EUROPEAN UNION

TRADE SUMMARY

The U.S. goods trade deficit with the European Union was $79.8 billion in 2010, up $18.6 billion from 2009. U.S. goods exports in 2010 were $239.8 billion, up 8.7 percent from the previous year. Corresponding U.S. imports from the European Union were $319.6 billion, up 13.4 percent. European Union countries, together, would rank as the second largest export market for the United States in 2009.

U.S. exports of private commercial services (*i.e.*, excluding military and government) to the European Union were $171.8 billion in 2009 (latest data available), and U.S. imports were $121.4 billion. Sales of services in the European Union by majority U.S.-owned affiliates were $561.4 billion in 2008 (latest data available), while sales of services in the United States by majority European Union-owned firms were $390.5 billion.

The stock of U.S. foreign direct investment (FDI) in the European Union was $1.7 trillion in 2009 (latest data available), up from $1.6 trillion in 2008. U.S. FDI in the European Union is primarily concentrated in the nonbank holding companies, finance/insurance, and manufacturing sectors.

OVERVIEW

The United States and the European Union (EU) share the largest and most complex economic relationship in the world. The enormous volume of trade and investment is a key pillar of prosperity both in the United States and Europe.

Despite the generally positive character of the U.S.-EU trade and investment relationship, U.S. exporters and investors in some sectors face chronic barriers to entering, maintaining, or expanding their presence in the EU market. Some of the most significant barriers – which have persisted despite repeated efforts to resolve them through bilateral consultations or WTO dispute settlement procedures – have been highlighted in this report for many years. Many are highlighted again in this year's NTE report.

MARKET ACCESS FOR NON-AGRICULTURAL PRODUCTS

WTO Information Technology Agreement

In September 2010, the WTO Dispute Settlement Body (DSB) adopted the final report of the panel considering the U.S. claim that the EU violated its tariff commitments under the WTO Information Technology Agreement (ITA) by imposing duties as high as 14 percent on flat panel computer monitors, multifunction printers, and certain cable, satellite, and other set-top boxes. For all three products at issue, the panel concluded that the EU tariffs were inconsistent with its obligations. The United States and EU agreed to a period of nine months and nine days for the EU to comply with the recommendations and rulings of the DSB, ending on June 30, 2011. With EU compliance, the United States expects that U.S. producers of high-tech products will continue to be able to export those products to Europe duty-free, as required under the ITA.

Pharmaceutical Products

The U.S. pharmaceutical industry has expressed concerns regarding some EU and Member State policies affecting market access for pharmaceutical products, including procedural non-transparency and a lack of

meaningful stakeholder input into policies related to pricing and reimbursement. The United States is following with interest European deliberations on steps to increase the availability of pharmaceutical product information to consumers, as a means of promoting consumer awareness and access to medicines. The United States continues to engage with the EU and individual Member States on these matters. In recent years, the U.S. pharmaceutical industry has raised concerns about pharmaceutical market access and government pricing and reimbursement systems in Austria, Belgium, the Czech Republic, Finland, France, Germany, Hungary, Lithuania, the Netherlands, Poland, Portugal, Spain, and the United Kingdom. Additional detail on some of these countries follows.

Member State Measures

Belgium: U.S. pharmaceutical companies have expressed concern about the lack of adequate transparency in the development and implementation of government cost-containment measures in Belgium. The United States has encouraged the government of Belgium to ensure that policies affecting the pharmaceutical industry are developed and implemented in a transparent manner and that industry is afforded meaningful opportunities to engage with the relevant authorities to address their concerns and to ensure the continuing development of their already significant investment in the Belgian market.

Czech Republic: U.S. pharmaceutical companies have expressed concern about the Czech Republic's system for determining pricing and reimbursement levels for pharmaceutical products. The United States has encouraged the Czech government to review its current pricing and reimbursement system to ensure that it does not unfairly limit the access of innovative pharmaceutical products to the Czech market.

Germany: U.S. pharmaceutical companies have raised concerns about Germany's 2010 drug pricing reform, including limitations on reimbursement prices and mandatory discounts. The industry is also concerned about certain structural reforms, such as a brief period for assessing whether new products offer additional benefits compared to existing drugs. Over the past year, industry has continued to raise concerns about transparency and a lack of adequate consultation with affected stakeholders in the legislative process. Industry has called for the government to convene a broader stakeholder dialogue on issues such as pricing, regulation, and research and innovation. The United States has encouraged the German government to expand and intensify its dialogue with the pharmaceutical industry, to ensure meaningful opportunities for affected stakeholders to address their concerns with relevant authorities.

Hungary: Pharmaceutical manufacturers have expressed concern about Hungary's volume and pricing restrictions, high sector-specific taxes, and delays in reimbursement approvals. The United States has encouraged the Hungarian government to review its pricing and reimbursement system to ensure that affected stakeholders have adequate opportunities to engage with relevant authorities to address their concerns.

Poland: U.S. pharmaceutical companies have expressed concerns about the lack of adequate transparency and of meaningful engagement in the development and implementation of government cost containment measures affecting reimbursement and pricing policies in Poland. The United States has encouraged the government of Poland to ensure that policies affecting the pharmaceutical industry are developed and implemented in a transparent manner and that industry is given opportunities to address their concerns and to ensure the continuing development of their already significant investment in the Polish market.

Portugal: The U.S. pharmaceutical industry is concerned about a lack of transparency in the development and implementation of government cost-containment measures. Industry representatives also report that they do not have adequate opportunities to engage with the relevant authorities to address their concerns prior to the adoption of policies that affect their ability to participate in the market.

Uranium

The United States is concerned that EU policies may unjustifiably restrict the import into the EU of enriched uranium, the material from which nuclear power reactor fuel is fabricated. Since 1992, the EU has maintained strict quantitative restrictions on imports of enriched uranium. 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 limit the acquisition of non-EU sources of supply of enriched uranium, imposing explicit quotas on imports of enriched uranium. The EU's Euratom Supply Agency continues to pursue a policy that appears to favor two European enrichers. The United States has raised concerns about the justification for the import quotas and the nontransparent nature of the Corfu Declaration and its application. The United States will closely monitor whether EU agreements under negotiation with Russia in the nuclear area alter EU application of the Declaration.

MARKET ACCESS FOR AGRICULTURAL AND FOOD PRODUCTS

Bananas

In December 2009, the United States and the EU initialed an agreement designed to lead to a settlement of the longstanding dispute over the EU's discriminatory bananas trading regime. In the agreement, the EU agreed not to reintroduce measures that discriminate among foreign bananas distributors and to maintain a non-discriminatory, tariff-only regime for the importation of bananas. The U.S.-EU agreement complements a parallel agreement – the Geneva Agreement on Trade in Bananas (GATB) – between the EU and several Latin American banana-supplying countries, which provides for staged EU tariff cuts to bring the EU into compliance with its WTO obligations. The United States and the Latin American countries signed their respective agreements with the EU in June 2010.

The agreements mark the beginning of a process that – when completed – will culminate with the settling of the various banana disputes and claims against the EU in the WTO. Once the Parties to these agreements conclude their domestic ratification procedures, the agreements will enter into force, at which point the EU will need to request formal WTO certification of its new tariffs on bananas. The GATB provides that once the certification process is concluded, the EU and the Latin American signatories to the GATB will settle their disputes and claims. Once that has occurred, the United States also will settle its dispute with the EU.

Husked Rice Agreement

The United States has ongoing concerns regarding the operation of the U.S.-EU husked rice agreement, which has been in effect since 2005. Discussions on this subject with the European Commission have focused on the annual increase in the import reference volume and the longer-term operation of the tariff adjustment mechanism set out in the agreement. The United States has sought a significant increase in the import reference quantity in the husked rice agreement. The longer-term U.S. objective is to obtain consistent market access for U.S. brown rice at a tariff well below the bound tariff – the tariff rate that generally cannot be exceeded under WTO rules – of 65 Euros per ton.

Meursing Table Tariff Codes

Many processed food products – such as confectionary products, baked goods, and miscellaneous food preparations – are subject to a special tariff code system in the EU. Under this system, often referred to as the Meursing table, the EU charges a tariff on each imported product based on the product's content of

milk protein, milk fat, starch, and sugar. As a result, products that the United States and other countries might consider equivalent for tariff classification purposes sometimes receive different rates of duty in the EU depending on the particular mix of ingredients in each product. The difficulty in calculating Meursing duties imposes an unnecessary administrative burden on – and creates uncertainty for – exporters, especially those seeking to ship new products to the EU.

EU Enlargement

In December 2006, the United States entered into negotiations with the EU – within the framework of the GATT 1994 provisions relating to the expansion of customs unions – regarding compensation for certain tariff increases related to Romania and Bulgaria's EU accession on January 1, 2007. Upon accession to the EU, Romania and Bulgaria were required to change their tariff schedules to conform to the EU's common external tariff schedule, which resulted in increased tariffs on the importation of certain products, mainly agricultural products. Under GATT Articles XXIV:6 and XXVIII, the United States is entitled to compensation from the EU to offset these tariff increases. In 2011, the United States will continue to seek conclusion of an appropriate bilateral compensation agreement with the EU and to ensure that the agreement is implemented as soon as possible.

INTELLECTUAL PROPERTY RIGHTS (IPR) PROTECTION

The EU and its Member States generally provide strong protection for intellectual property rights (IPR). However, U.S. industry has concerns regarding the implementation of key provisions of EU IPR directives and overall IPR protection in some Member States.

In recent years, the European Commission issued communications on strengthening the criminal law framework to combat intellectual property infringement and undertook a renewed effort to introduce an EU-wide patent regime. 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, including the United States.

The United States continues to have concerns about the EU's system for the protection of Geographical Indications (GIs), which raises issues of national treatment and adversely impacts trademarks and widely accepted generic terms for food products. The EU adopted its current GI regulation for food products, Council Regulation (EC) 510/06, in response to findings by the WTO Dispute Settlement Body that the EU GI system impermissibly discriminated against non-EU products and persons. The Dispute Settlement Body also agreed with the United States that the EU could not create broad exceptions to trademark rights guaranteed by the TRIPS Agreement. The United States continues to have some concerns about this amended regulation, and intends to monitor carefully current initiatives to modify it. These concerns extend equally to Council Regulation (EC) 479/08, which relates to wines, and to Commission Regulation (EC) 607/09, which relates, *inter alia*, to GIs and traditional terms of wine sector products, whose implementation the United States is also carefully monitoring.

With respect to the impact of GIs on generic terms, the United States, along with several other interested WTO Members, was given the opportunity to provide input into a number of recently proposed GIs that threatened to undercut the general use of certain generic terms. The resulting approvals, issued in fall 2010, appear to contain provisions intended to preserve the general use of those terms. The United States will monitor how these GIs are enforced and whether, in fact, the generic terms are preserved. Certain other recently proposed GIs may also provide relevant information on the possible negative impact of EU GIs on generic terms.

The EU and its Member States were active participants in the Anti-Counterfeiting Trade Agreement (ACTA) negotiations, which concluded in November 2010. When it enters into force, ACTA will establish an international framework that will assist Parties in their efforts to effectively combat the infringement of intellectual property rights, in particular the proliferation of counterfeiting and piracy, which undermines legitimate trade and the sustainable development of the world economy.

Member State Measures

The United States continues to have concerns about IPR protection and enforcement in several Member States. The United States actively engages with the relevant authorities in these countries and will continue to monitor the adequacy and effectiveness of IPR protection and enforcement, including through the annual Special 301 review process.

Austria: U.S. copyright holders report that while legal protections are strong in principle, procedural roadblocks prevent copyright holders from blocking online access to pirated works and prevent effective prosecution.

Bulgaria: U.S. industry reports growing IPR concerns, particularly with respect to increased Internet piracy; inefficient cooperation between Bulgarian IPR officials and the private sector; delays and conflicts of interest in enforcing patent protection; and difficulties obtaining information from ISPs in Bulgaria to combat piracy on the Internet.

Czech Republic: The Czech Republic made significant progress in increasing enforcement in the approximately 50 open air markets that line the Czech borders with Germany and Austria and was removed from the Special 301 Watch List in April 2010. Despite this progress, industry remains concerned about the sustainability of these enforcement efforts. Industry is also concerned that the IPR penalties that have been imposed are not sufficient to deter violations.

Finland: Finland was included in the Watch List in the 2010 Special 301 Report. The key concern cited in the report was the lack of product patent protection for certain pharmaceutical products and a regulatory framework that denied adequate protection for some process patents filed before 1995, and those that were pending in 1996. Affected products include many of the top-selling U.S. pharmaceutical products currently on the Finnish market.

Greece: Greece was included in the Watch List in the 2010 Special 301 Report. The United States acknowledges some improvements in IPR enforcement in Greece, including actions taken against Internet piracy. However, inadequate IPR protection continues to pose barriers to U.S. exports and investment. Key issues cited in the 2010 report include weak and inconsistent IPR enforcement and a failure to follow through on initiatives begun in 2008 and 2009, including effective implementation of the National Action Plan on IPR.

Italy: Italy was included in the Watch List in the 2010 Special 301 Report. The United States welcomes signs of the government's renewed commitment to tackling IPR issues, especially with respect to Internet piracy, including by ratifying the WIPO Internet Treaties along with the other EU Member States. Other problems related to IPR protection and enforcement continue to represent barriers to U.S. exports and investment, however. Key concerns cited in the 2010 report include continued widespread copyright piracy and trademark counterfeiting, growing online piracy of books and journals, the lack of an expeditious legal mechanism for right holders to address piracy on the Internet, and the imposition of sentences that are inadequate to deter IPR violations.

Latvia: The United States is encouraged by amendments to Latvia's intellectual property criminal statutes, which will simplify certain aspects of infringement cases and which may result in more successful prosecutions of IPR violations. Latvia hosts a number of file-sharing websites, however, and while the national police and prosecutors have made efforts to take down these sites, they are hampered by a lack of resources, severe backlogs in police forensics labs, and high legal barriers to prosecution. A U.S. software company has also reported that the government of Latvia has permitted significant unauthorized use of its software products in government offices. The United States has engaged the government of Latvia on this issue, stressing the need to include full software licensing in ministry budgets.

Poland: Poland was removed from the Watch List in the 2010 Special 301 Report. This was in large part due to Poland's implementation of its national IPR action plan for 2008-2010, which provided for increased enforcement efforts in German border markets where pirated and counterfeit goods have long been sold with impunity. In 2010, Polish authorities began taking random samples at optical disc manufacturing plants to determine whether violations of intellectual property rights were occurring. Piracy of movies, music, and software on the Internet continues, but there has been progress on enforcement. Rights holders continue to have concerns, however, as penalties for IPR infringement still are not being imposed at levels sufficient to deter violations. The government reports that, to address these concerns, it will implement a new national IPR action plan in 2011, including a nationwide standard platform for enforcing intellectual property laws with an emphasis on equipping prosecutors and judges to better enforce against crimes on the Internet.

Portugal: Although Portugal regularly conducts inspections at fairs, markets, and festivals, which resulted in the seizure of illegal goods in 2008 worth an estimated 6 million Euros, it does not have strong mechanisms to prevent piracy on the Internet. Legal cases involving IPR often take years to resolve, however, and rarely lead to a conviction. Courts rarely order injunctions stopping the activity in question while a case is pending.

Romania: Romania was included in the Watch List in the 2010 Special 301 Report. The United States welcomes positive steps taken in 2009, including increased cooperation between enforcement authorities, such as the National Police and General Prosecutor's Office, the use of a national database to improve interagency coordination on enforcement, coordination with rights holders on enforcement matters, and further positive efforts aimed at ensuring the government's use of licensed software. Deficiencies in IPR protection and enforcement continue to pose barriers to U.S. exports and investment, however. Key concerns cited in the 2010 report include weaknesses in the prosecution of IPR infringers, judicial inefficiency, and a failure to impose deterrent sentences for IPR violations.

Spain: Spain was included in the Watch List in the 2010 Special 301 Report. The key concerns cited in the report include significant piracy on the Internet, the failure of the existing legal and regulatory framework to promote cooperation between ISPs and right-holders to reduce online piracy, the Spanish government's weak efforts to change the widespread misperception that the use of peer-to-peer file sharing systems to share copyright infringing materials is legal, and the general failure of Spain's legal system to apply criminal penalties for criminal intellectual property infringement.

In early 2011, after a year of deliberations, Spain enacted legislation that established an administrative mechanism for taking down infringing Internet websites and content. Late amendments to the legislation introduced potentially time-consuming judicial review procedures that could limit the new mechanism's effectiveness in preventing the circulation of infringing digital materials. The United States will carefully monitor the implementation of this legislation in 2011.

Sweden: Sweden continues to grapple with widespread piracy on the Internet, but government enforcement efforts have begun to show positive results. Following the entry into force in April 2009 of legislation implementing the EU Enforcement Directive, several major pirate websites left Sweden. Nonetheless, Sweden still hosts some of the largest on-line pirate sites in the world. These were listed in USTR's publication, Notorious Piracy Markets, issued on February 28 and posted on the USTR website at http://www.ustr.gov/about-us/press-office/press-releases/2011/february/ustr-announces-results-special-301-review-notorio.

SERVICES BARRIERS

Telecommunications

The WTO commitments of EU Member States 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 WTO commitments to provide market access and national treatment for voice telephony and data services. The Framework Directive imposed additional liberalization and harmonization requirements on Member States, and the Commission has acted against Member States that were not implementing 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.

Enforcement of existing telecommunications legislation by national regulatory authorities (NRAs) has been characterized by unnecessarily lengthy and cumbersome procedures in France, Italy, and Austria, among others. The European Commission has also found that incumbent telecommunications providers in Germany, Greece, Spain, Italy, Ireland, Austria, Finland, and Sweden have slowed the development of competition by systematically appealing their national regulators' decisions. The major EU telecommunications reform package adopted in December 2009, however, was designed to resolve many of these issues. One of its innovations was the establishment of the Body of European Regulators of Electronic Communications, which is intended to help ensure fair competition and more consistency in the regulation of telecoms markets within the EU by strengthening the Commission's oversight of national regulators. The new rules are supposed to be transposed into the national laws of the 27 Member States by May 2011.

In August 2010 the EU outlined its overall strategy for a flourishing European digital economy by 2020. This European Digital Agenda will be followed up by legislative proposals, which are likely to impact U.S. companies providing telecommunication and broadband services and online content in Europe.

Member State Measures

Austria: Austria continues to move toward a more open and competitive telecommunications market and has implemented the relevant EU directives. Legal reforms effective as of October 2010 anchored the independence of Austria's telecoms regulators. The Austrian NRA carries out market reviews and imposes remedies where necessary. Despite these recent improvements, the NRA is not pro-active in imposing and implementing proposed remedies and decisions. The incumbent telecommunications provider, Telekom Austria, offers fixed-line networks, mobile telephony, and Internet access, including broadband, and is the market leader in all of these areas.

The Austrian mobile market is highly competitive, in contrast to the more concentrated fixed-line market. Retail rates for mobile communications have continued to decrease, but the NRA has reported a steady increase in consumer complaints. The market share of fixed broadband lines held by operators other than Telekom Austria continues to fall because of Telekom Austria's ability to offer bundled services. Price pressure on the wholesale broadband access market is very intense, with alternative operators losing market share. On next generation access (NGA), the NRA has adopted technology-based market definitions that exclude some NGA networks from regulation.

Finland: Incumbent Finnish mobile network operators have appealed the determinations of the Finnish NRA that these operators maintain "significant market power" (the basis for price regulation of these operators by the NRA). Appeals in several recent cases have taken as long as three years to five years, which underscores the regulatory uncertainty that foreign network operators currently face.

Germany: Germany has made further progress in introducing competition to some sectors of its telecommunications market. However, competitors continue to report difficulties competing with the partially state-owned incumbent, Deutsche Telekom AG (DT), which retains a dominant position in a number of key market segments, including local loop and broadband connections. On the positive side, the passage of the Telecommunications Act in 2003, as well as subsequent amendments, increased competition in the German market, enabling competitors to gain more than 21 percent of the fixed-line telecommunications market (excluding cable and VoIP) and about 41 percent of broadband connections delivered over copper phone lines (i.e. excluding cable and fiber-optic broadband).

In 2006, the German government amended the Telecommunications Act to boost customer protection rules, requiring more transparent pricing and billing, and to introduce liability limitations for service providers. The amended Telecommunications Act includes a provision (paragraph 9a) to authorize the regulatory agency to grant "regulatory holidays" for services in new markets. Competitors repeatedly expressed concerns that DT should not obtain a regulatory holiday with respect to the fiber optic network it is installing in order to provide triple-play services (bundled digital telephone, television, and Internet services). The United States raised concerns on this issue with the German government. The European Commission initiated infringement proceedings immediately after this provision of the amended Act entered into force, and in December 2009 the European Court of Justice ruled that paragraph 9a of the Telecommunications Act infringes European law. Ultimately, the government did not apply paragraph 9a and announced that it will abolish the provision in the upcoming reform of the Telecommunications Act, which will implement the December 2009 EU telecoms package.

One trade association has complained that telecommunications carriers that compete with DT continue to experience long delays in obtaining access to, and use of, wholesale Internet protocol (IP) bit stream access, a service DT is required to offer to competitors. Although DT's reference interconnection offer for this service has been approved by the German federal regulatory agency, Die Bundesnetzagentur, and some contracts have been signed between DT and competitive carriers, there continue to be technical problems in actually obtaining the services, a situation that hampers the ability of competitors to compete in the German market. Competitors also claim that IP Multicast services are currently being offered by DT to its customers, but that DT has failed to include this in its reference interconnection offer. Additionally, competitors complain that DT continues to impede competition by not granting competitors sufficient access to DT's customer information system, which would be necessary to achieve a smooth transfer in the event a DT customer wants to switch to a DT competitor.

Italy: Telecom Italia (TI) is the largest telecommunications operator in Italy. Domestic political pressure has prevented foreign operators (*e.g.*, AT&T in 2007) from gaining a controlling interest in this operator. TI owns most of Italy's fixed-line telecommunications infrastructure, and competitors have complained

about the high costs of access and of allegedly unfair practices aimed at retaining customers. In 2009, TI established an independent supervisory board aimed at ensuring equal access to the country's fixed-line infrastructure. In addition, the Italian antitrust authority fined TI twice in 2009 for unfair practices aimed at retaining customers. The fines were reduced following action by TI.

Although TI has expressed interest in upgrading its current broadband infrastructure, it has also voiced concern that the main beneficiaries of TI investment in broadband would be businesses selling goods and services online – in particular, large American companies.

Television Broadcasting and Audiovisual Services

The 2007 EU Directive on Audiovisual Media Services (AVMS) amended and extended the scope of the Television without Frontiers Directive (which already covered traditional broadcasting, whether delivered by terrestrial, cable or satellite means) to also cover audiovisual media services provided on-demand, including via the Internet. European content quotas for broadcasting remain in place. On-demand services are subject to somewhat less restrictive provisions than traditional broadcasting under the AVMS Directive, which does not set any strict content quota, but still requires Member States to ensure that on-demand services encourage production of, and access to, European works. This could be interpreted to refer to the financial contribution made by such services to the production and rights acquisition of European works or to the prominence of European works in the catalogues of video-on-demand services. EU Member States had to transpose the AVMS Directive into their national law by December 19, 2009, but only three countries (Belgium, Romania and Slovakia) had notified the Commission of full implementation by that date. In October 2010 the Commission deemed that 11 Member States had still not adequately implemented all the rules. Cyprus, Estonia, Greece, Finland, Hungary, Lithuania, Luxemburg, Latvia, Poland, Portugal, and Slovenia were therefore requested to update, without delay, their national broadcasting rules. Should they fail to comply the Commission can refer them to the European Court of Justice.

Member State Measures

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

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

In addition to the broadcasting quotas, cinemas must reserve five weeks per quarter for the exhibition of French feature films and this is reduced to four weeks per quarter for theaters that include a French short-subject film during six weeks of the preceding quarter. Operators of multiplexes may not screen any one film with more than two prints, or through staggered and interlocking projection techniques, 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: In March 2010, Italy approved Broadcasting Law DL 44, which implements EU regulations. This law provides for reserving 50 percent of the programming time (excluding sports, news, game shows, and advertisements) for EU works. Ten percent of transmissions (and 20 percent for state broadcaster RAI) must be reserved for EU works produced during the preceding five years. Within this quota, 20 percent of the time must be reserved for Italian movies.

Broadcasting Law DL 44 also sets limitations on advertising collection by pay and non-pay TV channels, including SKY Italia, a pay-television subsidiary of News Corporation. Some critics maintain that the government has tried to hinder SKY Italia's growth in Italy, such as by delaying its access to digital transmission, in order to protect the market share of Italian domestic competitors.

Spain: For every three days that a film from a non-EU country is screened – in its original language or dubbed into one of Spain's languages – one EU film must be shown. This ratio is reduced to four to one if the cinema screens a film in an official language of Spain and keeps showing the film in that language throughout the day. In addition, broadcasters and providers of other audiovisual media services must annually invest five percent of their revenues in the production of European and Spanish films and audiovisual programs. In June 2010, the legislature of the Catalonia region passed a law requiring distributors to dub or subtitle into Catalán one half of the copies of any film dubbed into Spanish and distributed in Catalonia. The law unfairly burdens the creators and distributors of U.S. films, given that dubbing and subtitling requirement does not apply to Spanish-made films and that certain EU-origin films have been exempted.

Postal and other Delivery Services

In February 2008, the EU formally adopted Directive 2008/06/EC, which established the end of 2010 as the deadline for achieving the full opening of postal service markets in EU Member States. Eleven Member States (Cyprus, Czech Republic, Greece, Hungary, Latvia, Lithuania, Luxembourg, Malta, Poland, Romania, and Slovakia) were permitted to delay the opening of their postal markets until 2013. In some Member States, certain regulatory measures continue to raise concerns.

Member State Measures

Germany: By the end of 2007, Germany had abolished all entry hurdles to the domestic mail and postal services market, becoming one of the first EU Member States to end its postal monopoly. Deutsche Post AG (DPAG) has remained the dominant player since the postal market was opened, but it is no longer the only supplier of standard letter mail below 50 grams. Two significant barriers to entry that adversely affected competition were dismantled in 2010. After the European Court of Justice found in April 2009 that VAT exemption for DPAG conferred an unfair advantage, the European Commission initiated infringement procedures against Germany. In response, the German government amended the VAT exemption in early 2010, and business and bulk mail became subject to VAT in July. VAT exemptions now only apply to services used by individual consumers, such as over-the-counter parcels.

In January 2010, the German Federal Administrative Court ruled that the minimum wage in the postal sector, which was imposed by the government in 2007, was no longer valid. Competitors praised the decision, as the minimum wage had seemingly been set at a level that DPAG had negotiated with the German multi-service trade union, ver.di, and competitors claimed they were not able to participate in the wage-setting process.

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.

Member State Measures

Belgium: U.S. nationals may practice foreign law in Belgium provided they are associated with qualified members of the Belgian bar. The Belgian Judicial Code provides that only Belgian or EU lawyers can be fully admitted to the bar. An exception exists for foreign non-EU lawyers who meet certain requirements.

Bulgaria: The July 2010 amendments to the Bulgarian Bar Act allow law firms registered in the EU to practice in Bulgaria under their original name after they register with the local bar association. Foreign lawyers registered in another EU Member State are also allowed to practice law or register a local office in partnership with other foreign or local lawyers. However, at least one of the partners has to be registered both in Bulgaria and in another EU Member State if the local partnership is to use an internationally-recognized name.

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. In contrast to EU-based law firms, U.S. law firms cannot establish Czech branches to practice law (i.e., operate directly through their home legal entities). Attorneys from U.S. law firms admitted as foreign lawyers, together with Czech lawyers, may establish local partnerships.

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.

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

Portugal: Portuguese law requires that practicing lawyers be members of the Portuguese Bar Association. The Portuguese Bar Association requires that members graduate from a Portuguese or Brazilian law school and that foreign lawyers be citizens of the EU or a country with a reciprocal agreement permitting foreign lawyers to be bar certified.

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.

Accounting and Auditing Services

Greece: A 1997 presidential decree established a method for fixing minimum fees for audits, established restrictions on the use of different types of personnel in audits, and 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 for 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. This sector is one of several "closed sectors" in Greece that the government is planning to reform.

Portugal: Portuguese law requires that practicing accountants and auditors be accredited by one of two Portuguese accounting associations, which both require EU citizenship as a prerequisite for membership.

Financial Services

Poland: Foreign financial service suppliers have requested that Poland treat a grouping of 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, Spain, Belgium, Hungary, and the Czech Republic. VAT grouping would allow financial service providers to recover VAT charges that they incur when making intra-company payments for supplies, including labor costs. As of 2010, Poland has no mechanism for VAT grouping.

Energy Services

Cyprus: The ownership of the Public Company for Natural Gas (PCNG) is currently split between the government of Cyprus and the semi-governmental Electricity Authority of Cyprus (EAC) (56 percent to 44 percent, respectively). In the future, to open the market to newcomers, it will be possible for private investors to take a five percent stake in the government's share of PCNG. On October 13, 2009, the Ministerial Board of the government appointed the PCNG Board of Directors. Its chair, until recently, was the Energy Regulator for the Cyprus Energy Regulatory Authority and previously was the General Manager of the EAC. The PCNG has a monopoly over the purchase, importation, processing, and sale of natural gas through a land-based LNG terminal in the Vasilikos area of Cyprus. The EAC's participation in PCNG reinforces its dominant position in the energy sector. The EAC's effective control over natural gas prices and power distribution could adversely affect foreign power suppliers.

EU Enlargement

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

INVESTMENT BARRIERS

The EU requires national treatment for foreign investors in most sectors and, with few exceptions, EU law requires that any company established under the laws of one Member State must receive national treatment in all other Member States, regardless of the company's ultimate ownership. As discussed below, however, EU law does impose some restrictions on U.S. and other foreign investments and, in many instances, individual Member State policies and practices have had a more significant impact on U.S. investment than EU-level policies.

Prior to the adoption of the Lisbon Treaty in December 2009, the European Commission shared competence with Member States on investment issues. Member States negotiated their own bilateral investment treaties (BITs) and generally retained responsibility for their investment regimes, while the EU negotiated investment provisions in EU economic agreements. Article 207 of the Lisbon Treaty brings foreign direct investment (FDI) under the umbrella of Europe's common commercial policy, making it the exclusive competence of the EU. FDI is not defined in the Treaty, however, leaving many practical implications of the Treaty for EU external investment policy unclear.

In July 2010, the Commission issued two communications aimed at defining a comprehensive EU international investment policy and establishing transitional arrangements for bilateral investment agreements between Member States and third countries. Under these communications, which were presented to the European Parliament and EU Member State governments for endorsement under the co-decision process, the more than 1200 Bilateral Investment Treaties concluded by Member States, including with the United States, will remain valid under international law. The existence of these treaties, however, may raise questions of compatibility with EU law and with the common commercial policy, in particular.

The communications provide that the Commission will review the existing Member States BITs. If the Commission finds clauses that are incompatible with EU law (e.g. transfer clauses that would hamper the implementation of EU financial restrictions against a certain third country), it will ask the Member State to renegotiate such clauses. If this proves impossible, the authorization to maintain the treaty may be withdrawn as a matter of last resort. The United States will monitor the impact of this process on U.S. BITs with the Member States.

Member State Measures

Bulgaria: Local companies in which foreign partners have controlling interests may be asked to provide additional information or meet mandatory requirements in order to engage in certain licensed activities, including production and export of arms and ammunition; banking and insurance; and exploration, development, and exploitation of natural resources. The insolvency rules in Bulgaria's Commercial Code and 2007 changes to its Law on Public Offering of Securities have greatly improved legislative protection for minority shareholders, but enforcement of the law's provisions is inadequate and corporate governance remains weak.

Cyprus: Cypriot law imposes significant restrictions on the foreign ownership of real property. Non-EU residents may purchase a single piece of real estate (not to exceed three donums, or roughly one acre) for private use, *e.g.*, a holiday home. Exceptions can be made for projects requiring larger plots of land, but they are rarely granted. Cyprus also restricts ownership of local electronic mass media companies (*e.g.*, television and radio stations, but not print media) to a maximum of 25 percent for EU investors and just five percent for non-EU investors. Under the Registration and Control of Contractors Laws of 2001 and 2004, only citizens of EU Member States have the right to register as construction contractors in Cyprus, and non-EU entities are not allowed to own a majority stake in a local construction company. Non-EU natural persons or legal entities may bid on specific construction projects, but only after obtaining a special license from the Cypriot Council of Ministers.

Czech Republic: Prior to 2009, foreigners were permitted under the Czech Foreign Exchange Act to acquire non-agricultural or non-forested property if they registered businesses with the Commercial Register of the Czech Republic. The act was amended in May 2009 to remove the restrictions on the purchase of non-agricultural real estate by foreigners. Restrictions on foreigners purchasing agricultural

and forest lands still apply, although the government has announced plans to eliminate this restriction in 2011.

France: There are generally few pre-screening or prior approval requirements for non-EU foreign investment in France. Pursuant to a November 2004 law that streamlined the French Monetary and Financial Code, however, the State Council was directed to define a number of sensitive sectors in which prior approval would be required before acquisition of a controlling equity stake. A December 2005 government decree (Decree 2005-1739 of 30 December 2005) lists 11 business sectors in which the French government has the right to monitor and restrict foreign ownership through a system of "prior authorization."

The government of France has expressed concern that sovereign wealth funds could buy up "strategic" companies, whose stock prices fell steeply in the wake of the financial crisis. Near the end of 2008, President Sarkozy announced the establishment of a "strategic investment fund," to assume stakes in companies with "key technologies." This fund would be run as a "strategic priority" by the Caisse des Depots et Consignations, a state-sponsored financial institution and France's largest institutional investor, under parliamentary supervision. The French government has also asked the Caisse de Depots et Consignations to work as a domestic buffer against foreign takeovers by increasing its stake in French companies.

The Financial Market Authority (AMF) modified disclosure requirements for corporate takeovers in July 2009. In most cases, the new rules lower the shareholding threshold at which potential acquirers have to make a mandatory tender offer. New AMF regulations add two new thresholds of 15 percent and 25 percent of shares or voting rights to the existing 33 percent threshold. The financial and banking regulatory reform passed in October 2010 replaced the 33 percent threshold by a 30 percent threshold. Tender offer thresholds of 50 percent and 95 percent of shares or voting rights for companies listed on Alternext, the new unregulated market created in 2005, remained unchanged. The AMF regulations took effect on August 1, 2009, while the new 30 percent threshold has yet to be implemented. The Finance Ministry becomes involved in mergers and acquisitions when the government uses its "golden share" in state-owned firms to protect national interests (currently Thales and GDF-Suez only).

Germany: In November 2008, the European Commission formally asked Germany to modify the 1960 law privatizing Volkswagen following a European Court of Justice ruling of October 23, 2007 (C-112/05). The Court found that three provisions of the law (automatic representation of public authorities on the board; a 20 percent voting cap; and a 20 percent blocking minority) grant unjustified special rights to German public authorities (i.e., the Land of Lower Saxony and potentially also the German federal government) and that, by maintaining them in force, Germany is in breach of EU Treaty rules on the free movement of capital. An amended law, which still does not modify the 20 percent blocking minority, entered into force in December 2008. A Commission review of possible renewed infringement action is still in progress.

Greece: 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 other EU investors. For example, non-EU investors in the mining industry need special approval from the Greek cabinet for the use and exploitation of mines. Foreigners seeking to purchase land in border areas and on certain islands also need an additional approval from the Ministry of Defense. Greek authorities consider local content and export performance criteria when evaluating applications for tax and investment incentives, although such criteria are not prerequisites for approving investments.

In November 2008, the European Commission sent Greece a formal "reasoned opinion" request to eliminate the restrictions on investment in strategic companies introduced by Greek Law 3631 of 2008. The law in question establishes: (1) an *ex ante* authorization system, under which the acquisition of voting rights by shareholders other than the State is limited to 20 percent, unless prior approval has been granted by the Inter-ministerial Privatization Committee; and (2) an *ex post* approval system, under which certain important corporate decisions, as well as certain decisions concerning specific management matters, need the approval of the Minister for Regional Development and Competitiveness (formerly the Minister of Economy and Finance.) The Commission argues that both authorization systems are disproportionate measures and the restrictions introduced by the law represent unjustified obstacles to EU rules on the free movement of capital and freedom of establishment. The European Commission and Greece are still negotiating a solution to this issue.

A new development bill introduced by the government of Greece in December 2010 provides incentives for investment. The development bill complements another "fast-track" bill, which is aimed at providing rapid approval for investment projects valued at more than 200 billion Euros. While both bills purportedly eliminate bureaucratic barriers to investments, it is not yet clear whether they will eliminate the specific barriers cited above.

Lithuania: U.S. citizens and foreign investors report difficulties in obtaining and renewing residency permits. U.S. citizens can stay in Lithuania no more than 90 days without a visa, and no more than 180 days during a single calendar year, with those who stay longer facing fines and deportation. In principle, Lithuanian embassies abroad are able to initiate the application process for residency permits, but in practice, U.S. citizens only are able to begin the residency permit process upon arrival in Lithuania. Decisions by the Migration Office regarding the issuance of residency permits can take up to six months. Non-Lithuanians are generally not able to buy agricultural or forestry land. As part of its EU accession agreement, the Lithuanian government was obligated to eliminate this restriction by 2011. Early in 2010, however, the government started negotiating with the EU on postponing the removal of the restriction until 2013.

Portugal: The Portuguese government maintains special stock, commonly called "golden shares," in partially state-owned companies Portugal Telecom (PT), Galp Energia, and Energias de Portugal (EDP). These special stakes give the government privileges and veto powers on certain strategic decisions. On June 30, 2010, the Portuguese government blocked the sale of PT's stake in Brazilian mobile phone carrier Vivo by invoking its veto powers, claiming that Vivo was a strategic asset. The government's action led to a July 2010 decision by the European Court of Justice (ECJ) declaring the government's special ownership rights in violation of EU law. Despite ongoing ECJ reviews regarding the legality of ownership rights in Galp Energia and EDP, the government has not terminated its "golden shares" in any of the three companies.

Romania: Uncertainty and a lack of predictability in the legal and regulatory systems pose a continuing impediment to foreign investors in Romania. Tax laws change frequently, and many companies experience long delays in receiving VAT refunds to which they are legally entitled. Deadlines for government processing and payment of refunds as stipulated by law are often not respected. Companies reported frequent instances in which the government issued new legal decrees or regulations affecting the business climate without following required public transparency and consultation procedures. Tort cases often require lengthy, expensive procedures and judicial rulings are reportedly often inconsistent.

GOVERNMENT PROCUREMENT

The EU is a party to the WTO Agreement on Government Procurement (GPA), which it implements through the Public Procurement Directive (2004/18). EU Member States also must comply with the EU's obligations under the GPA.

The EU does not cover all of its government procurement under the GPA. U.S. suppliers participate in EU government procurement tenders, but the lack of statistics makes it difficult to accurately assess the level of U.S. and non-EU participation.

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

Member State Measures

Austria: U.S. firms continue to report a strong pro-EU bias in government contract awards. U.S. industry asserts that invitations for bids for the Austrian government's vehicle fleet are tailored for German competitors. Additionally, offset requirements can reach up to 200 percent of the value of the contract for major defense purchases. In 2009, the Austrian Government raised the ceiling for non-competitive tenders from 40,000 Euros ($52,000) to 100,000 Euros ($130,000). Although Austria's power utilities are majority-government owned, under a European Commission ruling (2008/585/EC), they are exempted from having to issue public tenders for power-generation projects.

Czech Republic: U.S. and other foreign companies continue to express concern over the lack of transparency in the public procurement process. Widespread use of bearer shares among Czech and some foreign firms competing for government contracts creates opportunities for conflict of interest, and there is evidence that some winning firms may be owned by government officials. By law, acquisition of non-EU foreign defense materials requires a Czech intermediary, increasing costs and reducing transparency.

France: The French government continues to maintain shares in several major defense contractors (EADS 15.06 percent, Safran 30.20 percent, and Thalès 26.51 percent as of December 2010). It is generally difficult for non-European firms to participate in the French defense market and, even where the competition is among European suppliers, French companies are often selected as prime contractors.

Greece: Greece imposes onerous qualification requirements on companies seeking to bid on public procurement tenders. Companies must submit documentation from competent authorities indicating that they have paid taxes, have not been in bankruptcy, and have paid in full their social security obligations for their employees. All managing directors and board members of companies that want to participate in procurements must submit certifications from competent authorities that they have not engaged in fraud, money laundering, criminal activity, or similar activities. It is difficult for U.S. firms to comply with these requirements because there are no competent authorities in the United States that issue these types of certifications.

The U.S. Embassy in Athens and the Greek Ministry of Development reached an agreement at the end of 2008 that would allow U.S. companies to submit sworn, notarized, and translated statements from

corporate officers, along with an official statement from the U.S. Embassy in Athens stating that no U.S. federal authority issues the documents otherwise required under Greek procurement law. Despite this agreement, there remains considerable confusion among Greek authorities as to how U.S. firms may comply with these requirements. Greece also continues to require offsets as a condition for the awarding of defense contracts.

The government of Greece announced a new law in late November 2010 that addresses public procurement tenders. The law will establish a National Electronic System for public procurement tenders, which will allow bids and offers to be processed electronically. The law is expected to be signed in early 2011. In December 2010, the Greek Manufacturers Association proposed the creation of a "company ID," which could be used in public sector procedures with a sworn statement from a company's legal representative for public procurement tenders. The U.S. government will monitor the evolution of these proposals and their impact on procurement by U.S. companies.

Hungary: Inadequate transparency in procurement is a significant problem in Hungary. Hungarian non-governmental organizations continue to advocate reform of campaign finance laws to reduce politically motivated tendering decisions and to help make public procurements more transparent and competitive. The government passed a measure simplifying the Public Procurement Act in 2010, in an effort to enhance the participation of small- and medium-sized enterprises in the procurement process. The government has also said it will enact stronger anti-corruption measures.

Ireland: Government procurement in Ireland appears generally open and transparent. U.S. companies contend, however, that they have been successful in only a few national and regional government tenders, particularly for infrastructure-related projects. U.S. firms complain that lengthy processes for budgetary decisions delay procurements, and that unsuccessful bidders often have difficulty obtaining information regarding the basis for a tender award. Once awarded a contract, companies can experience significant delays in finalizing contracts and commencing work. Successful bidders have also found that the implementation of contracts is occasionally delayed due to political interference. U.S. companies have estimated that delayed or abandoned projects have cost them tens of millions of dollars.

Italy: Procurement authority is widely dispersed in Italy, with contracting agencies at the national, regional, and local level. Italy's public procurement sector is often criticized for a lack of transparency. This has created obstacles for some U.S. firms bidding on public contracts. Laws implemented in the mid-1990s reduced corruption, but industry asserts that it still exists, especially at the local level. In 2010, the Italian press reported on alleged corruption involving the abuse of emergency procurement laws.

The Italian Parliament is currently considering an anti-corruption bill that, among other things, would revise some administrative measures that were originally introduced to streamline the public procurement process, but have reportedly generated corrupt practices and abuse. To increase transparency, the Italian Government also plans to publish online information regarding the use of public funds. The information would include data on procurement contracts as well as on the earnings of senior government officials.

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

Portugal: There is a lack of transparency in Portuguese public procurement procedures. U.S. firms report that the Portuguese government tends to favor EU firms, even when bids from U.S. firms are technically

superior or lower in price. U.S. firms appear to be more successful when bidding as part of consortia or as part of joint ventures with Portuguese or other EU firms.

Romania: Romania implemented the EU Utilities Directive in national legislation in 2007. Under the Romanian ordinance, public tenders in the water, transportation, energy, and postal services sectors should give preference to bids containing at least 50 percent content from EU Member States or from countries with reciprocal bilateral agreements with the EU – when the difference in price is less than three percent. In addition, Romania requires offsets as a condition for the awarding of defense contracts. Romania revised its public procurement law in 2010, particularly with regard to procedures for handling challenges to contract awards. While an award must still be temporarily suspended if a losing bidder challenges it, the revised law allows contracting authorities to conclude the contract within 11 days after a decision by the National Complaint Council or a court upholding the initial award, even if the challenger chooses to appeal that decision. Should the Complaint Council find the challenge ungrounded, the contracting authority can withhold the contract value from the plaintiff's bid participation fee as a penalty.

Slovenia: U.S. firms continue to express concern that the public procurement process in Slovenia is non-transparent. Other complaints include short time frames for bid preparation, lack of clarity in tendering documentation, and opacity in the bid evaluation process. One specific complaint involves the quasi-judicial National Revision Commission (NRC), which reviews all disputed public procurement cases. The NRC has extraordinary powers to review, amend, and cancel tenders, and it is unclear whether its decisions are subject to judicial appeal. There also are concerns that the NRC favors European, and especially Slovenian, firms under its ambiguous "national interest" standard, regardless of cost or doubts about a firm's ability to deliver and service its products.

Spain: U.S. construction companies assert that Spanish public sector infrastructure projects are closed to them, prompting at least two major U.S. construction firms to shut down their Spanish offices during the construction boom of the past decade due to insufficient business.

United Kingdom: The United Kingdom (UK) requires offsets in its defense procurement, but has no set percentage for them. Bidders are free to determine their own level of "industrial participation," as well as with whom to do business. The UK defense market is, to an increasing extent, defined by the terms of the December 2005 Defense Industrial Strategy (DIS), which 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 Defense and selected companies. The DIS does not preclude partnerships with non-UK companies, and U.S. companies with UK operations may be invited by the Ministry of Defense to form partnerships in key programs. 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.

SUBSIDIES

Government Support for Airbus

Over many years, the governments of France, Germany, Spain, and the United Kingdom have provided subsidies to their Airbus-affiliated companies to aid in the development, production, and marketing of Airbus large civil aircraft. These governments have financed between 33 percent and 100 percent of the development costs for all Airbus aircraft models (launch aid) and have provided other forms of support, including equity infusions, debt forgiveness, debt rollovers, and marketing assistance, including political and economic pressure on purchasing governments. The EU's aeronautics research programs are driven significantly by a policy intended to enhance the international competitiveness of the European civil

aeronautics industry. EU governments have spent hundreds of millions of Euros to create infrastructure for Airbus programs, including 751 million Euros spent by the City of Hamburg to drain the wetlands that Airbus is currently using as an assembly site for the A380 "superjumbo" aircraft. French authorities also spent 182 million Euros to create the AeroConstellation site, which contains additional facilities for the A380. The beneficiary of more than $6 billion in subsidies, the Airbus A380 is the most heavily subsidized aircraft in history. Some EU governments have also made legally binding commitments of launch aid for the new Airbus A350 aircraft, even though Airbus has barely begun to repay the financing it received for the A380.

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

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

On May 31, 2005, the United States submitted a WTO panel request. The WTO established the panel on July 20, 2005. In June 2010, the dispute settlement panel found in favor of the United States on the central claims. That dispute is now before the WTO Appellate Body. The United States has consistently affirmed its willingness to negotiate an agreement to address WTO-inconsistent subsidization of the development and production of large civil aircraft, even while the WTO litigation proceeds.

Government Support for Airbus Suppliers

Belgium: The federal government of Belgium, in coordination with Belgium's three regional governments, subsidizes Belgian manufacturers that supply parts to Airbus. In the fall of 2006, the EU Commissioner for Competition concluded that Belgium's 195 million Euro support program exceeded the allowable level of support under EU regulations. The Belgian federal government in June 2007 subsequently reduced its support fund to 150 million Euros, but simultaneously, the Flemish Regional government set up a 50 million euro start-up fund for the aviation sector in Flanders. It is unclear how much assistance already paid to the companies for the A350 program, if any, has been reimbursed. The Belgian commitment to the A380 superjumbo was 195 million Euros, not all of which was disbursed. Belgium claims that its A380 support was structured in accordance with the 1992 bilateral agreement and covers nonrecurring costs.

In the spring of 2009, the Commission once again notified the Belgian government that its 2008-2013 program of federal aid to the aeronautic sector was illegal, but in May 2010, after being provided with supplemental information from the Government, the Commission ruled that the program, for 178 million Euros, was compatible with article 87(3)c of the EC Treaty. Industrial research or experimental development projects linked to the A350 and A380 were cited as examples of projects that could benefit from the program.

France: In addition to the launch aid that the French government provided for the development of the A380 and A350 aircraft, France provides aid in the form of reimbursable advances to assist the development by French manufacturers of products such as planes, aircraft engines, helicopters, and on-

board equipment. French appropriations supporting new programs in these areas in 2008 totaled 214.4 million Euros, of which 20.1 million Euros were committed to the A380. In 2009, appropriations for the aeronautical sector amounted to 209 million Euros, including 74 million Euros in support of research and development. Projected appropriations for the 2010 budget are 200.8 million Euros. France's 2011 pending draft budget law provides for 230 million Euros in reimbursable advances for the civil aviation sector.

In 2009, EADS' total European government (U.K., France, Germany, Spain) refundable advances outstanding amounted to 5.3 billion Euros, of which 3.6 billion Euros was for the A380, 1.2 billion Euros for long-range wide body aircraft, and 0.2 billion Euros for Eurocopter.

In July 2008, Airbus, the parastatal Caisse des Dépôts et Consignations, and the Safran Group, announced the launch of the AEROFUND II equity fund, capitalizing 75 million Euros destined for the French aeronautical sector. The equity fund's objective is to support the development of the small- and medium-sized subcontractors that supply the aeronautical sector. In March 2009, the state's investment fund (FSI) and AEROFUND I and II bought nearly 20 percent in DAHER, for 80 million Euros, to help that private aerospace group speed up its development and seize strategic opportunities. On April 14, 2010, the European Commission authorized France to grant reimbursable advances of 35.14 million Euros to Daher-Socata (12.34 million Euros) and Sogerma (22.8 million Euros) for two R&D projects for the future Airbus A 350 XWB. In addition, FSI allocated 2 billion Euros for projects: 1.5 billion Euros for environmentally safe planes of the future and 500 million Euros for aerospace, through a combination of development support, reimbursable advances, and direct equity investments. In 2007, OSEO (the state-backed company that provides financial support to innovative SMEs) signed a contract with the French Civil Aviation Authority for European aerospace project development. In 2010, OSEO announced eighty million Euros in reimbursable advances over two years for French SME sub-contractors and suppliers of large aerospace firms. Zodiac Aerospace received 230 million Euros in reimbursable advances during the August 2008 to August 2009 period. In 2009, Latécoère received 50.4 million Euros in reimbursable advances.

Spain: In late 2010, Airbus Operations S.L. and CESA (Spanish Aeronautical Systems Company, S.A.) were awarded grants of 12.89 million Euros and 12.38 million Euros, respectively, as the leaders of two major technical research projects. The government of Spain authorized the grants as part of the projects approved in the sixth edition of the programs to support the National Strategic Consortia for Technical Research (CENIT)

United Kingdom: UK government support for Airbus has most recently included investment in the Integrated Wing Program, announced in December 2006. The Department for Business, Innovation and Skills (BIS) and selected regional development agencies will provide half of the funding for the £34 million program, with the remainder drawn from Airbus and participating suppliers. The Integrated Wing Program is one of 12 key technologies identified in the National Aerospace Technology Strategy, which largely directs UK government investment in strategic aerospace capabilities. On September 15, 2008, GKN plc. announced that it was buying Airbus's wing component factory near Bristol, England, for £136 million. The same day, the British government announced that it would provide £60 million in repayable launch aid to the company to help it develop advanced composite wing components for the Airbus A350. The government also announced an additional £50 million in funding to support research and technology development for Airbus wing projects. This money will be paid through the Technology Strategy Board's research and development program.

Government Support for Aircraft Engines

United Kingdom: In February 2001, the UK government announced its intention to provide up to £250 million to Rolls-Royce to support development of the Trent 600 and 900, two additional engine models for large civil aircraft. The UK government characterized this engine development aid as an "investment" that would provide a "real rate of return" from future sales of the engines. The European Commission announced its approval of a £250 million "reimbursable advance" without opening a formal investigation into whether the advance constituted illegal state aid under EU law. According to a Commission statement, the "advance will be reimbursed by Rolls-Royce to the UK government in case of success of the program, based on a levy on engine deliveries and maintenance and support activity." Detailed terms of the approved launch aid were not made public. To date, none of the launch aid for the Trent 600 and 900 has been repaid.

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

France: In 2005, the French government-owned engine manufacturer, Snecma SA, merged with Sagem, a technology and communications firm, to form the SAFRAN Group. The government supported the SAFRAN SaM146 propulsive engine program, a turbofan engine produced by the PowerJet joint venture between Snecma of France and NPO Saturn of Russia, with a reimbursable advance of 140 million Euros. In 2009, Safran received new reimbursable advances of 69 million Euros.

Other Civil Aircraft

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

CUSTOMS ADMINISTRATION

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

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

Not only are the Committee and other EU-level institutions ineffective tools for achieving the uniform administration and application of EU customs law, but the EU also lacks tribunals or procedures for the prompt review and EU-wide correction of administrative actions relating to customs matters. Instead, review is provided separately by each Member State's tribunals, and rules regarding these reviews can vary from Member State to Member State. Thus, a trader encountering non-uniform administration of EU customs law in multiple Member States must bring a separate appeal in each Member State whose agency rendered an adverse decision.

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

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

Member State Measures

Romania: In June 2010, the Romanian Government approved Ordinance 54/2010 which disallowed bonded tax warehouses from storing and applying customs stamps to distilled spirits under duty-deferment measures. The ordinance was enforced 48 hours after its publication with assurances that imports initiated before the implementation date would not be affected; however, the U.S. Distilled Spirits Council complained that prior imports of several U.S. companies were affected. The ordinance's final enforcement rules included some places – customs warehouses and free-trade areas – where products can be stored and customs stamps applied, but excise duties are required on the imported spirits by the 25th of each month, regardless of when the product will be sold. Domestic producers reportedly may continue storing their products in warehouses without paying the excise duties until the moment of sale.

ELECTRONIC COMMERCE

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

The EU Data Protection Directive (1995/46) allows the transmission of EU data to third countries only if those countries are deemed by the European Commission to provide an adequate level of protection by reason of their domestic law or their international commitments (Article 25(6)). The Commission has thus far recognized Switzerland, Canada, Argentina, Guernsey, the Isle of Man, and Israel as third countries that provide an adequate level of protection. The United States does not yet benefit from a blanket adequacy finding, but the Commission has recognized a series of specific and limited programs and agreements as providing adequacy. The most all-encompassing of these is the U.S.-EU Safe Harbor

Framework, but others include the U.S.-EU Agreement on the Transfer of Air Passenger Name Records to the U.S. Bureau of Customs and Border Protection.

The Safe Harbor Framework provides U.S. companies with a simple, streamlined means of complying with the EU rules. It is the result of an agreement that allows U.S. companies that commit to a series of data protection principles (based on the EU Data Protection Directive), and that publicly state their commitment by "self-certifying", on a dedicated website (http://www.export.gov/safeharbor), to continue to receive personal data from the EU. Signing up to the Safe Harbor is voluntary, but the rules are binding on signatories. A failure to fulfill commitments made under the Safe Harbor framework is actionable either as an unfair or deceptive practice under Section 5 of the Federal Trade Commission Act or, for air carriers and ticket agents, under a concurrent Department of Transportation statute.

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

In recent years, a number of U.S. companies have faced obstacles to winning contracts with European governments and private sector customers because of public fears in the EU that any personal data held by these companies may be collected by U.S. law enforcement agencies. The United States is working to inform European stakeholders on how personal data is protected in the United States.

The United States actively supports the Safe Harbor Framework and encourages EU institutions and Member States to continue to use the flexibility offered by the EU 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.

The Commission is currently reviewing the 1995/46 directive as part of a broader review of the framework of data protection legislation in the EU that would encompass both commercial and judicial/law enforcement uses of data. In November 2009, the Commission released a communication outlining its goals and objectives in this review and has indicated that it intends to develop draft legislation by mid-2011 and final legislation by 2012-2013. Given the importance of this issue to the business models of many U.S. companies, the United States is closely monitoring the development of this revised framework legislation to ensure that it does not adversely impact transatlantic trade and investment.

Member State Measures

Germany: Online data privacy has been a subject of intense discussion in Germany in 2010, notably directed towards U.S. companies Google and Facebook. Google's August 2010 announcement that it would introduce its Street View service in Germany by the end of the year caused a political uproar. The debate prompted the drafting by the Interior Ministry of data privacy legislation aimed at online services and the establishment of a voluntary data privacy codex for geo data services by a major information technology industry association.