the Saudi Arabian government enacted the Control Law for Co-Operative Insurance Companies. The law requires all insurance companies operating in the Kingdom to be locally registered, publicly-owned firms, and to operate on a cooperative or mutual basis (*i.e.*, requiring that the profits be distributed between policy holders and the insurance company). As of 2006, cooperative health insurance became mandatory. Employers are required to pay for insurance coverage of foreign workers and dependent family members. A new law requiring foreign workers in Saudi Arabia to show proof of medical insurance in order to receive or renew national identification cards will be used to enforce this legislation.

The Saudi Arabian Monetary Agency (SAMA) began accepting applications for insurance operations in November 2003. Insurance firms operating in the Kingdom may offer any insurance product in both the commercial and personal markets as long as the firm operates in accordance with the cooperative insurance structure.

FOREIGN TRADE BARRIERS

On April 13, 2005, Royal Decree No. 3120/MB was promulgated to implement Saudi Arabia's GATS commitment allowing foreign insurance companies to operate in Saudi Arabia through direct branches. For a transitional period of 3 years, foreign insurance companies operating through an agent were allowed to continue operations in Saudi Arabia uninterrupted pending the issuance of insurance branching regulations. To date Saudi Arabia has not yet issued such regulations, but continues to work with the United States through a Bilateral Mechanism on Financial Services on their development.

Banking

Although the Saudi Banking Control Law does not limit foreign participation, for the past 20 years the SAMA has capped foreign ownership in commercial banks at 40 percent of any individual bank operation. In the last few years, the Saudi government has taken steps to increase foreign participation in its banking sector by granting operating licenses to foreign banks. SAMA granted 10 foreign bank licenses to operate in the Kingdom in December 2005, including to BNP Paribas, Deutsche Bank, J.P. Morgan, National Bank of Kuwait, National Bank of Bahrain, Emirates Bank, Gulf International Bank, State Bank of India (SBI), and National Bank of Pakistan. The Saudi Capital Markets Law took effect in February 2004. The law provides for the creation of investment banks and brokerages in the Kingdom. Levels of foreign participation in these ventures have been capped at 60 percent. As capital markets regulations are finalized, Saudi Arabian investment banking will likely provide significant growth opportunities.

Shipping

Saudi Arabia gives preferences to national carriers for up to 40 percent of government-related cargoes. Under these rules, the National Shipping Company of Saudi Arabia and United Arab Shipping Company receive preferences.

Agent and Distributor Rules

Saudi law requires that domestic distributors register with the Ministry of Commerce and Industry. Saudi Arabia's WTO commitments (which took effect on December 11, 2005) open distribution to non-nationals on a gradual basis, up to 75 percent of total equity within 3 years. In 2006, some foreign companies reported difficulties in obtaining licenses to provide distribution services as required by Saudi Arabia's WTO commitments.

INVESTMENT BARRIERS

In April 2000, Saudi Arabia's Council of Ministers approved a new foreign direct investment code with the goal of facilitating the establishment of foreign companies, both joint ventures and 100 percent foreign-owned enterprises, in Saudi Arabia. Key provisions allow foreign investors to transfer money freely into and out of the country, allow joint-venture companies to sponsor their foreign investors as well as their foreign employees (all foreigners in Saudi Arabia need a legal sponsor in order to reside in the country), and permit foreign investors to own real property for company activities. The government established the Saudi Arabian General Investment Authority (SAGIA) to function as a one-stop shop, where foreign investors can obtain all of the permits or authorizations necessary to make an investment. In addition to its four existing service centers (in Riyadh, Jeddah, Dammam, and Medina), SAGIA opened a Women's Investment Center in March 2003 to promote the participation of Saudi women in business.

FOREIGN TRADE BARRIERS

SAGIA must grant or refuse an investment license within 30 days of receiving an application and supporting documentation from the investor. Licenses are required for all foreign investments. Wholly domestic projects funded with Saudi or other GCC member money do not need licenses through SAGIA's investment services center, as it was specifically designed for foreign investors. However, many of the licenses SAGIA issues concern projects jointly owned with Saudi investors. Bureaucratic impediments arising in other ministries have sometimes delayed the application process. SAGIA continues to take steps to address these impediments and to streamline the process, including concluding 23 separate agreements relating to the processing of license applications with other ministries and government agencies. Some companies still experience bureaucratic delays after receiving licenses from SAGIA, for example, in obtaining a commercial registry or purchasing property.

Following SAGIA's recommendations in 2001, the Supreme Economic Council published a list of 16 manufacturing and service sectors and subsectors in which foreign investment is currently prohibited, including oil exploration, drilling and production, and manufacturing and services related to military activity.

In October 2003, the Saudi government passed the Capital Markets Law, which took effect in February 2004. The law allows for the creation of financial intermediaries (stock brokerages and investment banks) and created an independent stock market and an independent stock market regulatory body. The law sets SR50 million (\$13.3 million) capitalization requirements for brokerages and provides penalties for insider trading and wrongful dissemination of information. The law also allows for the development of long-term investment instruments and limits the maximum equity share held by foreign partners in joint ventures with Saudi entities to 49 percent. Saudi Arabia agreed to raise the maximum allowable percentage of the foreign partner to 60 percent after WTO accession. The 2003 law does not repeal the prohibition on direct foreign participation in the Saudi stock market. However, foreigners can continue to purchase shares in bank operated investment funds. Foreign participation in these funds is limited to 10 percent of the total value of the fund.

ELECTRONIC COMMERCE

Pursuant to the Council of Ministers' decree concerning the regulation of use of the Internet in Saudi Arabia, all websites that contain content in violation of Islamic tradition or national regulations are blocked. Pornographic websites are identified and blocked through a filtering system, which does occasionally prevent access to sites that appear to fall outside stated prohibited topics. Nonpornographic sites are placed on the blocked list based upon direct requests from the security bodies within the government. Although the Saudi government is in the process of drafting an electronic commerce law, it is unclear when the law will be completed.

SINGAPORE

TRADE SUMMARY

The U.S. goods trade surplus with Singapore was \$7.9 billion in 2007, an increase of \$974 million from \$6.9 billion in 2006. U.S. goods exports in 2007 were \$26.3 billion, up 6.5 percent from the previous year. Corresponding U.S. imports from Singapore were \$18.4 billion, up 3.5 percent. Singapore is currently the 11th largest export market for U.S. goods.

U.S. exports of private commercial services (*i.e.*, excluding military and government) to Singapore were \$6.7 billion in 2006 (latest data available), and U.S. imports were \$3.9 billion. Sales of services in Singapore by majority U.S.-owned affiliates were \$7.3 billion in 2005 (latest data available), while sales of services in the United States by majority Singapore-owned firms were \$2.1 billion.

The stock of U.S. foreign direct investment (FDI) in Singapore was \$60.4 billion in 2006 (latest data available), up from \$54.5 billion in 2005. U.S. FDI in Singapore is concentrated largely in the manufacturing, finance, wholesale trade, and banking sectors.

FREE TRADE AGREEMENT (FTA)

The United States and Singapore signed a Free Trade Agreement (FTA) on May 6, 2003, which entered into force on January 1, 2004. It was the first FTA that the United States concluded with an Asian country, eliminating most tariffs immediately upon entry into force of the FTA and making important advances in many key areas. Among other benefits, the FTA provides strong disciplines in the most competitive U.S. services sectors, enhances protection for intellectual property, makes specific commitments regarding the conduct of Singapore's government linked enterprises, and provides strong and transparent discipline in government procurement. The FTA also includes commitments to prevent illegal transshipments of all traded goods and circumvention in the textiles and apparel sector as well as requirements to effectively enforce domestic labor and environmental laws. Since the FTA entered into effect, exports from the United States through 2006 increased 49 percent, with steady growth in medical devices, machinery and construction equipment exports, and pharmaceutical exports.

In addition to the FTA with the United States, Singapore has concluded bilateral FTAs with Australia, the European Free Trade Association, Japan, Jordan, New Zealand, South Korea, India, and Panama, as well as a quadrilateral agreement with Chile, New Zealand and Brunei. Singapore is negotiating FTAs with Bahrain, Canada, China, Egypt, Kuwait, Mexico, Pakistan, Peru, Qatar, Sri Lanka, and the United Arab Emirates. Singapore is a member of the Association of Southeast Asian Nations (ASEAN), which has concluded FTAs with China and South Korea and is negotiating FTAs with Australia, New Zealand, India, and Japan.

IMPORT POLICIES

Tariffs

Singapore imposes no tariffs on industrial goods or textiles. For social and/or environmental reasons, Singapore levies high excise taxes, applicable to distilled spirits and wine, tobacco products, motor vehicles (all of which are imported), and gasoline. Singapore has bound 70.5 percent of its tariff lines in the WTO and is a signatory to the WTO Information Technology Agreement.

FOREIGN TRADE BARRIERS

Import Licenses

Beginning in April 2008, Singapore will require that all manufacturers, importers, and wholesalers of medical devices be licensed under the Health Products Act by no later than October 2009. Singapore also expanded its controlled goods list, effective January 1, 2008, to include all items covered by the Australia Group, the Nuclear Suppliers Group, the Missile Technology Control Regime, and the Wassenaar Arrangement. Singapore maintains a tiered motorcycle operator licensing system based on engine displacement, which, along with a road tax based on engine size, places U.S. exports of large motorcycles at a competitive disadvantage. The sale of chewing gum is restricted in Singapore.

STANDARDS, TESTING, LABELING, AND CERTIFICATION

Under the 2002 Consumer Protection Regulations, 45 categories of electrical, electronic, and gas home appliances and accessories are listed as controlled goods and require a stamp of approval from the Singapore government's standards and certification authority (SPRING Singapore). SPRING Singapore recognizes test reports issued by accredited testing laboratories and certification bodies, including those in the United States. Labels conforming to standardized formats are required on imported foods, drugs, liquors, paints, and solvents.

Agriculture

Singapore allows meat and poultry imports solely from countries with which it has protocol agreements. Doing so preserves its rigorous food safety requirements through the integration of foreign farm accreditation, inspection, and regular testing. Export health documentation endorsed by federal health institutions must accompany every shipment of imported meat and poultry. In addition, Singapore health authorities test every shipment of imported meat and poultry visually for wholesomeness and to ensure it is free from spoilage and disease. Meat and poultry product samples are regularly sent to government laboratories for evaluation to guarantee that they do not exceed the allowable microbiological specifications for raw meat and poultry products. Singapore's Agri-food and Veterinary Authority (AVA) enforces a zero tolerance policy for salmonella enteritidis and escherichia coli E. 0157 in raw meat products, which is inconsistent with international standards and has posed some difficulties for U.S. exporters.

AVA prohibits beef imports from nations in which Bovine Spongiform Encephalopathy (BSE) has been detected, including the United States. Singapore previously required six years of non-BSE detection in a country before re-establishing trade, but has now established a minimum risk rule in line with World Organization for Animal Health (OIE) guidelines. On January 17, 2006, Singapore announced the re-opening of its market to U.S. boneless beef from animals under 30 months of age. Singapore continues to ban imports of U.S.-origin bone-in cuts of beef, beef offals, and beef products derived from animals over 30 months of age. The U.S. Government will continue to raise its concerns on this issue with Singapore.

Fresh produce imports are labeled to secure their traceability to farms.

Medical Devices

In November 2007, Singapore issued implementing regulations for medical devices under the 2007 Health Products Act covering a wide array of areas, including adverse events, product recalls, advertising and sales promotion, and "good distribution practices." The United States is reviewing these policies and

consulting with the medical device industry on the regulations to determine their likely impact on U.S. exporters.

Agricultural Biotechnology

All imported foods, both genetically modified organisms (GMOs) and non-GMOs have to be determined safe by their respective national regulatory bodies of the exporting countries as well as in compliance with international safety standards established by Codex Alimentarius before they are allowed entry into Singapore. Singapore has already approved the import of agricultural biotechnology products such as genetically modified corn and soybeans to be used in foods and feeds.

On March 1, 2007, the Singapore government introduced a 6 month trial monitoring of soy grains and corn kernels. Singapore importers were required to indicate the transgenic content of the shipment of corn or soy grains and products on their permit application including the specific transgenic crops or events present in the shipment. U.S. millers and exporters have considerable difficulty identifying any genetically modified grains since they do not segregate the different varieties of corn and soy grains handled and processed through the same equipment.

Singapore currently does not produce any agricultural related GMOs. There are no biotechnology crops under development and none are expected on the market in the foreseeable future.

GOVERNMENT PROCUREMENT

Singapore is a signatory to the WTO Agreement on Government Procurement and the FTA provides enhanced access for U.S. firms to Singapore's central government procurement. Some U.S. and local firms have expressed concerns that government-owned and government-linked companies (GLCs) may receive preferential treatment in the government procurement process. The U.S. Government has raised this issue with Singapore, which denies that it gives any preferences to GLCs or that GLCs give preferences to other GLCs.

INTELLECTUAL PROPERTY RIGHTS (IPR) PROTECTION

In line with its FTA commitments and obligations under international treaties and conventions, Singapore has developed one of the strongest IPR regimes in Asia. The United States continues to closely monitor Singapore's implementation of its FTA commitments in this area.

Transshipment

To implement its FTA commitments, Singapore amended Section 31 of the Import/Export Act in November 2003 to facilitate information sharing with U.S. Customs and Border Protection and officials from other countries with which Singapore has relevant trade agreements. Nonetheless, Singapore, a major transshipment and transit point for sea and air cargo, does not collect information on the contents and destinations of most transshipment and transit trade, which accounts for 80 percent of the cargo coming through the port. This lack of information makes enforcement against transshipped or transit trade in infringing products virtually impossible. In addition, goods in transit are not generally subject to seizure under the Copyright Act, although seizures may be possible if a search warrant is obtained in advance.

FOREIGN TRADE BARRIERS

Internet Piracy

In accordance with the FTA, Singapore's amended Copyright Act provides improved protection for digital works and outlines requirements and procedures for removing infringing material from Internet sites. Nonetheless, the copyright industry maintains that the new law fails to impose full liability on service providers engaged in infringing activity. The industry also claims that Section 107B of the Copyright Act violates FTA obligations by permitting entities in Singapore to "simulcast" performances over the Internet without paying remuneration to performers and producers of phonograms. U.S. industry reports that Internet piracy in Singapore is on the rise as a result of the increasing availability of the country's broadband facilities. The United States will continue to work with Singapore to try to address these concerns.

Enforcement

In line with its FTA obligations, Singapore has taken steps to improve IPR enforcement and to lower infringement rates, which are among the lowest in the Asia-Pacific region. Singapore claims that its enforcement efforts have almost eliminated the production of pirated material and blatant storefront retail piracy. According to industry estimates, Singapore's piracy rate averaged 5 percent to 10 percent for audio and video and 39 percent for business software.

Rights holders have encountered difficulties when attempting to prosecute IPR cases based on tips provided by company insiders. Singapore currently does not offer specific protection to "whistleblowers." As a result, many informants refuse to provide crucial testimony in court. The United States will continue to raise concerns on this issue with Singapore.

U.S. industry has expressed concerns that violations of Singapore's optical disc law are not prosecuted vigorously and deterrent sentences are not imposed. It has also sought greater cooperation by the Singapore government with rights holders to provide access to the evidence necessary to support possible civil actions.

While a number of local educational institutions, mostly majority government-operated, have signed agreements to comply with their legal obligations to pay royalty fees to publishers, unlawful duplication of textbooks at some commercial copy centers continues. The police have conducted multiple raids, but, according to industry representatives, the practice is lucrative enough to continue despite the possibility of large fines. Book publishers have reported experiencing difficulties obtaining the necessary search warrants for these enforcement actions.

SERVICES BARRIERS

Basic Telecommunications

Facilities-based operators continue to be limited in their ability to take advantage of wholesale pricing for SingTel's ("last mile") local leased circuits. The Infocomm Development Authority of Singapore (IDA) first mandated this regulatory change in December 2003, but SingTel has repeatedly contested this directive, typically through requests for IDA to stay decisions or through appeals to the Minister for Information, Communications and the Arts (MICA). In October 2005, IDA amended SingTel's Reference Interconnection Offer to provide for a more appropriate, open-standard technical interface, a decision upheld by MICA in May 2006, following an appeal by SingTel. Although SingTel must now offer wholesale prices for local leased circuits at reduced rates ranging from 55 percent to 82 percent, U.S.

FOREIGN TRADE BARRIERS

industry is still unable to avail itself of this more competitive pricing structure due to certain uneconomical technical interconnection requirements imposed by SingTel.

The United States also remains concerned about the lack of transparency in some aspects of Singapore's telecommunications regulatory and rule-making process. In particular, there is no obligation to make information publicly available concerning a company's request for a stay of decision or the filing of an appeal, to request public comments about such requests, or to publish a detailed explanation concerning final decisions made by IDA or MICA.

U.S. companies continue to report concerns about a lack of access to infrastructure facilities controlled by SingTel *e.g.*, ducts under roads that could facilitate U.S. companies' ability to lay lines for competing networks.

Since January 2007, SingTel has been exempted from dominant licensee obligations for the residential and commercial portions of the retail international telephone services (ITS), based on a regulatory finding that sufficient competition in this segment now existed.

SingTel announced, in June 2006, plans to consolidate its local exchanges, but failed to provide details of specific local exchanges to be closed. This has put U.S. and other carriers' expansion plans on hold. IDA issued a decision in June 2007 that increases the notification period SingTel must provide from 6 months to 18 months. IDA has denied requests by U.S. and other companies for interconnection at a more centralized location.

The U.S. Government has discussed the range of concerns in this sector with the Singapore government and intends to continue to press Singapore to address these issues.

Audiovisual and Media Services

Singapore's local free-to-air broadcasting, cable, and newspaper sectors are effectively closed to foreign firms. Section 47 of the Broadcasting Act restricts foreign equity ownership of companies broadcasting to the Singapore domestic market to less than 49 percent, although the Act gives the Media Development Authority (MDA) the authority to waive this requirement. The Singapore government also limits individual equity stakes in broadcasting companies to no more than 5 percent of issued shares.

MediaCorp TV is the only free-to-air television broadcaster. It is 80 percent owned by the government and 20 percent by publicly listed Singapore Press Holdings (SPH). Under MDA rules, MediaCorp TV must outsource at least 285 hours of local content production to independent television production companies per year. The incumbent subscription television provider, StarHub Cable Vision (SCV), is a 100 percent owned subsidiary of StarHub Ltd., a publicly-listed company. SingTel entered the subscription television market in January 2007. Free-to-air radio broadcasters are mainly government-owned, with MediaCorp Radio Singapore being the largest operator. BBC World Service is the only foreign free-to-air broadcaster in Singapore. Singapore restricts the use of satellite dishes and has not authorized direct-to-home satellite television services. MDA must license the installation and operation of broadcast-receiving equipment, including satellite dishes. Satellite broadcasters that want to operate their own uplink facility must get a special license from MDA. Satellite broadcasters lacking their own facility are restricted to using one of four available uplink facilities.

Distribution, importation, or possession of any "offshore" or foreign newspaper must be approved by the government. Singapore significantly restricts freedom of the press, having curtailed or banned the

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circulation of some foreign publications. The Singapore government has also “gazetted” foreign newspapers *i.e.*, numerically limited their circulation. Singapore's leaders have threatened foreign publishers with defamation suits for perceived slights, often resulting in the foreign publishers issuing apologies and paying damages.

Legal Services

U.S. and other foreign law firms with offices in Singapore face certain restrictions. They cannot practice Singapore law, employ Singapore lawyers to practice Singapore law, or litigate in local courts. Since June 2004, U.S. and other foreign lawyers have been allowed to represent parties in arbitration in Singapore without the need for a Singapore attorney to be present. U.S. law firms can provide legal services with respect to Singapore law only through a Joint Law Venture (JLV) or a Formal Law Alliance (FLA) with a Singapore law firm, subject to the Guidelines for Registration of Foreign Lawyers in Joint Law Ventures to Practice Singapore Law. Singapore relaxed one of these guidelines for U.S. law firms under the FTA. Since July 2007, foreign attorneys have been allowed to own equity in JLVs up to a maximum of 25 percent of total shares.

Except for law degrees from designated U.S., Australian, New Zealand, and British universities, no foreign university law degrees are recognized for the purpose of admission to practice law in Singapore. Under the FTA, Singapore has recognized law degrees from Harvard University, Columbia University, New York University, and the University of Michigan.

To address a perceived shortage of practicing lawyers, Singapore relaxed its criteria for admission of attorneys to the Singapore Bar, effective October 2006. One of the new criteria will admit to the Bar Singapore-citizen or permanent-resident law school graduates of the above-mentioned designated universities who were ranked among the top 70 percent of their graduating class or have obtained lower-second class honors (under the British system). As of July 2007, the government allows highly skilled foreign lawyers meeting certain criteria to practice Singapore corporate, finance, and banking law.

Banking

Retail Banking: Singapore maintains legal distinctions between offshore and domestic banking units and the type of license held (full, wholesale, or offshore). Except in retail banking, Singapore laws do not distinguish operationally between foreign and domestic banks.

Singapore has granted 6 “qualifying full bank” (QFB) and 24 full service licenses to foreign banks, including one U.S. QFB and four U.S. full service banks. Since January 2006 under the FTA, U.S. licensed full service banks and QFBs are able to operate at an unlimited number of locations (branches or off-premises ATMs). Non-U.S. full service foreign banks have been allowed to operate since January 2005 at up to 25 locations. These full service banks can freely relocate existing branches and share ATMs among themselves. They also can provide electronic funds transfer, point-of-sale debit, and Central Provident Fund (Singapore's compulsory pension fund) related services.

However, holders of cards issued locally by foreign banks or financial institutions cannot access their accounts through the local ATM networks. They are also unable to access their accounts for cash withdrawals, transfers or bill payments at ATMs operated by banks other than those within their own bank or at foreign banks' shared ATM networks.

Regarding Singapore's credit bureau system, the Minister of Finance must provide specific types of approval for acquisitions of 5 percent, 12 percent, or 20 percent or more of the voting shares of a local bank. Although it has lifted the formal ceilings on foreign ownership of local banks and finance companies, the Singapore government has indicated that it will not allow a foreign takeover of its three major local financial institutions. While foreign penetration of the Singapore banking system is comparatively high, with foreign banks holding about 40 percent of nonbank deposits, the government has stated publicly that it wants local banks' share of total resident deposits to remain above 50 percent.

Restricted and Offshore Banking: The Monetary Authority of Singapore (MAS) has issued 25 new wholesale bank licenses since 2001 as part of its liberalization program. MAS continues to upgrade certain existing offshore banks to wholesale bank status. New foreign bank entrants are also eligible to apply for wholesale banking licenses. Unless otherwise approved by MAS, wholesale banks can operate in only one location.

Energy

Singapore implemented the Gas (Amendment) Act in June 2007 to facilitate competition and move towards a fully liberalized energy market, in part, by opening access to gas pipeline infrastructure. However, at least one U.S. company has encountered difficulties in its access bid due to lengthy delays in the review of its application by the Energy Market Authority. To date, no nonincumbent operators have been able to secure access to the Singapore section of the existing Sumatra-Singapore pipeline.

OTHER BARRIERS

Competition

The FTA contains specific conduct guarantees to ensure that commercial enterprises in which the Singapore government has effective influence will operate on the basis of commercial considerations and will not discriminate in their treatment of U.S. firms. In accordance with its FTA commitments, Singapore enacted the Competition Act in 2004. Phase I established the Competition Commission of Singapore in January 2005. Phase II involved the implementation of provisions on anticompetitive agreements, decisions and practices, abuse of dominance, enforcement, and the appeals process, which came into effect in 2006. Phase III provisions pertaining to mergers and acquisitions came into effect in July 2007. The government's initial decisions under the Competition Act have focused primarily on services, including exemptions for the aviation sector.

The FTA includes obligations for greater transparency among government enterprises with substantial revenues or assets. Singapore has an extensive network of government linked corporations that are active in many sectors of the economy. Some sectors, notably telecommunications, power generation/distribution, media, and financial services are subject to sector specific regulatory bodies and competition regulations typically less rigorous than those being implemented under the Competition Act.

U.S. industry has expressed concerns about the lack of adequate trade secrets protections under Singapore law that would provide specific legal protections for commercially sensitive proprietary information.

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SOUTHERN AFRICAN CUSTOMS UNION (SACU)

TRADE SUMMARY

The U.S. goods trade deficit with SACU countries was \$4.3 billion in 2007, an increase of \$533 million from \$3.8 billion in 2006. U.S. goods exports in 2007 were \$5.7 billion, up 23.9 percent from the previous year. Corresponding U.S. imports from SACU countries were \$10.1 billion, up 19.4 percent.

The stock of U.S. foreign direct investment (FDI) in SACU countries was \$3.9 billion in 2006 (latest data available), up from \$3.6 billion in 2005.

OVERVIEW

The Southern African Customs Union (SACU) links the trade regimes of Botswana, Lesotho, Namibia, South Africa, and Swaziland. There are currently no internal tariff barriers among SACU members. All SACU members except Botswana are members of a common monetary area, with currencies pegged to the South African rand. Imports from outside SACU are subject to a common external tariff. The 2002 SACU Agreement, which became fully operational in 2004, provided for a more democratic structure that reduces reliance on South Africa for administrative decisions. The Agreement set up a Council of Ministers (COM) as the supreme decision making body for SACU. The COM is supported by the Commission of Senior Officials (a group of technical experts) and a SACU Secretariat located in Windhoek, Namibia. A SACU Tariff Board formulates and implements tariff policy; it reports directly to the COM.

The United States began free trade agreement (FTA) negotiations with the five SACU countries in June 2003, but active negotiations were suspended in April 2006. As a way forward in the U.S.-SACU FTA negotiations, the United States and SACU are negotiating a new type of agreement, a Trade, Investment, and Development Cooperative Agreement (TIDCA). The proposed United States-SACU TIDCA would be a framework for trade and investment promoting activities that could provide the “building blocks” for the future resumption of FTA negotiations, while allowing the United States and SACU to take meaningful interim steps towards improving their trade and investment relationship.

The TIDCA would establish a forum for consultative discussions on a wide range of trade and investment issues, including, but not limited to, FTA issues. The proposed TIDCA would establish a Consultative Council that would oversee the implementation of the TIDCA, set up working groups, and monitor progress towards the negotiation of various trade and investment related agreements. The TIDCA would provide a mechanism to address SACU trade practices of concern to U.S. exporters.

1. SOUTH AFRICA

IMPORT POLICIES

The International Trade Administration Commission (ITAC) is tasked with administering South African trade laws. Its specific responsibilities include:

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- **Tariff Administration:** ITAC administers tariff related programs, including the Motor Industry Development Program (MIDP) and the Duty Credit Certificate System (DCCS). In addition, interested parties may petition ITAC to review tariffs with the purpose of reducing or increasing them.
- **Trade Remedies:** ITAC administers SACU's use of antidumping and countervailing duty measures. ITAC also administers SACU's safeguard laws, which have recently been adopted by South Africa. The textiles and apparel industry was the first to utilize the China specific ITAC safeguard procedures, introduced in 2004 as permitted by China's WTO protocol of accession, when it filed petitions for protection against rising Chinese imports. In response, the government imposed a quota system limiting certain Chinese textile and apparel imports, which became effective January 1, 2007. In May 2007, ITAC initiated SACU's first global safeguard investigation by imposing provisional duties on lysine products of 160 percent, which were lowered to 27 percent in a December 2007, final determination.
- **Import and Export Control:** ITAC issues import and export permits for certain items designated by the Minister of Trade and Industry under the authority of the International Trade Administration Act of 2002 (which replaced the Import and Export Control Act of 1963).

Tariffs

ITAC continues to receive requests from a number of industries for tariff protection, and U.S. companies have cited protective tariffs as a barrier to trade. In a few cases, products that are duty free from SACU partners compete directly with U.S. goods that are subject to duties. One example is soda ash imported from Botswana at a zero duty, while soda ash from the United States faces a 5.5 percent duty. If tariffs on U.S. soda ash were removed, U.S. industry estimates that U.S. exports of high quality soda ash to South Africa could increase from less than \$8 million to \$25 million, closer to its historical level. The soda ash duty benefits Botswana, the only producer of soda ash within SACU. A longstanding complaint from this Botswana producer to South Africa's Competition Commission, that U.S. soda ash exports compete unfairly in the South African market, could result in a prohibition of U.S. imports of soda ash. Initially, the Competition Commission accepted the complaint as a "*per se*" offense, but a 2006 decision by the South African Supreme Court of Appeal remanded the case to the Competition Commission to confirm that U.S. exports have actually damaged the South African market. The Commission's appellate division ruled on a procedural matter in June 2007 and will now proceed on the merits of the case.

The Department of Trade and Industry (DTI) released its National Industrial Policy Framework and Industrial Policy Action Plan in August 2007. The Framework's objective is to promote value added industries in four key sectors and four priority sectors under the South African government's Accelerated and Shared Growth Initiative for South Africa (ASGI-SA) including: capital and transport equipment; automotive goods and components; chemicals, plastic fabrication, and pharmaceuticals; forestry, pulp, paper and furniture; business process outsourcing; tourism; biofuels; and clothing and textiles. The Action Plan sets out specific mechanisms to assist these sectors that include a comprehensive review of import duties in 2008 and a potential reduction of selected import duties on downstream products and components.

Nontariff Measures

The Minister of Trade and Industry is authorized to prohibit imports, by notice in the Government Gazette, of goods of a specified class or kind into South Africa, except under the authority of, and in

accordance with, the conditions stated in a permit issued by ITAC. The main categories of controlled imports are as follows:

- Used goods. ITAC requires import permits on used goods or substitutes if such goods are manufactured domestically, thus creating a *de facto* ban on most used goods, including used clothing;
- Waste, scrap, ashes, and residues;
- Other harmful substances; and
- Goods subject to quality specifications: This restriction permits the monitoring of manufacturing specifications that enhance vehicle safety (such as in the case of tires) or protect human life.

Other often cited nontariff barriers to trade include port congestion, customs valuation above invoice prices, theft of goods, import permits, antidumping measures, intellectual property violations, and inefficient bureaucracy and excessive regulation.

Transparency and due process remain issues regarding the actions of ITAC and its administration of South Africa's antidumping laws and regulations.

During 2006, ITAC initiated an antidumping investigation into the alleged dumping of white self-copy paper imported from the United States, but terminated the investigation in 2007. ITAC also completed a sunset review of antidumping duties on frozen chicken meat portions imported from the United States that resulted in the continuation of the antidumping duties. In 2007, ITAC initiated a sunset review of antidumping duties on l-lysine feed supplement that resulted in the termination of antidumping duties in December 2007. In addition to frozen chicken meat portions, South Africa imposes anti dumping duties on U.S.-origin suspension polyvinyl chloride (PVC) and acetaminophenol.

On September 25, 2007, South Africa's Supreme Court of Appeal ruled that ITAC had improperly calculated the 5 year expiration date of antidumping duties imposed upon A4 paper imported from Indonesia, and as a result, authority to impose duties had expired prior to the initiation of the sunset review. The Supreme Court of Appeal's ruling may affect many other ITAC trade remedy measures, including those in force involving exports from the United States. This will be an issue in 2008 as ITAC begins to implement the court ruling with respect to other trade remedy actions.

In May 2007, ITAC imposed a 160 percent provisional safeguard duty on l-lysine products imported from all countries on the same day that it announced the initiation of its investigation. This was the first time that ITAC opted to utilize a global safeguard remedy. The Pretoria High Court overturned ITAC's provisional safeguard duties on the grounds that ITAC failed to provide proper notice and an opportunity for all interested parties to comment. Following the court's ruling, ITAC continued its investigation and on December 14, 2007 the South African authorities imposed final definitive duties of 27 percent.

Free Trade Agreement with the European Union

In 2000, South Africa and the European Union (EU) began to implement provisions of their Trade, Development, and Cooperation Agreement (TDCA). Under the TDCA, South Africa and the EU agreed to establish a free trade area over a transitional period of up to 12 years for South Africa, and 10 years for the EU. The Agreement provides for the reduction and eventual elimination of duties on approximately

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85 percent of the products imported by South Africa from the EU, and 95 percent of the products exported by South Africa to the EU. The Agreement exempts certain agricultural products from liberalization. Some U.S. businesses exporting to South Africa are concerned that their products are less competitive because of preferences for EU products that the TDCA provides. An example includes the tariff differential between EU and U.S. bottled and bulk distilled spirits; another example is automobiles.

In November 2005, South Africa and the EU completed a work program on automobile trade as part of the TDCA. The EU agreed to phase out all tariffs on South African automotive imports by 2010. South Africa agreed to reduce tariffs on European car imports from 25 percent to 18 percent by 2012. The EU and South Africa reached an agreement in November 2006 to further liberalize trade in the automotive sector on given product tariff codes. South Africa's vehicle and component exports to the EU grew by 40 percent in 2006. Currently, 49 percent of South Africa's vehicle and component exports go to the EU.

STANDARDS, TESTING, LABELING, AND CERTIFICATION

The South African Bureau of Standards (SABS) often adopts European Union standards rather than those developed by international or U.S.-domiciled standards developing organizations. The U.S. Government is working with SABS to consider alternative standardization policies, which would allow for the use of competing non-EU standards that meet the same objectives and allow for the adoption of international and U.S. standards that would not interfere with access for U.S. products.

Biotechnology

The South African government generally accepts the use of biotechnology products. Transgenic varieties of cotton, corn, and soybeans are approved for commercial planting and account for approximately 92 percent of South Africa's cotton, 44 percent of its corn and 59 percent of its soybeans. Agricultural biotechnology has wide appeal for South African farmers as they recognize the technological benefits of fewer inputs and potentially higher yields.

U.S. agricultural interests in South Africa are wide ranging and diverse. Wheat is the main U.S. export, followed by other bulk, intermediate, and consumer-ready products. Those products affected by biotechnology issues are corn, soybeans, and planting seeds (corn, cotton, and soybeans). South Africa does not grant import permits for products coming from countries that have approved biotechnology varieties of a product that has not been approved in South Africa. Accordingly, the South African government has not approved U.S. yellow corn for importation because there are a number of genetically modified varieties of yellow corn that have been approved in the United States and not in South Africa. If yellow corn were in short supply in South Africa, importers would have to apply to the government for a special waiver to import it, and would have to guarantee that the corn would be milled near the port to ensure that seeds from such imports could not be planted.

U.S. grain producers have raised concerns about the treatment of "stacked events" when it comes to import approval for biotechnology products. Although the U.S. Government considers products containing a combination of two previously approved genetic modifications (such as for insect resistance and herbicide tolerance) as "conventional," only encouraging producers to notify the U.S. Government of such "stacked events," South Africa – like the EU – considers "stacked events" to constitute a completely new event, thus requiring a *de novo* review for registration purposes. This requirement creates significant delays in registering products, causing U.S. exporters to lose export opportunities.

Agricultural biotechnology regulations in South Africa are managed by an Executive Council (EC) with representation from eight government departments: the Department of Agriculture; the Department of Science and Technology; the Department of Environment and Tourism; the Department of Trade and Industry; the Department of Health; the Department of Water Affairs and Forestry (DWAF); and, the Department of Arts and Culture (DAC). In April 2007, the DWAF and DAC were added to the EC as a result of amendments to the 1997 Genetically Modified Organism (GMO) Act. In addition to an expanded EC, the April amendments improved legislative administration and ensured 1997 GMO Act compliance with the Cartagena Biosafety Protocol.

The EC has decision making authority over agricultural biotechnology approvals. To assist the EC, an Advisory Committee (AC) consisting of independent experts reviews all GMO applications with the authority to request additional data and information. The AC's review is taken into consideration in the EC decision making process. Final determinations are based on consensus among the members of the EC. Although the EC's final determination is made public, the decision making process leading to a determination lacks transparency.

The Advisory Committee and the Executive Council meet infrequently which slows the decision making process. In addition, the consensus nature of the EC decision making process allows for committee members to request additional data and information outside their particular areas of expertise or regulatory jurisdiction.

Agricultural Standards

The South African government requires an import permit for certain controlled products. Public health officials still ban the importation of irradiated meat from any source.

U.S. horticultural producers have complained about a range of South African sanitary or phytosanitary (SPS) import requirements that affect imports of apples, cherries, and pears from the United States. They estimate that, if these barriers were removed, U.S. exports of these fruits to South Africa could potentially reach \$25 million in annual sales. U.S. producers have also expressed concern about unnecessary SPS requirements for some grains, pork, poultry, and horticultural products.

In September 2006, the U.S. Department of Agriculture's (USDA) Animal and Plant Health Inspection Service sponsored the trip of two South African National Department of Agriculture (NDA) inspection officials to the Pacific Northwest to visit orchards and packing houses in order to liberalize the NDA's SPS requirements for importing U.S. apples. There has been no change in the status of U.S. apples since that trip.

To fulfill South Africa's commitment under the WTO Marrakesh Agreement on market access, the NDA published the rules and procedures regarding the application for import permits for agricultural products on October 24, 2003. The NDA issues permits to importers registered with the South African Revenue Service (SARS) and the Department of Trade and Industry (DTI) for agricultural products listed in the Table of Import Arrangements. Ten percent of such permits are reserved for "new importers" (those who have not imported within the past 3 years), and 10 percent are reserved for small, medium, and microenterprises.

In response to the Bovine Spongiform Encephalopathy (BSE) case in Washington State announced by the USDA on December 23, 2003, South Africa banned all ruminant animals and products originating in the United States. By January 15, 2004, South Africa, in accordance with World Organization for Animal Health (OIE) standards, exempted nonrisk products such as hides, skins, wool, and mohair from the ban.

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On May 8, 2006 the Chief Veterinary Officer of the USDA sent his South African counterpart a full report detailing USDA's surveillance program. In May 2007, South Africa's Chief Veterinary Officer informed USDA officials that an audit of the U.S. food safety system would need to be completed before it reopens South Africa to beef meat products from the United States. The ban on risk products remains in effect. The United States continues to urge South Africa to fully reopen its beef market consistent with OIE guidelines.

GOVERNMENT PROCUREMENT

Government purchases are made through competitive tender for goods, services, and construction contracts. South Africa uses government procurement to promote the empowerment of the historically disadvantaged majority population in South Africa through its Black Economic Empowerment (BEE) strategy. See section below on Investment Barriers for more details on BEE.

South Africa's Preferential Procurement Policy Framework Act of 2000 (the Framework Act) and its implementing regulations created the legal framework and set forth a formula for evaluating tenders for government contracts. To augment this, the Department of Trade and Industry (DTI) has been working on regulations to clarify the Framework Act and to incorporate the objectives of the Broad-Based Black Economic Empowerment Act of 2003. These regulations give preference to bidders who comply with BEE objectives. The regulations also include BEE thresholds for tender qualification. Companies bidding on procurement valued up to one million rand earn 80 percent of their points from their bid price and 20 percent from their commitment to BEE objectives. For tenders valued over one million rand, companies earn 90 percent of their points from their bid price, and 10 percent from their commitment to BEE objectives. The National Treasury is working with the DTI to align preferential procurement regulations with the BEE Code of Good Practice on Procurement in order to help standardize how firms are evaluated on their compliance with industry BEE scorecards.

South Africa's National Industrial Participation Program (NIPP) program, introduced in 1996, subjects all government and parastatal purchases or lease contracts for goods, equipment or services with an imported content equal to or exceeding \$10 million (or the rand equivalent thereof) to an industrial participation obligation. This obligation requires the seller/supplier to engage in local commercial or industrial activity valued at 30 percent or more of the value of the imported content of total goods purchased or leased under government tender.

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

INTELLECTUAL PROPERTY RIGHTS (IPR) PROTECTION

South Africa is a signatory to the Berne Convention for the Protection of Literary and Artistic Works, the Paris Convention for the Protection of Industrial Property, the Patent Cooperation Treaty, and the Budapest Treaty on the International Recognition of the Deposit of Microorganisms for the Purposes of Patent Procedure, as well as the International Union for the Protection of New Varieties of Plants (UPOV) Convention and the World Intellectual Property Organization (WIPO) Convention. South Africa is also a signatory to the Trademark Law Treaty, the WIPO Copyright Treaty and the WIPO Performances and Phonograms Treaty.

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Legal Regime

Enforcement of intellectual property rights is a concern. The United States has provided training assistance on IPR enforcement to South African government and private sector representatives.

Since 2001, the South African government has introduced measures to enhance enforcement of the 1997 Counterfeit Goods Act. The government appointed more inspectors, designated more warehouses for securing counterfeit goods, destroyed counterfeit goods, and improved the training of customs, border police, and police officials. Although law enforcement authorities often cooperate with the private sector in investigating allegations of trade in pirated or counterfeit goods, there are concerns about lax enforcement of IPR laws against imports of infringing goods, as well as slow and cumbersome court proceedings.

Under South African law, complainants can take both civil and criminal action against IPR offenders. The number of arrests for trading in pirated or counterfeit goods doubled from 2005 to 2006 and continued to increase in 2007. South Africa has taken some positive steps with the creation of the Department of Trade and Industry's enforcement unit, which has expanded its number of investigators to 47, and the establishment of Commercial Crime Courts in several cities. The appointment of two senior prosecutors in 2006 and an additional nine prosecutors in 2007 focusing on intellectual property offenses and operating within the Commercial Crime Courts also increases the capacity to prosecute intellectual property cases. The South African government has also formed an interagency counterfeit division including the Department of Trade and Industry (DTI), South African Revenue Service (SARS), and the South African Police Service (SAPS) to improve coordination on IPR enforcement. SARS has launched a public awareness campaign about the seriousness and impact of IPR crimes, and DTI is working with universities to incorporate IPR awareness into college curricula.

Despite efforts to improve IPR enforcement, monetary losses from counterfeiting and piracy remain high. U.S. industry is increasingly concerned about illegal commercial photocopying, especially at universities, libraries and other on-campus venues. U.S. industry has also expressed concern about software and Internet piracy, the growing number of burner labs, advertisements of "burn-to-order" services and the unwillingness of South African Internet service providers (ISPs) to shut down infringing sites or access thereto. In addition, counterfeit medicines are also a growing problem. U.S. industry reports that South Africa is also becoming a transshipment point for pirated and counterfeit goods into the rest of Africa, noting that it is unclear whether South African Customs has the power to interdict such shipments and should exercise that power.

SERVICES BARRIERS

Telecommunications

Telkom, South Africa's main telecommunication provider, continues to maintain a dominant position in the provision of value added and basic telecommunications services. Many businesses have complained about high telecommunications prices, many of which are a result of Telkom's control of the underlying network. In 2004, in response to a complaint brought in 2002 by Value Added Network Service (VANS) providers, the South African Competition Commission found that Telkom had abused its dominant position by engaging in anticompetitive conduct with respect to the VANS providers and referred the matter to the Competition Tribunal for final determination.

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One U.S. company has also pursued legal remedies against Telkom to honor the results of a binding arbitration decision against Telkom regarding a multi-million dollar breach of contract claim. Instead of honoring the arbitrator's findings, Telkom took steps to block the arbitral award and appealed the award to a local high court. In November 2006, the South African Supreme Court of Appeal found in favor of the U.S. company, and an arbitration panel is still deliberating to calculate the recoverable damages.

In its WTO commitments, South Africa committed to license a second national operator (SNO) to compete in long-distance, data, telex, fax and privately leased circuit services no later than January 1, 2004. The Minister of Communications conditionally completed the selection of the SNO's shareholders following a public bidding process in September 2004, and South Africa's Independent Communications Authority (ICASA) licensed the SNO in December 2005. Disagreements among SNO shareholders over operational control and allocation of equity stakes, however, delayed the SNO's start of operations until August 30, 2006. As a result, Telkom continued to enjoy monopoly privileges well beyond its period of exclusivity, which ended in May 2002. The SNO began operations under the name "Neotel", which is 26 percent owned by Videsh Sanchar Nigam (a subsidiary of the Indian industrial giant Tata). Neotel has entered the business-to-business market and plans to enter the residential market.

Some of the problems facing VANS and ISP are being addressed by certain liberalization policies that were implemented by the Department of Communications (DOC) starting in February 2005. As a result of such liberalization, mobile operators are allowed to use any fixed lines in the provision of their service, VANS can be offered through infrastructure other than that which is owned by Telkom, and VANS providers are allowed to provide voice services. In addition, private telecommunications network operators are allowed to sell spare capacity.

A Convergence Bill and ICASA Amendment Bill were passed in June 2006 in an effort to resolve some of the remaining barriers in this sector, including the failure to empower the regulator. While the ICASA Amendment Bill did provide some independence to ICASA, the fact that the DOC must approve ICASA's funding allows it to maintain influence over ICASA. Critics believe that ICASA should be strengthened to better carry out its regulatory mandate. ICASA has begun to address recent capacity problems and has fully staffed all vacant executive management positions.

Broadcasting

ICASA maintains local content regulations for satellite, terrestrial, and cable subscription services. Foreign ownership in a broadcaster is presently capped at a maximum of 20 percent.

INVESTMENT BARRIERS

Uncertain Implementation of the BEE Act

In January 2004, President Mbeki signed into law the Broad-Based Black Economic Empowerment Act of 2003, giving the force of law to the government's Black Economic Empowerment (BEE) strategy. The intention of BEE is to move the historically disadvantaged majority population in South Africa into the mainstream of the economy. While BEE is not mandatory in most sectors and companies are generally free to pick their level of empowerment, a low overall BEE "score" would affect a company's competitiveness on government tenders and possibly limit its access to other business opportunities. U.S. businesses support the goals of BEE, and many companies have a history of instituting human resource management, procurement, and enterprise development policies in South Africa that are consistent with BEE objectives.

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In February 2007, the Department of Trade and Industry (DTI) published Codes of Good Practice in the Government Gazette that included a new generic scorecard that companies will use to measure their level of black empowerment in areas such as equity ownership, management, employment, procurement from black-owned companies, and development of black-owned enterprises. The Codes permit multinational corporations to score equity ownership "points" through the use of mechanisms not involving the transfer of equity if these mechanisms are approved by DTI and the multinationals have a global corporate policy of owning 100 percent of the equity in their subsidiaries. Many U.S. companies had pressed for the right to use such "equity equivalent" mechanisms. The completion of the Codes of Good Practice has cleared up much of the uncertainty that surrounded BEE that had been of concern to foreign investors. However, the Codes are complex documents and there is much about their interpretation and implementation that remains unclear.

Several "transformation charters" have also been negotiated by stakeholders in sectors such as financial services, mining, and petroleum. These charters are intended to promote accelerated transformation within particular sectors, taking into consideration sector-specific circumstances and challenges. It is expected that many charters will be converted into sector codes that will be binding on signatories and government, once gazetted. Confusion has arisen over whether Equity Equivalent plans approved by DTI under the Codes of Good Practice can automatically satisfy equity requirements imposed by transformation charters. For example, state-owned Telkom has refused to recognize at least one DTI-approved Equity Equivalent plan that did not satisfy the requirements of the Information and Communications Technology charter.

U.S. Government agencies and the U.S. Embassy in Pretoria have been closely monitoring the ongoing development and implementation of South Africa's BEE policies and have maintained a continuous dialogue with the South African government and U.S. industry on BEE.

ANTICOMPETITIVE PRACTICES

Ownership Patterns

There is a historical legacy of concentrated ownership in some sectors of the South African economy. Between 1961 and 1994, the apartheid government prevented a large portion of the South African population from participating actively in the economy by disallowing them the opportunity to gain higher education and managerial experience or to take advantage of entrepreneurial and investment opportunities. Apartheid policies also prohibited successful companies such as South African Breweries, Anglo American, DeBeers, and SASOL from investing abroad. Therefore, these enterprises expanded their businesses domestically in horizontal and vertical conglomerates. As a result, major South African companies entangled themselves into complex ownership structures and a series of crossholdings that concentrated considerable power in the South African marketplace. This situation has changed considerably since 1994, as many of the major players have disentangled their businesses, focused on core businesses, sold off noncore assets, expanded internationally, and even listed on foreign stock exchanges. Together with more effective competition laws and BEE initiatives to enlarge the share of black participation in the economy, South Africa's business environment has become more transparent, more competitive, and more open to new entrants (including U.S. companies) than it was 10 years ago. The exceptions have been the energy, transportation, and telecommunications sectors, which are still dominated by state-owned or state-controlled monopolies.

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ELECTRONIC COMMERCE

The Electronic Communications and Transactions Law, effective July 31, 2002, governs all companies that conduct electronic commerce in South Africa. The law was designed to facilitate electronic commerce, but may instead increase the regulatory burden and introduce an unacceptable level of uncertainty for some businesses. The law requires government accreditation for certain electronic signatures, takes government control of South Africa's ".za" domain name, and requires a long list of disclosures for web sites that sell via the Internet.

The South African Law Reform Commission submitted draft legislation and discussion documents on privacy and data protection for public comment by February 28, 2006. The Commission held a series of workshops on the legislation in February 2006. Numerous public submissions were received, and the Commission recently finalized its report with recommendations on the draft legislation, which must now be approved by the Minister, Cabinet, and Parliament. The draft legislation will reach the Parliament for approval in June 2008 at the earliest. This legislation may negatively impact the ability of South African and foreign companies to receive and send trans-border flows of personally identifiable data.

OTHER BARRIERS

Transparency, Corruption and Crime

Laws, such as the Promotion of Access to Information Act, signed into law in February 2000, have helped to increase transparency in government during the last few years. The Public Finance Management Act, which became effective on April 1, 2000, helped to raise the level of oversight and control over public funds and to improve transparency in government spending, especially with regard to off-budget agencies and state-owned enterprises. These efforts notwithstanding, businesses complain about the lack of certainty and consistency in interpreting and implementing some government policies.

South African law provides for the prosecution of government officials who solicit or accept bribes. Penalties for offering or accepting a bribe may include criminal prosecution, monetary fines, dismissal from government employment, or deportation (for foreign citizens). South Africa has no fewer than 10 agencies engaged in anti-corruption activities. Some, like the Public Service Commission, the Office of the Public Protector, and the Office of the Auditor-General, are constitutionally mandated to address corruption as only part of their responsibilities. Others, like the South African Police Anti-Corruption Unit and the Directorate for Special Operations (more popularly known as the "Scorpions"), are dedicated to combating crime and corruption. High rates of violent crime, however, are a strain on capacity and make it difficult for South African criminal and judicial entities to dedicate adequate resources to anti-corruption efforts.

On April 28, 2004, President Mbeki signed The South African Prevention and Combating of Corrupt Activities Act (PCCAA) into law. The PCCAA, *inter alia*, defines graft, bars the payment of bribes by South African citizens and firms to foreign public officials, and obliges public officials to report corrupt activities. One shortcoming of the Act has been its failure to protect whistleblowers against recrimination or defamation claims.

Immigration Laws

For a number of years, U.S. and other foreign companies have complained about difficulties in obtaining work permits for their foreign employees. A 2002 immigration law established yearly quotas for granting

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work permits to foreigners. Local businesses criticized the law for creating uncertainty because the quota system sets limits on the number of skilled people that may enter the country in particular categories. However, corporate investors are allowed to make blanket permit applications for the people they need, although it is unclear whether these corporate permits fall within the quota system. The Minister of Home Affairs has said that the law is an enormous improvement over previous legislation and places South Africa on a par with other countries, especially with respect to investors and intra-company transfer permits.

On July 1, 2005, the Immigration Amendment Act Number 19 came into effect. The Minister of Home Affairs released the quota category schedule for skilled workers in February 2006, but subsequently decided that the quota schedule should be adjusted to match the critical skills most needed in South Africa. A revised quota schedule for skilled workers was released in April 2007, with categories primarily for scientists, science technicians, engineers, and education and health professionals.

2. BOTSWANA

IMPORT POLICIES

Tariffs

Botswana is a member of various regional and international economic and trade bodies including the WTO, Southern African Customs Union (SACU), and Southern African Development Community (SADC). Botswana's tariff policies are generally determined by and integrated with SACU, in accordance with the 2002 SACU Agreement. Accordingly, Botswana uses the Harmonized System of Classification (HS) and applies the SACU common external tariff (CET). Botswana has been a participant in SADC's ongoing Economic Partnership Agreement (EPA) negotiations with the EU. Botswana, along with all of the SADC countries, except for South Africa, signed an "interim agreement of goods" with the EU. This interim agreement covers tariffs on goods, sanitary and phytosanitary issues, technical barriers to trade, and trade facilitation. It also includes a clause to conclude negotiations on investment and services by year-end 2008.

Nontariff Measures

Import permits are required for goods entering Botswana directly from countries outside of SACU, with the exception of Malawi, and are obtainable from the Department of Trade and Consumer Affairs in the Ministry of Trade and Industry. The import permits are not transferable and are usually granted upon request.

Importation of certain agricultural products and plants requires approval from the Ministry of Agriculture prior to obtaining an import permit from the Department of Trade and Consumer Affairs. Imports of fresh pork are banned, but processed pork products may be imported. Imports of beef and beef products are banned. Although poultry imports are permitted when there is a domestic market deficit, the Botswana poultry sector met all domestic demand throughout 2006 and the first two quarters of 2007. Imports of some vegetables and dairy products are seasonally banned when domestic supply is determined to be adequate, regardless of price. The government "discourages" the importation of used clothing, although there are no written regulations to this effect. The importer of used clothes is required to apply for an import permit, which may be issued for a duration of 6 months, obtainable from the Department of Trade and Consumer Affairs. Fumigation is required.

FOREIGN TRADE BARRIERS

GOVERNMENT PROCUREMENT

Based on the Public Procurement and Asset Disposal Act of 2002, the Public Procurement and Asset Disposal Board (PPADB), an independent parastatal, is responsible for the award of all government contracts. The tender process is open. In order to enhance efficiency and transparency, PPADB has adopted Standardized Bidding Packages for services and supplies. Lobbying of the PPADB or its members is prohibited. The Independent Complaints Review Committee of the PPADB reviews the Board's decisions, which are subject to challenge by stakeholders, *e.g.*, contractors and procuring entities. The PPADB has published its decisions concerning awarded tenders, prequalification lists and newly registered contractors. The PPADB Act empowers the government, under its economic and social objectives, to introduce from time to time reservation and preference schemes for the benefit of citizens and local companies. Preferences are also applied on production inputs sourced locally from qualifying firms. The government reserves certain tenders for 100 percent Botswana-owned companies, including all contracts valued at P300,000 (\$50,000) or less. On large tenders, the relevant ministries review the finalists selected by the PPADB and exert some degree of influence in the final award. The PPADB has stated that it considers these schemes to be in conformance with Botswana's obligations under its international and regional trade agreements. Botswana is not a signatory to the WTO Agreement on Government Procurement.

INTELLECTUAL PROPERTY RIGHTS (IPR) PROTECTION

Botswana is a signatory to both the Berne Convention for the Protection of Literary and Artistic Works and the Paris Convention for the Protection of Industrial Property. Botswana is also a party to the WIPO Convention, the Patent Cooperation Treaty, the Protocol Relating to the Madrid Agreement Concerning the International Registration of Marks, the WIPO Copyright Treaty, and the WIPO Performances and Phonograms Treaty. Botswana's legislation, including the 2006 Copyright Act, is intended to conform to international IPR standards, but there are notable deficiencies with respect to geographic indications and integrated circuits, and enforcement of intellectual property rights remains a challenge. The government of Botswana has conducted comprehensive workshops on Intellectual Property in coordination with the U.S. Patent and Trademark Office.

SERVICES BARRIERS

The government is continuing to reorganize and restructure some ministries and departments to improve the efficiency and effectiveness of services delivery. It is moving towards privatizing a number of parastatal businesses through the creation of autonomous authorities or boards, although observers of this process view it as moving too slowly. One such authority is the Public Enterprise Evaluation and Privatization Agency (PEEPA) that was established in 2000 to oversee the implementation of the Privatization Policy. The government intends to use privatization as a tool to increase foreign direct and portfolio investment in the country. PEEPA will ultimately determine the extent of foreign participation in the privatization process. The Ministry of Finance and Development Planning, to which PEEPA reports, has stated that local investors may be given preference in privatization initiatives in some instances. The government of Botswana has not succeeded in any of its recent privatization efforts. For example, the long awaited Air Botswana privatization has collapsed. SA Airlink won the tender for Air Botswana, but the government rescinded this award after a 10 month delay, challenging technical aspects of the bid that had been certified by the Public Procurement and Assets Disposal Board (PPADB). The Botswana government has now shifted attention to the privatization of the Botswana Telecommunications Corporation (BTC). A procurement tender has been filed through the Ministry of Communications, Science, and Technology to the PPADB.

FOREIGN TRADE BARRIERS

The telecommunications market was liberalized in 1996 following the adoption of the Telecommunications Policy of 1995 and enactment of the Telecommunications Act (Act No. 15 of 1996) that abolished BTC's monopoly in some segments of the market and established an independent regulator, the Botswana Telecommunications Authority (BTA). The BTA was created to safeguard competition and ensure unrestricted interconnection with the public network. Market segments liberalized so far are mobile telephony, data communications, payphones, telecommunications equipment sales, and Internet services. Competition in the cellular phone industry is dominated by two international firms, Mascom (Portuguese) and Orange (French), which compete for the bulk of the local market. Voice-Over-Internet Protocol (VOIP) is not allowed (except over private networks). Universal licenses have been granted for all licensed telecommunications corporations, opening the cell phone market to parastatal BTC.

INVESTMENT BARRIERS

All foreign investors wishing to invest in Botswana are required to register a company in Botswana in accordance with the Companies Act and to: comply with other applicable legislation; transfer technology to Botswana, in certain circumstances; transfer skills to citizens of Botswana by promoting their involvement and participation in positions in the supervisory, middle, and senior management levels of companies; and ultimately replace expatriate employees with Botswana citizens within an agreed period, though there are often exceptions to this rule in practice.

The Botswana Export Development and Investment Authority (BEDIA), founded in 1998, is an autonomous organization established to promote investment in Botswana with a special emphasis on export oriented manufacturing industries. The Authority is designed to serve as the primary government contact point for both domestic and foreign investors. BEDIA maintains a center for potential investors to expedite clearances, residence and work permits, and factory and land allocation. Unfortunately, the acquisition of land, work permits, and business licenses remains encumbered by significant bureaucratic and political constraints. Despite several years of focus on this issue by BEDIA and other government agencies, Botswana has not achieved improvement in this area.

ELECTRONIC COMMERCE

Internet usage is on the rise, but nationwide usage remains extremely low. According to the government, less than 10 percent of the population uses the Internet. There is a growing number of Internet service providers and Internet cafes, but due to the high cost of fixed-line phone charges associated with dial-up service, the cost of accessing the Internet remains prohibitive for the majority of the population. DSL services are increasing their presence in the market, but limited bandwidth and slow connection speeds continue to inhibit the growth of electronic commerce.

OTHER BARRIERS

The legal system is sufficient to conduct commercial dealings, and foreign and domestic parties have equal access to, and standing under, the judicial system. Botswana courts will, in general, accept and enforce decisions of a foreign court found to have jurisdiction in a given case. However, a backlog of court challenges has adversely affected international companies that have won government procurement contracts. In some instances even companies that have won these challenges have had to rebid the tender due to the length of time, in one case over four years, for the court to render a decision. There is a

FOREIGN TRADE BARRIERS

growing concern that the backlog could deter American companies interested in competing for contracts in Botswana.

3. LESOTHO

IMPORT POLICIES

Tariffs

Lesotho's tariff policies are generally determined by and integrated with SACU, in accordance with the 2002 SACU Agreement. Accordingly, Lesotho applies the SACU Common External Tariff and other SACU import policies. Additional charges include clearing fees ranging from M750 to M1,000 (approximately \$110 to \$140). Lesotho is a Member of the WTO, the Southern Africa Development Community (SADC), and the Africa, Caribbean and Pacific-European Union (ACP-EU) Cotonou Trade Agreement. With seven of its fellow SADC member states, Lesotho has been a participant in the ongoing negotiations on a SADC-EU Economic Partnership Agreement (EPA). Lesotho, along with the other SADC countries except for South Africa, signed an "interim agreement of goods" with the EU. This interim agreement covers tariff lines on goods, sanitary and phytosanitary issues, technical barriers to trade, and trade facilitation. It also includes a clause to conclude negotiations on investment and services by year-end 2008.

Nontariff Barriers

Lesotho applies a permit system for all imports from non-SACU members. The system is applicable to all consignments imported by individuals. Manufacturers can receive a "blanket permit" with a validity of 12 months and an additional grace period of 3 months. Lesotho has yet to submit its Import Licensing Questionnaire to the WTO.

In recent years, the government of Lesotho (GOL) has undertaken agricultural sector structural reforms including the removal of price subsidies and import controls on maize and wheat produce in favor of market-determined prices. The 1967 Agricultural Marketing Act, however, continues to control the importation of bread, legumes, sugar, eggs, meat, dairy products, fruits, and vegetables. The government provides subsidies to maize, milk, beans, and other grains and agricultural inputs during poor harvest seasons. Currently, the government provides a 30 percent subsidy on agricultural inputs and a 20 percent subsidy on grains as a response to the 2006/2007 drought and subsequent crop failure.

With the exception of eggs, sugar, and legumes, import restrictions allow a limited exemption for consumer purchases outside the country. The Department of Marketing under the Ministry of Trade and Industry, Cooperatives and Marketing monitors local production of consumer goods and issues import licenses for goods that are in short supply. However, national production has never met local demand. As a result, import licenses are issued as a matter of course.

Nonautomatic licenses apply to imported used clothing. In practice, licenses for used clothing are not issued, constituting a *de facto* ban. The Ministry issues permits for the import of used vehicles from outside the SACU area.

FOREIGN TRADE BARRIERS

STANDARDS, TESTING, LABELING, AND CERTIFICATION

Lesotho does not have a national standards body and no national standards have been developed. The Standards and Quality Assurance section of the Ministry of Trade and Industry, Cooperatives and Marketing functions as the focal point for standards and quality assurance. Industries in Lesotho have traditionally relied on the South African Bureau of Standards for voluntary standards facilities and quality assurance schemes. Local exporters have relied on traditional export markets and have developed their standards according to technical and quality requirements of importing countries and firms or based on international standards.

Lesotho participates in a regional program on Standardization, Quality, Accreditation, and Metrology for the SADC. The program aims to harmonize standards for adoption by all member states. Efforts are also underway to develop a regional accreditation authority.

GOVERNMENT PROCUREMENT

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

In 2007, the Government adopted new public procurement regulations. Standard government procurement in Lesotho is conducted through open competition. However, some preferences are given to locally owned companies in the government bidding process. Procurement regulations require the government to advertise online in order to conform to SACU standards. Lesotho's Ministry of Trade and Industry encourages foreign companies to bid on public tenders as joint ventures with local firms.

INTELLECTUAL PROPERTY RIGHTS (IPR) PROTECTION

Lesotho's Industrial Property Order (1989), Copyright Order (1989) and the Industrial Property Regulations (1989) are the basis for legal protection of intellectual property rights. Patents have rarely been issued in Lesotho, but trademark protection is widely sought and granted. Lesotho is a party to the WIPO Convention, the Berne Convention for the Protection of Literary and Artistic Works, and the Paris Convention for the Protection of Industrial Property. Lesotho is also a party to the Patent Cooperation Treaty and the Protocol Relating to the Madrid Agreement Concerning the International Registration of Marks.

SERVICES BARRIERS

The Trading Enterprises Order of 1996 restricts foreigners from participating in small scale trading activities that are reserved for nationals only. These include butcheries, barbershops, certain cafes, and hair salons.

INVESTMENT BARRIERS

Lesotho welcomes foreign investment. Foreign investors have participated in the country's privatization program without discrimination. According to the International Finance Corporation, however, it takes 73 days to start a new business in Lesotho – a consequence of significant bureaucratic impediments and inefficiencies. In response, the government of Lesotho has embarked on a private sector development initiative in order to improve the nation's investment climate. The private sector development initiative will be implemented through funding from the Millennium Challenge Corporation and the World Bank.

FOREIGN TRADE BARRIERS

ELECTRONIC COMMERCE

The government of Lesotho adopted Lesotho's National Information and Communication Technology Policy in 2005. This introduced a regulatory framework for electronic commerce into Lesotho's legal system. The Ministry of Communications, Science, and Technology is responsible for its implementation.

Electronic commerce has not widely penetrated the country due to the high cost and low speed of Internet access. Telecom Lesotho, the sole fixed line Internet service provider, also holds a monopoly for international Internet access. Telecom Lesotho does not allow the use of wireless connections by local Internet providers.

OTHER BARRIERS

Corruption

The government has received international accolades for its prosecution of multinational companies for corruption related to the awarding of contracts for construction of the Lesotho Highlands Development Project. In cases that have been upheld by the Lesotho Court of Appeals, the former Chief Executive of the Lesotho Highlands Development Authority (LHDA) and three multinational corporations have been convicted for fraud and bribery.

The government has established a Directorate on Corruption and Economic Offenses that continues to prosecute cases regarding embezzlement and bribery in government departments and the private sector.

4. NAMIBIA

IMPORT POLICIES

Namibia is a member of various regional and international economic and trade bodies including the WTO, the Southern African Customs Union (SACU), whose Secretariat is headquartered in Namibia, and the Southern African Development Community (SADC). Namibia's tariff policies are generally determined by and integrated with SACU, in accordance with the 2002 SACU Agreement. Accordingly, Namibia applies the SACU common external tariff (CET).

The Directorate of International Trade of the Ministry of Trade and Industry (MTI) is responsible for coordinating the country's trade policies and overseeing Namibia's participation in international trade bodies. The Directorate is responsible for managing import/export procedures. Namibia, as a WTO Member, is a party to the WTO Agreement on Import Licensing. Most nonagricultural imports require a permit issued by MTI. In addition, a limited number of products are subject to specific import licensing requirements: medicines; chemicals; frozen or chilled fish and meat; live animals and genetic materials; controlled petroleum products; firearms and explosives; diamonds, gold and other minerals; and seemingly all second-hand goods such as clothing and motor vehicles. In practice, however, MTI does not issue licenses for imports of used clothing, resulting in a *de facto* ban on this product. Namibia bans the importation of used vehicles older than 5 years from non-SACU countries as well as left hand drive vehicles.

With respect to agricultural trade, the Namibian Agronomic Board issues permits for the import, export, and transit of controlled agronomic crops, *i.e.*, wheat and wheat products and corn and corn products.

FOREIGN TRADE BARRIERS

Imports of agronomic crops and derivatives, as well as all plants and plant products, also require the issuance of a phytosanitary certificate by the Ministry of Agriculture, Water and Rural Development. Retailers of fruits, vegetables, and other crop products must purchase 25 percent of their stock from local farmers. The Namibian Meat Board regulates the import and export of live animals (cattle, sheep, goats, and pigs) and derivative meat products. Importers of live animals and meat products must demonstrate compliance with the country's animal health standards by obtaining a veterinary import permit from the Directorate of Veterinary Services.

STANDARDS, TESTING, LABELING, AND CERTIFICATION

The South African Bureau of Standards (SABS) currently undertakes standardization functions in Namibia as a result of the agreement signed between SABS and the Namibian Government in July 1991. The Namibian Government, however, recently established the Namibian Standards Institute, which will take over from SABS once the new institution builds its technical capacity.

Namibia is a party to the Convention on Biological Diversity and a signatory to the subsequent Cartagena Protocol on Biosafety. In an effort to meet its international commitments, the government has drafted new legislation – the Biosafety Act 2006. The Act will regulate the importation, sale and use of products of agricultural biotechnology and will establish new regulatory and administrative structures. It will impose new registration obligations on facilities that use or produce agricultural biotechnology products and will require persons and companies to receive authorization prior to importing such products. It will require biotechnology products to be clearly labeled and identified for purposes of traceability. The Biosafety Act was passed by the Namibian Parliament in December 2006, but has not yet been fully implemented because drafting regulations has not been completed. Pending implementation of the Biosafety Act, the government has imposed a moratorium on the importation of agricultural biotechnology products.

GOVERNMENT PROCUREMENT

Most government transactions, including the awarding of contracts and the purchase of supplies, are made through the Tender Board of Namibia. The Board is comprised of representatives from various government ministries and appointed by the Minister of Finance. Government procurement tender notices are published in the local media. The Tender Board gives preference to goods manufactured and/or assembled in Namibia as well as by historically disadvantaged Namibians. Namibia is not a signatory to the WTO Agreement on Government Procurement.

EXPORT SUBSIDIES

Since independence in 1990, the government has pursued policies to diversify its economy and to create employment. To achieve these goals, the government has put in place tax and nontax incentives to attract manufacturers and export oriented businesses. The Offshore Development Company administers the country's Export Processing Zone (EPZ) regime. Companies granted EPZ status can set up operations anywhere in Namibia. There are no restrictions on the industrial sector as long as the exports are destined for markets outside the SACU region. Benefits of the EPZ regime include no corporate tax, no import duties on the importation of capital equipment or raw materials, and no value added tax, stamp or transfer duties. Nonresidents operating in an EPZ may hold foreign currency accounts.

FOREIGN TRADE BARRIERS

INTELLECTUAL PROPERTY RIGHTS (IPR) PROTECTION

Namibia is a party to the WIPO Convention, the Berne Convention for the Protection of Literary and Artistic Works, and the Paris Convention for the Protection of Industrial Property. Namibia is also a party to the Protocol Relating to the Madrid Agreement Concerning the International Registration of Marks and the Patent Cooperation Treaty. Namibia is a signatory to the WIPO Copyright Treaty and the WIPO Performances and Phonograms Treaty.

The responsibility for IPR protection is divided between two government ministries. The Directorate of Internal Trade of MTI oversees industrial property and is responsible for the registration of companies, private corporations, patents, trademarks, and designs. The Ministry of Information and Broadcasting manages copyrights.

The government is in the process of updating copyright legislation in part to implement the provisions of the WIPO Treaties on Performance and Phonograms and Copyrights. A draft bill that was scheduled to be considered by the Namibian Parliament in 2006 has yet to be introduced. Absent new legislation, Namibia lacks adequate legal and enforcement mechanisms to address the problems associated with piracy.

SERVICES BARRIERS

The telecommunications sector is dominated by government-owned Telecom Namibia. Foreign investment exists in both of the country's mobile operators. However, the government of Namibia still has a share in both of these companies. Although the government pledged to foreign investors that no further licenses would be issued in the mobile phone market for the next 5 years, Telecom Namibia was granted a license and allowed to introduce a mobile service. The government of Namibia is in the process of drafting a new bill on telecommunications which aims to pave the way for new technology services and increased competition in the communications sector. An Internet provider has pursued legal action against Telecom Namibia alleging monopolist policies in the Internet sector.

Under the Namibia National Re-insurance Act of 1998, insurance companies are required to cede 20 percent of any policy issued or renewed to the state-owned Namibia National Reinsurance Corporation (NamibRe). In 2006, the government and private insurers reached an agreement in which the mandatory cession clause would not be enforced for 5 years.

INVESTMENT BARRIERS

Namibia's Foreign Investment Act of 1990 provides for equal treatment of domestic and foreign investors and provides nondiscriminatory access to all sectors. The government guarantees foreign investors access to foreign currency, repatriation of capital, and dispute settlement through international arbitration. There are few restrictions on the establishment of private businesses or the size of an investment. The Namibian Investment Center is responsible for implementing the country's investment promotion policies.

There is no legal local participation requirement for foreign investments, but the government actively encourages partnerships with historically disadvantaged Namibians. In certain industries, such as the fishing sector, investors complain of a concerted campaign to "Namibianize" existing investments.

The lengthy and administratively burdensome process of obtaining work permits is among investors' greatest complaints in Namibia. Although the government cites the 36 percent unemployment rate as

FOREIGN TRADE BARRIERS

their motivation for their strict policy, generally Namibia does not yet have the available skills capacity to fill the jobs which foreigners seek. Namibia also lacks a category of visa providing for “business” visits. In some instances, immigration officials have either refused entry or arrested individuals who have traveled to Namibia for short-term business meetings or consultations under the pretext that those individuals lacked work permits.

Land reform is at the forefront of public debate. The Namibian Constitution provides for the government initiated purchase of private property in the public interest subject to the payment of “just” compensation under a “willing buyer-willing seller” system, and the government has begun to implement this program as prescribed by the Constitution. Namibian law also allows for expropriation with just compensation of land in the public interest. To date, land acquisition and expropriations have been undertaken legally and with compensation. Domestic groups have criticized Namibia’s government recently for the slow pace of acquiring commercial farmland and resettling Namibia’s landless population. The government considers foreign-owned and nonproductive farmland primary targets for expropriation. The government introduced a land tax at the beginning of April 2005 in an effort to raise money for land acquisition. Absentee landowners are subject to higher tax rates per hectare than resident farmers.

ELECTRONIC COMMERCE

Electronic commerce is still relatively unknown to Namibian consumers. Only a small percentage of Namibians enjoy access to the Internet. The government is in the early stages of formulating policies to regulate electronic commerce. MTI’s Directorate of Internal Trade included a section on electronic commerce in the new 2004 Companies Act. Implementation of the new Act is expected in 2008 after regulations have been drafted.

OTHER BARRIERS

According to recent surveys, there is a growing public perception that official corruption is on the rise.

Anticorruption was the centerpiece of President Pohamba’s election campaign, and it is a top priority of his administration along with the elimination of mismanagement and fraud. Anticorruption legislation is in place to combat public corruption.

Anticorruption bodies include the Office of Ombudsman and the Office of the Auditor-General. In 2003, an Anti-Corruption Bill was passed and the government later established an independent Anti-Corruption Commission. The challenge remains for the Commission to effectively investigate cases of corruption that culminate in successful prosecution. Only a few initial cases of relatively low level corruption have been brought to trial. In addition, the government has yet to take action on reports and recommendations from several presidential commissions that were established in past years to investigate allegations of kickbacks and irregularities in Namibian parastatals.

A large court backlog continues to cause lengthy delays of all types of trials.

There are examples of Namibian ministry or government officials interpreting laws inconsistently, often to the detriment of foreign investors.

FOREIGN TRADE BARRIERS

5. SWAZILAND

IMPORT POLICIES

Tariffs

Swaziland is a member of the World Trade Organization (WTO), the Southern African Customs Union (SACU), the Southern Africa Development Community (SADC), and the Common Market for Eastern and Southern Africa (COMESA). As a member of SACU, Swaziland's tariff policies are generally determined by and integrated with SACU, in accordance with the 2002 SACU Agreement. Accordingly, Swaziland applies the SACU common external tariff. However, Swaziland introduced a 14 percent sales tax for goods coming through its borders regardless of the SACU member country of origin.

Swaziland's continued retention of its COMESA status is uncertain as the COMESA Heads of State and Government continue to give Swaziland a 1 year derogation. The present derogation ends in December 2008. COMESA plans to establish a Customs Union by December 2008, making Swaziland's multiple memberships in SACU and COMESA a challenge. The government of the Kingdom of Swaziland (GKOS) has engaged the USAID Southern African Competitiveness Hub to study if Swaziland may be able to maintain both its SACU and COMESA memberships simultaneously.

Nontariff Measures

There are no restrictions on imports into Swaziland and few prohibited imports (except illicit drugs, pornography and arms). Permits are required for certain imports, including all agricultural products, mineral fuels, used clothes, mineral oils, motor vehicle parts, used cars, medicinal drugs, and electrical appliances. Licensing permits issued by the Ministry of Finance are generally easy to obtain and are valid for one shipment. Goods consigned to Swaziland from outside SACU must be cleared through customs at the first port of importation into SACU. A bill of entry must be completed and submitted to customs along with copies of the supplier's invoices and a Swaziland import permit.

Another cited nontariff barrier to trade is the Southern African Development Community's (SADC) Single Administrative Document 500 (SAD 500) form. The form is used for multiple border crossings and is supposed to standardize the number of forms needed for transporting goods between SADC countries. Entrepreneurs trading between SADC countries find the form rather cumbersome. The business community has inundated the Federation of Swaziland Employers and Chamber of Commerce with complaints. Large businesses are coping with the requirement by designating employees to complete the form. However small entrepreneurs, with a much smaller employee base and fewer resources, become reliant on makeshift offices opened at the borders to complete the forms. These offices often charge exorbitant fees.

Other nontariff barriers to trade commonly cited are levy charges and sales tax on some products like agricultural products, mineral fuels, electronic equipment, *etc.*

STANDARDS, TESTING, LABELING, AND CERTIFICATION

In December 2005, the Ministry of Enterprise and Employment created the Swaziland Standards Authority (SSA) to eliminate Swaziland's reliance on the South African Bureau of Standards (SABS). The Ministry named the first Director to the SSA in April 2007 and plans to have a fully operational office by April 2008.

FOREIGN TRADE BARRIERS

GOVERNMENT PROCUREMENT

Although the government may accord local business a 15 percent price preference in tendering for government contracts, it appears that this preferential treatment is not always granted. Firms from South Africa and other southern African countries are selected for a large portion of government contracts. However, for small- and medium-sized tenders, bidding companies must be registered in Swaziland. The government inspects the premises of all suppliers prior to awarding the tender. The government's withholding of a 10 percent tax from resident government suppliers is still being practiced despite the complaints from the private sector.

The government issues tender notices 7 days to 30 days before tenders are due, depending on the size of the contract. Potential suppliers must pay a fee to obtain tender documentation and participate in government procurements. Tenders must be submitted to the Central Tender Board and suppliers are invited for the opening of the tenders. In some instances, a Ministry can apply for a waiver of the tender procedure if there are too few companies that supply a particular commodity.

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

INTELLECTUAL PROPERTY RIGHTS (IPR) PROTECTION

Swaziland is a party to the WIPO Convention, the Berne Convention for the Protection of Literary and Artistic Works and the Paris Convention for the Protection of Industrial Property. Swaziland is also a party to the Protocol Relating to the Madrid Agreement Concerning the International Registration of Marks and the Patent Cooperation Treaty. Swaziland is a signatory to the Patent Law Treaty and the Trademark Law Treaty.

Protection for patents, trademarks, and copyrights in Swaziland is inadequate.

Updated patent legislation has been in draft form for the past 3 years. When the new legislation is enacted, the African Regional Industrial Property Organization is expected to help Swaziland with technical assistance in granting patents.

Copyright protection is also limited as the copyright statutes are not adequately implemented. The Ministry of Justice and Constitutional Affairs has drafted an updated Copyright Act, based on the World Intellectual Property Rights Organization (WIPO) model.

SERVICES BARRIERS

Foreign participation in the services sector is generally not restricted. In 2005, one major reform undertaken by the GKOS was to remove the monopoly held by the Swaziland Royal Insurance Corporation in the country. The Office of the Registrar of Insurance and Pension Fund opened its offices in May 2007.

MTN Swaziland is the only mobile telecommunications provider. MTN Swaziland was given a 10 year monopoly that ends in 2008. The government will consider whether or not to remove the monopoly in 2008.

FOREIGN TRADE BARRIERS

The Swaziland Telecommunications Corporation is the sole provider of the fixed line telecommunications services.

INVESTMENT BARRIERS

Swaziland does not have an investment code. The emphasis on foreign investment is more a matter of policy statements by the government and individual ministers than a matter of laws and institutions to support such policies. Calls for the streamlining of procedures to start a business have gone unheeded. Suggestions from the USAID-funded 2005 Investor Road Map report have not been implemented.

Major legislation to support a solid investment climate is lacking in Swaziland. There is a need for a Securities Code to support investors who buy shares in the securities market. A Securities Bill has been proposed but not yet passed. Related legislation known as the Financial Services Regulatory Authority Bill has not reached Parliament. The legislation would bring under one regulatory net all nonbank financial institutions such as insurance firms, retirement funds, building societies, capital markets, and intermediaries.

Companies are governed by the outdated Companies Act of 1912, which is retooled from an 1889 South African law. There is a draft bill to replace the Companies Act. It would regulate incorporation, registration, management, administration, and dissolution of companies. A Parliamentary Select Committee presented a report on the draft bill to the Senate. Presently, the Minister of Enterprise and Employment Portfolio Committee is studying the bill. The Ministry has not presented the bill for debate in the House of Assembly. While foreign businesses currently operating in Swaziland complain about the lack of regulations, some also emphasize that it would be a mistake to decide against investing in Swaziland for this reason alone.

There are no formal policies or practices that discriminate against foreign owned investors and companies in Swaziland. Foreign investors are free to invest in most sectors of the Swazi economy; however, investors should be aware of state-run or state-sanctioned monopolies. Pineapple canning, cellular and fixed line telecommunications, and water are all state sanctioned or state owned monopolies. The Trade and Business Facilitation Bill, originally drafted in 2001, requires specified sectors to maintain a certain degree of Swazi ownership and encourages small scale entrepreneurship in rural areas. According to the Ministry of Enterprise and Employment, the bill has not gone through Parliament.

The Cabinet has approved a privatization policy and the GKOS is taking steps to implement the policy. The privatization process will create a Public Enterprise Agency charged with ensuring that public enterprises are managed efficiently and are not a drain on the nation's resources. Key parastatals being targeted for privatization, with the possibility of joint ventures for foreign investors, are the Swazi Post and Telecommunications Corporation (SPTC) and the Swaziland Electricity Board. The Swaziland Electricity Act 2007 outlawed the Swaziland Electricity Board's previous monopoly. There is room for improvement as GKOS efforts are moving slowly.

Land acquisition is a barrier to investment in Swaziland. Large plots of land, not designated as Swazi Nation Land, are difficult to find and companies, especially those in agribusiness, are finding it difficult to expand their operations.

FOREIGN TRADE BARRIERS

SRI LANKA

TRADE SUMMARY

The U.S. goods trade deficit with Sri Lanka was \$1.8 billion in 2007, a decrease of \$70 million from \$1.9 billion in 2006. U.S. goods exports in 2007 were \$227 million, down 4.0 percent from the previous year. Corresponding U.S. imports from Sri Lanka were \$2.1 billion, down 3.7 percent. Sri Lanka is currently the 112th largest export market for U.S. goods.

The stock of U.S. foreign direct investment (FDI) in Sri Lanka was \$54 million in 2006 (latest data available), up from \$40 million in 2005.

IMPORT POLICIES

Despite an economy open to foreign investment, the pace of reform in Sri Lanka has been uneven. President Rajapaksa's broad economic strategy focuses on poverty alleviation and steering investment to disadvantaged areas, developing the small and medium enterprise sector, promotion of agriculture, and expanding the already large civil service.

The Trade, Tariff, and Investment Policy Division of the Ministry of Finance and Planning is charged with the formulation and implementation of policies in these areas. In addition, the Trade and Tariff cluster of the National Council of Economic Development (NCED) also examines trade and tariff issues and sends recommendations to the Ministry of Finance and Planning. The NCED consists of 22 clusters representing both private and public sector officials, which examine various sectors of the economy.

Import Charges

Sri Lanka's main trade policy instrument has been the import tariff. According to the World Trade Organization (WTO), in 2006, Sri Lanka's average applied tariff for nonagricultural goods was 9.2 percent. Its average bound (ceiling) tariff for these goods was 19.6 percent. However, approximately 70 percent of Sri Lanka's nonagricultural tariffs are unbound under WTO rules and can be increased at any time. Sri Lanka's average applied agricultural tariff in 2006 was 23.8 percent.

Currently in Sri Lanka, there are five tariff bands: 0 percent; 2.5 percent; 6 percent; 15 percent; and 28 percent. Textiles, pharmaceuticals, and medical equipment are duty free. Basic raw materials are generally assessed a 2.5 percent duty. Semi-processed raw material tariffs are 6 percent, while intermediate product tariffs are 15 percent. Most finished product tariffs are 28 percent. There are also a number of deviations from the five band tariff policy. Some items are subject to an *ad valorem* or a specific duty, whichever is higher, and there is intermittent use of exemptions and waivers. In addition, there are specific charges on certain imported items, including footwear, ceramic products, and agricultural products. For example, in 2007 the government raised taxes on imported textiles and apparel by imposing an Export Development Board Levy (often referred to as a cess) of 50 Rupees (approximately \$0.5) per kilogram on imported textiles not intended for use by the apparel export industry. Apparel imports are subject to a 15 percent import duty, a 30 percent cess, a 15 percent VAT, a 3 percent Ports and Airports Levy, and a 1.5 percent Social Responsibility Levy.

In addition to tariffs, a variety of taxes introduced in the past several years have effectively increased Sri Lanka's tax rates on a range of imported items to between 60 percent and 90 percent of the cost,

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insurance, and freight (CIF) value of the product. The government has imposed these charges on imports primarily to raise revenue or to defray the costs of specific government services. Most of these charges were revised upwards effective November 8, 2007. The frequent changes (mostly upward) in these rates have added unpredictability to foreign exporters' and local importers' cost calculations. Affected products include fruits, processed/packaged food, personal care products, and consumer electronics.

Other charges on imports include:

- An Export Development Board (EDB) levy, ranging from 10 percent to 35 percent *ad valorem* on a range of imports identified as “nonessential.” Some items are subject to specific duties; for example, shampoo (35 percent or Rs 100 (\$0.9) per kg), apparel (30 percent or Rs 60 (\$0.6) per unit), and oranges (30 percent or Rs 40 (\$.37) per kg). Whichever levy is higher – percentage versus a flat rate – is applied. Also, when calculating the EDB levy, an imputed profit margin of 10 percent is added onto the import price.
- An import duty surcharge of 15 percent on all dutiable imports (increased from 10 percent as of November 8, 2007).
- A Ports and Airports Development Levy (PAL) of 3.0 percent on imports (increased from 2.5 percent in January 2007).
- A Value Added Tax (VAT) of 0 percent, 5 percent, 15 percent, or 20 percent. When calculating the VAT, an imputed profit margin of 10 percent (increased from 7 percent on January 1, 2007) is added on to the import price. Locally manufactured products are also subject to VAT but not the imputed profit margin.
- Excise fees on some products such as aerated water, liquor, beer, motor vehicles, and cigarettes. The list of products subject to these fees was expanded in 2007 to include certain household electrical items. When calculating the excise fee, an imputed profit margin of 15 percent (increased from 10 percent on October 11, 2007 and from 7 percent on January 1, 2007) is added on to the import price. Locally manufactured products are also subject to excise fees.
- A port handling charge, which varies by container size.
- A Social Responsibility Levy, a surcharge of 1.5 percent assessed on the import duty to fund the National Action Plan for Children. This tax was increased from 1 percent as of November 8, 2007.
- A regional infrastructure fee of 2.5 percent on automobiles introduced in January 2007 was scheduled to be increased to 5 percent on January 1, 2008. The fee is levied on both imports and domestically assembled vehicles.

In March 2007, the government lifted a requirement to keep a 50 percent deposit on letters of credit on nonessential imports. The requirement had been introduced in October 2006 to discourage imports in more than 40 categories of consumer items including confectionary, liquor, personal care products, footwear, and tableware.

The U.S. Government engaged in bilateral Trade and Investment Framework Agreement (TIFA) talks with the government of Sri Lanka in December 2006. The United States underscored that Sri Lanka's

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import regime, characterized by high finished goods tariffs, continues to impede significantly U.S. export opportunities to Sri Lanka. Sri Lankan officials noted their inability to reduce these duties immediately as Sri Lanka is dependent on border tariffs for a significant portion of government revenue. In 2007, the U.S. Ambassador also discussed with senior Sri Lankan ministers the adverse impact that Sri Lanka's high charges on imports have on trade.

Import Licensing

Sri Lanka requires import licenses for over 400 items at the 6-digit level of the Harmonized Tariff System code, mostly for health, environment, and national security reasons. Importers must pay a fee equal to 0.1 percent of the import price to receive an import license.

Customs Administration

The government of Sri Lanka implemented the WTO Customs Valuation Agreement in January 2003 and follows the transaction value method to determine the CIF value. The scheme has operated quite successfully and major companies have not faced problems. Customs is also in the process of installing an Electronic Data Interchange system to support an automated cargo clearing facility. When implemented, this system should improve customs administration and facilitate trade.

STANDARDS, TESTING, LABELING, AND CERTIFICATION

Standards

At present, 102 items are subject to the Sri Lanka Standards Institution (SLSI) mandatory import inspection scheme. These include food, steel, electrical cables, switches, water heaters, and cement. Importers of these items must obtain a clearance certificate from the SLSI to sell their goods. SLSI accepts letters of conformity from foreign laboratories but retains the discretion to take samples and perform tests.

Laws Governing Genetically-Engineered (GE) Food

In January 2007, the Ministry of Health established a regulation for the control of import, mandatory labeling, and sale of GE food. The regulation is in place but is not being fully implemented by the government of Sri Lanka. Some U.S. food exporters have expressed concern about this regulation and have restricted their product portfolio to limit products with GE content. The regulation is not science-based and that the proposed labeling procedure is excessively burdensome. During December 2006 discussions under the United States-Sri Lanka TIFA, the United States raised concerns regarding Sri Lanka's imposition of the new labeling requirement as it lacks scientific rationale and creates undue fears in the minds of consumers.

The United States Department of Agriculture (USDA) also expressed concern in 2007 that the labeling component of the regulation could be burdensome and costly and hinder U.S. food exports to Sri Lanka. Any regulatory system by a member of the WTO should be consistent with international obligations and be administered in a manner that is least trade restrictive.

Planting material and corn require nongenetically modified organism certification. This regulation is burdensome and trade restrictive despite a national biosafety framework that is in place, which outlines procedures for the import of biotechnology products and the domestic use of biotechnology.

FOREIGN TRADE BARRIERS

Sanitary and Phytosanitary (SPS) Measures

Sri Lanka bans imports of some food items completely, including raw and frozen chicken imports because of outbreaks of avian influenza in the United States, which have since been resolved. A ban on imports of beef from the United States is maintained, due to the detection of bovine spongiform encephalopathy (BSE) in the United States. These bans, however, are inconsistent with and more constraining than the World Organization for Animal Health's guidelines as they are not scientifically based.

Sri Lanka lifted a ban on imports of seed potato from the United States in March 2007. The prohibition had been established due to unsubstantiated fears that the Colorado Potato Beetle could have been introduced into Sri Lanka by these imports. The United States pressed for the removal of this barrier on the grounds that it was not scientifically justified. Although the government allowed a shipment of U.S. seed potato recently, an additional declaration certifying field freedom was provided by the U.S. state level Department of Agriculture. A declaration certifying field freedom was not included as an import permit condition in the measure allowing U.S. potato seed import into Sri Lanka. The government of Sri Lanka has decided to review each shipment on a case-by-case basis to accept shipment freedom certification of Colorado Potato Beetle.

GOVERNMENT PROCUREMENT

Sri Lanka is not a signatory to the WTO Agreement on Government Procurement. Government procurement of goods and services is primarily undertaken through a public tender process. Some tenders are open only to registered suppliers. Procurement is also undertaken outside the normal competitive tender process. Examples of such procurement include agreements in 2006 with the government of China to build a coal power plant and for two Chinese companies to build a new bulk cargo port in Hambantota; an agreement with India to build a coal power plant; and the granting of oil exploration rights off the western coast of Sri Lanka to India and China.

The government publicly subscribes to principles of international competitive bidding, but charges of corruption and unfair awards are common. In 2004, the government created a National Procurement Agency (NPA) to introduce a more transparent procurement system. However, political influence continues to hamper the new system's effectiveness. In 2006, Sri Lanka published new guidelines to improve the public procurement process as well as a new procurement manual. Changes included a requirement to have generic specifications and the opportunity for bidders to protest if the specifications are biased.

INTELLECTUAL PROPERTY RIGHTS (IPR) PROTECTION

Sri Lanka is a party to major intellectual property agreements, including the Berne Convention for the Protection of Literary and Artistic Works, the Paris Convention for the Protection of Industrial Property, the Patent Cooperation Treaty, the Trademark Law Treaty, and the convention establishing the World Intellectual Property Organization (WIPO).

In 2003, a new intellectual property law – governing copyrights, patents, trademarks, and industrial design – came into force. Infringement of IPR is a punishable offense under the new law and IPR violations are subject to both criminal and civil jurisdiction. Notwithstanding the new law, IPR enforcement is still a problem. Piracy levels are very high for sound recordings and software. Government use of unauthorized software also appears to be a problem. According to a study

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commissioned by the Business Software Alliance, 90 percent of new computers sold in Sri Lanka in 2006 used pirated software. The study estimated retail revenue losses of \$86 million in 2006 due to software piracy.

Further, redress through the courts is often a frustrating and time-consuming process. Police can legally take action without complaints by rights holders, but rarely do so. The government's Director of Intellectual Property and international experts have begun IPR legal and enforcement training for customs, judicial and police officials. The government of Sri Lanka is also expected to develop a plan specifically to improve IPR enforcement. The U.S. Embassy, the American Chamber of Commerce of Sri Lanka, and the European Chamber of Commerce are also working with the government of Sri Lanka to improve enforcement, provide enforcement training, and enhance public awareness.

The U.S. government raised these issues during the December 2006 TIFA meeting. The government of Sri Lanka reported that in 2007 it would develop a national IPR strategy to increase enforcement and public awareness as well as use intellectual property for economic development. The government has since decided not to issue a national IPR strategy, but instead to develop a plan specifically to enhance IPR enforcement.

SERVICES

Insurance

Sri Lanka allows 100 percent foreign ownership in insurance. Foreign insurance companies are required, however, to incorporate in Sri Lanka to conduct insurance business. In 2003, the government privatized state-owned insurance companies. Resident Sri Lankans are prohibited from obtaining foreign insurance policies, except for health and travel, from foreign companies not incorporated in Sri Lanka. Sri Lanka's insurance regulatory body retains the discretion to establish minimum and maximum premiums for various insurance products. In practice, premiums are not regulated, though. In early 2008, the government implemented a new regulation requiring all insurance companies to reinsure 20 percent of their insurance business with a state-run insurance fund.

Telecommunications

Telecommunications, especially mobile services, is increasingly competitive and may be the most dynamic service industry in Sri Lanka. The government of Sri Lanka maintains a majority share in the fixed line carrier Sri Lanka Telecom (SLT). All other operators are privately owned.

Due to SLT's past monopoly status, it continues to own most of the national telephone infrastructure (including the main switches and the only two international cable landing stations) and continues to dominate the sector, affecting the competitiveness of other operators. The government liberalized international telecommunications in 2003 and issued 33 nonfacilities based gateway licenses, ending the SLT monopoly over international telephony.

Broadcasting

The government imposes taxes on foreign movies, programs, and commercials to be shown on television in the following ways:

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- Imported English language movies shown on television are taxed at Rs 25,000 (approximately \$250).
- English language television programs are taxed at Rs 10,000 (approximately \$100) per half hour episode.
- Any foreign film or program dubbed in the local language Sinhala is taxed at Rs 90,000 (approximately \$900) per half hour.
- Foreign television commercials are taxed at Rs 500,000 (approximately \$5,000) per year.

Rates for non-English foreign programming are higher. Government approval is required for all foreign films and programs shown on television.

Professional Services

There is no formal national policy on professional services. In practice, many foreign doctors, nurses, engineers, architects, and accountants work in Sri Lanka. Most of them are employed by foreign companies. Sri Lanka has not made any WTO commitments on the presence of natural persons and national treatment is not accorded to foreign nationals working in Sri Lanka. Most foreign nationals do not have statutory recognition in Sri Lanka and cannot sign documents presented to government institutions or regulatory bodies.

The Immigration Department grants resident visas for expatriates and professionals whose services are required for projects or by companies approved by the Board of Investment (BOI). Non-BOI companies, such as banks, can also employ expatriate staff; however, in practice the Immigration Department has limited the number of expatriates to levels below those desired by the banks. The Immigration Department also grants visas for foreign professionals required for projects approved by the government. Sri Lanka also operates a resident guest visa program for foreign investors and professionals who are recommended by the relevant ministry.

Legal Services

A person can provide legal consultancy services without being licensed to practice law in Sri Lanka. Foreigners are not allowed to practice law (*i.e.*, appear in courts) and do not have statutory recognition in Sri Lanka. Sri Lankan citizens with foreign qualifications need to sit for exams conducted by the Sri Lanka Law College in order to practice and register in the Supreme Court.

INVESTMENT

Sri Lanka welcomes foreign investment but has restrictions in specific sectors. Foreign investment is not permitted in the following areas:

- nonbank money lending;
- pawn brokering;

- retail trade with a capital investment of less than \$1 million (with one notable exception: the BOI permits retail and wholesale trading by reputable international brand names and franchises with an initial investment of not less than \$150,000);
- coastal fishing;
- education of students under 14 years of age for local examinations; and
- local degree-awarding university education (institutions awarding overseas degrees are permitted).

Investment in the following sectors is restricted and subject to screening and approval on a case-by-case basis when foreign equity exceeds 40 percent:

- shipping and travel agencies;
- freight forwarding;
- higher education;
- mass communications;
- deep sea fishing;
- timber-based industries using local timber;
- mining and primary processing of nonrenewable national resources; and
- growing and primary processing of tea, rubber, coconut, rice, cocoa, sugar, and spices.

Foreign investment equity restrictions and government regulations also apply to air transportation, coastal shipping, lotteries, large-scale mechanized gem mining, and “sensitive” industries such as military hardware, illegal narcotics, and currency.

The BOI offers a range of incentives to both local and foreign investors. To qualify for BOI incentives, investors need to meet minimum investment and minimum export requirements. In general, the treatment given to foreign investors is nondiscriminatory. Even with incentives and BOI facilitation, however, foreign investors can face difficulties operating in Sri Lanka. Problems range from difficulties in clearing equipment and supplies through customs to obtaining land for factories. The BOI encourages investors to locate their factories in BOI-managed industrial processing zones to avoid land allocation problems. Investors locating in industrial zones also get access to relatively better infrastructure facilities such as improved power reliability, telecommunications, and water supply.

SWITZERLAND

TRADE SUMMARY

The U.S. goods trade surplus with Switzerland was \$2.3 billion in 2007, an increase of \$2.1 billion from 2006. U.S. goods exports in 2007 were \$17.0 billion, up 18.5 percent from the previous year. U.S. imports from Switzerland were \$14.8 billion, up 3.8 percent over the corresponding period. Switzerland is currently the 17th largest export market for U.S. goods.

U.S. exports of private commercial services (*i.e.*, excluding military and government) to Switzerland were \$13.2 billion in 2005 (latest data available), and U.S. imports were \$13.7 billion. Sales of services in Switzerland by majority U.S.-owned affiliates were \$10.8 billion in 2006 (latest data available), while sales of services in the United States by majority Swiss-owned firms were \$34.0 billion.

The stock of U.S. foreign direct investment (FDI) in Switzerland was \$90.1 billion in 2006 (latest data available), up from \$81.0 billion in 2005. U.S. FDI in Switzerland is concentrated largely in the nonbank holding companies, wholesale trade, banking, and finance sectors.

IMPORT POLICIES

Agricultural Products

Agriculture retains an important place in Swiss society (agricultural self-sufficiency is mentioned in the Swiss constitution), and agricultural interests maintain a strong lobby among politicians, one-third of whom claim to be farmers. However, the agricultural sector has been losing its relative importance in the Swiss economy for some time and now represents less than 1.5 percent of gross domestic output from fewer than 64,000 farmers. Preservation of the Swiss agricultural sector is largely due to governmental intervention and support, which the OECD estimates to be valued at 70 percent of gross farm receipts. While the average applied tariff for manufactured products was 2.1 percent in 2006, the average applied tariff in Switzerland on imports of agricultural products was 44 percent.

Switzerland is a relatively difficult market to enter and in which few U.S. agricultural products can successfully compete. This is due to high tariffs on certain agricultural products, preferential tariff rates for other countries, and government regulation and negative public perception of agricultural products derived from biotechnology. Imports of nearly all agriculture products, particularly those which compete with products produced in Switzerland are subject to import duties and quotas. Agricultural products which are not produced in Switzerland, such as tropical fruit and nuts, tend to have lower tariffs. As a result of these challenges, as well as a geographical disadvantage vis-à-vis Switzerland's EU trading partners, the U.S. share of the Swiss agricultural import market was only 2.7 percent in 2006.

Hormone-treated beef became an issue in 2006 after Switzerland notified the World Trade Organization (WTO) that Switzerland would begin requiring European Union (EU) animal health certificates for imported livestock products effective April 1, 2007. This action is tied to Switzerland's planned harmonization of animal health rules with the EU and the future end of veterinary border controls between Switzerland and the EU. However, since hormone-treated beef is not allowed in the EU, the proposed Swiss rules would have effectively ended U.S. beef exports to Switzerland, estimated to have been approximately 300 tons in 2005. Switzerland has postponed implementation of this measure for the

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time being. The U.S. and Swiss governments are discussing the proposed Swiss harmonization with EU animal health regulations in an effort to find a solution that will allow trade in U.S. beef to continue.

As of January 2000, imports of fresh meat and eggs produced in a manner not permitted for products produced in Switzerland must be clearly labeled as such. Methods not allowed in Switzerland include the use of growth hormones, antibiotics and other substances in the raising of beef and pork, as well as the production of eggs from chickens kept in certain types of cages.

Biotechnology

Switzerland has a burdensome and slow process for approving agricultural biotechnology products for food and feed use. In addition, starting in November 2005, a 5 year moratorium on approvals for planting of biotechnology crops or production of genetically modified animals was put into place. The moratorium was the result of a grass-roots movement put to a vote under the Swiss political system, which allows voters themselves to seek changes to the Constitution by referendum as long as at least 100,000 voters sign a petition requesting it. The Federal government opposed the amendment, stating that it was unnecessary given the stringent approval process in place. The moratorium does not affect approval of imports for food, feed, and processing use. However, the restrictive regulatory environment, combined with strong anti-biotechnology public sentiment has dampened interest in the Swiss market for biotechnology products.

Biotechnology imports into Switzerland are limited. Few products are authorized and public resistance to biotechnology has reduced demand for authorized products. Biotechnology products imported for feed use must be declared to Swiss authorities and are therefore tracked statistically. Feed products declared as biotechnology products accounted for only 0.11 percent of imports of feed in 2005, down from 1.4 percent in 2001. Spot-testing is done by the Federal authorities to check for biotechnology content and proper labeling of feed. Statistics on imports of food for human consumption derived from biotechnology are not tracked, but spot-checking of products on the market is carried out by cantonal laboratories with guidance from the Federal Office for Public Health.

In addition to imports of a few corn and soybean products approved for feed use in Switzerland, there was an exception in force through the end of 2007 that allowed the importation of the feed products (not the raw material) made from corn and soybeans that have been approved in the United States or Canada. Such products imported before December 31, 2007, may be used until December 31, 2008. After those dates, only imports of these feed products made from corn or soy events approved in the EU will be allowed. In addition to these products, trace amounts (up to 0.5 percent) of other products authorized in the EU would be allowed as “adventitious” (*i.e.*, not intentional) presence in Swiss feed. A similar threshold for products approved in the EU is under discussion for food products as well, albeit with additional conditions.

The Swiss biotechnology labeling regime is closely aligned with that of the EU. Labeling is for consumer information purposes. All food and feed products (including pet food) containing or consisting of biotechnology products and/or produced from biotechnology products, including products that no longer contain detectable traces, must be labeled. If a product contains 0.9 percent or lower biotechnology (or biotechnology derived) content and the content is “adventitious,” the product does not have to be labeled as containing or being derived from biotechnology. This tolerance applies to approved biotechnology products only; there is no tolerance for unapproved varieties, although there is an exception (up to 0.5 percent adventitious presence) for feed products that are approved in the EU even if they are not approved

in Switzerland. Imports of food and feed (including pet food) are spot-checked to ensure that they are properly labeled if they have biotechnology-related content.

Meat, milk, eggs, or other livestock products made from animals fed biotechnology feed need not be labeled according to Swiss law. Products produced using genetically modified microorganisms as processing aids (such as yeasts in the production of wine or beer, or enzymes in the production of cheese) need not be labeled if the biotechnology processing aid is not present in the final product.

The main retailers in Switzerland have taken a strong anti-biotechnology stance, stocking only nonbiotechnology products and requiring meat to have been produced without biotechnology feed. Coop, with 35 percent of the market, is the second-largest retailer in Switzerland and has a clear anti-biotechnology policy outlined on its website and promotional material. Migros, the largest retailer with 37 percent of the market, has a similar anti-biotechnology policy, but does not advertise it as aggressively. The retail market is highly concentrated and controlled by these two retail giants. In addition, they are large players in the importation and distribution of food in Switzerland.

In September 2007, the Federal Office of Environment approved crop trials involving genetically modified wheat for three field tests near Zurich and Lausanne. These three field tests are part of the CHF 12 million (\$12 million) program and are intended to help answer questions on crossbreeding and to see if they have any unexpected impact on the environment. The wheat will not be released to the market, but is a test to determine if GMO products can be safely farmed in Switzerland.

GOVERNMENT PROCUREMENT

Switzerland is a signatory to the WTO Agreement on Government Procurement (GPA). On the cantonal and local levels, a 1995 law provides for nondiscriminatory access to government procurement.

Notices of Swiss government tenders at the federal level are published in the Swiss Official Gazette of Commerce and on the online Swiss government procurement website. There is no requirement that bids be submitted by a local agent.

In general, quality and technical criteria are as important as price in the evaluation of tenders. Cantons and communes usually prefer local suppliers, whether foreign-owned or domestic, because they can recover part of their outlays through income taxes paid by the suppliers. Foreign firms may be required to guarantee technical support and after-sale service if they have no local office or representation.

INTELLECTUAL PROPERTY RIGHTS (IPR) PROTECTION

In general, Switzerland maintains exceptionally high standards of protection of intellectual property rights. However, some concerns have been expressed with respect to the 2007 revised copyright legislation that would, among other purposes, conclude Switzerland's accession to the World Intellectual Property Organization (WIPO) Copyright Treaty and the WIPO Performances and Phonograms Treaty. While the revised legislation now prohibits the circumvention of technological protection measures, the unauthorized downloading of multimedia content, and the provision of that content to family members or friends, for personal use is not prohibited. Public libraries and broadcast libraries are also allowed to sell the works they possess, which may contain multimedia content, to their patrons. These libraries have also been exempted from paying a copyright fee to the industry. The United States will continue to monitor the implementation of the legislation. The United States has also raised certain questions regarding

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potentially broad mandatory licensing provisions governing research tools, in the context of pending Swiss patent law amendments.

SERVICES BARRIERS

Telecommunications

More than 50 Swiss and foreign companies currently offer fixed line telecommunications services. Three operators, Swisscom, Sunrise (TeleDanmark), and Orange (France Telecom) provide mobile telephone services, and each company also holds third-generation mobile telephony licenses. In October 2005, U.S. Liberty Global purchased 100 percent of the shares of Cablecom, the largest cable (phone and Internet) operator in Switzerland and second largest Internet Service Provider behind Swisscom – the incumbent state monopoly. Stiff competition between the two operators has already led to a sharp drop in fixed line rates.

Following an investigation by the Competition Commission and the Federal Communications Commission (ComCom) of Swisscom's failure to completely unbundle the local loop and provide leased lines at cost-oriented prices to competitors, the government amended the Telecommunications Act. The amendment, which entered into force on April 1, 2007, gives the regulator explicit authority to force Swisscom to unbundle its local loop, effectively fixing a "flaw" cited in earlier court proceedings. However, the reform covers only fixed-line services and does not extend to other technologies, such as mobile and WiFi. The amendment also requires that broadband access be offered to Swisscom competitors at cost-oriented prices over a period of 6 years, after which all operators are expected to be able to afford the broadband investment themselves.

Audiovisual Services

Switzerland has no limitations on the amount of non-Swiss or non-European origin programming that can be broadcast, but film distributors and cinema companies must maintain, through self-regulatory solutions, an "appropriate diversity" – not currently defined – in the products offered within a region. The government may levy a nominal development tax on movie theater tickets if the Swiss government determines the appropriate geographical diversity is not being met. More generally, the Swiss copyright law allocates copyright receipts (from national and international productions) to five different Swiss collecting societies, under the supervision of the Federal Institute of Intellectual Property and the Copyright Commission. Parts of the funds are used to finance measures that support the Swiss culture. Over the years, copyright duties received by the Swiss collecting societies rocketed from CHF 119 million (approximately \$117 million) in 1994 to CHF 209 million (\$206 million), much to the dissatisfaction of private industry.

Postal Services

The Postal Act divides the Swiss postal market into two segments: universal services and competitive services. Competitive services, including express delivery, are unrestricted. Universal services are divided into reserved and nonreserved services. Swiss Post is the exclusive provider of reserved services, while it competes with private postal operators for the provision of nonreserved services. The regulatory authority exercises market supervision, ensures the functioning and fair competition in the postal market, and enables the proper implementation of applicable regulations.

FOREIGN TRADE BARRIERS

The Swiss government reduced Swiss Post's monopoly from a 350-gram threshold to 100 grams in April 2006, and is planning to reduce it further to 50 grams in 2011. A bill will be presented to the Swiss Parliament in early 2008 proposing the end of the monopoly. The government generally supports the idea that a further liberalization of letter delivery services will not undermine the existing large mail distribution network. Nevertheless, an independent study highlighted that the CHF 400 million (\$394 million) public costs to keep mail delivery a "public service" have largely been exaggerated by Swiss Post in an effort to restrict competition. The report highlighted the fact that Swiss Post bypasses existing business restrictions on night transport, benefits from favorable tax treatment, and keeps a large number of post offices and staff in place to distort competition.

Insurance

Foreign insurers attempting to do business in Switzerland are required to establish a subsidiary or a branch and cannot sell their entire product line cross-border or through a representative office. Foreign insurers operating in Switzerland are limited to those types of insurance for which they are licensed in their home countries. The manager of the foreign-owned branch must be resident in Switzerland, and the majority of the board of directors of the Swiss subsidiary must have citizenship in the EU or the European Free Trade Association (Switzerland, Norway, Iceland, and Liechtenstein). Public monopolies exist for fire and natural damage insurance in 19 cantons and for the insurance of workplace accidents in certain industries. Private insurance firms must establish a fund – amounting to between 20 percent and 50 percent of their minimum capital requirement – available at short notice to cover potential losses.

ANTICOMPETITIVE PRACTICES

The Swiss economy has long been characterized by a high degree of cartelization, primarily among domestically-oriented firms and industries. In June 2003, the Swiss parliament adopted a revised competition bill, which took effect in April 2004. The most significant improvement is authority to prosecute anticompetitive behavior without prior warning, with a maximum fine of 10 percent of a firm's total combined revenue for the past 3 years. Companies that cooperate with regulators are eligible for a reduced fine.

Electricity

Most local public monopolies that used to dominate the electricity transmission and distribution system within Switzerland have merged into a few private sector utility companies (Romande Energie, FMB, Axpo, Atel, and BKW). Several cantons have attempted to prevent other providers from serving their areas, but those efforts were ruled illegal by the Federal Court under the Cartel Law. Local communities as a result have tried to bypass the court ruling by cementing their dominant position through cantonal legislative changes or "gentlemen's agreements" with large customers. On December 15, 2006, the Swiss national grid operator "Swissgrid" started its operations as a national transmission system operator, and took full responsibility for operating the 6,700 kilometers of Swiss high-voltage grid, formerly in the hands of private operators. In addition to the shareholders – Atel, BKW, CKW, EGL, EOS, EWZ, NOK, and RE – the new company's board of directors also is comprised of two representatives of the cantons and three neutral members.

According to the new Federal Law on Energy Supply approved in 2007 by Parliament, the full opening of the electricity market will be done in two phases: one business-only market liberalization starting in 2008, followed by full consumer access to energy competitors in 2012. Under the provisions of the implementing ordinance, energy prices will be capped by the Electricity Commission (EiCom).

FOREIGN TRADE BARRIERS

TAIWAN

TRADE SUMMARY

The U.S. goods trade deficit with Taiwan was \$11.9 billion in 2007, a decrease of \$3.2 billion from \$15.2 billion in 2006. U.S. goods exports in 2007 were \$26.4 billion, up 14.4 percent from the previous year. Corresponding U.S. imports from Taiwan were \$38.3 billion, up 0.2 percent. Taiwan is currently the 10th largest export market for U.S. goods.

U.S. exports of private commercial services (*i.e.*, excluding military and government) to Taiwan were \$7.1 billion in 2006 (latest data available), and U.S. imports were \$7.0 billion. Sales of services in Taiwan by majority U.S.-owned affiliates were \$11.2 billion in 2005 (latest data available), while sales of services in the United States by majority Taiwan-owned firms were \$439 million.

The stock of U.S. foreign direct investment (FDI) in Taiwan was \$16.1 billion in 2006 (latest data available), up from \$14.6 billion in 2005. U.S. FDI in Taiwan is concentrated largely in the finance, manufacturing, and wholesale trade sectors.

The United States and Taiwan continued to work together to enhance economic cooperation through the bilateral Trade and Investment Framework Agreement (TIFA) process. The TIFA, which was signed in 1994, provides an important mechanism for both parties to resolve bilateral trade issues and to address the concerns of the U.S. business community. The United States and Taiwan held a productive sixth meeting of the TIFA Joint Council in Washington on July 10 and 11, 2007, covering issues related to agricultural trade, intellectual property rights, pharmaceuticals, government procurement, investment, and other areas.

IMPORT POLICIES

Tariffs

Following Taiwan's latest comprehensive revision of its tariff schedule in 2006, as well as its unilateral improvement to its tariff structure on finished goods and raw materials, the average nominal tariff rate on imported goods in 2007 fell slightly to 5.56 percent from 5.6 percent in 2006. In order to stabilize bulk commodity prices in Taiwan, Taiwan's Executive Yuan (EY) implemented temporary tariff cuts on seven bulk imports – including wheat, flour, and flour of soybean and corn – for a 6 month period from August 6, 2007, to February 5, 2008. During the period, tariffs on these seven categories were cut in half. Taiwan is working on a new version of its tariff schedule to meet the World Customs Organization's Harmonized System (HS) requirements. Taiwan estimates it needs to reclassify goods in more than 11 percent of its tariff lines. U.S. industry continues to request that Taiwan lower tariffs on many goods, including large motorcycles, wine, canned soups, cookies (sweet biscuits), savory snack foods, vegetable juices, potato and potato products, table grapes, apples, fresh vegetables, and citrus products.

When Taiwan became a WTO Member in January 2002, Taiwan implemented tariff-rate quotas (TRQs) on small passenger cars, three categories of fish and fish products, and a number of agricultural products. On January 1, 2007, in accordance with its WTO commitments, Taiwan made additional tariff cuts and increased TRQ amounts on these products. For example, the commodity tax on passenger cars with engine displacement of over 2000cc dropped from 35 percent to 30 percent, and this rate will remain in place until 2011. Also by 2011, Taiwan has committed to fully eliminate TRQs on small passenger cars.

FOREIGN TRADE BARRIERS

Taiwan has notified the WTO that it maintains Special Safeguards (SSGs) for a number of agricultural products covered by TRQs. SSGs, permitted under Article 5 of the WTO Agreement on Agriculture, allow Taiwan to impose additional duties when import quantities exceed SSG trigger volumes or import prices fall below SSG trigger prices.

Because Taiwan did not previously import many of these products, SSG trigger volumes are relatively low. Over the last few years, Taiwan has imposed safeguard provisions on poultry imports several times, including in 2006. SSGs have been previously triggered on several other products, including types of offal. Imports of affected products usually continue despite safeguard tariffs.

Taiwan has eliminated more than 99 percent of import controls on 10,924 official import categories. Currently, there are 71 product categories facing import restrictions. Of these categories, 41 require import permits from the Board of Foreign Trade (BOFT) and 30 are prohibited. Most of the permit-required categories are related to public sanitation and national defense concerns and include ammunition and some agricultural products.

Agricultural and Fish Products

Before it became a WTO Member, Taiwan banned or restricted imports of 42 agricultural and fish items. In January 2002, Taiwan liberalized imports of 18 of these agricultural and fish categories and implemented TRQs on the remaining 24 items, and on January 1, 2005, Taiwan eliminated TRQs on a number of products of interest to the United States, including chicken meat, poultry offal, and pork bellies and offal.

Beef:

Taiwan allows the import from the United States of deboned beef from animals less than 30 months of age, but requires that tissues listed by the World Organization for Animal Health (OIE) as specified risk materials (SRMs) appropriate for removal from animals over 30 months of age are removed from animals of less than 30 months of age as well. Ruminant and non-ruminant products intended for use in animal feed and pet food--such as tallow (including protein free tallow), lard, poultry and porcine meal--are banned due to Bovine Spongiform Encephalopathy (BSE) related concerns, while limited exceptions for pet food have been approved after a thorough case-by-case review or plant clearance process. Taiwan does not maintain a BSE related import suspension on U.S.-origin protein-free tallow imported for human consumption. Although the United States requested that Taiwan allow the import of U.S. ruminant and non-ruminant products consistent with OIE guidelines and the May 2007 OIE classification of the United States as controlled-risk for BSE, Taiwan made little progress on the issue through the summer of 2007. The United States is urging Taiwan to complete its various regulatory processes as early in 2008 as possible and is continuing to work with Taiwan to achieve market access for the full range of U.S. beef and beef products from animals of all ages. SRMs removed as specified in the OIE guidelines, as well as other ruminant and non-ruminant products affected by Taiwan's BSE-related bans.

Rice:

Taiwan banned imports of rice before until it became a WTO Member. In 2003, Taiwan changed its minimum access agreement to a TRQ without consulting its trading partners. In 2007, after 4 years of negotiations, Taiwan implemented a Country Specific Quota (CSQ) for public sector rice imports. . As part of the CSQ Taiwan made substantial changes to its rice head-note to address concerns about rice procurement. Despite these reforms to the head-note, tenders from U.S. firms have continued to fail due

to the ceiling price set in Taiwan. Because authorities use old data to determine the ceiling price, it can be undervalued in periods of rising prices. Despite these difficulties, the United States has supplied the majority of Taiwan's imported rice every year since Taiwan became a WTO Member. Taiwan's implementation of its import commitments has improved significantly, but the price ceiling issue has been a recurring problem since 2005.

Tobacco and Alcohol Products

A new tobacco and alcohol management and tax system went into effect in 2002, eliminating tariffs on imports of most spirits and replacing a tax on imports administered by the Taiwan Tobacco and Wine Monopoly Bureau (TTWMB) with an excise tax. In July 2002, TTWMB became a state owned corporation, Taiwan Tobacco and Liquor Corporation (TTLC), but resistance from organized labor forced the authorities to postpone sale of even the first 20 percent stake in TTLC until at least 2009. Taiwan has not set an official implementation date because the privatization plan requires approval by the Executive Yuan and legislative passage.

Wood Products

Taiwan has revised building codes in line with international practices. However, Taiwan has not yet completed a companion fire code. The delay means that while a wood frame structure may be built, approval by fire inspection authorities is contingent on review and comment by a special committee on details, such as design and usage, making insurance and financing difficult to obtain even if fire inspection authorities approve the plans. U.S. wood products companies have raised concerns that this practice is restrictive and discourages wood use in construction. The continued use of a special committee, rather than finalizing a fire code, unnecessarily delays wood structure construction and raises the cost of using wood materials significantly beyond that of other materials such as concrete and steel.

Automobiles and Motorcycles

Taiwan lifted local content requirements in the automobile and motorcycle industries when it became a WTO Member. As of November 1, 2007, large motorcycles with engine displacement of 550cc or more are allowed to travel on most expressways, and the Ministry of Transportation and Communications (MOTC) has asked the Directorate General of Highways (DGH) to study the possibility of opening all highways to large motorcycles. The United States continues to be concerned with the remaining restrictions on motorcycle access to highways, as well as with Taiwan's tariffs and other taxes on large motorcycles.

STANDARDS, TESTING, LABELING, AND CERTIFICATION

As of December 31, 2006, the Bureau of Standards, Metrology & Inspection (BSMI) had on file 15,973 separate standards, over 70 percent of which have been harmonized to some extent with international standards. BSMI is actively harmonizing existing standards with international standards.

Industrial and Home Appliance Products

Industrial and home-appliance products (such as air-conditioning and refrigeration equipment) are subject to safety and Electromagnetic Compatibility (EMC) testing requirements before clearing customs. The manufacturers or importers can choose one of two testing methods: "batch-by-batch inspection" with Type Approval, or "registration of product certification" (RPC). End product safety testing of these

products must be done in Taiwan by Taiwan-accredited laboratories. Taiwan accepts EMC testing by National Institute of Standards and Technology-designated laboratories in the United States only for information technology equipment as described in the APEC Telecom Mutual Recognition Arrangement implemented by the United States and Taiwan with respect to Phase I on March 16, 1999. For those products produced in facilities that adhere to the ISO 9000 quality management system, Taiwan requires an alternative factory inspection option. Manufacturers or importers may choose the method most appropriate to them when applying for registration under the RPC scheme.

In 2006, Taiwan announced the adoption of several new standards for digital and audio recording apparatuses, paper shredders, and components of electrical machinery and electronics. Starting July 3, 2006, BSMI began to regulate levels of lead, mercury, hexavalent chromium, polybrominated biphenyls, and polybrominated biphenyl ether in electro-technical products. Such products must pass BSMI-required product testing or production-site inspection. In July 2005, the Ministry of Economic Affairs directed that, in addition to existing EMC and safety requirements, television receivers must include the capability to receive over-the-air digital television (DTV) broadcast signals, with larger televisions required to comply as of January 1, 2006, and smaller televisions by January 1, 2008.

Sanitary and Phytosanitary Measures

Taiwan accepts meat and poultry imports from plants approved by the USDA Food Safety Inspection Service, and also accepts Codex Alimentarius or U.S. pesticide residue standards for a limited number of chemicals used on imported fruits and vegetables. The approval of new maximum residue limits for chemical/product combinations, however, is slow and cumbersome and the lack of such limits poses a potential threat to U.S. fresh produce and grain shipments. Moreover, the United States continues to be concerned that some Taiwan plant and animal quarantine measures are not necessarily based on sound science and are more trade restrictive than necessary to ensure health and safety.

Maximum Residue Limits (MRLs)

Taiwan restricts imported products containing residues--pesticides, feed additives, or drugs--that are not specifically approved for use in Taiwan. This restriction has become a serious bilateral issue because Taiwan has not approved many of the pesticides used for production of U.S. agricultural products, and has a backlog of over 1,400 pesticide commodity combinations that do not have established MRLs. Provisional MRLs have been established for some fruits and vegetables, but Taiwan has resisted recognizing Codex and exporting country MRLs until MRLs are established domestically. Due to domestic political pressure, Taiwan has begun actively testing for residues in grain shipments, and made findings that threaten to interrupt bilateral trade in wheat. Political pressure from local pork producers also led Taiwan to start testing for ractopamine in U.S. pork--bringing about a 50 percent drop in imports of U.S. pork meat (offal trade is not impacted) --even though Taiwan officials acknowledge that there is no health risk due to trace amounts of ractopamine in U.S. pork.

Alcoholic Beverage Products

On July 1, 2004, the Ministry of Finance (MOF) eliminated ingredient-labeling requirements for alcoholic beverages, though beverages must include a warning label stating that excessive drinking is harmful to one's health. Beginning in January 2006, Taiwan implemented new "Regulations Governing the Inspection of Imported Alcohol" for fermented beverages, with the exception of grape wine; and in July 2006 for distilled spirits and grape wine. By January 1, 2008, alcohol product manufacturers and importers must comply with the Hygiene Standards for Alcohol Products on antiseptics, colorants, and

additives or face penalties of up to \$90,900. Importers of alcoholic beverages can submit home country documentation of sanitary inspection or safety assurances issued by alcohol product inspection officials or professional alcohol associations in place of customs-clearance product inspection.

In March 2007, the Taiwan Department of Health (DOH) held open hearings on a regulation that would amend the current Hygiene Standards for Alcohol Products. The United States and several other countries made comments. While Taiwan verbally addressed some U.S. concerns at these hearings, nothing was formally put in writing. In August 2007, Taiwan submitted a notification to the WTO providing guidance on the standards proposed for additives in beverage alcohol products. A key concern included Taiwan's intention to create a "positive list" system that would exclude currently acceptable ingredients commonly used in alcoholic beverages. The United States raised concerns through the WTO comment process (as did other trading partners) and clarified status of the issue with DOH at annual technical discussions held with Taiwan in November 2007. On November 28, 2007, the amendment of "The Hygiene Standards for Alcohol Products" was jointly promulgated by the MOF and DOH indicating the proposed positive list system would not be adopted. This amendment took effect January 1, 2008. Several other proposed revisions of concern were modified based on international comments.

Agricultural Biotechnology Products

Taiwan authorities take a generally pragmatic approach to trade in agricultural biotechnology products. Risk assessment documentation on agricultural biotechnology corn and soybeans was required to be submitted to the DOH before April 30, 2002, and mandatory labeling on certain corn and soybean products commenced in 2003. In October 2003, DOH announced its intention to require registration of agricultural biotechnology products other than corn and soybeans in 2004, but announced a process for life science companies to obtain interim approval for those products currently commercialized. No disruptions to trade have resulted from Taiwan's biotechnology regulations, but with the increasing number of products entering the regulatory approval pipeline and a lack of investment in a strong domestic regulatory infrastructure, delays in approvals may become more frequent.

Taiwan granted an approval license to Agrisure MIR604 corn for food, feed, and processing use. The license is valid for 5 years, effective October 22, 2007. In February 2008, Taiwan approved Monsanto's Roundup Ready 2 Yield™ soybean (MON 89788). The United States exported \$754 million in corn and \$714 million in soybeans to Taiwan in CY 2007.

Labeling of Biotechnology Food

Taiwan requires labels on foods containing biotechnology corn or soybeans. All food products containing 5 percent or more bioengineered soybean or corn ingredients by weight must be labeled as "Genetically Modified (GM)" or "Containing Genetically Modified." Highly processed food items (items with no proteins or DNA) do not require GM labels.

Pharmaceuticals and Medical Devices

Taiwan has identified both the medical device and pharmaceutical sectors as priorities for development, resulting in Taiwan agencies sometimes appearing to favor the interests of local companies over foreign firms. In addition, Taiwan bans imports from China of about 30 medical products. Due to global manufacturing plans, however, many U.S. designed medical devices are produced in China, and the foreign medical device industry has suggested that Taiwan lift import bans for these products.

Improvements have occurred in the registration and approval process for less risky medical devices in recent years. However, registration and approval procedures for higher risk medical device imports are complex and time consuming, and continue to be the subject of longstanding complaints by U.S. firms. The registration process requires extensive documentation and sometimes arbitrary demands for additional information and redundant testing. DOH officials are working with the industry to improve the registration process, primarily concerning identical products made in different quality system documentation manufacturing sites, or with outer packaging changes. In order to make product registration more efficient, the DOH recently adopted more flexible product registration procedures for in-vitro diagnostic medical devices that allow importing companies to follow U.S. or EU procedures, rather than demand extensive documentation and redundant testing for products made in Europe by U.S. companies. Regulations are vague on when local clinical trials are required for the review process or whether industry is allowed to provide additional input in response to questions posed by DOH officials reviewing the clinical trial submissions.

A continuing concern in the pharmaceutical sector in Taiwan involves pharmaceutical pricing and management. Through the TIFA process, the United States has been encouraging Taiwan to adopt a system of actual transaction pricing (ATP) in order to address the significant gap between the amount that the Bureau of National Health Insurance (BNHI) reimburses for a pharmaceutical product and the price actually paid to the provider of that product. This gap distorts pharmaceutical trade and prescription patterns in Taiwan. These distortions are worsened by hospital doctors' ability to both prescribe and dispense pharmaceuticals. Separating these functions would help to resolve the long term pricing problem. In addition, Taiwan's lengthy pharmaceutical registration process imposes unnecessary costs and slows market entry for new drugs that have already received regulatory approval in advanced economies.

The reimbursement price gap noted above for pharmaceuticals is also an issue for medical devices offered in the Taiwan market. In addition, BNHI pricing criteria currently specifies a single purchase price for all medical devices that treat the same indication. This policy effectively subsidizes lower quality, often domestically made devices while forcing producers of high priced, high value devices to be reimbursed at an insufficient level. Unless the policy is modified, this may lead to significant market distortion in favor of lower quality products over time.

Through the TIFA process, the United States is encouraging Taiwan's Ministry of Justice and DOH to work together to take action to resolve pharmaceutical pricing and reimbursement problems. The DOH has agreed to set up working groups to study options to bring more transparency and fairness to drug pricing, including requiring standard contracts for all drug purchases, implementing ATP, and separating dispensing and prescription. In September 2007, Taiwan's Executive Yuan approved a proposed amendment to the National Health Insurance (NHI) Law that would require all hospitals to use a common standard contract for pharmaceutical purchases; the amendment is pending approval by the Legislative Yuan.

GOVERNMENT PROCUREMENT

Taiwan committed to accede to the GPA as soon as possible after it became a WTO Member, but it has not yet acceded due to differences with GPA Parties regarding nomenclature issues. To prepare for accession, Taiwan implemented a new government procurement law in mid-1999, an important first step toward establishing a transparent and predictable environment for Taiwan's multi-billion dollar public procurement market. In August 2001, Taiwan and the United States signed a Memorandum of Understanding on Government Procurement (MOU). The MOU calls for Taiwan to implement certain

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procedural commitments immediately, with others to be implemented upon accession to the GPA. Some Taiwan procurement contract clauses exclude U.S. and other foreign tenders. Taiwan's refusal to implement liability caps and exclusions for consequential damages in procurement contracts also has prevented U.S. suppliers from participating because of the unknown liability exposure. In addition, the Public Construction Commission often requests that U.S. firms provide information on relevant U.S. and international procurement practices. The United States continues to encourage the Taiwan authorities to abide by the provisions of the GPA in spite of difficulties in accession.

EXPORT SUBSIDIES

Taiwan provides incentives to industrial firms in export processing zones and to firms in designated "emerging industries." Taiwan has notified the WTO of these programs and, as part of its WTO accession, committed to amend or abolish any subsidy programs inconsistent with WTO rules. When it became a WTO Member, Taiwan amended relevant laws, such as the Statute for Establishment and Management of Economic Processing Zones and the Statute for Establishment of Scientific Industrial Parks. The United States continues to monitor Taiwan's compliance with the commitments it undertook as part of its WTO accession, including those obligations associated with the Agreement on Subsidies and Countervailing Measures.

INTELLECTUAL PROPERTY RIGHTS (IPR) PROTECTION

IPR protection continues to be an important issue in the United States-Taiwan trade relationship. The United States recognizes Taiwan's continuing efforts to improve enforcement of IPR in 2007, but continues to be concerned with a number of issues, including the availability of counterfeit pharmaceuticals in Taiwan, Internet infringement, illegal textbook copying on university campuses, and inadequate protection for the packaging, configuration, and outward appearance of products (trade dress). The U.S. International Intellectual Property Alliance estimates that losses due to IPR copyright piracy in Taiwan cost U.S. industry \$327.8 million in 2007. Transshipment of counterfeit products from China is also a problem. Counterfeit goods from Taiwan seized by U.S. Customs dropped from \$26.5 million in 2002 to \$1.1 million in 2005, but a sharp increase in the transshipment of counterfeit goods from China pushed the value of seized counterfeit goods up to \$1.8 million in 2006 and to \$2.8 million in the first half of FY2007.

Trademark counterfeiting, particularly of clothing and luxury goods, is still a concern. Much of the counterfeit product is reportedly smuggled from China. Rights holders state that Taiwan is both a transshipment point and a market for this counterfeit material. Taiwan Customs and IP police make regular seizures of counterfeit apparel and handbags, but rights holders complain that investigation and prosecution remain hampered due to inadequate resources and personnel and that light sentences issued for convictions do not deter trademark counterfeiters.

Internet piracy and illegal peer-to-peer (P2P) downloading remain serious concerns for IP enforcement in Taiwan, and the sale of counterfeit goods over the Internet – resulting in part from increased raids on traditional sales venues – is also a growing concern. Taiwan has made efforts to combat such Internet-related IPR violations, including strengthening cooperation with foreign enforcement agencies and passing an amendment to the Copyright Law in June 2007 that subjects illegal file sharing to a maximum jail term of 2 years. And in 2006, two of Taiwan's P2P operators, EzPeer and Kuro, reached a settlement with IFPI, the umbrella organization for recording industry associations worldwide. To improve Taiwan's ability to protect IPR on college campuses, in November 2007, authorities finalized a Campus

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IPR Action Plan to strengthen management of academic computer networks and illegal textbook copying by students.

The United States remains concerned about counterfeit pharmaceutical products in the Taiwan market. In March 2007, Taiwan revised the Pharmacist Law to increase penalties for pharmaceutical counterfeiting, and the Ministry of Justice, the Taiwan Coast Guard, and Taiwan Customs have had some success in intercepting imports of counterfeit pharmaceuticals. Nevertheless, counterfeit products continue to be a threat to public health in Taiwan, and may undermine confidence in legitimate products.

U.S. rights holders report that court procedures and delays can constitute impediments to effective IPR enforcement and that penalties for intellectual property infringement are inadequate to deter violators. In addition, Taiwan's judiciary continues to experience difficulties handling technically challenging IPR infringement cases. To improve this situation, in March 2007, Taiwan passed the IP Court Organization Law to establish a specialized IP court. Taiwan authorities expect this IP court to be operational in July 2008. Meanwhile, the United States continues to assist Taiwan to remedy weaknesses in the judicial system by providing training and holding seminars on different criminal enforcement issues.

SERVICES BARRIERS

Financial Services

Foreign portfolio investors are required to register rather than seek advance approval, though since December 2003, the registration can be done through the Internet. In late 2003, Taiwan allowed foreign portfolio investors to trade in the futures and money markets as a part of financial management before actual portfolio investment. Domestic currency denominated futures, money market funds, and bank deposits, however, are subject to a limit of 30 percent of total inward remittances. All offshore foreign portfolio investors may trade in Taiwan's stock market regardless of their size, except for investors from the People's Republic of China. Since October 2003, hedge funds have been permitted to trade in Taiwan's stock market, but are subject to Taiwan authorities' close surveillance. Foreign individual investors, however, are still subject to an investment limit. Onshore foreign individuals and institutional investors are also subject to annual inward/outward limits.

In addition to liberalization, Taiwan set up a bond market international board in 2006. Since then, two foreign banks have issued foreign currency denominated bonds. Taiwan has also announced plans to establish a securities market international board where both listing and trading will be denominated in U.S. dollars. The plan, which is designed to attract foreign companies to list as well as foreign portfolio investors to trade, has so far failed to materialize due to restrictions on cross-Strait mutual investment.

Telecommunications Services

The capital requirement for integrated network services is NT\$16 billion (\$485 million) and system capacity requirements are 400,000 subscriber lines. The Directorate General of Telecommunications (DGT) established new licensing criteria for local, long distance, and international sub-sectors in March 2005. A new formula based on local population is used to calculate the capital requirements for facilities based operators for each of the new service licenses; for instance, NT\$1.2 billion (\$36.4 million) may be required for a local call license in Taipei City and NT\$2 billion (\$60.0 million) for long distance and international service licenses. Only four firms, however, have been approved to begin operating such services on a facilities-basis (many more operate leasing facilities of others), including three local call service operators and one international long distance company. To encourage investments and

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competition, the National Communications Commission (NCC) has stated that it plans to further reduce the capital requirement for facilities-based operators from NT\$16 billion (\$485 million) to NT\$6.4 billion (\$194 million) for an integrated network operator; from NT\$1.2 billion (\$36.4 million) to NT\$500 million (\$15.2 million) for local call service providers in Taipei; and from NT\$2 billion (\$60.0 million) to NT\$800 million (\$24.2 million) for both long distance and international call operators, but these changes have yet to be formalized. The NCC has also stated that beginning in 2008, it will accept and review applications at any time, rather than on a quarterly basis, but this change too has not yet been implemented.

Existing fixed-line operators still face serious difficulties in negotiating reasonable interconnection arrangements at technically feasible points in the network of the dominant carrier, Chunghwa Telecom (CHT). Despite its announcement in May 2004 that it would share the local loop with the three private providers, CHT set two limitations: non-CHT service provider's access to CHT's local loop could only be initiated by end-users, and only voice service in three metropolitan areas would be open to non-CHT operators. In addition to NT\$35 billion (\$1.1 billion) of new broadband-network construction ongoing since 2003, the NCC in July 2007 issued six regional licenses to Worldwide Interoperability for Microwave Access (WiMax) operators. These new investment projects are expected to help break the monopoly of the telecommunications network by CHT.

Until 2005, Taiwan's telecommunications regulator (DGT) and the largest telecommunications operator (CHT) were both under the control of the Ministry of Transportation and Communication (MOTC), creating an obvious conflict of interest. Privatizing CHT and establishing an independent regulator were two of Taiwan's WTO accession commitments. In August 2005, MOTC partially privatized CHT and, after sales of additional shares in September 2006, state ownership has been reduced to 34 percent, and more than 40 percent of the company is held by foreign investors. CHT still retains close ties to the government.

The National Communications Commission (NCC), the new regulatory body established in 2006, is led by a group of commissioners and staffed by employees of the former DGT and Government Information Office. Taiwan's high court ruled that the selection process for the commissioners was unconstitutional and in its decision allowed a grace period until the end of 2008 during which time the NCC continues to function in its current form. These developments have given the agency an uncertain beginning and weakened its authority. Continued failure to pass an amended organization law could halt license approvals for importing and installing telecommunications and broadcasting equipment, and affect plans by foreign companies to begin or expand satellite and wireless broadcasting operations in Taiwan.

In August 2003, DGT amended regulations to open Taiwan's mobile virtual network operator (MVNO) market and began licensing operators in September 2003. The MVNO market opening allows operators to offer an alternative third-generation (3G) wireless service to local consumers and allows service providers to operate without a spectrum license by partnering with existing 3G operators. In 2007, the authorities issued six WiMAX licenses and awarded six trial licenses for handheld television projects. Taiwan's mobile service market is equally divided between FarEasTone, CHT, and Taiwan Cellular. In November 2003, the DGT announced regulations governing number portability service, enabling subscribers to retain their existing telephone numbers when switching from their original Type I enterprise to another Type I enterprise engaging in the same business. Actual implementation of the number portability service started October 15, 2005. DGT opened Voice over Internet Protocol (VoIP) to telecommunications operators in November 2005. As the end of September 2007, four telecommunications operators had received approval to operate numbered VoIP businesses. In the face of

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digital convergence, the NCC is drafting the "Communications and Broadcasting Management Act" to combine telecommunications and broadcasting administration in one framework.

Pay Television Services

The Cable Audio and Television Law restricts foreign investment in pay television services to a total equity share of 20 percent and further limits each cable service provider's potential market share to no more than one-third of the total market.

Chiropractors

Taiwan does not license or recognize chiropractors as legitimate medical practitioners, and allows chiropractors to practice in Taiwan only if they do not advertise their services and make no claims about the results or efficacy of treatments.

INVESTMENT BARRIERS

Taiwan has relaxed investment restrictions in a host of areas, but foreign investment remains prohibited or restricted in a handful of industries such as agricultural production, public utilities, and postal services. Taiwan allowed private production of cigarettes in 2004 without any foreign ownership limit, although prior government approval is required. In April 2004, Taiwan dropped mining and ordinary trucking services from the list of sectors in which foreign investment is restricted, but added single axle truck leasing to the list.

Most foreign ownership limits have been removed. Taiwan flagged merchant ships are subject to a foreign ownership limit of 66 percent. The foreign ownership limit on wireless and wireline telecommunications firms is 60 percent, including a direct foreign investment limit of 49 percent. For Chunghwa Telecom, the legacy carrier which is still partially owned by the Ministry of Transport and Communications and controls 97 percent of the fixed line telecommunications market, the cap on direct and indirect investment is set at 49 percent. In January 2003, Taiwan raised the total direct and indirect foreign ownership limit on cable television broadcasting services to 60 percent, including a 20 percent limit on foreign direct investment. A 49 percent foreign ownership limit remains on satellite television broadcasting services, power transmission and distribution, piped distribution of natural gas, high speed railways, ground handling firms, air cargo terminals, air catering companies, and air cargo forwarders. In March 2007, the foreign ownership limit on airline companies was raised from 33 percent to 49 percent, with each individual foreign investor subject to an ownership limit of 25 percent.

ELECTRONIC COMMERCE

Over 90 percent of Taiwan's companies have corporate networks and a network infrastructure, and over 90 percent of Taiwan's 5.8 million household computers are linked to the Internet -- mainly by broadband digital subscriber lines (DSL). A law protecting personal online data was passed in 2001, and in 2001 the Legislative Yuan also passed the Electronic Signature Law that recognizes the legal validity of electronic contracts, records, and signatures. Since 2005, the Ministry of Finance has imposed business taxes on Internet vendors who sell products for profit and have monthly sales over NT\$60,000 (\$1,820). In 2006, the volume of Internet sales, including "Business to Consumer" (B2C) and "Consumer to Consumer" (C2C) totaled NT\$145 billion (\$4.4 billion), according to information released by the Market Intelligence Center, a financial news service. Sales were expected to increase 27 percent to NT\$185 billion (\$5.6

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billion) in 2007. Taiwan has refused to join the United States at APEC in advocating for a permanent moratorium on taxation of Internet transactions.

THAILAND

TRADE SUMMARY

The U.S. goods trade deficit with Thailand was \$14.3 billion in 2007, the same as in 2006. U.S. goods exports in 2007 were \$8.4 billion, up 3.7 percent from the previous year. Corresponding U.S. imports from Thailand were \$22.8 billion, up 1.3 percent. Thailand is currently the 27th largest export market for U.S. goods.

U.S. exports of private commercial services (*i.e.*, excluding military and government) to Thailand were \$1.6 billion in 2006 (latest data available), and U.S. imports were \$1.1 billion. Sales of services in Thailand by majority U.S.-owned affiliates were \$3.3 billion in 2005 (latest data available), while sales of services in the United States by majority Thailand-owned firms were \$3 million.

The stock of U.S. foreign direct investment (FDI) in Thailand was \$8.2 billion in 2006 (latest data available), up from \$6.6 billion in 2005. U.S. FDI in Thailand is concentrated largely in the manufacturing, finance, and banking sectors.

FREE TRADE AGREEMENT (FTA) NEGOTIATIONS

The U.S. Government began FTA negotiations with Thailand in June 2004, and conducted seven rounds of discussions through 2006. The negotiations were suspended indefinitely following a military-led coup against the Thaksin government in September 2006. The negotiations remained suspended throughout 2007. The United States will continue to monitor and evaluate developments in Thailand following the inauguration of a new government in February 2008 and will determine appropriate next steps for the economic relationship.

IMPORT POLICIES

Thailand's high tariffs remain an impediment to market access in many sectors. The country's average applied MFN tariff rate is 11.4 percent with some tariffs as high as 80 percent. The highest tariff rates apply to imports competing with locally produced goods, including agricultural products, automobiles and automotive parts, motorcycles, alcoholic beverages, fabrics, paper and paperboard products, and restaurant equipment.

Taxation

Thailand's tax administration is complex and nontransparent. Excise taxes are high on some items, such as unleaded gasoline, beer, wine, and distilled spirits. When import duties, excise taxes, and other surcharges are calculated, the cumulative tax burden on most imported spirits is approximately 400 percent.

Agriculture and Food Products

High duties on agriculture and food products in addition to arbitrary management of import licenses and sanitary and phytosanitary (SPS) measures (see section below on Standards, Testing, Labeling, and Certification) remain the primary impediments to U.S. exports of high value fresh and processed foods. U.S. agricultural exports to Thailand totaled \$870 million in 2007, while U.S. fish and forestry products

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exports totaled \$98 million. According to U.S. industry estimates, potential exports to Thailand could reach as much as \$1.5 billion annually if Thailand's tariffs and other trade-distorting measures were substantially reduced or eliminated.

Duties on imported consumer-ready food products typically range between 30 percent and 50 percent – the highest among Association of Southeast Asian Nations (ASEAN) members - with some as high as 90 percent. Tariffs on meats, fresh fruits (including citrus fruit and table grapes) and vegetables, fresh cheese, and pulses (*e.g.*, dry peas, lentils, and chickpeas) are similarly high, even for products for which there is little domestic production. Frozen french fries, for example, are not produced in Thailand, yet face a 30 percent tariff. U.S. exports of wine face a total tax of nearly 400 percent when import duties, excise taxes, and other surcharges are calculated.

With the exception of wine and spirits, Thailand no longer applies specific duties on most agricultural and food products, and *ad valorem* rates have been reduced in accordance with Thailand's WTO commitments. Nevertheless, import duties on some agricultural and processed food goods have an average tariff rate of 25.4 percent. Moreover, bound duties on many high value fresh and processed food products will remain high, from 30 percent to 40 percent, even after Thailand implements reductions required under its WTO commitments. Tariffs on apples are at 10 percent, while duties on pears and cherries remain as high as 30 percent to 40 percent. U.S. fruit growers estimate lost sales of up to \$15 million annually from the combined effect of Thailand's high tariffs.

Thailand's overall import policy is directed at protecting domestic producers, and the Thai government has implemented nontransparent price controls on some products and maintains significant quantitative restrictions that impede market access. The United States is concerned that access to tariff-rate quotas for agricultural products is often managed in an arbitrary and nontransparent manner. Although Thailand has been relatively open to imports of feed ingredients, including corn, soybeans, and soymeal, in recent years U.S. industry reports that the Thai government has maintained excessively burdensome requirements associated with the issuance of import permits for feed ingredients. In addition, Thailand requires that importers purchase a certain amount of domestically produced product before being granted licenses for imported products.

The Thai government also requires import license fees for meat products of approximately \$142 per ton on beef and pork, \$286 per ton for poultry, and \$142 per ton on offal. U.S. industry has expressed concerns that these fees appear to be higher than necessary to cover the costs of import administration. SPS standards for certain agricultural products also appear to be applied in a nontransparent manner, often without prior notification. Although Thailand agrees in principle to a system-based audit, the Thai government still maintains the requirement of inspecting individual slaughterhouse or farm facilities that export animals and animal products into Thailand. Enforcement of this requirement occurs on a case-by-case basis.

Automotive Sector

Thailand's import duties and taxes on vehicles are among the highest in ASEAN. In response to the 1997 financial crisis, the Thai government raised tariffs on passenger cars and sport utility vehicles to 80 percent, up from 42 percent and 68 percent, respectively. In November 2007, Thailand implemented a trade agreement with Japan that will phase in over 4 years a reduction of tariffs to 60 percent on Japanese vehicles with engines greater than 3000 cc.

Excise taxes in Thailand are based on various vehicle characteristics, such as engine size, weight, and wheelbase. In July 2004 Thailand revised its excise tax structure, but it remains complex and heavily

favors domestically manufactured vehicles. Taxes on passenger vehicles range from 30 percent to 50 percent, while pickup trucks are taxed at a rate of 3 percent. As a result, pickups account for more than 50 percent of total vehicle sales in Thailand.

Textiles

Thailand's tariff rates for U.S. textile exports are high, ranging from 20 percent to 30 percent for most fabrics and 30 percent for most clothing and other made-up textile products. In addition, Thailand applies specific unit duties on more than one-third of all textile tariff lines, which make effective rates even higher. Furthermore, on the Asia-Pacific Economic Cooperation forum website, Thailand's applied tariffs for certain clothing are incorrectly listed as 60 percent. Thailand has not yet addressed the United States' concern that these higher published tariffs are misleading and discourage potential U.S. exporters.

Quantitative Restrictions and Import Licensing

Import licenses are required for at least 26 categories of items, including many raw materials, petroleum, industrial materials, textiles, pharmaceuticals, certain consumer products, and agricultural items. Imports of used motorcycles and parts and gaming machines are prohibited. Imports of certain minerals, arms and ammunition, and art objects require special permits from the relevant ministries.

Customs Barriers

The lack of transparency of the Thai customs regime and the significant discretionary authority provided Thai officials remain serious concerns for the United States. Despite Thailand's commitment to fully implement the WTO Customs Valuation Agreement, the Thai Customs Director General retains the authority to arbitrarily increase the customs value of imports. The United States continues to urge Thailand to implement legislation to revoke this authority. U.S. industry is increasingly reporting inconsistent application of the WTO transaction valuation methodology and repeated use of arbitrary values. Representatives from the alcoholic beverage industry (wines and spirits) report that transaction invoice values provided by importers have been routinely rejected since September 2006 and replaced with arbitrary deductive values by Thai customs authorities. Exporters of powdered tea products report similar problems. The United States raised these customs valuation concerns both bilaterally and in WTO meetings and sought clarification from Thai customs and other Thai agencies throughout 2007. The U.S. Government will continue to work to address these concerns.

In addition, the United States has concerns over the transparency of Thailand's customs regulatory process. To address these, U.S. industry is requesting that Thai Customs publish proposals for changes in customs laws, regulations, and notifications and allow time for comments on these proposals. They have also requested that Thai customs impose a time limit on the issuance of rulings, respond to appeals within an established time period, provide a full explanation of its decisions regarding appeals, establish a reasonable time period at the beginning of an audit or an investigation for their completion, and provide a written report of the findings of the audit or investigation.

In addition, as is the case with some other Thai agencies, Thai customs has an incentive program rewarding officials for identifying violators based on a percentage of the recovered revenues. This practice encourages revenue maximization rather than compliance with legal requirements. Corruption in the Customs Department reportedly remains a serious problem.

STANDARDS, TESTING, LABELING, AND CERTIFICATION

The Thailand Industrial Standards Institute (TISI) is the national standards organization under the Ministry of Industry. TISI is empowered to provide product certifications according to established Thai standards and is an accredited body for International Standards Organization (ISO) and other certifications in Thailand. The Thai government requires the certification of 60 products in 10 sectors, including agriculture, construction materials, consumer goods, electrical appliances and accessories, polyvinyl chloride pipe, medical equipment, liquefied natural gas containers, surface coatings, and vehicles. In the case of medical equipment, Thailand requires product approval in the country of origin before it can be registered.

Thailand prohibits motorcycle traffic on its expressways, including large-engine motorcycles that are sufficiently powerful and intended for expressways and do not pose the same safety risk to other travelers as do underpowered motorcycles. Thailand's motorcycle emissions regulations are an amalgamation of standards and tests used elsewhere in the world, resulting in standards that reportedly are among the most stringent in the world. Enforcement of these standards has been nontransparent and even producers utilizing advanced low-emission technology have difficulty meeting these standards.

Thailand's Food and Drug Administration (TFDA) imposes standards, testing, and labeling requirements, and requires certification permits for the importation of all food and pharmaceutical products, as well as certain medical devices. Many U.S. companies have raised concerns that the cost, duration, and complexity of the permitting processes are overly burdensome and are concerned about the periodic demands for disclosure of proprietary information. TFDA has streamlined its procedures somewhat, but U.S. companies still report delays of up to a year. All processed foods must be accompanied by a detailed list of ingredients and a manufacturing process description, disclosure of which could potentially jeopardize an applicant's trade secrets.

In October 2006, Thailand announced a proposed snack food labeling requirement that would have required "traffic light" labeling logos on five categories of snack foods: potato chips, corn chips, extruded snack foods, biscuits/crackers, and assorted wafers. As a result of efforts by the United States, as well as concerns expressed by other countries, the Ministry of Public Health withdrew the proposed requirement on August 30, 2007. This proposal, however, was replaced with a requirement that snack food be labeled with a message stating "Should have less, and exercise for a better health." This new labeling requirement has been in effect since December 2007. The U.S. Government and others continue to raise concerns with the proposal.

GOVERNMENT PROCUREMENT

Thailand is not a signatory to the WTO Agreement on Government Procurement. A specific set of rules, commonly referred to as the Prime Minister's Procurement Regulations, governs public sector procurement for ministries and state-owned enterprises. While these regulations require that nondiscriminatory treatment and open competition be accorded to all potential bidders, state enterprises and ministries typically have their own individual procurement policies and practices. Preferential treatment is provided to domestic suppliers (including subsidiaries of U.S. firms registered as Thai companies) through an automatic 7 percent price advantage over foreign bidders in initial bid round evaluations.

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A 2001 "Buy Thai" directive from the Prime Minister's office raised additional concerns about Thai government procurement policies. While Thailand denies that the "Buy Thai" policy discriminates against foreign products, specific language used in government instructions on some procurement tenders explicitly excludes foreign-made, non-Thai products from the bidding process.

Government agencies and state enterprises reserve the right to accept or reject any or all bids at any time and may also modify the technical requirements during the bidding process. The latter provision allows considerable leeway to government agencies and state-owned enterprises in managing tenders, while denying bidders any recourse to challenge procedures. Allegations that changes are made for special considerations frequently surface, including charges of bias on major procurements. Despite an official commitment to transparency in government procurement, U.S. companies and Thai media have reported allegations of irregularities. In addition, some U.S. companies have expressed concerns regarding a Thai government decision to no longer include arbitration clauses in concessions and government contracts.

EXPORT SUBSIDIES

Thailand maintains programs to support trade in certain manufactured products and processed agricultural products, which may constitute export subsidies. These include various tax benefits, import duty reductions, credit at below-market rates on some government-to-government sales of Thai rice (established on a case-by-case basis), and preferential financing for exporters. The Thai government terminated its packing credit programs and export contingent subsidies provided by the Board of Investment and the Industrial Estate Authority of Thailand.

INTELLECTUAL PROPERTY RIGHTS (IPR) PROTECTION

Widespread counterfeiting and piracy continue to plague IPR owners in Thailand. The lack of sustained and coordinated enforcement, and, in particular, the lack of prosecution, remains a substantial problem. U.S. copyright industries reported an estimated annual trade loss of more than \$308.5 million in 2006 from IPR infringement in Thailand. An increasing volume of pirated and counterfeited products manufactured in Thailand is exported. In 2007, Thailand was elevated from the Special 301 Watch List, where it had been since 1994, to the Special 301 Priority Watch List, reflecting an overall deterioration in the protection and enforcement of IPR. The United States will continue to raise its serious concerns about the deterioration of IPR protection with the Thai government.

Patents, Data, Trade Secrets, and Plant Variety Protection

Thailand's patent regime generally provides adequate protection for most innovations. However, U.S. industry has expressed concerns that the legislation that Thailand enacted to implement its data protection obligations under the TRIPS Agreement does not provide adequate protection of confidential information from disclosure. U.S. industry is also concerned that Thailand does not have a formal patent linkage system to prevent the regulatory approval of copies of pharmaceuticals that are still patented. There has been a recent increase in the number of such copies receiving Thai FDA approval while the original product is still under patent protection.

Thailand's patent office lacks sufficient resources to keep up with the volume of applications, and patent examinations can take more than 5 years, and 8 years to 10 years or more for pharmaceutical patents. While patent filings have increased in recent years, the number of patents issued continues to decrease. The Department of Intellectual Property (DIP) is reportedly subject to a hiring freeze that prevents the employment of more than the current 16 examiners. In January 2008, the National Legislative Assembly

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approved Thailand's plan to join the Paris Convention and the Patent Cooperation Treaty, but the Thai government is still preparing for accession.

Thailand's Ministry of Public Health has issued compulsory licenses on certain patented drugs. The United States acknowledges Thailand's ability to issue compulsory licenses to address public health emergencies, subject to Thailand's domestic and international legal obligations as a WTO Member. At the same time, the United States has expressed concern regarding a lack of transparency in the process and about the potentially expansive use of compulsory licenses. The United States has urged Thailand to address judiciously the complexities of the relationship between health and intellectual property policy and to do so in ways that recognize the role of intellectual property in the development of new drugs.

On January 30, 2007, the Ministry of Public Health issued implementing regulations for the 2002 Trade Secrets Act. The regulations restrict the government from releasing protected data for a period of 5 years, but do not appear to provide data exclusivity that would prevent unfair commercial use.

Registration of new plant varieties under the Plant Variety Protection Act began in April 2006. Private sector representatives have expressed concern about the implementation and enforcement of the Act, noting the wide availability of counterfeit seeds and other products in Thailand. The United States has urged Thailand to strengthen the 1999 Act to make it consistent with the 1991 International Convention for the Protection of New Varieties of Plants and to accede to this convention.

Copyright

Thailand's copyright law, which was intended to bring Thailand into conformity with international standards under the TRIPS Agreement and the Berne Convention, became effective in March 1995. Thailand enacted optical disc legislation, but it lacks many key elements. U.S. officials continue to press Thailand to address these deficiencies.

The Thai government is in the process of amending the Copyright Law in several ways. A current set of pending amendments deals with collecting societies and creates fair use exceptions for disabled users. Additional amendments proposed but not enacted in 2007 would implement certain provisions of two 1996 World Intellectual Property Organization (WIPO) treaties - the WIPO Copyright Treaty and the WIPO Performances and Phonograms Treaty. Thailand has stated that it does not intend to accede to these treaties.

Trademarks and Geographical Indications

The Thai government amended its trademark law in 1992, increasing penalties for infringement and extending protection to service, certification, and collective marks. The Thai government also streamlined trademark application procedures, addressing issues raised by the U.S. Government. Additional amendments designed to bring Thailand's trademark law into compliance with the TRIPS Agreement were enacted in June 2000, broadening the legal definition of a mark. Thailand has been considering joining the Madrid Protocol, but has not yet taken steps to do so.

The Geographical Indications Act was passed by the Thai Parliament in September 2003 and went into effect in April 2004. This legislation allows rights holders to seek protection for indications that identify a good as originating in the territory of a member, or a region, or locality in that territory, where a given quality, reputation, or other characteristic of the good is essentially attributable to its geographic origin. It is not clear how this law will be applied to U.S. geographical indications (GIs), because it requires

explicit evidence that the GI is protected under the law of the foreign country in order to receive protection in Thailand. In addition, the law raises concerns because existence of a similar previously registered trademark does not constitute grounds for refusal of a GI registration in Thailand.

Enforcement

Thailand's IPR enforcement efforts have been inconsistent. The frequency of raids compromised by leaks from police sources remain a concern. Rights holders complain that seized materials disappear and are used to reward enforcement officials and even the press. Pirates, including those associated with transnational crime syndicates, have responded to intensified levels of enforcement with intimidation against rights holders' representatives and enforcement authorities.

The Ministry of Commerce has the lead in promoting interagency cooperation on IPR enforcement issues. In August 2006, the Ministry concluded a memorandum of understanding (MOU) between enforcement authorities, retail establishments, and rights holders to better coordinate operations. While the MOU is an important step, the United States is not aware of any instances in which retail landlords have been held liable for overt sales of counterfeit and pirate goods on their premises.

The Department of Special Investigations (DSI) was established in 2004 and assumed an IPR enforcement role, focusing on significant infringing production, warehousing, and trafficking operations, as well as those activities associated with organized crime. In January 2006, the threshold for cases to be referred to DSI was lowered to 500,000 baht (\$13,400), promising stronger investigative action into more cases. However, DSI has been embroiled in internal political issues for the past year and has not taken effective action against IPR crimes in this period.

The Thai government established a specialized intellectual property court in 1997 that has improved judicial procedures and imposed tougher penalties. Criminal cases generally are disposed of within 6 months to 12 months from the time of a raid to the rendering of a conviction. However, courts frequently hand down light sentences that are not considered a deterrent to criminal behavior. Of nearly 2,000 cases brought before the IP court in 2007, only 17 involved the imposition of prison sentences. Over the past year, rights holders and even the Royal Thai Police have complained that the IP court is increasingly unwilling to issue search warrants and civil search orders. For many rights holders, this is the primary obstacle to enforcement.

U.S. copyright industries continue to express serious concerns over the rapid and unchecked growth of optical media piracy in Thailand. In August 2005, the Optical Disc Manufacturing Control Act went into force. This Act was designed to enhance the authority and capabilities of the Thai government to act against operators of illicit optical disc factories and to control the production materials and machines of legal producers. U.S. copyright industries are concerned that the Act is deficient in several respects, including that penalties are not high enough to deter piracy, and that the Thai government's enforcement and oversight powers are not sufficiently strengthened. Although the Thai government has conducted enforcement activities under the Optical Disc Act, its efforts do not appear to have produced any meaningful results.

Cable piracy continues to be a major problem throughout Thailand, as pirate providers expand their presence in the provinces. The Thai government passed new broadcasting legislation in December 2007. The U.S. Government will monitor the impact of this new law on the cable piracy issue.

Book publishers have raised concerns that the existing copyright law is being interpreted in a manner that allows extensive book piracy to go unchecked, especially illegal photocopying. According to U.S. industry, annual losses are estimated at approximately \$30 million. The Thai government has initiated a public awareness campaign to address this issue, but so far the impact has been limited.

Trademark infringement remains a serious problem. U.S. companies with an established presence in Thailand and a record of sustained cooperation with Thai law enforcement officials have had some success in defending trademarks, but the process remains time consuming and costly. Penalties for trademark violations are insufficiently high to have a deterrent effect.

SERVICES BARRIERS

Telecommunications Services

Thailand has made substantial progress toward reforming its telecommunications regulatory regime, but several controversial issues remain unresolved and significant obstacles to foreign investment in this sector remain in place. While Thailand is still working to liberalize its basic telecommunications services, new technologies such as mobile telephony and broadband Internet services are beginning to transform the telecommunications sector. However, insufficient regulatory structure is in place to allow the technologies to develop.

The 1997 Constitution delegated frequency allocation to the National Telecommunications Commission (NTC) and a National Broadcast Commission (NBC). The NTC began operations in November 2004, but the NBC was never created. The new constitution (enacted on August 24, 2007) mandates that there will now be one independent state agency, provisionally named the National Telecommunications and Broadcasting Commission (NTBC), to allocate the frequencies for radio and television, and telecommunications. The timeframe to set up the NTBC and how frequencies will be allocated remain unclear. Other unresolved issues in the telecommunications sector, include the phasing out of the “concession” system, the privatization of TOT and CAT Telecom, and the revision of its GATS schedule to reflect its 1998 commitments, including with respect to improvements in foreign equity participation and regulatory oversight.

Financial Services

After the 1997 to 1998 financial crisis, the Thai government liberalized foreign firms’ access to the financial sector on a case-by-case basis. However, significant restrictions remain on foreign participation in the sector. For example while foreigners have been allowed to engage in brokerage services since 1997, foreign firms are allowed to own shares greater than 49 percent in Thai securities firms only on a case-by-case basis.

Under the 1962 Commercial Banking Act, foreigners were only allowed to hold a maximum of 25 percent of the equity in Thai banks, but in practice Thai regulators have waived the foreign shareholding ceiling with respect to most local banks due to their need for funds. The new Financial Institutions Act will increase the statutory percentage to 49 percent, effective August 2008. The Financial Sector Master Plan (FSMP I), which took effect in early 2004 and was completed in the first quarter of 2007, called for the consolidation of financial institutions and encouraged mergers under the single presence rule.

Foreign banks currently operating in Thailand are disadvantaged in their ability to compete. Most notably, they are limited to one branch and are not permitted to operate off-site ATM machines, which are

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considered as branches. Foreign banks must maintain minimum capital funds of 125 million baht (\$3.1 million) invested in government, state-enterprise securities, or deposited directly with the Bank of Thailand. Expatriate management personnel are limited to six professionals in full branches although exceptions are often granted.

Professional Services

Foreigners cannot be licensed as Certified Public Accountants and, therefore, cannot practice accounting in Thailand. Foreign accountants may only serve as business consultants.

Transport Services and Communication Services, including Express Delivery Services

The Multimodal Transport Act passed in July 2005 introduced uncertainty with respect to the treatment of operations and foreign shipping companies. Political difficulties throughout 2006 and 2007 delayed approval of implementing regulations and, therefore, the full impact of the law remains unclear. While the text of the law itself appears to require foreign shipping companies performing multimodal services in Thailand to either incorporate in Thailand or appoint a Thai agent (as opposed to operating out of their branch offices in Thailand as they have done to date), the draft ministerial regulations implementing the law provide that the law shall not apply to foreign shipping companies transporting goods under bills of lading governed by international convention. Given the lack of clarity and the severe penalties for noncompliance (including a retroactive fine of 50,000 baht per contract), international shipping firms have sought to mitigate their risk by either incorporating in Thailand, appointing an agent, or passing the attendant costs on to customers.

Thailand's Postal Act (1934) gives the government a monopoly on handling letters and postcards, loosely defined to include nearly any kind of document. Private express companies must pay postal "fines" and penalties for delivery of documents in Thailand that amount to an average of 37 baht per item and in the aggregate amount to several hundred thousand dollars per year.

The 49 percent limit on foreign ownership in land transport (trucking) is hampering investment in express delivery services. Express delivery firms prefer to control items throughout the supply of the service, including both air and ground based operations, in order to speed the movement of goods.

Healthcare Services

Thai government policy is highly restrictive in the healthcare services sector (*e.g.*, hospital, dental, physician services), particularly regarding the lack of transparency relating to foreign ownership and management of hospitals and treatment facilities. Thailand has offered no medical services commitments in the current GATS negotiations.

Retail Services

The National Legislative Assembly considered, but did not pass, a draft retail act intended to regulate retail business. In 2006, the Thai government requested major foreign and domestic retailers to voluntarily freeze their expansion plans while regulations were drawn up to protect smaller retailers. In October 2006, the Thai government issued guidelines under the Trade Competition Act (1999) to prevent retailers from engaging in "unfair practices" such as: pricing goods lower than costs; requesting discounts from suppliers; charging high introduction fees for new products; and returning products to the supplier without valid reasons.

Advertising

Current Thai law prohibits all advertising on pay television. In late 2007 the National Legislative Assembly passed the Alcohol Control Act, which limits advertising for alcohol products in the media. The Ministry of Public Health will detail the restrictions at a later date. There are no regulations on foreign participation in the advertising sector.

INVESTMENT BARRIERS

The Foreign Business Act (FBA) lays out the overall framework governing foreign investment and employment in Thailand. Although the FBA prohibits majority foreign ownership of investment in most sectors, Thailand makes an exception for U.S. investors pursuant to the Treaty of Amity and Economic Relations (AER). Under the AER, Thailand may discriminate against U.S. investors only in the following sectors: communications, transportation, fiduciary functions, banking involving depository functions, the exploitation of land or other natural resources, and domestic trade in indigenous agricultural products. Moreover, Thailand's obligation to accord national treatment to U.S. investors in all other sectors does not extend to "the practice of professions, or callings reserved for [Thai] nationals."

The FBA's prohibitions on foreign investment generally do not affect projects established by Board of Investment promotion privileges or export businesses authorized under the Industrial Estate Authority of Thailand law.

In 2007, the National Legislative Assembly considered amendments to the Foreign Business Act. The draft amendments proposed to alter the definition of a foreign enterprise. Under current law, an enterprise's status as foreign or domestic is determined based on share ownership. The FBA amendments would have taken account of voting rights and management control, such that an enterprise could be considered "foreign" even if a majority of shares were owned by Thai nationals. Although most U.S. investments are protected under the AER or have obtained investment privileges through the Board of Investment, the United States has expressed serious concerns to the Thai government about the restrictions that the proposed FBA amendments would impose on certain investments in Thailand. This includes the implications that these amendments would have for Thailand's international legal obligations and for the investment environment in Thailand. The 2007 legislative session ended without action on the proposed amendments.

ELECTRONIC COMMERCE

Thailand lacks a complete legal framework to support electronic commerce, and the business community has been unable to fully take advantage of electronic commerce opportunities. In January 2007 a Royal Decree on Electronic Transactions in the Public Sector came into effect to provide proper policy and standards for electronic transactions in the public sector. In July 2007, the Act on Computer-related Crime was enacted to criminalize offenses against computer systems and data. Awaiting cabinet approval are three royal decrees on security measures for reliable electronic transactions, regulations for e-payment service providers, and regulations for a certification authority. A draft law on data protection has been under review for over a year and another to amend the Electronic Transaction Act to fulfill the legal status of electronic documents is still awaiting approval.

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OTHER BARRIERS

Several government firms are protected from foreign competition in Thailand. In the pharmaceutical sector, the Government Pharmaceutical Organization (GPO) is not subject to requirements faced by the private sector on registration. In addition, it is exempt from complying with the requirements of the safety monitoring period (SMP) when producing and marketing generic formulations of drugs marketed in foreign countries. Other manufacturers are subject to a mandatory 2 years to 4 year SMP for all new chemical entities registered and approved for marketing in Thailand. During the SMP, only doctors in hospitals and clinics can prescribe the product and the product may not be included on the National List of Essential Drugs. This and other Thai government requirements limiting government hospitals' procurement and dispensing of drugs not on the national list of essential drugs significantly constrain the availability of many imported products.

The Thai government retains authority to set *de facto* price ceilings for 33 goods and two services, including staple agricultural outputs, liquefied petroleum gas, medicines, sound recordings, and student uniforms. Under the 1999 "Act Relating to Price of Merchandise and Service" a government committee headed by the Minister of Commerce has the authority to "Prescribe the purchase price or distribution price of merchandise or service...", "prescribe maximum profit per unit..." and set the terms and conditions – including maximum permissible volumes – of any goods and service in the Kingdom. The law was amended in 1999 with the advent of a competition law and was meant to be phased out. However, with several critical aspects of competition law still undefined, the old law continues in place with no termination under consideration by the Thai government. Price control review mechanisms are nontransparent. Price control determinations are sometimes based on outdated assumptions, including with respect to exchange rates, and go for long periods without review, even upon repeated petition for review by affected parties. Only sugar currently is subject to a retail price ceiling. In practice, the Thai government also uses its control of major suppliers of products and services under state monopoly, such as the petroleum, aviation, and telecommunications sectors, to influence prices in the local market.

The Thai government has made some efforts to counter corruption. The new Thai Constitution of 2007 contains provisions to combat corruption, including enhancement of the status and powers of the Office of the Counter Corruption Commission (OCCC), which is independent from other branches of government. Persons holding high political office and members of their immediate families are required to disclose their assets and liabilities before assuming and upon leaving office. Moreover, a law regulating the bidding process for government contracts both clarifies actionable anticorruption offenses and increases penalties for violations. Nonetheless, counter-corruption mechanisms continue to be employed unevenly. The lack of transparency in administrative procedures also fosters corruption in Thailand.

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TURKEY

TRADE SUMMARY

The U.S. goods trade surplus with Turkey was \$2 billion in 2007, an increase of \$1.6 billion from \$364 million in 2006. U.S. goods exports in 2007 were \$6.6 billion, up 15.1 percent from the previous year. Corresponding U.S. imports from Turkey were \$4.6 billion, down 14.2 percent. Turkey is currently the 31st largest export market for U.S. goods.

The stock of U.S. foreign direct investment (FDI) in Turkey was \$2.1 billion in 2006 (latest data available), up from \$2.0 billion in 2005. U.S. FDI in Turkey is concentrated largely in the banking, manufacturing, and wholesale trade sectors.

IMPORT POLICIES

Tariffs and Quantitative Restrictions

Turkey applies the EU's common external customs tariff to third-country (including the United States) nonagricultural imports and imposes no duty on nonagricultural items from EU and European Free Trade Association (EFTA) countries.

Turkey maintains high tariff rates (an average 28.3 percent Most Favored Nation rate) on many food and agricultural product imports. The Turkish government often increases tariffs on grains during the domestic harvest. However, high feed prices harm Turkish livestock industries, particularly for the beef and poultry industries. Duties on fresh fruits range from 15.4 percent to 145.8 percent. Tariffs on processed fruit, fruit juice, and vegetables range between 19.5 percent and 130 percent. The Turkish government also levies high duties, excise taxes and other domestic charges on imported alcoholic beverages that increase wholesale prices by more than 200 percent.

Import Licenses and Other Restrictions

Import licenses are required for products that need after-sales service (*e.g.*, photocopiers, advanced data processing equipment, and diesel generators), distilled spirits, and agricultural products. Lack of transparency in Turkey's import licensing system can result in costly delays, demurrage charges, and other uncertainties that stifle trade for many agricultural products, as well as for distilled spirits. In November 2005, the United States brought a dispute against Turkey in the World Trade Organization (WTO) arguing that, *inter alia*, Turkey's tariff-rate quota (TRQ) scheme for rice, which contains an onerous domestic purchase requirement, and its refusal to issue import licenses for rice outside the TRQ, are inconsistent with Turkey's WTO obligations. In September, 2007, the dispute settlement panel agreed with the United States that Turkey's failure to grant licenses to import rice and its operation of a discretionary import licensing system for rice are in breach of Turkey's market access obligations under the WTO Agreement on Agriculture. The panel also agreed with the United States that Turkey's domestic purchase requirement, under which Turkey required importers of rice to purchase large quantities of domestic rice in order to import rice at preferential tariff rates, is in breach of the national treatment provisions of the WTO.

In some cases, notably for meat and poultry, the Turkish government simply does not issue licenses, thereby creating a *de facto* ban on imports of these products. Turkey has not allowed meat imports from

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any country since 1996 and has not established any public health requirements for the entry of meat. Outbreaks of Bovine Spongiform Encephalopathy (BSE) and foot and mouth disease (FMD) in Europe strengthened Turkey's resolve to keep poultry and meat products out of its market. In part as a result of ongoing discussions and the 2007 United States-Turkey Trade and Investment Framework Agreement (TIFA) Council meeting, a protocol permitting the import of live breeding cattle from the United States was agreed to in July 2007. The United States remains unable to export poultry meat for consumption within Turkey because the government of Turkey requires its officials to inspect and approve all foreign processing facilities and expects inspection costs to be covered by Turkish importers.

Despite liberalization of the spirits and tobacco markets, including a completed privatization of the state-owned alcoholic beverage company and plans to privatize the state-owned tobacco company in early 2008, as well as privatization of imports of wine and alcoholic beverages, increases in consumption have been inhibited by inordinately high tariffs (85 percent to 100 percent) and special consumption taxes (275 percent), along with the value added-tax (VAT). In 2006, legislation was introduced to reduce the number of control certificates required to import distilled spirits from two to one, but full jurisdiction could not be transferred to just one entity, so the legislation was never enacted. Instead, the Turkish government has focused on improving the efficiency and speed of the process so as not to put undue burden on importers. This topic also was discussed at the 2006 and 2007 TIFA Council meetings.

STANDARDS, TESTING, LABELING, AND CERTIFICATION

The Turkish government has a poor track record of notifying WTO Members of proposed or final technical regulations and phytosanitary requirements. Most changes in regulations become effective immediately with little or no notification to trading partners. This often results in significant disruptions in trade. Furthermore, laws and regulations do not appear to be always implemented or enforced immediately or consistently at every port, creating unpredictability and making it difficult for the exporter and the importer to comply.

Importers report increasing difficulty in obtaining information on sanitary and phytosanitary requirements. The United States Government has used every opportunity to raise the issue of transparency with the Turkish government, including informal discussions at the July 2007 TIFA Council meeting, the October 2007 WTO Sanitary and Phytosanitary (SPS) Committee meeting, and during Turkey's November 2007 Trade Policy Review by the WTO. In January 2008, Turkey notified the WTO of an SPS measure related to phytosanitary requirements for seed potatoes – the first Turkish notification since 2004. The United States will continue to stress to Turkey the importance of transparency and timely notification of proposed requirements.

U.S. companies have reported that products bearing the EU certificate of conformity (CE mark), particularly medical devices, have been detained by Turkish customs authorities for inspection. In some cases, U.S. products apparently have been subjected to additional tests, despite their CE marks. For importation of distilled spirits, Turkish customs requires that between two and four bottles per consignment be submitted for unspecified analyses, raising the cost of importing.

The draft of a Biosafety Law, currently circulating in the Turkish government, would effectively halt U.S. exports of soy products and corn to Turkey and could affect cotton exports to Turkey as well. In 2006, U.S. exports of soy and corn products to Turkey were valued at \$175 million and 90 million, respectively. U.S. cotton exports to Turkey reached \$500 million in 2006 and exceeded \$715 million for January through November 2007. Also of concern is a recently issued but then withdrawn directive to establish a traceability and labeling (T&L) system for biotechnology imports. This system was to be similar to and,

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in some respects, even more restrictive than the current EU traceability and labeling regime for biotechnology products. The Turkish directive was to go into effect August 1, 2007, but was withdrawn prior to implementation and remains pending.

GOVERNMENT PROCUREMENT

Turkey is not a signatory to the WTO Agreement on Government Procurement; however, it is an observer to the WTO Committee on Government Procurement.

Turkey's public tender law established an independent board to oversee public tenders. Foreign companies can participate in state tenders that are above an established threshold. The law provides a price preference of up to 15 percent for domestic bidders, which is not available if they form a joint venture with foreign bidders. Turkey has expanded the definition of domestic bidder to include foreign-owned corporate entities established under Turkish law. Although Turkey's laws require competitive bidding procedures for tenders, U.S. companies have complained that they can be lengthy and overly complicated.

Military procurement generally includes an offset requirement in the tender specifications. The offset guidelines were recently modified to encourage foreign direct investment and technology transfer.

EXPORT SUBSIDIES

Turkey employs a number of incentives to promote exports, although programs have been scaled back in recent years to comply with EU directives and WTO commitments. Historically, wheat and sugar have been Turkey's main subsidized commodities. Export subsidies, ranging from 10 percent to 20 percent of export values, are granted to 16 agricultural or processed agricultural products. In 2004, the Turkish Grain Board sold domestic wheat at world prices (well below domestic prices) to Turkish flour and pasta manufacturers in quantities based upon their exports of flour and pasta. Certain tax credits also are available to exporters.

INTELLECTUAL PROPERTY RIGHTS (IPR) PROTECTION

Turkey's intellectual property rights regime (IPR) has improved in recent years. However, Turkey remained on the Special 301 "Priority Watch List" in 2007 due to concerns about protection for confidential test data submitted by pharmaceutical companies against unfair commercial use and continued high levels of piracy and counterfeiting of copyright and trademark materials. Turkey has made improvements since the 2007 Special 301 report in its enforcement efforts, including an increased number of raids, arrests, prosecutions, and issuance of deterrent sentences for IPR infringers.

Trademark holders contend that there is widespread and often sophisticated counterfeiting of their marks in Turkey, especially in apparel, film, cosmetics, detergent, and other products.

SERVICES BARRIERS

Telecommunications Services

In November 2005, 55 percent of the government-owned Turk Telecom was sold to a foreign investor. Although Turkey has committed to ending Turk Telecom's exclusive rights on fixed telephony services, its delay in issuing implementing regulations has resulted in a delay in the establishment of alternative

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fixed line suppliers. The Telecommunications Authority (TK) has been actively issuing the regulations needed to promote a competitive market, but it still lacks adequate authority to provide effective enforcement. TK is expected to have greater authority when the draft Electronic Communication Law, pending in the Turkish Parliament, passes. Currently, the Ministry of Transport and Communications (MOTC) has the authority on behalf of the Government to approve or disapprove TK's major regulatory decisions. Once the new law passes, MOTC's influence over such decisions will diminish. The new law will also further liberalize telecom services provided by the private sector. Applicable licensing regulations are published on the TK website.

Cellular mobile and paging services are open to competition.

Other Services Barriers

There are restrictions on establishment in financial services, the petroleum sector, broadcasting, and maritime transportation (see Investment Barriers section). Turkish citizenship is required to practice as an accountant or certified public accountant, or to represent clients in Turkish courts. Legislation awaiting final approval by Parliament would permit foreign doctors to work in Turkey.

INVESTMENT BARRIERS

The United States-Turkey Bilateral Investment Treaty entered into force in May 1990. Almost all areas open to investment by the Turkish private sector are fully open to foreign participation without screening or prior approval, although establishment in the financial and petroleum sectors requires special permission. Foreign equity ownership is limited to 25 percent in broadcasting and 49 percent in maritime transportation. Parliament is considering draft legislation easing restrictions on foreign ownership in the media sector.

Once investors have committed to the Turkish market, they have sometimes found their investments undermined by legislative action, such as the imposition of production limits. Turkish law calls for a liberalized energy market in which private firms are able to develop projects with a license obtained from the Energy Market Regulatory Authority, an independent regulatory body. The state electricity utility has been unbundled into power generation, transmission, distribution, and trading companies, but little progress has been made in privatizing power generation and distribution. The Privatization Agency announced a tender for three electricity distribution regions in late August 2006, but the privatization was postponed in January 2007 until after the November parliamentary elections. The Turkish government is preparing for privatization of electricity generation and distribution facilities, but has not set a date for the tenders yet. Liberalization in the natural gas sector has also faced delays. The state pipeline company, BOTAS, will remain dominant in gas importation, but legislation requires a phased transfer of 80 percent of its gas purchase contracts to the private sector. Natural gas distribution in cities is dominated by the private sector. The only two remaining natural gas distribution licenses, Ankara and Istanbul, are expected to be privatized in 2008. The Ankara Greater Metropolitan Municipality has already announced the privatization process for Ankara's natural gas distribution pipeline network.

As the result of a 1997 court decision, the Turkish government has blocked full repatriation of profits by oil companies under Article 116 of the 1954 Petroleum Law, which protected foreign investors from the impact of lira depreciation. Affected companies have challenged the 1997 decision. The judgments in almost all such lawsuits have been against the claimant companies. A new petroleum law that seeks to provide greater investment incentives and protections still awaits passage in the parliament.

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OTHER BARRIERS

Corruption

Turkey has ratified the OECD antibribery convention and passed implementing legislation that makes bribery of foreign and domestic officials illegal and not tax deductible. Many perceive corruption to be a problem in Turkey, particularly by some government officials and politicians. The judicial system is also perceived to be susceptible to external influence and to be somewhat biased against outsiders.

Energy

In 2001, the Turkish government cancelled 46 contracted power projects based on the Build-Operate-Transfer (BOT) and transfer-of-operating-rights models. Turkey's constitutional court ruled in 2002 that the government would have to either honor the contracts or compensate the companies involved. Most of those companies launched international arbitration cases and won these cases. The GOT is in the process of compensating the companies. In 2002, the government requested BOT projects already in operation, which include U.S.-owned companies and/or creditors, to apply for new licenses from the new Energy Market Regulatory Authority. Negotiations between the Turkish government and the relevant companies concerning the request of the Turkish government to reduce electricity tariffs are continuing while the license application process is still underway. Despite a lack of action on new licenses, the Turkish government has continued to purchase electricity produced under the existing contracts.

The long-delayed investments in electricity generation and the continuing increase in demand with record growth rates are likely to cause serious electricity shortages in 2008. To address this problem, the GOT says it will expedite the privatization of electricity generation and distribution, and pass a Nuclear Power Law, both of which would present opportunities for U.S. companies.

Taxes

Taxation of all cola drinks (raised in 2002 to 47.5 percent under Turkey's "Special Consumption Tax") discourages investment by major U.S. cola producers. Turkey assesses a special consumption tax of 27 percent to 50 percent on all motor vehicles based on engine size, which has a disproportionate effect on U.S. automobiles.

Corporate Governance

A recent OECD report stated that Turkey's overall corporate governance outlook is positive because the authorities have already adopted, or are introducing, high quality corporate governance standards (including audit standards) and because transparency has improved significantly. The report cautions, however, that it is important for Turkey to improve further in the areas of control and disclosure of related party transactions and self-dealing, the protection of minority shareholders, and the role of the board in overseeing not only management but also controlling shareholders.

Pharmaceuticals

Aside from their intellectual property concerns detailed above, the pharmaceutical industry's sales have been affected by government price controls. U.S. research-based pharmaceutical firms are also concerned about achieving transparent and equitable treatment in upcoming reforms of the government's health care and pension system.

FOREIGN TRADE BARRIERS

UKRAINE

TRADE SUMMARY

The U.S. goods trade balance with Ukraine went from a trade deficit of \$884 million in 2006 to a trade surplus of \$121 million in 2007. U.S. goods exports in 2007 were \$1.3 billion, up 77.4 percent from the previous year. Corresponding U.S. imports from Ukraine were \$1.2 billion, down 25.6 percent. Ukraine is currently the 65th largest export market for U.S. goods.

The stock of U.S. foreign direct investment in Ukraine was \$505 million in 2006 (latest data available).

WTO Accession

Ukraine has completed the process of negotiating terms of accession to the World Trade Organization (WTO). On March 6, 2006, the United States and Ukraine signed a WTO bilateral market access Agreement. Later that month, the United States terminated the application of the Jackson-Vanik amendment to the Trade Act of 1974 to Ukraine, providing Ukraine permanent normal trade relations (PNTR) status. Ukraine made significant progress during 2007 in adopting legislation and regulations needed for compliance with WTO requirements. It also completed its bilateral market access negotiations with all other interested WTO Members. Members of Ukraine's WTO accession Working Party, including the United States, completed the multilateral Working Party process for Ukraine's WTO accession in January 2008.¹

IMPORT POLICIES

Ukraine continues to maintain fees and licensing requirements and fees on certain imports. Ukraine imposes several duties and taxes on imported goods: customs/import tariffs, value added tax (VAT), and excise duties. Additionally, imports into Ukraine are subject to customs processing fees, a unified fee on vehicles crossing Ukraine's borders, and port fees.

Customs/Import Tariffs

Ukraine's tariff schedule provides for three rates of import duty: full rates, Most Favored Nation (MFN) rates, and preferential rates. The full rate of import duty can be from 2 times to 10 times higher than the MFN rate. It currently is applied to a very small number of goods from 81 countries. In 2007, the number of goods still subject to the higher rates was sharply reduced. When it becomes a WTO Member, Ukraine would apply the MFN rate to all goods originating from WTO Members, in accordance with Article I of the GATT 1994, so the number of countries whose goods are subject to full duties will decline sharply. Preferential rates are applied to imports from countries with which Ukraine has a Free Trade Agreement (FTA) or other preferential trade agreement. Ukraine has an FTA with a number of CIS countries. Imports from the United States are subject to the MFN rate.

¹ The WTO General Council approved the terms of Ukraine's accession on February 5, 2008. Ukraine will become a Member of the WTO 30 days after it submits its instrument of acceptance of the accession package to the WTO Secretariat, which is expected to occur in mid-2008.

Import duties are calculated in accordance with the law “On the Customs Tariff of Ukraine.” Their levels currently undergo annual changes already provided for in the Customs Tariff Law, and Ukraine will implement additional tariff liberalizations as a result of its negotiations on WTO accession when it joins the WTO. The customs tariff schedule comprises more than 11,000 tariff lines. Most customs tariffs are levied at *ad valorem* rates, but 672 tariff line items (5.97 percent) are subject to specific or combined rates of duty. These specific and combined rates apply to approximately one-third of tariff lines for agricultural goods, primarily those that are also produced in Ukraine. These protected goods include grains, poultry products, sugar, and vegetables such as carrots and potatoes. For agricultural goods, the average applied tariff rate is 13.8 percent (down from 19.7 percent in 2005). The number of tariffs lines subject to combined rates of duty will be sharply reduced when Ukraine implements its WTO accession tariff commitments and the average applied tariff rate will drop to below 12 percent. By contrast, for industrial goods the average applied rate is 4.4 percent (down from 8.3 percent).

High import tariffs on goods such as poultry act as a barrier to U.S. exports. As a result of the March 2006 WTO bilateral Market Access Agreement with the United States, tariffs on poultry and many other goods will be reduced significantly when Ukraine becomes a Member of the WTO.

Excise Duties

Ukraine applies excise duties to a limited set of goods imported into Ukraine, such as alcoholic beverages, nonfilter cigarettes, motor vehicles, and petroleum products. Discriminatory excise duties still hinder U.S. exports of wine and grape spirits and automobiles to Ukraine. The excise duty rate on imported wine and grape spirits is 12 times and 13 times higher, respectively, than on domestically-produced products, and this difference is likely to remain at that level until Ukraine becomes a Member of the WTO and excise rates on imported and domestic goods are unified. Although VAT and excise tax exemptions for locally-produced vehicles were eliminated on March 29, 2005, excise taxes on automobiles remain high, ranging from 0.02 euros/cc for automobiles with smaller engines to 3.50 euros/cc for those with larger engines. The import tariff on fully assembled automobiles was raised from 15 percent to 25 percent during 2005 to compensate local producers for the loss of VAT and excise privileges. This increase has negatively impacted importers of fully assembled automobiles. Application of a lower tariff rate on “semi-knocked down” vehicles further discourages imports of fully assembled automobiles.

Import Licenses

Import licenses are required for some goods. The list of goods covered by the licensing regime and the license terms are decided annually by the Cabinet of Ministers. In 2007, the list included pesticides, alcohol products, optical media production inputs, some industrial chemical products and equipment containing them, official foreign postage stamps, excise marks, officially stamped/headed paper, checks and securities, some goods that contain sensitive encryption technologies, and ozone-depleting substances. While the licenses themselves are granted automatically to applicants, some products require a prior approval, which may or may not be automatic, from the relevant administrative agency before receiving the necessary import license from the Ministry of Economy. In the WTO accession negotiations, the United States has sought assurances from Ukraine that it will not impose restrictive import licensing requirements without adequate WTO justification, (*e.g.*, on imports of mass-market, commercially-traded goods containing encryption that are covered by the Information Technology Agreement). In 2007, beef, pork, and poultry (fresh, chilled, or frozen) and related live animals became subject to import licensing without prior approval. Copper sulphate, optical polycarbonates for production of discs for laser-reading systems, cane and beet sugar, and chemically pure sucrose in solid form became subject to import licensing without prior approval.

For some goods, product certification is a prerequisite for an import license. Importers can request that a foreign facility be certified as in compliance with Ukraine's technical regulations that apply to imports. The U.S. distilled spirits industry reports that this option usually involves a burdensome and costly inspection visit by Ukrainian government officials. If approved, the supplier receives a certificate of conformity valid for 2 years to 3 years and avoids the burden of certifying each shipment and mandatory laboratory testing upon arrival in Ukraine.

STANDARDS, TESTING, LABELING, AND CERTIFICATION

For a number of years, U.S. investors have regarded Ukraine's product certification system and standards regime as a significant obstacle to trade and investment. Recently, Ukraine has passed several new laws and governmental decrees aimed at bringing Ukrainian practices in this area into line with the WTO Agreement on Technical Barriers to Trade. As of October 2007, more than 4,000 of Ukraine's standards were harmonized with international standards, and approximately 8,000 remained to be harmonized.

Standardization and Certification

Mandatory certification is required in Ukraine for many products. The State Committee for Technical Regulation and Consumer Policy (DerzhSpozhyvStandard) is the standardization and certification body in Ukraine. DerzhSpozhyvStandard has a network of 114 accredited product certifying bodies, including 60 accredited certifying bodies for quality management systems, as well as about 780 testing laboratories throughout Ukraine, 170 of which are accredited by the National Accreditation Agency as complying with international standards. Appropriate resources, such as modern analytical equipment and reactants, are not available in most laboratories. DerzhSpozhyvStandard's system includes 27 territorial departments for consumer protection and 28 state centers for standardization, systematizing weights and measures, and certification. Depending on the type of product, testing, and applicable certification scheme, the certification process can take from 3 days to 1 month.

Ukraine has both private certification bodies, which operate on a profit-making basis and are more common in the area of technical regulations compliance, and certification bodies affiliated with state agencies, which are more common in ensuring compliance with sanitary and phytosanitary measures. Some certification agencies do much of their work with little or no coordination with other Ukrainian bodies performing similar tests. Many products require multiple certificates from different agencies, with local, regional, and municipal authorities often requesting additional documentation beyond that required by central bodies. According to industry sources, numerous burdensome certification and licensing procedures for equipment impede access to the Ukrainian market. Experts allege that government officials responsible for issuing licenses often require businesses to provide documents that are not mandatory deliberately conceal information in order to confuse a potential licensee, or delay issuing documents in order to induce licensees to offer a bribe.

These issues are being addressed during Ukraine's WTO accession negotiations, and, as recently as September 13, 2007, Ukraine has reduced the number of products subject to mandatory certification. When it becomes a WTO Member, Ukraine will be obliged to apply such mandatory requirements only in conformity with WTO provisions on technical regulations, including ensuring that such measures are not more trade restrictive than necessary to fulfill a legitimate objective, and reliance on available scientific and technical information. A May amendment to the law "On Standards, Technical Regulations, and Conformity Assessment Procedures" helped to guarantee precedence of international over regional

standards and introduced provisions related to conformity assessment recognition, although further amendments may be needed to ensure that Ukraine's authorities will accept the results of conformity assessment procedures performed in the United States. Ukraine's National Accreditation Agency is taking steps to become a member of the International Laboratory Accreditation Cooperation (ILAC), anticipated in 2009. Once an ILAC member, Ukraine should significantly increase the acceptance of test results of laboratories accredited with, and notified by, ILAC member bodies.

Sanitary and Phytosanitary (SPS) Measures

Ukraine applies a range of SPS measures that restrict imports of a number of U.S. agricultural products, among them, pork, beef, and poultry. Industry has repeatedly complained that Ukraine's certification and approval process is lengthy, duplicative, and expensive. Over the past several years, Ukraine has passed amendments to several laws and regulations, most importantly to the law "On Veterinary Medicine" and the law "Quality and Safety of Food Products and Food Raw Materials," to bring its legislative and regulatory framework into compliance with requirements of the WTO SPS Agreement. The following potentially trade distorting issues are subjects of discussion between the United States and Ukraine as part of the negotiations on Ukraine's accession to the WTO:

Overlapping State Authorities: Ukraine has maintained a complex and nontransparent oversight system for human and animal health measures that involves overlapping authority by the Veterinary Service, Sanitary Service, and DerzhSpozhyv Standard. Amendments to the law on "On Standards, Technical Regulations, and Conformity Assessment Procedures," passed in May, made some progress but failed to solve entirely the problem of overlapping authority. Additional legislative or regulatory amendments are needed. Further legislation has been enacted in 2007 that strengthens the legal separation of authority over testing for SPS and Technical Barriers to Trade (TBT) issues.

Beef, Beef Products, and Pork: A bilateral agreement with Ukraine negotiated at the same time as the March 2006 WTO bilateral Market Access Agreement, addresses the terms of U.S. exports of beef, beef products, and pork to Ukraine. As agreed, Ukraine has allowed the entry of certified U.S. beef and pork that meets veterinary certificate requirements. The United States continues to monitor ongoing trade.

In the past, Ukraine blocked the importation of beef and beef products due to concerns over the use of growth promoting hormones as well as Bovine Spongiform Encephalopathy (BSE). The United States is working with Ukraine to ensure that any requirements imposed by Ukraine are consistent with World Organization for Animal Health guidelines. Ukraine's law "On Veterinary Medicine" was amended in November 2006 in order to address this issue, and in 2007 additional regulatory amendments were enacted to address concerns over maximum residue levels, animal identification requirements, and the definition of contaminants.

U.S. pork exports to Ukraine have been hampered by regulations concerning trichinae. The United States is working with Ukraine to align Ukrainian standards for trichinae with international norms.

Biotechnology: Ukraine has not established an approval process for agricultural biotechnology products. The absence of an approval process has resulted in unpredictable sales conditions for corn products, soybeans, and meal. The United States is working with Ukraine to establish procedures governing biotechnology that are supported by science-based risk assessment principles and guidelines, including those of the WTO SPS and TBT Agreements, the Codex Alimentarius, and the International Plant Protection Convention (IPPC). In May, Parliament passed a new law establishing a framework for the

creation, testing, and use of products of biotechnology. Implementing regulations for the law are under development and scheduled to take effect prior to Ukraine's WTO accession.

Fish Shelf life: In Ukraine's WTO accession talks, Ukraine committed to make changes to its technical regulation on shelf life for fish such as salmon, sardines, and roe to bring it into conformity with the CODEX Alimentarius guidelines on the labeling of prepackaged food products.

GOVERNMENT PROCUREMENT

Ukraine is not yet a signatory to the WTO Agreement on Government Procurement (GPA), but committed to become an observer to the GPA when it becomes a WTO Member, and to initiate negotiations for membership within 2 years after that. Ukraine's total government procurement stood at \$4.11 billion for April through December of 2006.

All government procurement of goods and services valued at more than \$10,000 and public works valued at more than \$80,000 must be procured through competitive tenders. Open international tenders must be used when procurement is financed by any entity outside of Ukraine. The Tender Chamber of Ukraine publishes information on government procurement in the "State Procurement Bulletin."

Ukraine's recent amendments of the law "On Procurement of Goods, Works, and Services Using State Funds" have moved it away from international norms. A recent study on Ukraine by the Atlantic Council of the United States concluded that "government procurement is one of the most corrupt spheres of state activity." Amendments to the procurement law in March 2006 transferred the authority to coordinate government procurement from the Ministry of Economy to the Antimonopoly Committee of Ukraine, a body with no particular expertise in regulating public procurement. The amendments also dispersed policy and oversight functions across several bodies, including the Antimonopoly Committee, the Accounting Chamber of Ukraine (reporting to Parliament), the State Control and Audit Unit (under the Ministry of Finance), and the Tender Chamber of Ukraine. The amendments have been criticized for creating an overlap in authority of various regulatory agencies and decreasing the transparency of the system.

The 2006 amendments granted the Tender Chamber of Ukraine, purportedly a nongovernmental organization, the authority to monitor the procurement process, and to undertake key operational functions that are inherently governmental. The Tender Chamber has exclusive authority to maintain a catalog of bidders, consider claims of tender participants, and select suppliers to be awarded contracts. It also requires a UAH 7000 (\$1,400) fee for bidders to be registered in the catalogue, in contravention of the international practice of free listing for all interested parties. The Tender Chamber has faced widespread criticism as contributing to the procurement system's corruption and lack of transparency.

Only the European Consulting Agency, a Ukrainian private enterprise with links to the Tender Chamber has been allowed to operate a website announcing tenders. Several observers have charged that this relationship fosters corruption and decreases transparency. In addition, the 2006 amendments introduced burdensome and lengthy procurement procedures, and required all tender proposals to be secured by collateral, limiting the number of tender participants and increasing the cost of participation. For some procurement, the Tender Chamber assesses fees of 4 percent of the value of the procurement, which is extremely high by international norms.

Under the December 2006 amendments to the law, procurement rules do not apply to some tenders of special public sectors, such as defense, postal and telecommunications services, and railways.

FOREIGN TRADE BARRIERS

The procurement law does not restrict foreign enterprises from participating in government procurement, but in practice foreign companies claim that they are rarely able to compete on an equal footing with domestic companies. Foreign companies generally win only a tiny fraction of the total tenders (0.01 percent during the first nine months of 2006). Among the problems faced by foreign firms are: (1) the lack of public notice of tender rules and requirements; (2) covert preferences in tender awards; (3) the imposition of conditions that were not part of the original tender requirements; and (4) ineffective grievance and dispute resolution mechanisms, which often allow a losing bidder to block the tender after the contract has been awarded. March 2007 amendments to the law eliminated preferences that favor domestic bidders in tenders below certain values. However, some regulations still exclude foreign bidders; for example, some firms report that there is a practice in health sector procurement of only accepting bids from Ukrainian resellers or Ukrainian producers of pharmaceuticals.

EXPORT BARRIERS

Exports of some categories of products are subject to registration by the Ministry of Economy. Products that must be registered prior to export from Ukraine include: precious metals and stones, rolled metal products exported to the United States, textile products exported to the United States, scrap metal, printer's ink, and paper with watermarks. The government has eliminated most export duties, with the prominent exceptions of natural gas, livestock, raw hides, some oil seeds, and scrap metal. In the context of its WTO accession negotiations, Ukraine has negotiated reductions in a number of these duties and the elimination of others.

Export Restrictions on Grains

Ukraine is the sixth largest wheat exporter in the world. The United States continues to express its concern about the export restrictions that Ukraine imposed on food and feed grain exports beginning in September 2006. Ukraine readjusted the export restrictions in July, imposing highly-restrictive quotas that served as a near export ban on each grain type covered (wheat, barley, corn, and rye). Ukraine plans to introduce somewhat more liberal quotas in January, 2008, allowing more grain to be exported until April 2008. The measure will allow traders to clear some stocks, but the level is approximately one-third of what could be exported. To date, Ukraine has not adequately justified the measures taken, *i.e.*, it has not convincingly explained how it faces a "critical shortage," as required in order to maintain such a ban under Article XX of the GATT 1994. Several studies point to the contrary. The World Bank's November 2006 report titled "The Quotas on Grain Exports in Ukraine: ineffective, inefficient, and nontransparent" states that the introduction of the quota was not justified, as domestic grain supply was amply adequate to cover all domestic needs. Data from the Food and Agriculture Organization of the United Nations and industry confirm this finding. Further questions are raised by the scope of the measures: the quotas and licenses are also being applied to corn and barley, which are not being used for the production of bread in Ukraine, and to corn, barley, and wheat used as feedstock. More recently, Ukraine has sometimes argued that export restrictions are needed to combat rising food prices. Ukraine has threatened to extend the export restrictions to sunflower oil in order to combat rising domestic prices of this product.

Industry reports that the initial mismanagement of the issuance of licenses compounded the problem, leaving a large volume of grain in storage in Ukraine's ports, where in some cases it deteriorated past the point where it could be used for human consumption, or even animal feedstock. The World Bank estimated that during the 2006/2007 marketing year the costs to grain traders of demurrage and losses from rotting or otherwise compromised grain that was not able to leave Ukraine's ports exceeded \$300 million. The Ukrainian economy is sustaining some of these losses, including lost export opportunities.

FOREIGN TRADE BARRIERS

These measures have tarnished Ukraine's investment climate and damaged its reputation as a reliable grain exporter and a country that upholds contracts. Ukraine has committed to remove its current quotas prior to becoming a WTO Member, and to apply any future restrictions in conformity with WTO provisions.

Live cattle, sheep, hides, and skins

Export duties have been in place on live cattle, sheep, hides, and skins since 1996. For live calves the duty is 75 percent of the customs value (but no less than 1500 euros/ton of live weight); for live cows it is 55 percent (but no less than 540 euros/ton of live weight); and for live sheep it is 50 percent (but no less than 390 euros/ton of live weight). For raw hides of cattle the duty is 30 percent (but no less than 400 euros/ton of live weight); for sheep hides it is 30 percent (but no less than 1 euro/hide); and for pigskins the duty is 27 percent (but no less than 170 euros/ton of live weight). In November 2006, Parliament enacted amendments to the law that will lower these export duties gradually upon WTO accession. Export duties on live calves, cows, and sheep will fall to 10 percent, 8 years after accession. Export duties on raw hides will fall to 20 percent, 10 years after Ukraine becomes a WTO Member.

Scrap Metal

Since January 2003, Ukraine has imposed an export duty of 30 euros/metric ton on ferrous steel scrap and has had, in effect, a ban on exports of nonferrous metals. The ferrous scrap export duty contributed to a decline in scrap exports from Ukraine, when global demand and prices for steel scrap were rising. Ukrainian metallurgical producers benefited from scrap inputs at prices lower than world levels. As part of its March 2006 bilateral WTO Market Access Agreement with the United States, Ukraine agreed to significantly lower these export duties. Laws passed in the fall of 2006, and amended in May, provide for staged duty reductions to 10 euros/metric ton over a period of 6 years for ferrous metals and reductions to 15 percent *ad valorem* over a period of 5 years for nonferrous metals.

Sunflower Seeds

Sunflower seeds have been subject to an export duty since June 2001, to the benefit of local sunflower oil producers. In July 2005, the export duty on sunflower seeds was lowered to 16 percent of its customs value with further 1 percent annual reductions to be made upon WTO accession, reaching a final duty of 10 percent, 6 years after accession.

INTELLECTUAL PROPERTY RIGHTS (IPR) PROTECTION

Recent years have seen steady improvement in Ukraine's protection of intellectual property rights, but problems remain. On January 23, 2006, the United States reinstated GSP benefits for Ukraine and lowered Ukraine's designation under Special 301 from Priority Foreign Country to Priority Watch List. Also in January 2006, Ukraine agreed to work with the U.S. Government and with U.S. and domestic industry to monitor the progress of future enforcement efforts through the IPR Enforcement Cooperation Group. This bilateral group has conducted a series of successful dialogues, meeting roughly once every 4 months, throughout 2007. Ukraine has also agreed to meet biannually with European Commission officials as part of an EU-Ukraine IP Dialogue.

Optical Media

Despite the significant reduction of illegal production of optical discs, the retail sale of copyrighted goods in large markets – especially Kyiv’s well-known Petrivka market and similar markets in other large cities – is still widespread. The transit of pirated goods also remains a serious problem.

Internet Piracy

Internet piracy is a growing problem in Ukraine. Industry states that many Ukraine-based websites offer pirated material for download with the full knowledge of their Internet Service Providers (ISPs). The United States continues to work with the Ukrainian government to monitor and combat the spread of illegal download websites, and, at one meeting of the IPR Enforcement Cooperation Group, GOU officials agreed to begin monitoring suspected pirate sites jointly with industry.

Royalty Collecting Societies

Rights holders have complained repeatedly that some royalty collecting societies collect fees for public use of copyrighted material without authorization and do not properly return royalty payments to rights holders. An initial draft amendment to the Copyright Law failed to address industry concerns, and the draft is now being reworked.

Additional IPR Efforts

Ukraine has made some important revisions to its IPR laws as part of the WTO accession process. Parliament passed amendments to its Customs Code in November 2006 that provide customs officials the ability to use *ex officio* authority to seize suspected pirated or counterfeit goods. Parliament also passed a law amending the Civil and Criminal Codes of Ukraine in order to provide for the seizure and destruction of IPR-infringing goods and equipment, in line with Article 46 of WTO Agreement on Trade Related Aspects of Intellectual Property Rights (TRIPS).

As a result of commitments agreed to as part of its March 2006 WTO bilateral Market Access Agreement with the United States, Ukraine amended its law “On Medicinal Drugs” in November 2006 to provide a 5 year period for the protection of pharmaceutical test data that is submitted to government authorities to obtain marketing approval. The Ministry of Health issued a regulatory act to ensure implementation of this law and to clarify some procedures. Pharmaceutical industry representatives complain that implementation of the law remains a problem, however. Parliament also passed an amendment to the law “On Pesticides and Agrochemicals” in November 2006 that provides a 10 year period of protection for agricultural chemicals. In September, the Cabinet of Ministers issued a regulation to abolish discriminatory fees on the testing and registration of plant varieties.

Parliament also passed an amendment to the law “On Protection of Rights for Indications of Origin of Goods” in November 2006, but Ukraine recognizes that further amendments are necessary in light of TRIPS provisions.

Patent and Trademark

Trademarked and copyrighted goods must be registered for a fee in the Customs Service’s rights holder database in order to be guaranteed protection. Industry has reported instances of production of counterfeit

cigarettes within Ukraine as well as growth in the amount of counterfeit pesticides and apparel on the market.

The Ukrainian Ministry of Health does not routinely check the validity of patents when it grants marketing approval in Ukraine.

In 2006, Ukraine adopted the Singapore Treaty on the Law of Trademarks aiming at establishing a uniform mechanism for administrative trademark registration.

Judicial System

Civil IPR lawsuits remain rare because of a general lack of confidence in Ukraine's legal system, and because there are few judges properly trained in IPR law. However, a recording company won a landmark civil court case against the Ukrainian music download site www.mp3.ua. The court ruling imposed substantive penalties on the owners of [mp3.ua](http://www.mp3.ua) and was subsequently upheld on appeal. February 2006 amendments to the Criminal Code drastically lowered the required threshold (from roughly \$5,200 to \$700) needed to pursue criminal prosecution and increased penalties up to 7 years imprisonment for major offenders. The amendments have helped bolster criminal enforcement in the courts. The U.S. Government has worked closely with the Government of Ukraine to provide specialized IPR training.

SERVICES BARRIERS

Restrictions on services exist in areas such as insurance, banking activities, auditing, legal services, television and radio broadcasting, and information agencies. During bilateral negotiations on services market access with a number of countries in the context of Ukraine's negotiations to join the WTO, Ukraine agreed to open access for foreign service suppliers in a number of areas, including energy services, banking and insurance branches, professional services, express delivery, and telecommunications. When these commitments are fully implemented, Ukraine will have one of the most liberal services markets in the region.

In 2005, Parliament adopted legislation that will, within 5 years after Ukraine becomes a WTO Member, permit foreign insurance companies to open subsidiaries in Ukraine. In the fall of 2006, it adopted amendments to the law on "Banks and Banking" that would permit foreign banks to open subsidiaries and branches, a law "On Advocacy" that eliminates the nationality requirements for legal services, and amendments to the law "On Publishing" that will cancel limitations on foreign investment in publication services over a 5 year transition period. In May 2007, Parliament amended the law "On Insurance" to allow for unrestricted reinsurance of risks related to waterway transportation, commercial aviation, and space launch (including satellites) from the date of WTO accession.

Foreign professionals are permitted to work in Ukraine, but a lack of transparency hinders foreign access to the Ukrainian services market. A local content requirement exists for radio and television broadcasting, although it has not been stringently enforced in most cases. All foreign films are required to be dubbed or subtitled in Ukrainian.

In 2006, U.S. industry identified efforts to limit the ability of foreign credit and debit card service providers to provide their services to clients of national electronic payments systems as a significant barrier to trade. When Ukraine becomes a WTO Member, it must take on services commitments in the context of WTO negotiations to maintain an open and competitive banking system, including with respect to credit and debit cards, with full market access to electronic payments services. At present, Ukraine

FOREIGN TRADE BARRIERS

applies no formal restrictions. The United States continues to monitor Ukraine's actions in this important area.

INVESTMENT BARRIERS

The government is working to streamline regulations and eliminate duplicative and confusing laws regarding investment and business. In 2005, Ukraine created several agencies in order to attract investment to Ukraine, including the State Center for Foreign Investment Promotion (known as InvestUkraine) and the State Agency for Investment and Innovation. In 2007, the Cabinet of Ministers of Ukraine created the Council of Investors, a government advisory body, and the Committee for Modernization of the Investment Environment and Development of Capital Markets Infrastructure, to be chaired by the Minister of Finance.

The United States has a bilateral investment treaty (BIT) with Ukraine, which took effect in 1996. The BIT guarantees U.S. investors the better of national and MFN treatment, the right to make financial transfers freely and without delay, international legal standards for expropriation and compensation, and access to international arbitration. Despite the BIT, there are a number of longstanding investment disputes faced by several U.S. companies. These disputes mainly date from the early 1990s and the initial opening of the Ukrainian economy to foreign investors. In most cases, however, there has been little progress toward resolution of these cases under subsequent Ukrainian governments despite intensive advocacy by the United States.

Taxation

Companies report that Ukraine's taxation system is a major obstacle for U.S. investors doing business in Ukraine, and a World Bank study recently ranked Ukraine 177th out of the 185 countries surveyed in terms of the ease of paying taxes. Ukraine currently maintains a corporate profit tax (25 percent), a personal income tax (flat rate of 15 percent), a Value Added Tax (20 percent), and a payroll tax (variable, between 36.66 percent and 49.6 percent) that funds pension and social insurance programs. Many analysts single out the payroll tax as being exceptionally high and the main reason why shadow wage payments remain common in Ukraine.

Arrears in the payment of VAT refunds to exporters have also been a serious problem. Ukraine decreased the pace of VAT refunds beginning in August 2006, reimbursing only 76 percent of verified claims, down from 87 percent refunded in 2005. VAT refund problems continued in 2007, leading to calls for an overhaul of the VAT reimbursement mechanism. Industry claims that delays in reimbursements create opportunities for tax officials to demand kickbacks in return for quicker processing of rebates, and several companies reported being approached by "middlemen" who claimed that, for a fee, they could speed up the reimbursement process. Currently, the process for obtaining a refund of VAT payments can take from 3 to 18 months for foreign companies. Increasingly, the delays in reimbursement are becoming an important cost factor for many foreign companies and are seriously affecting the profitability of planned investments. Foreign companies have the right to use promissory notes for the payment of VAT on inputs to goods destined for export.

Foreign investors complain that the tax regime for nonresidents' representative offices is discriminatory. Funds transferred from a company's foreign home office to its representative office in Ukraine as part of the latter's operational expenses are taxed, while funds transferred from one office to another within Ukraine are not.

FOREIGN TRADE BARRIERS

Special Economic Zones (SEZs)

Ukraine has in the past maintained two forms of special economic zones (SEZs): Free Economic Zones (FEZs) and Priority Development Territories (PDTs). In April 2005, Ukraine canceled all tax exemptions (*i.e.*, from land tax, corporate income tax, import duty, and VAT on imports) to investors in all SEZs to stop large-scale misuse of these zones for tax evasion and smuggling. While the step reduced corruption and expanded the tax base, the abrupt cancellation of privileges and lack of compensatory provisions caused losses to some legitimate investors. In November 2005, the Parliament adopted legislation to create technology parks, providing for some government financial support, targeted subsidies, and tax privileges for a list of 16 technoparks based on existing scientific and research institutes. At the end of 2006, the Ukrainian government announced its intention to renew tax privileges granted to businesses operating in some SEZs and to introduce a compensation mechanism for investors, but a draft law on the subject never went forward.

Privatization

The State Property Fund oversees the privatization process in Ukraine. Privatization rules generally apply to both foreign and domestic investors, and, in theory, a relatively level playing field exists. Observers claim, however, that a common abuse of privatization laws is the adjustment of the terms of a privatization contest to fit the characteristics of a certain, pre-selected bidder. Few major, new privatizations have been conducted since the privatization rush of 2004. As of September 2007, revenues from privatization were only 15.4 percent (\$320 million) of the fiscal year's target. In 2005, Ukraine revoked the privatization of the Krivoriizhstal steel factory, which had been sold to a group of domestic investors for \$800 million, and subsequently sold it in a fair and transparent tender to Mittal Steel for \$4.8 billion, in what is generally viewed as Ukraine's most transparent major privatization to date. Since then, Ukraine has taken no further steps to reverse previous privatizations.

The few privatizations that took place in 2007 were often marked by controversy. In March, the State Property Fund sold a majority share in Luganskteplovoz (a Ukrainian locomotive manufacturer) to Russian-owned CJSC Bryansk Machine Building Plant. Only two related bidders were able to meet the tender requirements as set by the State Property Fund, and the Fund may also have violated rules governing the announcement of the tender, making it impossible for potential investors to learn of the tender in time to submit bids. The President of Ukraine has appealed the decision in court, claiming noncompetitiveness and lack of transparency in the sale.

In August 2007, the state sold a 28 percent stake in Dniproenergo, a regional electricity distributor, to the Donbas Fuel and Energy Company (DTEK), owned by a Member of Parliament in the ruling coalition. The sale was conducted as a controversial debt-for-shares swap, whereby DTEK acquired the shares in exchange for covering a debt owed by Dniproenergo to coal suppliers. Some experts claimed that DTEK acquired the shares in Dniproenergo for only 30 percent to 40 percent of the market value.

In August, Ukraine announced its intention to move forward with the long-awaited privatization of the Odesa Portside Plant, one of Ukraine's largest chemical producers. The State Property Fund canceled the tender in October, however, after the President complained that the tender plan failed to include environmental safety provisions and could allow the formation of a monopoly in the sector.

Ukraine's Parliament amended the Land Code of Ukraine in October 2006, extending a moratorium on the sale of farmland until January 1, 2008. This provision blocks private investors from purchasing some of the 33 million hectares of arable land in Ukraine and constitutes a serious obstacle to the development

of the agricultural sector. As of October 2007, Ukraine had failed to adopt new legislation necessary to open the land market. As a result, the ban on the sale of agricultural land may be prolonged again.

Corporate Hijacking

Ukraine is currently experiencing an escalation in corporate hijacking activity. Some researchers claim that as many as 2,500 Ukrainian enterprises have suffered hijacking attempts in the last several years. These hijackers frequently purchase a small stake in a company, and then take advantage of deficient legislation, corrupt courts, and a weak regulatory system to gain control of companies to the detriment of rightful shareholders. This development harms investors, including U.S. companies and shareholders, and has damaged the image of Ukraine among foreign investors. The Ukrainian government has recognized the seriousness of this problem and has taken some limited steps to address it, convening a special state commission in January. In May, Parliament passed in the first reading a draft law "On Joint Stock Companies," considered critical to stopping corporate hijacking, but a protracted political crisis prevented the law from moving forward.

ELECTRONIC COMMERCE

Electronic commerce is underdeveloped in Ukraine, particularly in the areas outside of Kyiv. Experts estimate that active Internet users number about 12.1 percent of the total population. There is a higher level of usage in Kyiv, which accounts for 61.4 percent of all Internet users, and where Internet commerce, while small in total volume, is experiencing strong annual growth. The National Council on Communications is entrusted with monitoring the telecommunications market. The Internet in Ukraine remains mostly unregulated.

OTHER BARRIERS

Inspections

Industry asserts that the frequency of inspections by regulatory agencies is one of the major hindrances to business development in Ukraine. The annual number of inspections conducted throughout the country exceeds 1.5 million. According to a recent study, 57 percent of the private businesses in Ukraine consider inspections to be unclear, complicated, and nontransparent. Ukraine's system of inspections does not fulfill its main purpose of preventing legal abuses, but is primarily punitive in nature. Parliament adopted a new law in June 2007 "On the Fundamentals of State Monitoring (Control) over Economic Activity," which provides for additional inspections and investigations of economic activities, and may worsen the situation. There is also a proposal in the new draft Tax Code to expand the authority of the State Tax Administration so that it could conduct on-site, unplanned inspections of companies and would no longer need a court order to obtain financial, economic, and accounting reports of audited companies. This proposed change to the Tax Code has not yet been adopted, however.

FOREIGN TRADE BARRIERS

UNITED ARAB EMIRATES

TRADE SUMMARY

The U.S. goods trade surplus with United Arab Emirates was \$10.3 billion in 2007, the same as in 2006. U.S. goods exports in 2007 were \$11.6 billion, down 0.3 percent from the previous year. Corresponding U.S. imports from United Arab Emirates were \$1.3 billion, down 3.3 percent. United Arab Emirates is currently the 21st largest export market for U.S. goods.

The stock of U.S. foreign direct investment (FDI) in United Arab Emirates was \$4.5 billion in 2006 (latest data available), up from \$3.3 billion in 2005. U.S. FDI in United Arab Emirates is concentrated largely in the mining, finance, and wholesale trade sectors.

Free Trade Agreement Negotiations

After consultation with Congress, the United States began Free Trade Agreement (FTA) negotiations with the United Arab Emirates (UAE) in March 2005. In early 2007, the United States and the UAE announced that, despite considerable progress in a number of areas under negotiation, they would not be able to complete FTA negotiations under the existing time frame for Trade Promotion Authority. The United States and the UAE have since initiated a "TIFA Plus" consultative process under the existing bilateral Trade and Investment Framework Agreement (TIFA); this process will be used to advance trade liberalization in as many areas as possible – building where appropriate on progress made during the FTA negotiations.

IMPORT POLICIES

The UAE is a federation of seven emirates (Abu Dhabi, Dubai, Sharjah, Ajman, Umm Al-Qaiwain, Fujairah, and Ras Al-Khaimah). The individual emirates founded the UAE in December 1971. Over the last 33 years, the UAE has developed into the second largest economy in the Arab world, with an estimated 2006 Gross Domestic Product (GDP) of about \$163.14 billion (at current prices); nominal GDP is projected at \$184.9 billion in 2007. The UAE Real GDP is expected to grow by 7.7 percent in 2007, according to the IMF's Article IV report.

Despite possessing around 9 percent of the world's proven oil reserves and the fifth largest proven gas reserves in the world, rapid growth in the nonoil economy reduced oil's share of GDP from 60 percent in 1980 to 35.8 percent in nominal terms in 2007. The UAE has pursued free market, trade liberalizing policies to diversify its economy away from a dependence on oil.

Tariffs

The UAE is part of the Gulf Cooperation Council (GCC), an economic and political policy-coordinating forum for the six member states (Bahrain, Kuwait, Oman, Qatar, Saudi Arabia, and the UAE). At a December 2001 Summit, GCC Heads of State adopted an across-the-board common external tariff of 5 percent for most products. The new tariff regime was implemented in January 2003 as part of the GCC Customs Union Agreement. The GCC member states also agreed to develop a list of products to which a higher tariff would apply. Currently, the UAE's exceptions to the 5 percent tariff are a 50 percent tariff on alcohol, a 100 percent tariff on tobacco, and duty exemptions for 53 food and agricultural items.

FOREIGN TRADE BARRIERS

Import Licensing

Only firms with an appropriate trade license can engage in importation, and only UAE registered companies, which must have at least 51 percent ownership by a UAE national, can obtain such a license. This licensing provision is not applicable to goods imported into free zones. In addition, not all goods require an import license.

Agriculture

In February 2007, the UAE Ministerial Council issued a decree levying fees on foreign slaughter plants and *Halal* certifiers. The decree required that plants must be accredited and pay an initial fee of \$2,723 followed by an annual renewal fee of the same amount (later reduced to \$1,362 in June of 2007). *Halal* certifiers that approve the slaughter plants must also pay a fee of \$1,362 with an annual renewal fee of \$817. Domestic slaughterhouses apparently are not being charged the fees. There is a lack of transparency on how the accreditation program is administered and how it is enforced by customs and municipality officials. Thus far, no exporters from any of the UAE's trading partners (including the United States) have paid the fees. However, the GCC may be considering adopting the fees on a GCC-wide basis and the issue may re-emerge in the future to adversely impact activities of exporters and importers.

Documentation Requirements

Since July 1998, the UAE has required that documentation for all imported products be authenticated by the UAE Embassy in the exporting country. There is an established fee schedule for this authentication. For U.S. exports, if validation is not obtained in the United States, customs authorities will apply the fee schedule when the goods arrive in the UAE.

Customs Valuation

The UAE notified the World Trade Organization's (WTO) Customs Valuation Committee in October 2004 of its customs valuation scheme.

STANDARDS, TESTING, LABELING, AND CERTIFICATION

Standards

As part of the GCC Customs Union, the six member states are working toward unifying their standards and conformity assessment systems. However, each member state currently continues to apply either its own standard or a GCC standard, causing confusion among some U.S. businesses. GCC member states do not consistently notify measures to WTO Members or the WTO Committees on Sanitary and Phytosanitary Measures (SPS) and Technical Barriers to Trade (TBT) or allow WTO Members an opportunity to provide comments.

The GCC Standards Committee has recently approved two new standards that will replace existing standards for the labeling and expiration periods of food products. While the new standards appear to attempt to incorporate international guidelines and address some longstanding issues, particularly in relation to expiration periods, some requirements that have previously complicated the import process remain. All member states are expected to adopt these two standards as national standards in order to implement them.

The GCC shelf life standard establishes mandatory expiration periods for 22 perishable products or product categories such as chilled meats, chilled offal, fresh dairy products, baby foods, fruit juices, and table eggs. This standard also establishes voluntary expiration periods for a range of frozen and processed products. Manufacturers have the option of using the actual expiry period in lieu of the voluntary expiration periods established in the standard. The standard also exempts a number of products from expiration periods including salt, white sugar, dried legumes, dried vegetables, spices and certain condiments, tea, rice, vinegar, and fresh fruits and vegetables, including potatoes that have not been peeled or cut.

The new standards eliminate the long standing requirement that at least one-half of a product's shelf life be valid when a product reaches the port of entry. However, they would still require both a production date and an expiration date on nonperishable food items, forcing U.S. producers to re-label products exported to the GCC, thereby leading to increased costs. The new standards appear inconsistent with international standards (*e.g.*, the standards do not appear to reflect Codex guidelines) and do not appear to have a clear scientific basis. The United States has outlined its specific concerns with these standards and has established a dialogue between U.S. and GCC technical experts to discuss a possible resolution of the concerns raised.

In May and October 2007, respectively, Bahrain and Oman notified WTO Members of recently proposed procedures meant to harmonize food safety import requirements for all GCC member states. The United States and other WTO Members provided comments outlining significant concerns with the procedures, which, as currently drafted, create unnecessary obstacles to trade and would substantially disrupt food exports to GCC member states from its trading partners. The GCC member states are reportedly developing a response to these comments, and the United States has established a dialogue between U.S. and GCC technical experts to discuss the procedures and potential amendments to address the concerns raised.

In October 2002, the UAE created the Emirates Authority for Standardization and Metrology (ESMA), established under the auspices of the Ministry of Finance and Industry, to manage issues of standardization arising from the GCC. Control of the UAE's food standards resides in the General Secretariat of Municipalities (GSM) and ESMA. These two entities develop food standards through a technical advisory committee, although, on occasion, individual municipalities or Emirate-level authorities still apply food standards independently of broader national authorities. Most recently, an Emirate briefly required labeling foods with biotechnology enhanced ingredients; the GSM quickly reversed the action. GSM control over the actions of individual municipalities appears to be improving.

As of early 2006, ESMA had adopted 1,810 standards. Ninety-five percent are based on GCC standards and 5 percent are based on UAE-developed standards. On October 20, 2007, ESMA announced that it had approved 500 new standards for products sold in the UAE, covering foodstuff, chemical and petroleum products, textiles, electrical and mechanical products, and construction. In the absence of national standards, suppliers may follow international standards.

Conformity Assessment

In 2004, ESMA launched its own conformity assessment program, the Emirates Conformity Assessment Scheme (ECAS), which applies to toys, detergents, paints, lubricants, oils, automobile batteries, food, chemical and petroleum products, textiles, electrical and mechanical products, and construction. ECAS assesses whether domestically manufactured products meet national or GCC standards, or international

standards if neither national nor GCC standards exist. The UAE asserts that the ECAS is a voluntary program and is only applicable to domestically produced goods, but the scope and parameters of ECAS lack clarity and transparency.

In September 2007, ESMA announced that it had been accepted as the UAE representative to the Worldwide System for Conformity Testing and Certification of Electro-technical Equipment and Components (IECEE)'s Member Body.

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

GOVERNMENT PROCUREMENT

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

The UAE grants a 10 percent price preference for local firms in government procurement. The UAE requires companies to register with the government before they can participate in government procurements, but to be eligible for registration a company must have at least 51 percent UAE ownership. This requirement does not apply to major projects or defense contracts where there is no local company able to provide the goods or services required.

The UAE's offset program, which was established in 1990, requires defense contractors that are awarded contracts valued at more than \$10 million to establish commercially viable joint ventures with local business partners that yield profits equivalent to 60 percent of the contract value within a specified period (usually 7 years). To date, more than 40 such joint venture projects have been launched, including, *inter alia*, a hospital, an imaging and geological information facility, a leasing company, a cooling system manufacturing company, an aquiculture enterprise, a foreign language training center in Abu Dhabi, and a firefighting equipment production facility. Two of the largest offset ventures are an international gas pipeline project (Dolphin) and the Oasis International Leasing Company, a British Aerospace offsets venture. There are also reports, as well as anecdotal evidence, indicating that defense contractors can sometimes satisfy their offset obligations through an up-front, lump-sum payment directly to the UAE Offsets Group.

INTELLECTUAL PROPERTY RIGHTS (IPR) PROTECTION

The UAE has made the protection of intellectual property a priority in recent years. The UAE repealed previous copyright, trademark, and patent laws and issued improved legislation in 2002, providing high levels of protection for U.S. intellectual property (IP). In addition, an agreement between the UAE and U.S. pharmaceutical companies provides for *de facto* patent protection for a number of U.S. patent-protected medicines.

The 2002 copyright law grants protections to authors of creative works and expands the categories of protected works to include computer programs, software, databases, and other digital works. Efforts to combat computer software piracy in the UAE have been successful. According to 2007 industry estimates, the rate of software piracy in the UAE is the lowest in the Middle East, estimated to be 34 percent. The UAE is recognized as the regional leader in fighting computer software piracy; although industry stakeholders believe the UAE could be doing more.

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The UAE also revised its Trademark Law in 2002. The law confirms that the UAE will follow the International Classification System and that one trademark can be registered in a number of classes. The law provides that the owner of the registration shall enjoy exclusive rights to the use of the trademark as registered and can prevent others from using an identical or similar mark on similar, identical, or related products and services if it causes confusion among consumers.

The UAE published the official and final version of its long-awaited Patent Law in November 2002. The Patent Law provides for national treatment for intellectual property owners from other WTO Members, product and process patent protection, and enforcement of IPR utilizing civil and criminal procedures and remedies. In October 2003, the Ministry of Health issued a circular providing protection of test and other data against unfair commercial use in the UAE for pharmaceutical products for up to 5 years or until a patent is granted or rejected in the UAE, whichever period is shorter. This is an improvement over the previous situation, but the protection of test data should not be contingent on patent protection.

The UAE is considering legislation for data protection, privacy, and other IP-related issues and has consolidated its IPR offices into the Ministry of Economy.

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

SERVICES BARRIERS

Insurance

In 1989, the UAE government banned additional foreign insurance companies from opening due to a perception that the market was saturated. In 2004, the Ministry of Economy and Planning announced that it would open its insurance sector to new foreign insurance companies and in June 2005, the UAE submitted a proposal to the World Trade Organization allowing new foreign insurance companies to open a branch but not a subsidiary in the UAE.

In 2006, the President of the UAE issued Federal Law No. 16 of 2006 amending some provisions of Federal Law No. 9 of 1984 on insurance companies and agents. The new amendments stipulate that established insurance companies in the UAE, or those which shall be incorporated, must take the form of a public joint stock company. At least 75 percent of the capital in such companies must be owned by UAE nationals and the other 25 percent may be owned by a foreigner.

Banking

The UAE has 21 national and 25 foreign banks. Following a banking crisis caused by accumulated bad debts after the oil boom in the mid 1980s, the UAE Central Bank stopped granting licenses to new foreign banks. In September 2003, however, the Central Bank announced that it would allow the operation of more banks from other countries on a reciprocal basis. The Central Bank does not currently allow foreign banks operating in the UAE to set up new branches.

FOREIGN TRADE BARRIERS

Agent and Distributor Rules

As originally written, the UAE's Commercial Agencies Law (Agencies Law) required that all commercial agents be either UAE nationals or companies wholly-owned by UAE nationals. Furthermore, the Law restricted the number of agents a foreign principal could appoint and the flexibilities available to foreign principals with respect to entering into or ending contractual relationships with agents. In 2006, the UAE made important changes to the Agencies Law. The amendments included: (1) limiting an agency contract to a fixed time period; (2) requiring mutual consent to renew an agency agreement; (3) allowing either party to file for damages; (4) eliminating the Ministry of Economy's Trade Agencies Committee, which handled agency disputes; and (5) allowing the import of "liberalized goods" without the agent's approval. Since 1996, the UAE had not recognized new agency agreements in the food sector. In an effort to curb price manipulation and allow unrestricted imports of basic food products, the UAE in August 2006 eliminated trading agency requirements for basic food products, including milk, frozen vegetables, baby formula, chicken, cooking oil, noodles, rice, flour, fish products, tea, coffee, cheese, pastries, and diapers. For some food products deemed nonessential, agency agreements in existence prior to August 2006 are still recognized. The restrictive laws currently governing agency relationships are under discussion in United States-UAE Trade and Investment Framework Agreement ("TIFA – Plus") consultations.

Telecommunications

UAE currently has two telecommunications companies which are largely government owned: Emirates Telecommunications Corporation (Etisalat), the former telecommunication monopoly, and Emirates Integrated Technology Company (which operates under the trade name Du). Local press reports indicate that the duopoly will continue until 2015 when the market will be further liberalized.

U.S. companies complain that the UAE's Telecommunications Regulatory Authority (TRA) has banned the use of Voice over Internet Protocol (VoIP) services, stating that VoIP services violate Etisalat's monopoly on fixed telephony services. While the TRA is reportedly developing a framework to legalize VoIP, it is unclear if and when this will occur.

INVESTMENT BARRIERS

Except for companies located in one of the UAE's free zones, at least 51 percent of a business established in the UAE must be owned by a UAE national. A business engaged in importing and distributing a product must be either a 100 percent UAE-owned agency/distributorship or a 51 percent UAE-owned/49 percent foreign-owned limited liability company. Subsidies for manufacturing firms are only available to those companies with at least 51 percent of the capital owned by a UAE national.

In many cases, company by-laws prohibit foreign ownership. The UAE government is considering liberalizing specific sectors where there is a need for foreign expertise or where local investments are insufficient to allow 100 percent foreign ownership. Some of the sectors which may be liberalized are education, health, professional services, and computer-related services.

Non-GCC nationals cannot own land, but the Emirates of Dubai and Ras al Khaimah are currently offering so-called freehold real estate ownership to non-GCC nationals within certain areas. In August 2005, UAE President Sheikh Khalifa bin Zayed Al-Nahyan, acting in his role as the ruler of the Emirate of Abu Dhabi, signed Abu Dhabi law number 19 of 2005, permitting UAE nationals and GCC citizens to own land within designated investment areas. Non-GCC nationals have the right to own buildings, but

FOREIGN TRADE BARRIERS

not the land, in investment areas. Foreign investors may purchase 79 of the 128 issues on the UAE stock markets, (Abu Dhabi Securities Market (ADSM), and Dubai Financial Market (DFM)).

Resolution of investment disputes continues to be a problem, in part due to foreign investors' concerns that pursuing international arbitration may jeopardize their business activities in the UAE and in part to reluctance on the part of investors to take disputes to the domestic court system.

ELECTRONIC COMMERCE

In 2002, the Emirate of Dubai passed The Law of Electronic Transactions and Commerce, which protects certain electronic records and signatures, and some electronic communications. This law also provides penalties for any person who knowingly creates, publishes, or otherwise makes available a false electronic signature or certificate, or provides false statements online for fraudulent or any other unlawful purpose. In 2006 the UAE issued a comprehensive national law on Information Technology Crimes, which criminalizes a broad range of fraudulent activities affecting commerce. The Emirate of Dubai has established the Dubai Technology, Electronic Commerce, and Media Free Zone (TECOM), which houses both Internet City and Media City, two subdivisions which cater, respectively, to the information technology and media sectors.

VENEZUELA

TRADE SUMMARY

The U.S. goods trade deficit with Venezuela was \$29.7 billion in 2007, an increase of \$1.6 billion from \$28.1 billion in 2006. U.S. goods exports in 2007 were \$10.2 billion, up 13.3 percent from the previous year. Corresponding U.S. imports from Venezuela were \$39.9 billion, up 7.4 percent. Venezuela is currently the 23rd largest export market for U.S. goods.

U.S. exports of private commercial services (*i.e.*, excluding military and government) to Venezuela were \$3.2 billion in 2006 (latest data available), and U.S. imports were \$552 million. Sales of services in Venezuela by majority U.S.-owned affiliates were \$3.2 billion in 2005 (latest data available), while sales of services in the United States by majority Venezuela-owned firms were \$153 million.

The stock of U.S. foreign direct investment (FDI) in Venezuela was \$11.6 billion in 2006 (latest data available) up from \$9.6 billion in 2005. U.S. FDI in Venezuela is concentrated largely in the manufacturing, and mining sectors.

IMPORT POLICIES

Venezuela officially withdrew from the Andean Community (CAN) in April 2006. President Chavez stated publicly that the reason for the withdrawal was the entry of other member countries into free trade agreements with the United States, which, according to the Venezuelan government, changed the essence of the pact.

Under CAN rules, tariff-related decisions and resolutions remain in force for 5 years from the date of a member's formal withdrawal. Over the years, CAN norms, which cover a wide range of disciplines, have been incorporated into the Venezuelan legal framework. Although the Venezuelan government has yet to officially clarify the legal impact of leaving the CAN, Venezuela has continued to follow CAN norms. In November 2006, Venezuela's Supreme Court accepted a petition requesting an interpretation of the current validity of CAN norms. As of March 2008, the Court had not issued a ruling on the matter.

Tariffs

In July 2006, Venezuela signed a membership agreement to become a full member of the Southern Cone Common Market (MERCOSUR), contingent upon the unanimous approval from member countries' legislatures. To date, Brazil and Paraguay's legislatures have not approved Venezuela's accession. Under the terms of its accession, Venezuela has 4 years from its accession to adopt the MERCOSUR Common External Tariff (CET) and to provide duty free treatment to its four MERCOSUR partners by January 2012 on all goods, with sensitive products allowed an extension to January 2014. Exceptions to the CET exist on a product specific or sector specific basis, mainly for goods not produced within the union or those which potentially affect the production capacity of the members. MERCOSUR's average external tariff is approximately 14 percent, except for capital goods, tariffs on which were recently reduced to zero.

While CAN applies higher tariffs on fisheries, textiles, and agriculture, MERCOSUR applies higher tariffs on vehicles, parts, leather, textiles, and shoes. Under the CAN's Common Automotive Policy

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(CAP), assembled passenger vehicles constitute an exception to the 20 percent maximum tariff and are subject to 35 percent import duties. The CAP will remain in effect until 2009.

On December 5, 2006, Venezuela imposed a new 15 percent luxury tax as part of a broader currency control measure for goods considered “nonpriority” items, including alcohol, rugs and carpeting, jewelry, and toilet paper. In October 2007, the Venezuelan government doubled the tax on alcoholic beverages and increased the tax on cigarettes from 45 percent to 70 percent. At the same time, Venezuela reduced its value added tax from 16.5 percent to 9 percent.

Venezuela continues to apply the CAN’s CET for certain agricultural products, including feed grains, oilseeds, oilseed products, sugar, rice, wheat, milk, pork, and poultry imports from third-countries. While most agricultural products fall within the 5 percent to 20 percent tariff range, Venezuela’s average tariff for the sector currently stands at approximately 17 percent. However, the adjustable levy applied under the CAN’s Price Band System can increase the actual duty significantly, raising tariffs when world prices are low and lowering them when prices are high.

Nontariff Measures

Difficulty in obtaining foreign exchange and burdensome documentation requirements associated with importation are significant barriers to trade with Venezuela. Venezuela also protects its agricultural producers through a nonlegislated system of guaranteed minimum prices, and the use of import licenses and sanitary permits to restrict imports.

The Foreign Exchange Administration Board (CADIVI) regulates the purchase and sale of foreign currency in Venezuela. CADIVI’s daily average currency approvals have grown from \$63.5 million in 2005 to \$160 million as of October 2007. The Ministry of People’s Power for Light Industry and Commerce (MILCO) maintains a list of imports that are eligible to receive foreign currency approval. This list has grown significantly since the introduction of exchange controls, and now includes services and the repatriation of capital. Despite these exchange controls, imports have grown significantly due to economic growth fueled by high oil prices and Venezuelan government spending. Exchange control authorities have recently expressed the need to tighten the supply of currency to limit imports of certain products, particularly spirits, vehicles, and luxury goods, and to favor increasing domestic production. Problems coordinating the timing of access to CADIVI dollars with the approval of import permits and licenses and contracting shipments have led to delays and higher import costs. CADIVI dollar approvals currently take 60 days to 90 days, but can run longer.

Venezuela prohibits the importation of used cars, buses, and trucks; used tires; and used clothing. Beginning January 1, 2008, all automobile importers must solicit a license from MILCO for authorization to receive foreign exchange for the importation of assembled vehicles. According to the resolution, approval of these licenses depends on “national need, the capacity of national production, plans to expand local production, model cost, historic sales, and the efficient use of fuel.” When soliciting this license, all automotive companies will have to include their “national production plan” and their “vehicle importation plan.” This resolution also requires that by July 2008 all vehicles imported and assembled in Venezuela run on both natural gas and regular gas before being sold to the public.

The Venezuelan government approved minimum farm gate prices for corn, rice, and sorghum on August 18, 2006. The Official Gazette N° 38,503 establishes new farm gate prices for these commodities. The last increase occurred in December 2005. Farmers have argued that prices do not keep up with production costs, and have requested a certain level of subsidies. The Venezuelan government announced

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agricultural subsidies for selected commodities in February 2007 and extended those subsidies in April 2007. Information about agricultural subsidies has only been published through advertisements in a pro-government newspaper. The subsidy scheme is oriented exclusively to primary growers. Growers, based on their acreage, must fulfill a list of requirements to receive this subsidy.

In theory, each year the government, industry, and producers agree to a minimum price for major crops, such as corn, sorghum, and rice. During 2003, the Ministry of People's Power for Agriculture and Lands (MAT) established the National Boards (in Spanish: Juntas Nacionales, or Juntas). "Juntas" were created for eight major food sectors (grain and feed, sugar, oilseeds, livestock, poultry, coffee, dairy, and cheese). These "Juntas" are composed of representatives from the producer, processor, retail, consumer, and government sectors, and are charged with reviewing the criteria for establishing fair prices for the entire production chain. Each "Junta" is responsible for recommending and establishing fair prices in the sector, with the consensus of all of its members. Beginning in 2006, the "Juntas" have not met on a regular basis, and both producers and processors have stated that recommendations made and decisions taken within the "Juntas" are, in many cases, not observed by the government.

Venezuela maintains tariff-rate quotas (TRQs) for up to 62 Harmonized System code headings. However, the issuance of import licenses for such TRQs is neither transparent nor automatic and has negatively affected trade in basic agricultural commodities, as well as processed products. The issuance of import licenses and sanitary permits has become very restrictive. The Venezuelan government has denied import licenses for both in-quota and over-quota quantities, even though importers are often willing to pay the over-quota tariff. Automatic issuance of licenses for over-quota quantities has not occurred. Furthermore, the Venezuelan government has not published regulations establishing the TRQ mechanism for certain eligible products and has refused to activate the TRQ for others, such as pork.

Basic agriculture and processed food products are still on the CADIVI priority import list. Nevertheless, importers interested in importing basic commodities, agricultural inputs, and some horticultural products must request a "certificate of nonproduction" or a "certificate of insufficient production" from either the Ministry of People's Power for Food (MINAL), MILCO, MAT, or the National Customs and Tax Administration Service (SENIAT), Venezuela's tax and customs authority. Some goods may require a certificate from more than one ministry. These certificates state that a certain product is not domestically produced or domestic production is not sufficient, and allow importers to request foreign exchange for imports, import licenses, import permits, and possibly tax exoneration from other government offices. The number of ministries and agencies involved and the constant shift of responsibilities among them has hampered the issuance of import permits, import licenses and the registration of local and imported food products. On January 18, 2008, the Government of Venezuela passed a resolution waiving the "certificate of nonproduction" requirement for 51 goods until July 18, 2008 to mitigate current food shortages.

Venezuela also blocks imports through its refusal to issue sanitary and phytosanitary (SPS) permits. Such permits are required by the Ministry of People's Power for Health (MPPS) and MAT. The government of Venezuela, as of January 18, now requires the MAT and MPPS to issue these permits within 7 days.

U.S. industry has raised concerns about the use of SPS permits to unreasonably restrict agricultural and food imports. These practices have particularly affected trade in pork, poultry, beef, apples, grapes, pears, nuts, onions, and potatoes. Industry representatives have reported that Venezuela also restricts the sale of nutritional supplements or natural products to pharmacies, limiting direct sales efforts.

The government generally delays the issuance of import licenses for yellow corn and for oilseeds and oilseed products until the entire local crop has been purchased at the set price. This occurs when there is

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a surplus of domestic crops. When there is a deficit, imports are readily authorized. In the case of oilseeds, the palm oil crop must be purchased, before issuing import licenses for any vegetable oil imports. Most recently, and due to insufficient domestic supply, the Venezuelan government restricted exports of both basic commodities and processed products; this is the case for white corn, rice, and corn flour.

Imports of yellow corn are dependent upon the purchase of local sorghum and/or white corn. Soybean meal imports are dependent upon the purchase of “domestically produced” soybean meal that is crushed from imported soybeans, and permits for grape and black bean imports have been tied to the purchase of local production.

Since January 2003, the Venezuelan government has implemented an import tax exoneration policy for staple products. Initially, the import tax exoneration was granted for a 6 month period. Since then, some products were added or removed from the initial list and there were certain periods when this policy expired. This measure had been renewed every 6 months until 2007, when the government renewed it for a 1 year period. Import tax exoneration is currently valid until February 12, 2008 (according to the Official Gazette N° 38,625, dated 02/13/07). On January 18, 2008, the Government of Venezuela created a new list of tax exempt goods that featured some products on the current list and some additions.

The Venezuelan government has created a large food distribution network for the low-income population. Corporación de Abastecimiento y Servicios Agrícolas (CASA), a state trading entity, is the government food purchasing entity, and Mercado de Alimentos C.A. (MERCAL) is a government organization created in 2003 to commercialize and market food products. Venezuela’s food program is focused on providing a government subsidized basic basket of products to the poor classes. Products include dry milk, precooked corn flour, black beans, rice, vegetable oil, sardines, pasta, sugar, bologna, margarine, deviled ham, eggs, mayonnaise, and sauces. CASA purchases both domestic and imported products and has purchased sugar, rice, wheat flour, black beans, milk powder, edible oil, margarine, poultry, and eggs from a variety of countries. MERCAL distributes more than 40 percent of all basic food staples consumed in Venezuela, offering products at prices that are at or below those of controlled-price products. CASA and MERCAL compete with private industry, although the private sector also supplies products to this chain. The private sector has complained that CASA has an unfair advantage, because it has guaranteed access to dollars, import licenses, and permits and, as a government entity, it imports products without tariffs and customs duties.

The Venezuelan Agricultural Corporation (CVA), a state-holding enterprise created in 2004, has the following processing subsidiaries: CVA Cereals and Oilseeds; CVA Dairy; CVA Sugar; CVA Inputs; and CVA-Leander, which was created in February 2007 for meat and fishery products, in response to meat shortages that occurred in January 2007. CVA’s main objective is to provide supplies to MERCAL. According to CVA’s regulations, these industries, in addition to processing pre-cooked corn flour, pastas, milled rice, powdered milk, refined sugar, and various agricultural inputs, may also import and export raw and processed food.

STANDARDS, TESTING, LABELING, AND CERTIFICATION

Some Venezuelan importers of U.S. products have alleged that Venezuela applies product standards more strictly to imports than to domestic products. The certification process is expensive. The Venezuelan Commission for Industrial Standards (COVENIN) normally requires certification from independent laboratories located in Venezuela, but at times will accept a certificate from independent laboratories elsewhere. In addition, in May 2007, the World Organization for Animal Health (OIE) classified the

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United States as a controlled risk country for Bovine Spongiform Encephalopathy (BSE), thereby clarifying that U.S. beef and beef products are safe to trade provided that the appropriate specified risk materials are removed. However, Venezuela continues to ban U.S. beef and beef products through BSE related measures.

Venezuela's 2002 labeling regulations established a register of domestic manufacturers and importers of textiles, as well as the minimum labeling requirements for all textile products marketed in Venezuela. According to the regulations, each imported product must bear a label stating the legal name or tax payer number of the Venezuelan importer. Industry reports that such information is difficult if not impossible to know during the manufacturing process when permanent labels are attached. Re-labeling products upon entry to meet these requirements results in additional costs and delays.

GOVERNMENT PROCUREMENT

Venezuela's procurement law covers purchases by government entities, national universities, and autonomous state and municipal institutions. The law requires a contracting agency to prepare a budget estimate for a procurement based on reference prices maintained by MILCO, which is used in the bidding process. The law forbids discrimination against tenders based on national origin. However, the law states the President can mandate temporary changes in the bidding process "under exceptional circumstances," or in accordance with "economic development plans" to promote national development, or to offset adverse conditions for national tenders. These measures can include price preferences for domestic products reservation of contracts for nationals, requirements of domestic content and technology transfer, and other incentives to purchase from companies domiciled in Venezuela. For example, government decree 1892 establishes a 5 percent preference for bids from companies offering products with more than 20 percent domestic content. In addition, half of that 20 percent of domestic content must be from small-to medium-sized domestic enterprises. The Venezuelan government is increasingly awarding contracts via directed procurements, thus avoiding competition required by the government procurement law. It is not clear to what degree the public procurement law applies to joint ventures in which a state entity has controlling interest.

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

EXPORT SUBSIDIES

Exporters of selected agricultural products – coffee, cocoa, some fruits, and certain seafood products – are eligible to receive a tax credit equal to 10 percent of the export's value. The level of direct payments for export subsidies has generally been fairly small and limited to agricultural products. Venezuela has notified its export subsidies to the WTO in the past, with the last notification occurring in June 2001, for the export year 1998. The total value of export subsidies at that time was \$5.5 million. Exports of coffee, cacao, bananas, and other fruits received the major share of these subsidies. The government has not published further information for export subsidies.

INTELLECTUAL PROPERTY RIGHTS (IPR) PROTECTION

The Venezuelan Industrial Property Office's policies, as well as occasional publicly stated antagonism toward IPR, often draws criticism from IPR advocates and rights holders. Unfortunately, pirated software, music, and movies are widely available throughout the country, and piracy levels are increasing. In 2006, Venezuela was placed on USTR's Special 301 "Priority Watch List" and was kept on the list in 2007 for its failure to improve its IPR regime.

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Patents and Trademarks

The 1955 National Industrial Property Law provides the legal framework for patent and trademark protection in Venezuela. Venezuela's 1955 law is outdated and offers inadequate protections. The legal status of the CAN decision 486, which to some extent implements the WTO TRIPS Agreement, and CAN Decision 345, are currently in question since Venezuela withdrew from the organization in April 2006. Although the Venezuelan government has not yet formally clarified whether CAN norms still apply, it has continued to follow them.

U.S. companies remain concerned about the consequences of Venezuela leaving the Andean Community. If the Venezuelan government decides that CAN regulations still apply, U.S. companies will continue to monitor the impact of the Andean Tribunal's 2002 interpretation of Articles 14 and 21 of Decision 486, which do not allow for the patenting of "second-use" products (*e.g.*, new uses of previously known or patented products). Under pressure from the Andean Community and in line with some changes in leadership at the Autonomous Service for Intellectual Property (SAPI), Venezuela has revoked previously issued patents. Very few patents for new pharmaceuticals were awarded in 2004, and none were issued in 2005, 2006, or 2007. Since 2002, Venezuela's food and drug regulatory agency (INH) began approving the commercialization of new drugs which were the bioequivalent of innovative drugs and relied on innovator proprietary data submitted for INH marketing approval. As a result, innovative drug companies do not receive protection from unfair commercial use of their test data as required by TRIPS. In effect, the Venezuelan government allows others seeking marketing approval for the same products to use the same test data that required lengthy and expensive development.

Enforcement

The Venezuelan copyright and trademark enforcement branch of the police (COMANPI) attempts to provide copyright enforcement support with a small staff of permanent investigators. Lack of personnel, coupled with a very limited budget and inadequate storage facilities for seized goods, has forced COMANPI to work with the National Guard and private industry to improve enforcement of copyrighted material. SENIAT, Venezuela's tax and customs authority, passed a regulation in mid-2005 that allows *ex officio* seizure of illegal goods at customs points and inland, and gives companies 3 days to verify the product's authenticity and press charges. In most cases, companies and violators reach a settlement instead of going through a lengthy, and often fruitless, court proceeding. SENIAT continues to be the only agency actively protecting IPR, and has launched public anti-piracy and "zero tax evasion" campaigns that have raised awareness of IPR issues.

SERVICES BARRIERS

Venezuela maintains restrictions on a number of service sectors. Venezuela requires that certain professions be licensed in Venezuela (*e.g.*, engineers, architects, economists, business consultants, accountants, lawyers, doctors, veterinarians, and journalists). Foreign nationals wishing to practice these professions in Venezuela must have their credentials validated by a Venezuelan university, provided that a reciprocity agreement exists with their country of origin. Some accounting and auditing functions (particularly government related) require Venezuelan citizenship, and only Venezuelan citizens may act as accountants in companies which trade over 25 percent of their total shares in the local stock exchange. A foreign lawyer cannot provide legal advice on foreign or international law without being licensed to practice Venezuelan law.

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On November 1, 2007, the Venezuelan government imposed a 1.5 percent tax on financial transactions for companies or legal entities, known by its Spanish acronym of ITF. Under the ITF, a transaction from one company to another would be taxed at 1.5 percent, but withdrawals from personal accounts are not taxed.

Foreigners are required to establish a commercial presence for the provision of engineering services. Foreign consulting engineers must work through local firms or employ Venezuelan engineers. There is a law governing public service tenders that gives preferential treatment to Venezuelan firms for projects financed with public funds. Foreign participation is restricted to a maximum of 19.9 percent in professional firms.

Venezuela limits foreign equity participation (except from other CAN countries) to 20 percent for enterprises engaged in Spanish language media.

A trade association has reported that draft satellite regulations call for preferential treatment for satellites owned and operated by the Venezuelan government, and may subject U.S. satellite operators to local establishment requirements that the trade association considers burdensome.

The government enforces a “one-for-one” policy that requires foreign musical performers giving concerts in Venezuela to share stage time with national entertainers. There is also an annual quota regarding the distribution and exhibition of Venezuelan films, as well as a requirement that a percentage of film copying be done in Venezuelan facilities. Television and FM broadcasters must use national content in half their programming.

In any enterprise with more than 10 workers, foreign employees are restricted to 10 percent of the work force, and Venezuelan law limits foreign employee salaries to 20 percent of the payroll.

By signing the 1997 WTO Financial Services Agreement, Venezuela made certain commitments to provide market access for banking, securities, life and non-life insurance, reinsurance, and brokerage activities. Venezuela did not make commitments on pensions, or on maritime, aviation and transportation insurance, and it applies an economic needs test as part of the licensing process.

INVESTMENT BARRIERS

The government continues to control key sectors of the economy, including oil, petrochemicals and much of the mining and aluminum industries. Venezuela began an ambitious program of privatization in the 1990s under the Caldera administration, but under President Chavez further privatization has been halted. On January 8, 2007, President Chavez announced that the telecommunications provider CANTV, the electricity generation sector, the heavy-oil strategic associations, and other “important and strategic” areas would be nationalized. Several of the affected U.S. companies have reached agreement with the government on compensation terms while others have filed for international arbitration.

Foreign investment continues to be restricted in the petroleum sector. The exploration, production, refinement, transportation, storage, and foreign and domestic sale of hydrocarbons are reserved to the state. However, private companies may engage in hydrocarbons-related activities through mixed companies and equity joint ventures with the state-owned oil company Petroleos de Venezuela, S.A. (PDVSA). The Venezuelan constitution reserves ownership of PDVSA to the Venezuelan government. Sales to foreign investors of interests in subsidiaries and affiliates of PDVSA are permitted.

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Over the last 2 years, the national government has made significant changes to royalty policies, tax policies, and contracts involving hydrocarbons-related activities. This has substantially increased uncertainty in the sector and raised concerns of companies operating in Venezuela. In 2006, the government transferred operating service agreements to mixed companies in which PDVSA held a majority stake. PDVSA has recently begun seeking partners to develop 27 blocks of the country's heavy crude reserves in Eastern Venezuela. National oil companies of politically strategic partner countries seem to be the preferred partners for the development of the new projects.

President Chavez issued a decree in late February 2007 requiring four strategic associations (joint venture projects relating to the development of Venezuela's extra heavy crude oil reserves) to convert to PDVSA control joint ventures in which the government would hold at least a 60 percent equity stake. The decree established a deadline of April 30, 2007, for completing the transfer. ConocoPhillips and ExxonMobil refused to transfer their investment stakes in three of the strategic associations. As a result, the Venezuelan government took control of these investments. Both companies are treating the government's actions as expropriations and are currently in negotiation with Venezuelan authorities regarding compensation. Both companies have filed arbitration claims against the Venezuelan government. The United States is monitoring the process closely, has consulted with the affected U.S. companies, and has publicly stated its expectation that U.S. companies receive fair treatment, including timely, adequate, and effective compensation.

The Gaseous Hydrocarbons Law of 1999 offers more liberal terms for foreign equity participation, and the Venezuelan government has sought foreign investment to develop offshore natural gas deposits near the Orinoco delta.

Both the 2001 Hydrocarbons Law and the Gaseous Hydrocarbons Law require that there be a competitive process for the identification of private partners for projects to be developed by PDVSA. However, the government may directly award contracts when the project is to be developed under special circumstances, or is of national interest.

The government passed legislation in 1998, aimed at introducing domestic and foreign competition into the domestic gasoline market. The law allows foreign and private Venezuelan investors to own and operate service stations, although the government retains the right to set product prices. The government has not raised gasoline prices in several years, and currency devaluations and a high inflation rate have eliminated service station profit margins.

Electric power generation, transmission, and distribution are no longer open to private participation. President Chavez announced in January 2007 that the Venezuelan government would nationalize strategic areas including telecommunications and electricity. As a result, the U.S. power-generating company, AES Corporation, sold its 82.14 percent stake in Electricidad de Caracas, the company that provides power to the Caracas metropolitan area, to the Venezuelan government in March 2007. The government also purchased the assets of several other smaller power producers.

Private participation is allowed in the mining sector. In early 2005, President Chavez reorganized the ministries that govern the energy and mining sectors. One result of this restructuring was to increase control over basic industries at the ministerial level and to strengthen the state-owned Corporacion Venezolana de Guayana (CVG), which controls steel and aluminum production, electricity generation, and mining. Under its new board of directors, appointed in February 2005, CVG announced a review of all existing contracts between CVG companies and third parties. A draft mining law currently in the

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National Assembly seeks to repeal “inactive” concessions to foreign companies and structure the mining sector under a joint-venture model.

Supply contracts by CVG companies are currently under review by the Ministry of Popular Power for Basic Industries and Mining (MIBAM). The Venezuelan government is looking to increase the development of downstream industrial sectors and to add value to Venezuelan exports. To this end, MIBAM is taking several steps to help local companies, including making available to them a higher percentage of materials, improving payment terms, and providing discounts of up to 10 percent.

VIETNAM

TRADE SUMMARY

The U.S. goods trade deficit with Vietnam was \$8.7 billion in 2007, an increase of \$1.3 billion from 2006. U.S. goods exports in 2007 were \$1.9 billion, up 72.9 percent from the previous year. Corresponding U.S. imports from Vietnam were \$10.6 billion, up 24.1 percent. Vietnam is currently the 60th largest export market for U.S. goods.

The stock of U.S. foreign direct investment in Vietnam was \$339 million in 2006 (latest data available), up from \$294 million in 2005.

The United States and Vietnam concluded a Trade and Investment Framework Agreement (TIFA) in June 2007. Dialogue under the TIFA is intended to promote increased trade and investment between the two countries and help monitor and support Vietnam's efforts to implement its WTO commitments. The TIFA also serves as a forum to address bilateral trade issues.

IMPORT POLICIES

Tariffs

Vietnam committed to reduce tariff rates for many important U.S. exports when it became a WTO Member in January 2007. As a result, the vast majority of U.S. exports now face tariffs of 15 percent or less. In 2007, Vietnam made further tariff reductions on major U.S. exports, such as dairy products, corn, animal feed and motor vehicles. Vietnam has eliminated tariffs on information technology products and reduced tariffs on 80 percent of the products covered by the WTO Chemical Harmonization Agreement.

Vietnam currently has four categories of tariff rates: (1) normal trade relations (NTR)/Most Favored Nation (MFN) rates that apply to all WTO Member countries, including the United States; (2) Common Effective Preferential Tariff rates that apply to imports from ASEAN countries; (3) preferential tariff rates applied under Vietnam's FTAs; and (4) general tariff rates (50 percent higher than NTR/MFN) that apply to all other countries.

Nontariff barriers (NTBs)

Vietnam has made significant progress in eliminating NTBs under the terms of the 2001 United States-Vietnam Bilateral Trade Agreement (BTA). With Membership in the WTO, Vietnam has eliminated and committed not to reintroduce any quantitative restrictions on imports or other nontariff measures, such as quotas, bans, permits, prior authorization requirements, licensing requirements, or other restrictions having the same effect, which would not be consistent with the WTO Agreement.

Import prohibitions: Vietnam currently prohibits the commercial importation of the following products: arms and ammunition; explosive materials (not including industrial explosives), military technical equipment and facilities, narcotics, certain toxic chemicals, "depraved and reactionary" cultural products, firecrackers, certain children's toys, second-hand consumer goods, right-hand drive motor vehicles, used spare parts for vehicles, used internal combustion engines of less than 30 horsepower, asbestos materials under the amphibole group; specialized encryption devices and software not destined for mass market consumption, polluting waste and scrap, and refrigerating equipment using chlorofluorocarbons.

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In 2007, Vietnam eliminated the ban on motorcycles with an engine capacity of 175 cc or greater, which had served as a market access barrier for exports of U.S. motorcycles. Vietnam's government issued two regulations in 2007 putting in place a nondiscriminatory and transparent system for the importation, distribution, and use of large motorcycles.

Quantitative restrictions and nonautomatic licensing: Vietnam's government issued a decree in January 2006 governing the implementation of the Commercial Law regarding export-import management, which contains a list of goods that require import permits from the Ministry of Industry and Trade. The Decree also places salt, tobacco, eggs, and sugar under a tariff-rate quota regime. Separate regulations apply to exports of rice, imports of petroleum and fuel, imports of cigarettes and cigars, and exports and imports of goods related to security and defense.

Special authority regulation: Certain categories of goods are limited to importation by state trading enterprises, and others are subject to automatic or nonautomatic import licensing. The U.S. entertainment industry has raised concerns that state control of the importation of video products serves as a market access barrier.

Foreign Exchange system: The Law on Foreign Direct Investment allows foreign investors to purchase foreign currency at authorized banks to finance current and capital transactions, and other permitted transactions. Residents and nonresidents can open and maintain foreign exchange accounts with authorized banks in Vietnam. Foreign investors can transfer abroad profits and other legal income upon presentation of relevant documents to authorized banks.

Vietnam also revised its foreign exchange system in 2006, eliminating the requirement to document the discharge of tax obligations when purchasing, remitting or carrying foreign currency overseas for the fulfillment of currency transactions. Regulations require foreign investors to use the Vietnamese dong in all activities relating to portfolio investments in Vietnam.

Customs: Vietnam has implemented the WTO Customs Valuation Agreement through the 2006 Customs Law, and related implementing regulations. The Customs Law makes the use of transaction value applicable to all imports and provides for a full application of the computed value and deductive methods. Subsequent regulations have been issued relating to customs procedures and inspection, post-clearance audits, and valuation of imported goods. These changes have significantly improved customs valuation in Vietnam.

The application of the WTO Customs Valuation Agreement principles has not been uniform, and importers complain about the low level of automation of Vietnam's customs system. The United States will continue to work with Vietnam to monitor implementation of the WTO Customs Valuation Agreement as part of the ongoing TIFA dialogue.

Trading rights: Import rights are granted for all products, except for a limited number reserved for state trading enterprises and those subject to a phase-in period for importation by foreign firms. Vietnam has reserved the right of importation for state trading entities for the following categories: cigars and cigarettes; crude oil; newspapers, journals, and periodicals; and recorded media for sound or pictures (with certain exclusions). Under the phase-in, foreign firms and individuals are restricted, until January 1, 2009, from importing the following categories of products: pharmaceuticals; motion picture films; unused postage, printed cards and calendars; certain printed matter; machinery for typesetting and print machinery (excluding ink-jet printers); and certain transmission apparatus for radio-telephony (excluding

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mobile phones and consumer cameras). Foreign individuals and enterprises will be given the right to export rice no later than January 1, 2011. The United States will closely monitor implementation of these commitments.

Taxes: Vietnam applies a value added tax on goods and services in a number of categories listed in the Law on Value Added Tax of January 1, 2004, and related implementing regulations. Certain goods in Vietnam are also subject to an excise tax, levied in accordance with the Law on Excise Tax. In several product categories, particularly beer, wine, distilled spirits, and automobiles, the United States raised concerns with Vietnam regarding discrimination between imported and domestically-produced like products. As a result of Vietnam's membership in the WTO, Vietnam has taken steps or committed to take steps to eliminate the discriminatory application of excise taxes. In particular, in 2006, Vietnam equalized the excise tax on imported and domestic wines and distilled spirits under 20 per cent alcohol by volume, and eliminated the excise tax reductions provided to domestic automobiles. WTO Members granted Vietnam a 3 year transition period to ensure that its excise taxes on imported and domestic beer and distilled spirits over 20 percent alcohol by volume conform to WTO rules. The United States will continue to work with Vietnam to monitor implementation of this commitment.

STANDARDS, TESTING, LABELING, AND CERTIFICATION

Sanitary and Phytosanitary Measures (SPS)

Vietnam is working on strengthening its SPS regime. Vietnam is working to base its SPS system on international standards like those of the Codex Alimentarius, the World Organization for Animal Health (OIE), and the International Plant Protection Convention. However, a number of reforms still need to be undertaken to bring measures in line with international standards. The United States has discussed with Vietnam concerns raised by U.S. raw poultry meat exporters regarding Vietnam's zero tolerance for salmonella on the surface of uncooked poultry meat. The United States will continue to urge Vietnam to adopt SPS measures in this area consistent with international standards.

Vietnam has an inter-ministerial working group that coordinates SPS activities. The Ministry of Agriculture and Rural Development currently serves as the enquiry point and notification authority under the WTO Agreement on SPS. Vietnam established its SPS National Authority in October 2007 and made its first notifications to the WTO in January 2008. The United States will continue to work with Vietnam to fully implement its WTO commitments in the area.

In May 2006, the United States and Vietnam concluded an agreement in which Vietnam agreed to recognize the U.S. food safety inspection systems for beef, pork, and poultry as equivalent to its own inspection system. At that same time Vietnam immediately opened its domestic market to U.S. imports of U.S. beef and beef products from cattle under 30 months of age. The United States is working with Vietnam to secure full market opening for all U.S. beef and beef products from cattle of all ages in accordance with the OIE guidelines for a controlled BSE risk country.

Standards and Technical Barriers to Trade

The Law on Standards and Technical Regulations (Standards Law) passed by the National Assembly in January 2007 has comprehensively reformed Vietnam's system of standards and technical regulations. The Standards Law designates the Ministry of Science and Technology as the responsible agency for issuing and managing national standards, while line ministries are responsible for national technical regulations. Vietnam's Directorate for Standards and Quality is the inquiry and notification point under

the WTO Agreement on Technical Barriers to Trade. To date, Vietnam has made no notifications to the WTO.

Pharmaceutical companies have raised concerns about alleged discriminatory treatment against foreign firms across a range of product registration requirements for imported pharmaceuticals. The United States will work closely with the Ministry of Health and other relevant agencies to seek improvements in the transparency of the regulatory process.

GOVERNMENT PROCUREMENT

Vietnam is not a signatory to the WTO Agreement on Government Procurement. Vietnam's 2006 Law on Procurement provides for greater transparency in procurement procedures, in particular by establishing a Procurement Gazette to provide information on tendering activities, invitations for tender, lists of bidders participating in limited tendering, and criteria for selection of the bidders to be awarded contracts. In addition, the Procurement Law aims at decentralizing procurement decision-making to the ministries, agencies, and local authorities. It also provides for the right of appeal by bidders and settlement of disputes relating to procurement decisions. The Law also includes enforcement provisions, including a definition of fraudulent behavior and penalties for such behavior.

Since 2004, Vietnam's government has promoted the use of open source software by government agencies. In 2006, the Prime Minister issued guidelines that provided for a specific preference for open source software in government procurement. The U.S. software industry has expressed concerns about this preference policy and continues to urge Vietnam's government to use a merit-based approach to software procurement decisions consistent with the APEC Technology Choice Pathfinder Agreement that Vietnam signed in 2006.

EXPORT SUBSIDIES

All export subsidies have been removed. On May 30, 2006, Vietnam implemented a decision that ended subsidies and institutional supports to the textiles and apparel sector.

INTELLECTUAL PROPERTY RIGHTS (IPR)

Vietnam made commitments under the WTO TRIPS Agreement and the BTA to provide expeditious legal remedies to prevent and deter IPR infringement, including civil, administrative and criminal procedures, such as criminal penalties for willful trademark counterfeiting and copyright and related rights piracy on a commercial scale.

Vietnam is a member of World Intellectual Property Organization and several multilateral IPR agreements. Those agreements include: the Berne Convention on Protection for Literary and Artistic Works; the Brussels Convention Relating to the Distribution of Program-Carrying Signals Transmitted by Satellite; the Geneva Convention for the Protection of Producers of Phonograms Against Unauthorized Duplication of their Phonograms; the International Convention on Protection of New Plant Varieties (1991); the Madrid Agreement Concerning the International Registration of Marks; the Paris Convention for the Protection of Industrial Property; the Patent Cooperation Treaty; the Protocol Relating to the Madrid Agreement concerning the International Registration of Marks; the Rome Convention For The Protection Of Performers, Producers, And Broadcasting Organizations; and the Stockholm Convention on Establishment of the World Intellectual Property Organization.

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As a result of its efforts to implement its obligations under the BTA the WTO and other international agreements, Vietnam has made considerable progress over the past few years in modernizing its legal framework for IPR protection. The 2006 Intellectual Property Law (IPR Law) established the legal framework for the civil litigation of IPR cases and authorized the courts to provide injunctive relief. Vietnam also revised its Civil Code in 2005 to increase the scope of protected IPR, including satellite signal carrying encrypted programs, layout-designs of semiconductor integrated circuits, business secrets, trade names, plant varieties, and geographical indications.

The IPR Law also gives Vietnam Customs Office jurisdiction over IPR enforcement at the border. The IPR Law and the Law on Customs allow IPR holders to register their intellectual property (including trademarks) with the Customs Office and to request the seizure of goods entering or leaving the country that are suspected of infringing IPR. Under the IPR Law, Customs authorities may also issue administrative penalties including monetary fines where a violation has occurred.

Administrative remedies remain the most commonly used means of enforcing IPR in Vietnam. Substantial compensation for IPR violations, however, is only available under the civil remedies section of the IPR Law. Vietnam courts are untested in this regard, and concerns remain as to whether right holders have adequate access to effective civil remedies under the IPR Law. Criminal offences are prosecuted under the Criminal Code, and criminal proceedings are regulated under the Criminal Procedure Code. In practice, criminal prosecutions typically require large scale IPR violations involving large quantities or high valued goods. Vietnam has not yet provided for criminal remedies in cases of willful trademark counterfeiting and copyright and related rights piracy on a commercial scale. The United States continues to urge Vietnam to provide for these remedies. Vietnam is developing a circular as an interim measure to meet its TRIPS obligation on criminal remedies while at the same time preparing to update its Criminal Code.

Patent and Trademarks

The National Office of Intellectual Property (NOIP), under the Ministry of Science and Technology, administers Vietnam patent and trademark registration systems. Despite recent positive developments in enforcement, infringement is widespread and victims of infringement have encountered difficulties implementing NOIP enforcement decisions. Obtaining expeditious adjudication and administrative enforcement of patent and trademark violations remains difficult, and enforcement of administrative and court findings of IPR infringement remain problematic.

Copyrights

Literary, artistic, architectural, and scientific works receive copyright protection, and performances, sound recordings, visual recordings, broadcasts, and satellite signals carrying encoded programs receive related rights protection, under Part VI of the 2005 Civil Code and the IPR Law. The Vietnam Office of Literary and Artistic Copyright, under the Ministry of Culture, Sports, and Tourism, administers copyright and related rights protection throughout the country.

After Vietnam joined the Berne and Geneva Conventions, the Ministry of Culture, Sports, and Tourism made an effort to tighten copyright regulations on foreign musical and theatrical works and sound recordings. All event organizers must now obtain permission in writing from copyright holders before performing their works. In February 2007, Vietnam issued a directive to strengthen computer program copyright protections.

Despite the progress in putting in place a legal framework to protect local and foreign-held copyrights, enforcement remains uneven. This is particularly true for certain categories of products, such as software, music and video CDs, VCDs, and DVDs. Industry estimates of piracy rates for software, music, and videos run as high as 92 percent. Vietnam's police have investigated, and in some cases raided and fined, businesses suspected of using pirated software. Vietnam's ministries and regional governments are also implementing a WTO commitment to use only legitimately licensed software. Vietnam has taken initial steps to implement an agreement reached with Microsoft in May 2007, relating to the use of business applications software in use on government computers. Cable and broadcast television signal piracy decreased in 2007, but remains a concern. Local police authorities are often slow to enforce administrative and court orders against copyright infringers. Vietnam has, however, made progress in this area, including through a state-owned digital terrestrial broadcasters action in October 2007, to end all nonauthorized distribution of U.S.-owned broadcast content.

SERVICES BARRIERS

Under the terms of the BTA, Vietnam agreed for the first time to liberalize a broad array of service sectors, including telecommunications, accounting, banking, and distribution services, and to apply MFN treatment to U.S. services suppliers in all covered sectors and for all modes of supply (with itemized exceptions).

Vietnam's WTO commitments include significant improvements in market access, which will benefit U.S. service providers. Vietnam's Commercial Law requires a license for foreign participation in certain conditional sectors, such as financial services, telecommunications, and distribution.

Limits on foreign ownership and other market access limitations and exceptions to national treatment are described in Vietnam's schedule of specific commitments, and they include the following service sectors: legal, taxation, architectural, engineering and integrated engineering, computer, advertising and marketing, audiovisual, express delivery, banking and securities, insurance, distribution, and telecommunications.

Legal Services

The 2006 Law on Lawyers became effective on January 1, 2007, replacing the Ordinance on Lawyers of July 25, 2001. Foreign lawyers cannot appear as counsels of record in civil or criminal proceedings.

A law degree from a Vietnamese university is required for anyone wishing to provide legal advice in Vietnam. U.S. invested law firms, whether joint ventures or branches, may advise on Vietnam's law only if they hire persons with Vietnamese law degrees who satisfy the same requirements applied to other Vietnamese practitioners. Licensing of branches is for 5 year periods and is renewable.

Advertising and Marketing Research Services

Foreign participation in joint ventures with service providers is limited at 51 percent equity. In January 2009, these restrictions will be lifted.

Vietnam restricts advertising in printed, electronic, and broadcast media of spirits and most wines.

FOREIGN TRADE BARRIERS

Audiovisual Services

Foreign investors may invest in cinema construction and operation only through joint ventures with local Vietnamese partners, subject to government approval. Certain quantitative restrictions also create barriers for foreign cinema operators. The total number of foreign films imported into Vietnam each year may not exceed two-thirds of the number of films domestically produced. Imported films are subject to censorship before public viewing. The censorship process is not transparent or predictable and the right of appeal of censor's decisions is not well established.

Express Delivery Services

Foreign participation in joint ventures with express delivery service providers is limited to 51 percent of a firm's equity. In January 2012, 100 percent foreign ownership will be permitted in this sector. A regulation issued in August 2007 sets out the existing restrictions and timetables.

Telecommunications

Permitted foreign participation in joint ventures with service providers ranges from 49 percent to 70 percent, depending on the sub-sector (there are five basic and eight value added sub sectors). For instance, foreign ownership in private networks is permitted up to 70 percent, while facility-based basic services (*e.g.*, public voice service) is generally capped at 49 percent. In January 2010, foreign equity of up to 65 percent will be allowed for nonfacilities based service suppliers, *i.e.*, suppliers that do not own transmission capacity but contract for such capacity including submarine cable capacity from a facilities-based supplier. A nonfacilities based supplier is not otherwise excluded from owning telecommunications equipment within its premises and is permitted public service provision "points of presence."

Vietnam's telecommunications services regulated by the government include regulation of telecommunications networks, prices and services; operations of service providers and users; licensing procedures; establishment of service provider networks; and public telecommunication services. Vietnam provides guidelines on the design, installation, and subscription of terminals; fixed telephone service; mobile phones; sale or lease of mobile phone terminals; and other telecom services. The regulations have not been updated following Vietnam's membership in the WTO, but work is currently underway to draft a new, comprehensive telecommunications law. The United States has encouraged Vietnam to ensure that these revisions are consistent with Vietnam's WTO commitments.

While Vietnam has opened up the telecommunications sector to competition, the facilities-based market is generally still restricted to state-owned or state-controlled enterprises, though joint-ventures with foreign firms are possible.

In 2010, Vietnam will open its telecommunications market and permit majority-owned foreign supply in basic public telecommunications services offered on a nonfacilities basis (fixed and mobile services offered by leasing transmission capacity from a Vietnamese company).

Distribution Services

Foreign participation in commission agents' services, wholesale services, retail services, and franchising is limited to joint ventures until January 2009. After January 1, 2009, this restriction will be lifted and 100 percent foreign-owned entities will be allowed in the sector. Vietnam requires an economic needs

test for additional foreign-invested retail outlets after the initial outlet is established. The United States will continue to monitor the implementation of this requirement.

Vietnam's WTO distribution commitments also cover foreign participation in direct sales activities, an important sector for U.S. businesses.

Banking and Securities Services

Vietnam began to allow foreign banks to establish 100 percent foreign-owned subsidiaries in April 2007. Equity in joint venture banks is still limited to 49 percent. In 2012, 100 percent foreign ownership of securities firms will be permitted.

INVESTMENT BARRIERS

Vietnam's Investment Law includes provisions designating certain sectors in which foreign investment is prohibited and others in which foreign investment is subject to conditions ("conditional sectors"). There are specific laws that also apply to investment in conditional sectors such as banking, securities, and insurance. Investments greater than VND300 billion and those in conditional sectors are required to undergo an investment evaluation.

All land in Vietnam is owned and managed by the state and, as such, neither foreigners nor Vietnamese nationals can own land. The Land Law of 2003 permits foreign invested enterprises to lease land for a (renewable) period of 50 years, obtain land rights, and mortgage both the structures erected on that land and the value of land use rights.

ELECTRONIC COMMERCE

Electronic commerce remains an undeveloped sector in Vietnam. Obstacles to its development include the low number of Internet subscribers, government fire-walling, limited bandwidth and other problems with the Internet infrastructure, limited financial services sector (including few credit cards users), and regulatory barriers.

In 2006, a new Law on Electronic Transactions became effective, facilitating electronic commerce by giving legal standing to electronic contracts and electronic signatures, as well as allocating the responsibilities of parties with respect to the transmission and receipt of electronic data.

OTHER BARRIERS

Both foreign and domestic firms have identified corruption in Vietnam, in all phases of business operations, as an obstacle to their business activities. In 2007, Vietnam scored a 2.6 out of a possible score of 10 points on Transparency International's Corruption Perception Index, ranking 123 out of 179 countries. In large part, lack of transparency, accountability, and media freedom, as well as widespread official corruption and inefficient bureaucracy remain serious problems. Top leaders in the Communist Party of Vietnam and Vietnam's government have publicly admitted that these are urgent problems.

Competition among government agencies for control over business and investments has created confusing and overlapping jurisdictions, and bureaucratic procedures and approvals, which in turn create opportunities for corruption. Low pay for government officials and inadequate systems for holding officials accountable for their actions compound the problems. Implementation of Vietnam public

FOREIGN TRADE BARRIERS

administration reform program, developed with the assistance of the World Bank and the United States Agency for International Development, combined with Vietnam obligations under the transparency provisions of the BTA, are expected to improve the situation.

APPENDIX
US Data for Given Trade Partners in Rank Order of US Goods Exports
(Values in Millions of Dollars)

Country	Trade Balance		Change 2006-07	Exports*		Change 06/07		Imports**		Change 06/07		FDI*** 2005	FDI*** 2006	% Change 2005-06	FDI Area
	2006	2007		2006	2007	Value	Percent	2006	2007	Value	Percent				
World	-817,304	-790,991	26,313	1,036,635	1,162,708	126,073	12.16	1,853,938	1,953,699	99,761	5.38	2,135	2,384	11.64	Manuf., Finance, Wholesale
Canada	-71,782	-64,206	7,576	230,656	248,905	18,249	7.91	302,438	313,111	10,673	3.53	233,474	246,451	5.56	Manuf., Finance, Mining
Mexico	-64,274	-74,258	-9,983	133,979	136,541	2,562	1.91	198,253	210,799	12,546	6.33	75,106	84,699	12.77	Manuf., Finance, Nonbank Holding Co
People's Republic of Chi	-232,589	-256,269	-23,681	55,186	65,238	10,053	18.22	287,774	321,508	33,733	11.72	17,033	22,228	30.50	Manuf., Wholesale trade, Nonbank Holding Co
Japan	-88,568	-82,799	5,769	59,613	62,665	3,052	5.12	148,181	145,464	-2,717	-1.83	79,280	91,769	15.75	Finance, Manuf., Wholesale trade
United Kingdom	-8,103	-6,597	1,506	45,410	50,296	4,886	10.76	53,513	56,893	3,380	6.32	333,497	364,084	9.17	Finance, Nonbank Holding Co, Manuf
Germany	-47,763	-44,712	3,050	41,319	49,652	8,333	20.17	89,082	94,364	5,282	5.93	90,574	99,253	9.58	Manuf., Nonbank Holding Co, Wholesale trade
Republic of Korea	-13,362	-12,863	499	32,442	34,703	2,261	6.97	45,804	47,566	1,763	3.85	18,188	22,280	22.50	Manuf., Banking, Finance
Netherlands	13,787	14,566	779	31,129	32,986	1,857	5.96	17,342	18,420	1,078	6.22	184,614	215,715	16.85	Nonbank Holding Co, Finance, Manuf
France	-12,822	-14,182	-1,360	24,217	27,407	3,190	13.17	37,040	41,589	4,549	12.28	60,127	65,933	9.66	Manuf., Nonbank Holding Co, Wholesale trade
Taiwan	-15,165	-11,943	3,222	23,047	26,359	3,312	14.37	38,212	38,302	90	0.24	14,602	16,126	10.44	Finance, Manuf., Wholesale trade
Singapore	6,916	7,889	974	24,684	26,284	1,601	6.49	17,768	18,395	627	3.53	54,500	60,417	10.86	Manuf., Finance, Wholesale trade
Belgium	6,935	10,009	3,075	21,340	25,292	3,952	18.52	14,405	15,283	877	6.09	48,409	52,054	7.53	Finance, Manuf.,
Brazil	-7,136	-1,008	6,128	19,231	24,628	5,397	28.07	26,367	25,636	-731	-2.77	29,619	32,601	10.07	Manuf., Nonbank Holding Co, Finance
Hong Kong	9,829	13,090	3,261	17,776	20,121	2,345	13.19	7,947	7,030	-916	-11.53	32,577	38,118	17.01	Nonbank Holding Co, Finance, Wholesale trade
Australia	9,575	10,589	1,013	17,779	19,205	1,426	8.02	8,204	8,616	412	5.03	115,622	122,587	6.02	Nonbank Holding Co, Manuf, Mining
India	-11,775	-6,432	5,343	10,056	17,592	7,536	74.94	21,831	24,024	2,194	10.05	6,634	8,852	33.43	Information, Manuf., Banking
Switzerland	145	2,270	2,125	14,375	17,040	2,665	18.54	14,230	14,769	539	3.79	81,048	90,085	11.15	Nonbank Holding Co, Wholesale trade, Banking
Italy	-20,109	-20,901	-792	12,546	14,141	1,595	12.71	32,655	35,042	2,387	7.31	24,845	28,936	16.47	Manuf., Information, Wholesale trade
Israel	-8,202	-7,793	409	10,965	13,019	2,054	18.73	19,167	20,812	1,645	8.58	8,350	9,964	19.33	Manuf., Information, Prof., Scientific, Tech
Malaysia	-23,989	-21,110	2,879	12,544	11,680	-864	-6.89	36,533	32,790	-3,743	-10.25	10,344	12,450	20.36	Manuf., Mining
United Arab Emirates	10,263	10,270	7	11,648	11,609	-39	-0.34	1,385	1,339	-46	-3.32	3,324	4,547	36.79	Mining, Finance, Wholesale trade
Saudi Arabia	-24,049	-25,227	-1,178	7,640	10,399	2,760	36.12	31,689	35,626	3,937	12.43	3,770	4,346	15.28	Nonbank Holding Companies
Venezuela	-28,131	-29,697	-1,566	9,002	10,199	1,197	13.30	37,134	39,897	2,763	7.44	9,568	11,556	20.78	Manuf., Mining
Spain	-2,352	-650	1,702	7,426	9,879	2,453	33.03	9,778	10,530	752	7.69	46,528	49,413	6.20	Nonbank Holding Co, Manuf
Ireland	-20,010	-21,336	-1,326	8,516	9,011	495	5.81	28,526	30,346	1,821	6.38	71,255	83,615	17.35	Manuf., Finance, Information
Colombia	-2,557	-880	1,677	6,709	8,560	1,851	27.59	9,266	9,440	174	1.88	4,192	4,897	16.82	Mining, Manuf., Wholesale trade
Thailand	-14,320	-14,308	12	8,147	8,445	298	3.66	22,466	22,753	287	1.28	6,573	8,217	25.01	Manuf., Finance, Banking
Chile	-2,779	-692	2,087	6,786	8,311	1,525	22.47	9,565	9,003	-562	-5.88	9,623	10,243	6.44	Finance, Manuf., Banking
Philippines	-2,077	-1,695	383	7,617	7,713	96	1.26	9,694	9,407	-287	-2.96	6,377	7,034	10.30	Manuf., Finance
Russia	-15,127	-11,995	3,132	4,701	7,365	2,664	56.67	19,828	19,360	-468	-2.36	8,562	10,064	17.54	Mining
Turkey	364	1,985	1,621	5,723	6,586	862	15.06	5,359	4,601	-759	-14.15	2,010	2,088	3.88	Banking, Manuf., Wholesale trade
Dominican Republic	818	1,871	1,053	5,351	6,091	740	13.84	4,532	4,219	-313	-6.91	770	896	16.36	Manuf
Argentina	797	1,360	563	4,776	5,854	1,079	22.58	3,979	4,495	516	12.96	11,019	13,086	18.76	Nonbank Holding Co, Manuf, Finance
Egypt	1,737	2,968	1,231	4,133	5,347	1,214	29.38	2,396	2,380	-16	-0.68	5,354	5,911	10.40	Mining
Costa Rica	288	638	349	4,132	4,581	448	10.85	3,844	3,943	99	2.57	1,278	1,573	23.08	Manuf, Wholesale trade
Sweden	-9,744	-8,552	1,192	4,126	4,494	368	8.92	13,870	13,046	-824	-5.94	33,219	35,938	8.19	Nonbank Holding Co
Honduras	-30	551	582	3,687	4,462	775	21.02	3,717	3,911	193	5.20	367	517	40.87	Manuf.,
Indonesia	-10,346	-10,070	276	3,078	4,235	1,156	37.55	13,425	14,304	880	6.55	9,487	10,585	11.57	Mining
Peru	-2,954	-1,087	1,866	2,927	4,120	1,193	40.75	5,880	5,207	-674	-11.45	4,245	4,979	17.29	Mining
Guatemala	409	1,044	635	3,511	4,076	565	16.08	3,102	3,032	-70	-2.26	303	347	14.52	
Panama	2,322	3,374	1,051	2,701	3,740	1,039	38.45	379	366	-13	-3.39	5,777	5,728	-0.85	Nonbank Holding Co, Finance
Austria	-5,318	-7,498	-2,180	2,986	3,172	186	6.22	8,304	10,670	2,365	28.48	10,982	17,405	58.49	Nonbank Holding Co, Manuf, Wholesale trade

* US Total Goods Exports (f.a.s.); ** US General Goods Imports (customs value); *** Stock of US Foreign Direct Investment Abro

APPENDIX
US Data for Given Trade Partners in Rank Order of US Goods Exports
(Values in Millions of Dollars)

Country	Trade Balance		Change 2006-07	Exports*		Change 06/07		Imports**		Change 06/07		FDI*** 2005	FDI*** 2006	% Change 2005-06	FDI Area
	2006	2007		2006	2007	Value	Percent	2006	2007	Value	Percent				
Finland	-2,326	-2,138	188	2,648	3,133	485	18.33	4,974	5,271	297	5.97	2,070	2,592	25.22	Manuf., Wholesale trade
Poland	-292	898	1,190	1,961	3,123	1,162	59.26	2,253	2,225	-28	-1.23	6,125	7,190	17.39	Manuf., Banking
Norway	-4,691	-4,267	425	2,394	3,052	659	27.51	7,085	7,319	234	3.30	8,819	10,280	16.57	Mining, Manuf.,
Ecuador	-4,367	-3,199	1,168	2,727	2,937	210	7.69	7,094	6,136	-958	-13.50	730	461	-36.85	Mining, Wholesale trade
Denmark	-3,272	-3,139	133	2,268	2,927	659	29.04	5,540	6,066	526	9.50	5,655	5,753	1.73	Manuf
New Zealand	-188	-302	-115	2,929	2,813	-115	-3.94	3,116	3,116	-1	-0.03	4,897	5,721	16.83	Finance, Manuf., Wholesale trade
Nigeria	-25,630	-29,984	-4,354	2,233	2,787	553	24.77	27,863	32,770	4,907	17.61	1,195	339	-71.63	Nonbank Holding Co, Wholesale trade
Qatar	1,017	2,283	1,266	1,279	2,762	1,483	116.03	262	479	217	82.90	5,255	5,080	-3.33	
Kuwait	-1,894	-1,633	261	2,087	2,485	398	19.09	3,981	4,118	138	3.46		600		
Portugal	-1,590	-592	998	1,471	2,478	1,008	68.55	3,060	3,070	10	0.34	2,391	3,033	26.85	Wholesale trade, Information, Manuf
El Salvador	295	269	-26	2,152	2,313	161	7.48	1,857	2,044	187	10.08	947	774	-18.27	
Greece	589	918	329	1,555	2,111	556	35.78	966	1,193	227	23.53	1,858	2,073	11.57	Wholesale trade, Finance
Pakistan	-1,683	-1,542	141	1,989	2,035	46	2.31	3,672	3,577	-95	-2.59	1,104	1,232	11.59	
Vietnam	-7,466	-8,730	-1,264	1,100	1,903	802	72.93	8,567	10,633	2,066	24.12	294	339	15.31	
Morocco	357	733	376	878	1,343	465	52.89	521	610	89	16.99	302	311	2.98	
Ukraine	-884	121	1,005	756	1,342	585	77.41	1,640	1,221	-419	-25.58		505		
Angola	-10,169	-11,227	-1,058	1,550	1,280	-270	-17.42	11,719	12,508	788	6.73	1,038	1,096	5.59	
Paraguay	853	1,169	316	911	1,237	326	35.79	58	68	10	17.17				
Oman	-80	18	98	829	1,059	231	27.82	909	1,041	132	14.55	528	819	55.11	
Luxembourg	47	476	429	581	1,003	421	72.49	534	527	-7	-1.36	69,746	82,588	18.41	Nonbank Holding Companies
Nicaragua	-774	-713	61	752	890	139	18.47	1,526	1,604	78	5.09	245	261	6.53	
Jordan	-772	-477	294	650	857	206	31.71	1,422	1,334	-88	-6.21	1	40	3900.00	
Kazakhstan	-314	-499	-184	646	753	107	16.53	961	1,252	291	30.29	4,673	4,893	4.71	
Romania	-565	-374	191	554	680	126	22.82	1,119	1,054	-65	-5.79	725	1,021	40.83	
Bahrain	-158	-35	123	474	591	117	24.64	632	626	-6	-0.98	179	107	-40.22	
Kenya	172	259	86	526	584	58	11.06	354	325	-28	-8.00	145	68	-53.10	
Ghana	97	217	120	289	416	126	43.67	192	199	6	3.37	239	237	-0.84	
Bulgaria	-165	-120	45	293	306	13	4.51	458	426	-32	-7.00	88	18	-79.55	
Bolivia	-147	-85	62	215	278	62	29.03	362	363	0	0.07	218	172	-21.10	
Sri Lanka	-1,909	-1,839	70	237	227	-9	-4.01	2,146	2,066	-80	-3.72	40	54	35.00	
Ethiopia	56	79	23	137	168	30	22.12	81	88	7	8.77	54	60	11.11	
Cote d'Ivoire	-554	-439	116	147	162	14	9.59	702	600	-101	-14.46	304	298	-1.97	
Cambodia	-2,114	-2,325	-211	74	139	64	86.37	2,188	2,463	275	12.57	1	1	0.00	
Cameroon	-153	-164	-11	120	133	13	10.72	273	297	24	8.76	99	231	133.33	
Laos	-2	-15	-13	7	5	-1	-21.47	9	20	11	129.93				
European Union - 27	-117,216	-107,389	9,827	214,843	247,343	32,500	15.13	332,059	354,733	22,674	6.83	998,028	1,123,284	12.55	Nonbank Holding Co, Manuf, Finance
SACU	-3,801	-4,334	-533	4,632	5,736	1,105	23.85	8,433	10,070	1,637	19.41	3,646	3,891	6.72	

* US Total Goods Exports (f.a.s.); ** US General Goods Imports (customs value); *** Stock of US Foreign Direct Investment Abro

