EUROPEAN UNION

TRADE SUMMARY

The U.S. goods trade deficit with the European Union was $60.5 billion in 2009, down $35.3 billion from 2008. U.S. goods exports in 2009 were $220.8 billion, down 18.8 percent from the previous year. Corresponding U.S. imports from the European Union were $281.3 billion, down 23.5 percent. The European Union countries together would have ranked as the 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 (25) were $195.8 billion in 2008 (latest data available), and U.S. imports were $139.4 billion. Sales of services in the European Union by majority U.S.-owned affiliates were $494.1 billion in 2007 (latest data available), while sales of services in the United States by majority European Union owned firms were $366.2 billion.

The stock of U.S. foreign direct investment (FDI) in the European Union (27) was $1.6 trillion in 2008 (latest data available), up from $1.5 trillion in 2007. U.S. FDI in the European Union is concentrated largely in the nonbank holding companies, finance/insurance, and manufacturing sectors.

OVERVIEW

The U.S. economic relationship with the European Union (EU) is the largest and most complex economic relationship in the world. The enormous volume of trade and investment promotes economic 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 still highlighted in the sections below.

MARKET ACCESS ISSUES

WTO Information Technology Agreement

The United States continues to raise serious concerns about EU duties on several high-technology products covered by the WTO Information Technology Agreement: LCD computer monitors, set top boxes with a communication function, and certain multifunction digital machines (*i.e.*, devices that can scan/print/copy/fax). After numerous discussions with the EU in both bilateral and multilateral settings, on May 28, 2008, the United States filed a request for consultations under WTO dispute settlement procedures. Japan and Chinese Taipei also requested consultations on May 28 and June 12, 2008, respectively. The United States and the EU held formal consultations in June and July, but failed to resolve the dispute. On August 18, 2008, the United States, Japan, and Chinese Taipei made a joint request for the establishment of a dispute settlement panel to determine whether the EU is acting consistent with its WTO obligations. A panel was established at the meeting of the WTO Dispute Settlement Body on September 23, 2008. Pursuant to the parties' request, the meetings with the parties, as well as a portion of the third-party session, were open for public observation. The United States expects the WTO panel to make its decision in 2010.

Pharmaceutical Products

The United States has concerns regarding some EU and Member State policies affecting market access for pharmaceutical products, including procedural non-transparency and a lack of stakeholder access to the rationale underpinning pricing and reimbursement processes. The United States is following with interest European deliberations on steps to increase the availability of pharmaceutical product information to consumers, as a means of promoting consumer awareness and access to medicines. The United States continues to be engaged with the EU and individual Member States on these matters. In recent years, the U.S. pharmaceutical industry has raised concerns with pharmaceutical market access practices, government pricing, reimbursement systems, and intellectual property protection in the Czech Republic, Finland, France, Hungary, Italy, the Netherlands, Poland, Spain, and the United Kingdom.

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 (ESA) 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. Furthermore, the United States will closely monitor whether EU agreements under negotiation with Russia in the nuclear area alter EU application of the Declaration and follow WTO rules.

AGRICULTURAL AND FOOD PRODCUTS

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 initialing of both agreements marks 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 various Members conclude their domestic ratification procedures, the agreements will be signed and 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 on 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 of 65 Euros per ton, *i.e.*, the tariff rate that generally cannot be exceeded under WTO rules.

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 would each receive a different rate 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 2010, 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 support strong protection for intellectual property rights (IPR). However, U.S. industry has concerns regarding the implementation of key provisions of the EU IPR Directives and overall IPR protection in some Member States (see Member State discussion below).

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, known as a Community patent. 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.

In December 2009, the EU ratified the World Intellectual Property Organization (WIPO) Copyright Treaty (WCT) and the Performances and Phonograms Treaty (WPPT) – collectively known as the "WIPO Internet Treaties." This marks a significant step forward for international norms to protect IPRs, particularly with regard to Internet-based delivery of copyrighted works.

The United States continues to have concerns about the EU's system for the protection of Geographical Indications (GIs). In a WTO dispute launched by the United States, a WTO Panel found that the EU regulation on food-related GIs was inconsistent with EU obligations under the TRIPS Agreement and GATT 1994. In its 2005 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. In response to the DSB's recommendations and rulings, the EU published an amended GI regulation, Council Regulation (EC) 510/06, in March 2006 (amended by Council Regulation (EC) 179/2006 and Commission Regulation 417/2008). The United States continues to have some concerns about this amended regulation, about the recently promulgated Council Regulation (EC) 479/08, which relates to wines, and about Commission Regulation (EC) 607/09, which relates, *inter alia*, to GIs and traditional terms of wine sector products. The United States is carefully monitoring the application of these regulations.

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.

Bulgaria: U.S. industry reports IPR concerns in Bulgaria, particularly with respect to increased Internet piracy and difficulties obtaining information from Internet service providers (ISPs) to combat Internet piracy. Judicial enforcement is inconsistent, inefficient, and lacks deterrent value.

Czech Republic: The Czech Republic was on the Watch List in the 2009 Special 301 Report, where it was placed as the result of an Off-Cycle Review (OCR) in January 2008. Key concerns cited in the 301 Report included the significant quantity of pirated and counterfeit goods sold in retail markets on the Czech Republic's borders with Germany and Austria, particularly as some of these markets are located on government-owned property. Subsequently, the Czech Customs Administration and Trade Inspectorate systematically increased raids of those markets, intensified its visible presence, and increased seizures of pirated and counterfeit products. The Czech Republic also passed a new criminal law in January 2009 (effective January 1, 2010), which hopefully will result in higher criminal penalties and stronger IPR enforcement. Despite this progress, industry remains concerned that this increased enforcement is not sustainable, that IPR legislation is not being fully enforced, that actual penalties applied to IPR violators lack any deterrent value, and that there is no effective mechanism to revoke the business licenses of IPR offenders. The United States will continue to engage the Czech government on these issues, monitor the situation, and work with the Czech Republic to address the border market and other IPR problems.

Finland: Finland was added to the Watch List in the 2009 Special 301 Report. The key concern cited in the Report was the lack of product patent protection for certain pharmaceutical products. U.S. industry continued to express concern that the regulatory framework in Finland regarding some process patents denies adequate protection to many of the top-selling U.S. pharmaceutical products currently on the Finnish market. The United States will continue its engagement with Finland to resolve this issue.

Greece: Greece was on the Watch List in the 2009 Special 301 Report. The key concern cited in the Report is that IPR enforcement in Greece remains weak and uneven. The report also cited the need for Greece to improve its IPR enforcement regime, including undertaking sustained enforcement actions against street vendors, more effective raids and seizures, investigations and legal actions against on-line infringers, increased prosecutions, deterrent-level penalties, and strengthened border enforcement. Greece also has an emerging problem with Internet piracy. Greece established an Inter-ministerial Coordinating Committee on IPR in 2008. The Committee, led by the Ministry of Foreign Affairs, published a National Action Plan for IPR in February 2009 to address IPR protection and enforcement. U.S. copyright industries reported that Greek law enforcement officials improved cooperation with the private sector in 2008. The United States will continue to work cooperatively with Greece on the measures outlined in its National Action Plan to improve IPR protection and enforcement.

Hungary: Hungary was on the Watch List in the 2009 Special 301 Report. The key concern cited in the Report was the need for Hungary to take concrete steps to implement its national IPR strategy and to improve its IPR enforcement regime. Under the leadership of its National Board Against Counterfeiting and Piracy (established in January 2008), the Hungarian government has implemented a two-year national strategy to combat counterfeiting and piracy, promote collaboration between the government and the private sector, increase public awareness of the importance of protecting intellectual property, and take concrete steps to improve IPR protection and enforcement. An area of continuing concern is a historical lack of deterrent sentencing. The Hungarian government recognizes this problem, but Hungary's independent judiciary typically has not issued strong sentences, even thought the Hungarian Criminal Code provides for a maximum prison sentence of eight years for IPR violators. The United States will continue to engage the Hungarian government on these issues.

Italy: Italy was on the Watch List in the 2009 Special 301 Report. Key concerns cited in the Report included U.S. copyright industry reports that Italy has one of the highest overall piracy rates in Western Europe, the lack of deterrent-level sentences for IPR crimes imposed by Italian courts, and an increasing problem with Internet piracy. While judicial branch and law enforcement agencies now have IPR training programs, senior government officials have urged stronger enforcement and sentencing. In 2009, the Italian Parliament raised the penalties for IPR infringement. Additionally, a new Intellectual Property Directorate was established and tasked with coordinating all domestic anti-IPR infringement activity. Attention to trademark counterfeiting seems to be increasing, but the same cannot be said for copyright piracy. Italy's IP directorate has expressed interest in deeper cooperation with the U.S. on anti-piracy and anti-counterfeit efforts, but concrete progress resulting in significant changes remains to be seen.

Poland: Poland was on the Watch List in the 2009 Special 301 Report and the United States conducted an OCR during 2009 to monitor progress on IPR protection and enforcement. The OCR focused in particular on Poland's implementation of its national IPR action plan for 2008-2010, issued by the government's "Team for Counteracting Infringements of Copyright and Related Rights". Border enforcement was strengthened with Poland's entry into the *Schengen Zone*, though further progress is needed to address markets selling pirated and counterfeit goods along the border with Germany. Successful raids by Polish police in February 2009 against an organized criminal syndicate closed down what is believed to be one of the largest infringing disc operations in the EU, which exported pirated music and films throughout the EU. Internet piracy of movies and music continues to present a problem, but some progress has been made. In 2009, Polish police arrested two peer-to-peer website owners and forcibly closed down the site, which had been receiving two million visitors a month. Rights holders continue to have concerns, as penalties for IPR infringement still are not being imposed at levels sufficient to deter violations.

Romania: Romania was on the Watch List in the 2009 Special 301 Report. Key concerns cited in the Report included delays and obstacles to criminal investigations, the lack of vigorous prosecution of IPR cases, and the lack of deterrent-level sentences against IPR infringers. Although authorities have made gradual improvements in enforcement, the copyright piracy rates in Romania remained high in 2008, according to industry reports. Romania also established a dedicated IPR department in the General Prosecutor's Office (GPO), which serves as the national IPR enforcement coordinator. However, few IPR cases have been prosecuted to conclusion.

Spain: Spain was on the Watch List in the 2009 Special 301 Report. The key concerns cited in the Report included the rapid growth of internet piracy, the lack of effective IPR enforcement, and the Spanish government's limited effort to change the widespread misperception that peer-to-peer file sharing is legal. Internet downloading of copyrighted material continues to grow rapidly in Spain. Negotiations between content provider companies and ISPs on measures to discourage inappropriate Internet use have not achieved results. In the fall of 2009, the Spanish government created an Inter-Ministerial Commission charged with issuing recommendations on Internet piracy by the end of the year. The Commission proposed legislation to empower an independent IPR commission with the authority to order website operators to remove infringing content, but the legislation has generated vocal opposition, and its prospects for enactment in 2010 are uncertain. The United States has been engaging with Spain to address these IPR enforcement issues and has been urging Spain to clarify that unauthorized peer-to-peer file sharing is illegal.

Sweden: Sweden continues to have a problem with Internet piracy, but government enforcement efforts have started to bear fruit. Following the entry into force in April of legislation implementing the EU Enforcement Directive, several major piracy websites moved out of Sweden.

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. A major EU telecommunications reform package adopted in December 2009, however, is designed to resolve many of these issues.

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 incumbents in Germany, Greece, Spain, Italy, Ireland, Austria, Finland, and Sweden have slowed the development of competition by systematically appealing their national regulators' decisions. The new EU telecommunications reform package will help address these concerns by strengthening the Commission's oversight of national regulators.

Member State Measures

Austria: Austria has moved toward a more open and competitive telecommunications market and implemented the relevant EU directives. The Austrian NRA carries out market reviews and imposes remedies where necessary. However, the NRA is not pro-active in imposing remedies and in preventing delays in the implementation of proposed remedies and decisions. The incumbent Telekom Austria offers fixed-line networks, mobile telephony, and Internet access, including broadband, and is the market leader in all of these areas. Telekom Austria's strong market position appears to be an increasing hurdle to entry for other firms.

The Austrian mobile market is highly competitive, in contrast to the more concentrated fixed-line market, although the number of mobile operators has declined from six to four from April 2006 to April 2008. Retail rates for mobile communications have continued to decrease; however, the NRA has reported an increase in the number of consumer complaints. Regarding broadband lines, the market share of operators other than Telekom Austria has dropped. Price pressure on the wholesale broadband access market is very intense, with alternative operators losing market share. In October 2009, the European

Commission raised doubts about the compatibility of Austrian regulatory provisions defining the Austrian wholesale broadband access market – the so-called bit stream access market – with EU law, and called on the NRA to suspend the adoption of regulatory measures. The Commission doubted that Austrian regulators had provided sufficient evidence to support its finding that mobile broadband connections can be considered as substitutes to fixed-line DSL and cable connections, and expressed further doubts regarding the scope of regulators' wholesale market definition for bit stream access.

Finland: Finnish mobile network operators have often appealed the significant market power decisions (the basis for price regulation of these operators) of the Finnish 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 slow progress in introducing competition to some sectors of its telecommunications market. New entrants report they continue to face difficulties competing with the partially state-owned incumbent, Deutsche Telekom AG (DT), which retains a dominant position in a number of key 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, has led to some increase in competition in the German market, enabling competitors to gain more than 21 percent of the fixed-line telecommunications market (excluding cable and VoIP) and around 42 percent of broadband connections (including DT DSL bit stream and DT DSL resale, but excluding broadband delivered via cable, fiber optic, power line, and satellite).

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. Since that time, competitors have 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 (digital telephone, television, and Internet services). The United States has 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.

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

Italy: Telecom Italia is the largest telecommunications operator in Italy. In the past, there has been political pressure to prevent foreign entities (including, in 2007, AT&T) from gaining a controlling interest in this operator. Telecom Italia owns most of Italy's fixed-line telecommunications infrastructure, and competitors have complained about the lack or high costs of access. In 2009, Telecom Italia established an independent supervisory board aimed at ensuring equal access to the country's fixed-line infrastructure. In addition, in 2009 the Italian antitrust authority fined Telecom Italia twice, totaling about 600,000 €, because of unfair practices aimed at retaining customers. The fines were later reduced due to quick action and cooperation from Telecom Italia to remedy the situation.

Television Broadcasting and Audiovisual Services

December 19, 2009 marked the implementation deadline for the EU Directive on Audiovisual Media Services (AVMS), which amends and extends 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.

Member State Measures

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

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

In addition to the broadcasting quotas, cinemas must reserve five weeks per quarter for the exhibition of French feature films and 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 July 2009, Italy implemented Broadcasting Law article 44, which reserves 50 percent of the monthly programming time for EU works. Ten percent of monthly "prime time" transmissions (20 percent for RAI) must be reserved for EU works produced during the last five years. Within this quota, 20 percent of the time must be reserved for Italian movies. For telecommunications companies that receive revenue from audiovisual content, new investment quotas stipulate that five percent of revenues from audiovisual content must be invested in the production and acquisition of EU works.

Sky Italia, a pay-television subsidiary of the Australian-American company, Newscorp, has complained about the unfair business practices of Italian media companies Mediaset and state-owned RAI, which Sky Italia says are designed to prevent it from gaining market share. Mediaset owns three of the main television channels in Italy and also offers pay television services. Sky Italia also asserts that recent government measures have had the effect of favoring Mediaset and RAI and penalizing Sky Italia. For example, Sky Italia believes that an increase in the VAT for subscription pay TV appears to specifically target its business, as it applies overwhelmingly to Sky Italia's customer market, and a recent proposal from the government to lower advertising limits for pay-television appears to target Sky Italia business. A court in Milan recently ruled in Sky Italia's favor, finding that Mediaset had engaged in anticompetitive practices by refusing to air Sky Italia advertisements on its channels.

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

Postal and other Delivery Services

On October 1, 2007, EU Transport Ministers approved a plan to liberalize postal services in EU Member States by 2011. Eleven Member States (Cyprus, Czech Republic, Greece, Hungary, Latvia, Lithuania, Luxembourg, Malta, Poland, Romania, and Slovakia) were permitted to delay the opening of their postal markets until 2013. In some Member States, certain regulatory measures continue to raise concerns.

Member State Measures

Belgium: Belgium is in the process of preparing for the 2011 liberalization of the postal market. Under the current legal framework, non-postal service suppliers – such as express delivery, transport, and logistics operators – appear to be covered by the postal licensing regime as well as by the obligation to contribute to a postal compensation fund. U.S. courier companies as well as the Belgian Courier Association (BCA) have expressed concern about proposals to create an ombudsman to oversee their activities, with companies being assessed charges to pay for the new position. According to the BCA, no other EU country has such an ombudsman.

Germany: By the end of 2007, Germany had abolished all entry hurdles to the domestic post/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. Despite full liberalization of the mail market, competition is still adversely affected by some restraints and entry barriers. In April 2009, the European Court of Justice found that the VAT exemption for DPAG conferred an unfair advantage. The European Commission subsequently initiated infringement procedures against Germany, and the German government prepared proposals to amend the VAT exemption. These will likely lead to VAT exemptions only for services used by individual consumers, such as over-the-counter parcels. Business and bulk mail will become subject to VAT following the European Court of Justice's verdict. The German legislation is not expected to enter into force until July 1, 2010, prolonging DPAG's advantage for another six months.

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.

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: Bulgaria maintains several limitations on the provision of legal services, including a nationality requirement for qualification as a Bulgarian lawyer and restrictions on the ability of foreign law firms to establish in Bulgaria and to use their own names. In February 2009, the European Commission sent Bulgaria a formal letter of inquiry that asked the government to address the consistency of these and other legal provisions with Article 43 of the EC Treaty and with Directive 98/5/EC. In October 2009, the Commission issued a reasoned opinion against Bulgaria requesting it to remove restrictions on the free movement of lawyers employed by firms operating in the EU. If there is no satisfactory reply from the government, the Commission may refer the matter to the European Court of Justice. A case between an international law firm and local law firms on legal service restrictions is pending with the Bulgarian Supreme Administrative Court.

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. U.S. firms may only establish in association with local firms and lend them their names; as a result, firms that operate in the country do so as independent Czech branches. These firms may employ U.S. attorneys that are employed as “advisors.”

Finland: Citizens of countries outside the European Economic Area (EEA) can practice domestic and international law and represent clients in court, but they are not entitled to the title of Asianajaja (Attorney at Law). Only a Finn or an EEA citizen who meets certain requirements may be accepted as an Asianajaja. In addition to conferring prestige, the Asianajaja designation helps in the solicitation of clients, because Asianajaja may be held accountable for their actions by the Board of the Bar Association and by the Chancellor of Justice, while other lawyers and legal advisers are not subject to such oversight.

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

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

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

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

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 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.

Financial Services

Poland: Foreign service providers 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, Belgium, Hungary, and the Czech Republic. (Since January 1, 2008, groups of companies established in Spain have also been able to opt for the new regime of VAT grouping). VAT grouping would allow financial service providers to recover VAT charges that they incur when making intra-company payments for supplies, including labor costs. As of 2009, there have been no changes, but this issue is on the agenda of an upcoming tax conference to be held in Warsaw in March, 2010.

Energy Services

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 will have a monopoly over the purchase, importation, processing, and sale of natural gas through a land-based LNG terminal in the Vasilikos area of Cyprus. The EAC's participation in PCNG reinforces its overwhelmingly dominant position in the energy sector. The EAC's effective control over natural gas prices and power distribution could adversely affect foreign power suppliers.

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 – as a Community undertaking – receive national treatment in all Member States, regardless of the company's ultimate ownership. However, as discussed below, 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. However, FDI is not defined in the Treaty, leaving the practical implications for EU external investment policy to be defined. If FDI is defined broadly, the EU could have greater authority to negotiate investment agreements and set EU investment rules. If Member States and the Commission cannot agree on a common definition of FDI treatment under the Lisbon Treaty, it would fall to the European Court of Justice to provide clarity.

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 investment persist. The Commission currently is reviewing Member State investment laws and proposals for compliance with EU Treaty language on the free movement of capital and the right of establishment.

Member State Measures

Bulgaria: Local companies in which foreign partners have controlling interests must obtain licenses to engage in certain activities, including the production and export of arms and ammunition; banking and insurance; exploration, development, and exploitation of natural resources; and the acquisition of property in certain geographic areas. The insolvency rules in Bulgaria's Commercial Code, and changes to the Law on Public Offering of Securities (2005), have greatly improved minority shareholder protection, but enforcement of the Commercial Code 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 exceptions are rarely granted. Cyprus also restricts ownership of local electronic mass media companies (*e.g.*, television and radio stations but excluding print media) to a ceiling of 25 percent of each local media company for EU investors, and to just five percent of each local media company 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 a construction contractor 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.

France: Generally, there are few pre-screening or prior approval requirements for non-EU foreign investment in France. However, pursuant to a November 2004 law that streamlined the French Monetary and Financial Code, 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."

France also has raised concerns that sovereign wealth funds could buy up "strategic" companies, whose stock prices have fallen steeply in the wake of the financial crisis and, 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 also has 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. New AMF regulations include creation of 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. The new regulations took effect on August 1, 2009. 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 Gaz de France 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 23 October 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 (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 a possible renewed infringement 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. Specifically, non-EU investors in the mining industry need special approval from the Greek cabinet for the use and exploitation of mines and foreign investors who want to purchase land in border areas and on certain islands need an additional approval from the Ministry of Defense. Greek authorities also 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 in 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 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 EC Treaty rules on the free movement of capital and freedom of establishment. The European Commission and Greece are still negotiating a solution to this issue.

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, however, the Lithuanian government must eliminate this restriction by 2011.

Romania: Uncertainty and lack of long-term predictability in Romania's legal and regulatory systems pose a continuing impediment to foreign investors. Tax laws change frequently and many companies experience very long delays in 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 judges' rulings reportedly often do not follow precedent.

GOVERNMENT PROCUREMENT

The EU is a party to the WTO Agreement on Government Procurement (GPA), which it implements through the EU 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. Accordingly, Member States maintain their own national practices in certain areas, including in defense procurement, where several Member States require offsets. The GPA defines an offset as a condition or undertaking that encourages local development or improves a Party's balance of payments accounts – such as requirements for domestic content, technology licensing, investment, and countertrade. U.S. suppliers participate in EU government procurement tenders, but it is 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 repeatedly 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. Defense offsets in Austria are reportedly linked to political considerations and transparency remains limited.

Czech Republic: U.S. and other foreign companies continue to express concern over the lack of transparency in the public procurement process. A 2006 law on government procurement was intended to bring the Czech Republic into compliance with EU legislation, but did little to improve transparency. An October 2009 change to the law governing defense procurement allows foreign companies to contract directly with the Czech Ministry of Defense, subject to Czech government approval. The change also eliminates the requirement for EU companies to partner with a Czech intermediary. However, U.S. companies must have a Czech intermediary, unless this requirement is waived by the Czech government. Additionally, the Ministry of Defense can issue a "direct call" tender, when sole source procurement is deemed to be in the Czech government interest.

France: The French government continues to maintain shares in several major defense contractors. It is difficult for non-European firms to participate in the French defense market 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.

Hungary: A 2009 Hungarian government-funded study confirmed the long, widely held assumption that public procurements in Hungary are neither open nor transparent. The study revealed that as many as two-thirds of all public procurements are affected by corruption, increasing the price of procurements by 25 percent on average and that politically motivated tendering decisions are common. Hungarian non-governmental organizations advocate reform of campaign finance laws to help make public procurements more transparent and competitive. While the current government has proposed a new package of anti-corruption measures, the package does not include campaign finance reform.

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

Italy: Procurement authority is widely dispersed, with over 22,000 contracting agencies at the national, regional, and local level, 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 industry asserts that it still exists, especially at the local level.

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

Portugal: There is a general lack of transparency in Portuguese public procurement procedures. U.S. firms continue to face stiff competition when bidding against EU firms, with the Portuguese government tending 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 a consortium or as part of a joint venture with Portuguese or other EU firms.

Romania: Romania adopted the EC Utilities Directive into national legislation in January 2007. Under the 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 3 percent. In addition, Romania requires offsets as a condition for the awarding of defense contracts.

Slovenia: U.S. firms continue to express concerns that the public procurement process in Slovenia is non-transparent. Complaints include short time frames for bid preparation, lack of clarity in tendering documentations, and opacity in the bid evaluation process. One specific complaint involves the quasi-judicial National Revision Commission (NRC) that 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, in particular Slovenian firms, under its ambiguous “national interest” standard, regardless of cost or doubts over 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, with at least two major U.S. construction firms closing their Spanish offices during the construction boom of the past decade due to insufficient business.

United Kingdom (UK): The 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 United Kingdom. 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 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. However, there have been examples of noncompetitive procurements in recent years.

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 September 2009, the dispute settlement panel issued a confidential interim report to both parties. The United States has consistently noted its willingness to negotiate a new bilateral agreement on large civil aircraft, even while the WTO litigation proceeds, but it has insisted that any such agreement must end launch aid and other direct subsidies for the development and production of such aircraft.

Government Support for Airbus Suppliers

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

France: In addition to the launch aid that the French government provided for the development of the 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 (the last advance to the A380). Based on preliminary estimates, overall 2009 appropriations, including 74 million Euros in support of research and development in the aeronautical sector, amount to 209 million Euros. In July 2008, Airbus, the parastatal Caisse des Dépôts et Consignations, and the Safran Group, announced the launch of the AEROFUND II equity fund, capitalizing 75 million Euros destined for the French aeronautical sector. The equity fund's objective is to support the development of the small- and medium-sized 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.

Spain: On November 9, 2009, the Spanish Official Gazette (BOE) published a Royal Decree regulating the direct concessions or advances of reimbursable loans to companies established in Spain that are subcontractors of the Airbus A350 XWB and its Trent XWB engine that the company Rolls-Royce develops. The loans amount to 359 million Euros. The Ministry of Industry, Tourism and Trade planned to disburse up to 93.7 million Euros in 2009, and 265.2 million Euros during the period 2010-2014.

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, 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 Sagam, a technology and communications firm, to form the SAFRAN Group. The government supports the SAFRAN SaM146 propulsive engine program with a reimbursable advance of 140 million Euros.

Regional Aircraft

In July 2008, Bombardier Aerospace announced an investment of £519.4 million in Northern Ireland to support the design and manufacture of the wings for its 110 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 (Commission). The Committee consists of representatives of the Member States and is chaired by a representative of the Commission. While, in theory, the Committee exists to help reconcile differences among Member State practices and thereby help to achieve uniformity of administration, in practice its success in this regard has been limited.

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

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

The United States has raised each of the preceding concerns with the EU in various fora, including the WTO Dispute Settlement Body. The concerns have taken on new prominence in light of the expansion of the EU and the focus of the Doha Development Agenda on trade facilitation. In the trade facilitation negotiations, Members are considering proposals that would clarify the requirement of GATT 1994 Article X that all WTO Members – including WTO Members that are customs unions, such as the EU – uniformly apply and give effect to a Member's customs laws, regulations, procedures, administrative decisions, and rulings. EU officials claim 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 intends to monitor its implementation closely, focusing on its impact on uniform administration of EU customs law.

ELECTRONIC COMMERCE

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

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

The Safe Harbor Program provides U.S. companies with a simple, streamlined means of complying with the EU rules. It is the result of an agreement that allows U.S. companies that commit to a series of data protection principles (based on the 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 and transfer personal data from the EU. Signing up to the Safe Harbor is voluntary, but the rules are binding on signatories. A failure to fulfill commitments made under the Safe Harbor framework is actionable either as an unfair or deceptive practice under Section V of the Federal Trade Commission Act or, for air carriers and ticket agents, under a concurrent Department of Transportation statute.

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