EUROPEAN UNION

TRADE SUMMARY

The U.S. goods trade deficit with European Union was $99.2 billion in 2011, up $19.6 billion from 2010. U.S. goods exports in 2011 were $268.6 billion, up 12.1 percent from the previous year. Corresponding U.S. imports from European Union were $367.8 billion, up 15.2 percent. European Union countries, together, would rank as the second largest export market for the United States in 2011.

U.S. exports of private commercial services (*i.e.*, excluding military and government) to European Union were $169.1 billion in 2010 (latest data available), and U.S. imports were $125.4 billion. Sales of services in European Union by majority U.S.-owned affiliates were $508.5 billion in 2009 (latest data available), while sales of services in the United States by majority European Union-owned firms were $373.1 billion.

The stock of U.S. foreign direct investment (FDI) in European Union was $1.9 trillion in 2010 (latest data available), up from $1.8 trillion in 2009. U.S. FDI in European Union is primarily concentrated in the nonbank holding companies, finance/insurance, and manufacturing sectors.

OVERVIEW

The United States and the 27 Member States of the EU share the largest 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 broadly successful character of the U.S.-EU trade and investment relationship, U.S. exporters and investors face chronic barriers to entering, maintaining, or expanding their presence in certain sectors of the EU market. Some of the most significant barriers, which have persisted despite repeated efforts at resolution 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 National Trade Estimate 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 the 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. While the EU took some steps to bring itself into compliance, the United States remains concerned that, notwithstanding the measures the EU has adopted to date, one or more Member State customs authorities may continue to apply duties to the products at issue. The United States is closely monitoring Member State customs decisions in this regard. With EU compliance, the United States expects that U.S. producers of high technology 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 nontransparency and a lack of meaningful stakeholder input into policies related to pricing and reimbursement. The United States is following with interest EU 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 reported that in Belgium, there is a lack of adequate transparency in the development and implementation of government cost-containment measures. 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. Belgium charges a three percent turnover tax on all sales of pharmaceutical products and requires a price reduction for drugs that have been on the market for fifteen years or longer. Pharmaceutical companies are also required to pay a "claw-back" tax to the Belgian government, when government spending on pharmaceuticals exceeds the budgeted amount.

Czech Republic: U.S. pharmaceutical companies have expressed concern about the Czech Republic's system for determining pricing and reimbursement levels for pharmaceutical products, as well as new legislation that went into effect December 1, 2011, requiring electronic auctions on pharmaceuticals and medical devices and equipment. 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 and to open a regular dialogue with industry representatives in order to ensure that reform efforts maximize costs savings while ensuring access to innovative drugs.

Finland: U.S. pharmaceutical companies report that practices by the Finnish Pharmaceutical Pricing Board have delayed consumer use of certain drugs. The national health care system reimburses consumers for drug purchases, but only with respect to drugs that the Pricing Board determines are reimbursable. U.S. pharmaceutical companies have reported that the Pricing Board often takes two years to four years to make those determinations, and that consumers in Finland are unlikely to purchase new drugs unless the Finnish government reimburses a portion of the cost.

U.S. pharmaceutical companies report that, as a consequence of the Pricing Board's practices, they have cut jobs in Finland and have stopped most clinical trials and research in Finland. The United States is currently working with the U.S. pharmaceutical companies and the Finnish government to address this issue.

France: On December 19, 2011, the French Parliament passed a reform bill that provides stricter conflict of interest and drug monitoring rules, a more powerful regulatory authority, and better control of off-label prescribing. The pharmaceutical industry, including U.S. companies, largely supports the reform, which was triggered by a scandal involving "Mediator," a diabetes drug used off-label for weight loss. The bill, however, includes two controversial measures: a new industry tax to finance continuing medical information for doctors and a two year ban on visits by industry sales representatives to individual doctors.

Germany: U.S. pharmaceutical companies have continued to raise concerns about Germany's 2010 drug pricing reform, which, *inter alia*, established a value-added quick assessment for new drugs and mandatory discounts. The industry is mainly concerned about the brief period provided for assessing whether new products offer additional benefits compared to existing drugs and the lack of industry involvement in the selection of comparable therapies in the assessment process. The United States has encouraged the German government to expand and intensify its dialogue with the pharmaceutical industry, to ensure enhanced and 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.

Lithuania: The United States continues to engage with the government of Lithuania regarding pharmaceutical market access issues. The Lithuanian government has made several reform efforts under the leadership of its new Health Minister, and has invited representatives of the pharmaceutical industry to discuss various matters, including the addition of certain drugs to the list of drugs for which the government provides reimbursements, and the procurement of additional innovative drugs.

Poland: U.S. pharmaceutical companies have reported that there is a lack of adequate transparency and meaningful engagement in the development and implementation of cost-containment measures affecting pharmaceutical reimbursement and pricing policies in Poland. The terms of reimbursement agreements have sometimes been unilaterally modified by the government with little advance warning to companies. Companies also report that they have found it difficult to obtain information from the Ministry of Health or to arrange meetings with its officials. The United States has encouraged the government of Poland to ensure that policies affecting the pharmaceutical industry are developed and implemented in a transparent and consistent manner, and that U.S. firms are given opportunities to explain their concerns and to promote the interests of their significant investments in the Polish market.

Portugal: The U.S. pharmaceutical industry reports that there is 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, including hospital arrears for pharmaceuticals (estimated at more than €1.2 billion). In October 2011, the government approved a new law requiring mandatory arbitration of pharmaceutical patent disputes, which requires patent holders to submit cases, including evidence, to an arbitration body within 30 days of notice of intent by a generic drug manufacturer to distribute. Patent holders do not have the right to an injunction, but the law requires patent violators to reimburse patent holders for any resulting losses.

Spain: U.S. pharmaceutical companies remain concerned that Spain's pricing and reimbursement system is unpredictable and lacks transparency. U.S. companies reported that Spanish government reforms enacted during 2010 and 2011 impacted the value of their patents and created a disincentive to innovation and new investment. The reforms, aimed at reducing the national health system budget, require, in general, that the prescription of medicine must be by active ingredient, rather than brand, and that pharmacies must dispense the lowest cost drugs available. For drugs that lack generic alternatives, the price will be reduced by 15 percent after a period of 10 years on the market, reducing the value of 20 year patents. Following discussions that the U.S. Embassy in Madrid facilitated, U.S. companies reached an agreement with the Spanish government in May 2011. In response to industry concerns, Spain agreed that the 15 percent price reduction will not apply to products whose patents are in force in all the EU member states, and that Article 85 of Law 29/2006, which distinguishes between branded medicines and generics, will be removed.

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 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 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.

Subsidies for Fruit

The EU Common Market Organization for fruit and vegetables came into effect on January 1, 2008. Implementing rules, covering fresh and processed products, are designed to encourage the development of Producer Organizations as the main vehicle for crisis management and market promotion. This is a subsidy regime covering dozens of products, including peaches, citrus, and olives. Although export subsidies have been eliminated, processing aid subsidies are only gradually being phased out in favor of so-called "decoupled" Single Farm Payments, limited by national envelopes. At the end of a five year transitional period, the EU expects to "fully decouple" its support for the sector. Hidden subsidies remain an ongoing concern for the United States. The EU policy distinguishes between subsidies paid for fresh fruit and those for processed products. For peaches, a flat rate payment is available for peaches going to processing. These subsidies are offered by the European Commission to the Member States and, because the funds are technically de-linked from specific commodities, they are notified as "green box" payments. Once the Member States receive this funding, however, the payments are often distributed to specific commodity sectors. The United States continues to monitor and review EU assistance in this sector, evaluating potential trade distorting effects.

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 late 2011, the United States concluded negotiation of a bilateral compensation agreement with the EU covering several agricultural products. The next steps involve the European Commission obtaining internal approval of the agreement from EU Member States and the European Parliament. USTR will closely monitor this process to ensure that the agreement is implemented as soon as possible.

INTELLECTUAL PROPERTY RIGHTS PROTECTION

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 continue to 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.

In 2011, the European Commission issued an intellectual property rights (IPR) strategy that includes proposals on enforcement and copyright, as well as a renewed effort to introduce an EU-wide patent regime. Although 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 IPR strategy also launched a study into extending GI protection for products other than agricultural products and food stuffs, which are currently eligible for GI protection in the EU.

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, the 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. The EU and 22 of its Member States signed the ACTA on January 26, 2012.

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 continued IPR concerns, particularly with respect to piracy over the Internet, a poor track record on prosecutions, delays and conflicts of interest in enforcing patent protection, and difficulties obtaining information from Internet service providers (ISPs) in Bulgaria to combat piracy over the Internet. Though the government recently entered into a licensing agreement with Microsoft, similar agreements with the Bulgarian armed forces and one parastatal company are still pending.

Czech Republic: The Czech Republic continues to make progress in increasing enforcement in the approximately 50 open air markets that line the Czech borders with Germany and Austria. 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 2011 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 2011 Special 301 report. The United States acknowledges some improvements in IPR protection and enforcement in Greece, including actions taken against piracy over the Internet. However, inadequate IPR protection continues to pose barriers to U.S. exports and investment. Key issues cited in the 2011 Special 301 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 2011 Special 301 Report. Key concerns cited in the 2011 report include continued widespread copyright piracy and trademark counterfeiting; the lack of an expeditious legal mechanism for rights holders to address piracy on the Internet; and lack of systemic deterrent sentences. The United States welcomes signs of the government's renewed commitment to tackling IPR issues, especially with respect to Internet piracy. Italy's Communications Regulatory Authority (AGCOM) devoted considerable time and attention to preparing regulations to address online piracy, including via a notice-and-take-down system.

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 software piracy rates remain high. While the national police and prosecutors continue to actively prosecute IPR cases, they are hampered by a lack of resources, severe backlogs in police forensics labs and in the courts, 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: Thanks to Poland's more stringent IPR enforcement, physical piracy (*e.g.*, optical discs) is no longer the problem it once was. Online piracy of movies, music, and software, however, continues to be widespread, despite progress in enforcement. Rights holders still express concerns that penalties for digital IPR infringement are not at levels sufficient to deter violations. In an effort to address these concerns, the government has devised a new national IPR action plan, entitled "Program for the Protection of Copyright and Related Rights 2011-2013," which aims to adopt EU IPR protection strategies. Additionally, the government is meeting regularly with rights holder groups and ISPs to increase cooperation in combating Internet piracy.

Portugal: Portugal regularly conducts inspections at street fairs, markets, and festivals, which resulted in the seizure of illegal goods in 2008 worth an estimated six million euros. However, it does not have adequate mechanisms to deter piracy on the Internet. Court cases involving IPR often take years to resolve, and rarely result in convictions. Courts rarely order an injunction against the activity in question while a case is pending.

Romania: Romania remained on the Watch List in the 2011 Special 301 Report. Concern about counterfeit hard goods, infringing optical discs and street piracy continued to decline, while increasing levels of piracy over the Internet, especially peer-to-peer downloading, remain a concern. Piracy over the Internet is a top concern, and enforcement efforts have not adequately addressed the problem. The United States is concerned by an apparent decrease in the overall commitment to IPR enforcement in Romania, reflected in reduced cooperation among enforcement authorities, decreased cooperation of police and prosecutors with rights holders, and a decline in the number of enforcement actions. In 2010, changes to the Penal Code provided for IPR cases to be adjudicated in lower-level courts, whose judges and prosecutors have substantially less IPR expertise. Deficiencies in IPR protection and enforcement, including overall judicial inefficiency and a failure to impose deterrent sentences, have posed barriers to U.S. exports and investment.

Spain: Spain was included in the Watch List in the 2011 Special 301 report. The key concerns cited in the report include significant piracy over the Internet, the failure of the existing legal and regulatory framework to promote cooperation between ISPs and rights 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 lawful, 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 Spanish government approved the implementing regulations for this legislation on December 30, 2011. The United States will carefully monitor the implementation of this legislation in 2012. Further, industry reported that Spain's lack of patent harmonization with the majority of EU Member States has left holders of pharmaceutical process patents with insufficient patent protection.

Sweden: Sweden continues to grapple with widespread piracy over 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 online pirate sites in the world, several of which are listed in USTR's publication, Notorious Piracy Markets. Legal sales over the Internet have increased in recent years, in part because the government's enforcement efforts.

SERVICES BARRIERS

Telecommunications

EU Member States' WTO commitments covering telecommunications services and the EU's 2002 Common Regulatory Framework for Electronic Communications Networks and Services (Framework Directive) have encouraged liberalization and competition in the EU 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. 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.

In 2009, the Commission amended EU telecommunications legislation with the aim of unifying Europe's telecommunications market for all EU Member States. The biggest change was the creation of the body of European regulators for electronic communications (BEREC). By bolstering Member State coordination and giving the Commission a larger role, the creation of BEREC was intended to help ensure fair competition and more consistency in the regulation of telecommunications markets within the EU. The new rules were supposed to have been transposed into the national laws of the 27 Member States by May 2011, but few met the deadline. The Commission has commenced infringement procedures against delinquent Member States.

As part of the EU's Digital Agenda for Europe, Commissioner Neelie Kroes is developing legislative proposals aimed at increasing harmonization and creating a more level playing field for companies providing telecommunications and broadband services in Europe. In 2012, the Commission plans to present recommendations for a consistent, investment-friendly application of nondiscrimination and price control remedies to telephone and broadband networks in all Member States.

EU institutions are also discussing proposals to minimize roaming charges across Member States and to launch a European Radio Spectrum Policy Program, which has the aim of improving radio spectrum management 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 telecommunications regulators. The Austrian national regulatory authority (NRA) carries out market reviews and imposes remedies where necessary. Despite these recent improvements, the NRA is not proactive 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.

France: France has transposed the majority of provisions in the 2009 EU Telecommunications Directive, with only a few regulations remaining to be finalized. A fourth mobile license has been allocated and competition for the mobile market is increasing. Competition for the fixed markets remains strong, with one of the lowest price points for triple-play services (bundled digital telephone, television, and Internet services) in Europe. But France Telecom continues to dominate the sector, notwithstanding its various efforts to partner with other operators to avoid duplication in fiber optic installation.

Germany: Germany has made further progress in increasing competition in some sectors of its telecommunications market. Competitors continue to call for more effective regulation of the competitive environment surrounding Deutsche Telekom (DT), which retains a dominant position in a number of key market segments, including local loop and broadband connections. On the positive side, since the passage of the Telecommunications Act in 2003, and the adoption of subsequent amendments, DT's share in the fixed-line telecommunications market has decreased and currently hovers around 60 percent. Competitors of DT (excluding cable and fiber optic broadband providers) continue to hold a 41 percent share of broadband connections, while DT's share has decreased slightly over the few past years to about 44 percent.

The *Bundestag* (lower chamber of the Federal Parliament) passed a reform of the Telecommunications Act in October 2011, which will implement the 2009 EU Telecoms Package. The reform aims to facilitate broadband expansion and strengthen consumer protection. Initial attempts to introduce a universal service obligation and net neutrality were dropped at the last minute. A provision (paragraph 9a) introduced in 2006 to authorize the regulatory agency to grant "regulatory holidays" for services in new markets will also be abolished. The provision, which competitors feared would result in deregulation for DT with respect to the fiber optic network it is installing, prompted the European Commission to initiate infringement proceedings, and the European Court of Justice eventually ruled that the provision infringed EU law. The United States also raised concerns on this issue with the German government. Ultimately, paragraph 9a was never applied. In November 2011, the *Bundesrat* (upper chamber of the Federal Parliament) denied passage of the reform legislation and called for stronger inclusion of the *Länder* (Federal States) in revenues of future spectrum auctions. The legislation will now enter arbitration procedures, which will further delay passage.

Greece: As of the end of 2011, Greece had not completed transposing the 2009 EU Telecoms Package into its national legislation. The Greek National Regulatory Authority for Telecommunications and Postal Services completed a tender for granting mobile communications licenses in November 2011. The tender was open to all bidders, including foreign companies, but only Greek telecommunications firms participated.

Italy: Telecom Italia (TI), the former state-owned monopoly operator, is the largest telecommunications provider in Italy. Domestic political pressure has prevented foreign operators (*e.g.*, AT&T in 2007) from gaining a controlling interest in TI. TI owns most of Italy's fixed-line telecommunications infrastructure, and competitors have complained about high access costs and of allegedly unfair practices aimed at retaining TI customers. TI's market share, however, is decreasing, with its share of the fixed-line market declining to approximately 70 percent in the second quarter of 2011 (down from 73 percent in the second quarter of 2010). Similarly, TI's share of the Italian retail broadband market was 53 percent in the second quarter of 2011 (compared to almost 56 percent in the second quarter of 2010). TI's market share for mobile services has remained stable. Although TI has expressed interest in upgrading its broadband infrastructure, it has also voiced concern that the main beneficiaries of TI broadband investment would be businesses selling goods and services online, in particular, large U.S. 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. EU Member State 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, EU works. This could be interpreted to refer to the financial contribution made by such services to the production and rights acquisition of EU works or to the prominence of EU 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. In September 2011 the Commission asked eight Member States (Austria, Cyprus, Estonia, Germany, Hungary, Latvia, Lithuania, and Luxemburg) to clarify whether they had implemented the AVMS Directive correctly. Should they fail to comply the Commission could appeal 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 EU and 40 percent French language. 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. Internet, cable, and satellite networks are permitted to broadcast as little as 50 percent EU works (the AVMS Directive minimum) and 30 percent to 35 percent French-language works, but, in exchange, channels and services are required to increase their investment in the production of French language works. 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 in French.

In addition to the broadcasting quotas, cinemas must reserve five weeks per quarter for the exhibition of French feature films. This requirement 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 reserves 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.

Poland: Broadcasters in Poland must devote at least 33 percent of their broadcasting time each quarter to programming that was originally produced in the Polish language.

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 EU and Spanish films and audiovisual programs.

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, but 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. U.S. citizens with a law degree may apply as legal trainees if the law degree is recognized by a Portuguese law school and if the U.S. citizen has a valid Portuguese residence authorization. The successful completion of legal internship and the mandatory Bar Association exams will enable the U.S. citizen to practice law in Portugal.

Accounting and Auditing Services

Member State Measures:

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 trying to reform. Law 3919/2011, passed in March 2011, lifts certain restrictions, such as the minimum fees. In October 2011, the Ministry of Finance began examining amending the law to fully liberalize auditing services (along with legal, notary, and engineering services).

Portugal: Portuguese law requires that practicing accountants and auditors be accredited by one of two Portuguese accounting associations, which require legal residency. Portuguese language ability and citizenship of a country with a reciprocal agreement or EU citizenship are prerequisites for membership.

Energy Services

Member State Measures:

Ireland: Bureaucratic delays and obstacles that benefit vested local interests and state-owned enterprises have slowed consideration of new entrants and raised costs to do business in Ireland. Both a waste-to-energy project and a liquefied natural gas terminal proposal have been delayed, which may result in cancellation of significant investments from the United States.

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. USTR will continue to monitor this process to ensure the agreement is implemented as soon as possible.

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 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 1,200 BITs concluded by Member States, including some with the United States, will remain valid under international law (though their continued existence may depend on compatibility with the EU's common commercial policy). The European Parliament in May 2011 voted on a draft Regulation establishing transitional arrangements for existing BITs between Member States and Third Countries, based on the arrangements proposed by the Commission in its July 2010 communications, but with amendments proposed by the Parliament. The European Parliament proposal was submitted to the Council, which has not yet voted on the proposed amendments.

The July 2010 communications provide that the Commission will review existing Member States BITs. If the Commission finds clauses that it believes are incompatible with EU law, it will ask Member States to renegotiate such clauses. If this proves impossible, the communications provide that the Commission may withdraw its "authorization" for a treaty to remain in force, 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 additional 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 5 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: Restrictions on foreigners purchasing agricultural and forest lands were removed 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 is permitted. A December 2005 government decree (Decree 2005-1739) 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." The 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 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 government may also become directly involved in mergers and acquisitions, using its "golden share" in state-owned firms to protect perceived national interests.

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

Italy: In May 2011, the government announced a new incentive scheme for photovoltaic solar energy production that reduced previous, guaranteed feed-in tariff rates and included a new bonus of 10 percent above the normal incentive rate for projects with at least 60 percent EU content, harming some foreign investors.

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 required to eliminate this restriction by 2011. However, that year the government successfully negotiated with the EU to postpone the removal of the restriction until 2014.

Portugal: The Portuguese government officially eliminated its special stock, commonly called "golden shares," in partially state-owned companies Portugal Telecom, Galp Energia, and Energias de Portugal in July 2011.

Romania: Uncertainty and a lack of predictability in the legal and regulatory systems pose a continuing impediment to foreign investment in Romania. Tax laws change frequently, and many companies experience long delays in receiving VAT refunds to which they are legally entitled. Deadlines for processing and payment of refunds as stipulated by law are often not respected. Companies have 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.

Spain: The Spanish government made retroactive changes to its renewable energy feed-in tariffs in December 2010. Institutional investment funds and energy companies, including some U.S. companies and funds, commenced arbitration proceedings against the Spanish state in November 2011 pursuant to the Energy Charter Treaty, claiming compensation of hundreds of millions of euros for losses suffered as a result of the tariff change.

U.S. and other foreign multinationals report a growing number of difficulties working with Spain's tax authority, particularly as it relates to the country's Foreign Assets Holding Entities tax regime. Companies report having had hundreds of millions of euros in deductions under the scheme rejected, while the tax authority has assessed significant retroactive sums and penalties against U.S. and other foreign firms. Several U.S. firms are pursuing cases through the administrative tax courts.

GOVERNMENT PROCUREMENT

The EU is a signatory to the WTO Agreement on Government Procurement (GPA).

U.S. suppliers participate in EU government procurement, but the lack of EU statistics makes it difficult to 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 foreign 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 ($52,000) to €100,000 ($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.

Bulgaria: The public procurement process in Bulgaria is not always transparent. There are persistent complaints that some tenders are so narrowly defined that they appear tailored to a specific company. U.S. companies also complain that they face difficulties having their certification documents accepted to qualify as bidders on public procurement projects.

Czech Republic: The Czech government is preparing a major public procurement reform bill to address transparency and corruption concerns. The legislation, which was passed in November 2011 by the lower chamber and moved to the Senate for consideration, would lower to one million CZK ($55,000) the threshold for the application of procurement rules. It also would require bidders to disclose more of their ownership structure. However, the legislation would retain certain mechanisms permitting the transfer of public money to anonymously-held companies. In 2011, the Czech government removed the requirement that purchases of non-EU foreign defense goods be made through a Czech intermediary.

France: The French government continues to maintain shares in several major defense contractors (EADS 0.06 percent, Safran 30.20 percent, and Thalès 27.00 percent as of November 2011). It is generally difficult for non-EU firms to participate in French defense procurement and, even where the competition is among EU suppliers, French companies are often selected as prime contractors.

Germany: U.S. industry asserts that the German government in 2010 and 2011 unfairly excluded a U.S. supplier of passenger scanning equipment from two major procurements at airports in Germany in favor of a German-affiliated supplier, through the use of technical specifications in one procurement and the use of sole sourcing in the other procurement.

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.

In 2011, the government of Greece passed a new law regarding public procurement tenders, which has been in effect since September. The law applies a National Electronic System for public procurement tenders, which will allow bids and offers to be processed electronically. The relevant web site is online (www.agora.gov.gr) but currently operates only as a pilot program.

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 procurement decisions and to help make public procurement 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 public procurement.

Ireland: Government procurement in Ireland is generally conducted under open and transparent procurement regulations. U.S. companies have raised concerns, however, that they have been successful in only a few national and regional government tenders, particularly for infrastructure-related projects. U.S. firms complain that lengthy processes for budgetary decisions delay procurements, and that unsuccessful suppliers 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: Italy's public procurement practice is often criticized for a lack of transparency, which has created obstacles for some U.S. firms bidding on public procurement. 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 has been considering an anti-corruption bill since 2010. Among other things, the legislation would revise administrative measures originally introduced to streamline the public procurement process, but which have reportedly generated corrupt practices and abuse. To increase transparency, the Italian government has also started publishing online information regarding the use of public funds. This information includes data on procurement 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. The government has made procurement reform a top priority and is starting to improve transparency by implementing online public procurement by its central purchasing body, the central project management agency. Now, over 70 percent of public procurement occurs online. Since 2003, the Lithuanian government has often required offset agreements as a condition for the award of contracts for procurement of military equipment.

Portugal: U.S. firms 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 also report that they are more successful when bidding as part of consortia or as part of joint ventures with Portuguese or other EU firms. U.S. based firms may bid on public tenders covered by the GPA, while EU subsidiaries of U.S. firms may bid on all public procurement contracts covered by EU directives.

Romania: 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 procuring entities 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 procuring entity can withhold a percentage of 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 its decisions are not subject to judicial appeal. There also are concerns that the NRC favors EU, 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: Recently, U.S. companies in the energy efficiency sector have reported being shut out of tenders for public projects due to bid design that favored Spanish companies.

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 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.

The UK has also implemented the EU Defence and Security Procurement Directive in new regulations. The Defence and Security Public Contracts Regulations 2011 were implemented in August 2011. One key provision of the Regulations is a prohibition of industrial participation or offsets. Although the UK's source selection process appears open and competitive, there appears to be a perception among U.S. defense industries that the UK Ministry of Defence prefers national and EU equipment solutions over superior U.S. offerings.

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 of all Airbus aircraft models (launch aid) and have provided other forms of support, including equity infusions, debt forgiveness, debt rollovers, and marketing assistance, in addition to 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 EU civil aeronautics industry. EU governments have spent hundreds of millions of euros to create infrastructure for Airbus programs, including €751 million 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 to create the AeroConstellation site, which contains additional facilities for the A380. The Airbus A380, the beneficiary of more than $5 billion in subsidies, 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 has 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 U.S.-EU agreement that would end subsidies for the development and production of large civil aircraft, the United States exercised its right to terminate the 1992 U.S.-EU Bilateral Agreement on Large Civil Aircraft. The United States also commenced WTO consultations, which failed to resolve the U.S. concerns. A renewed effort to negotiate a solution ended without success in April 2005.

On May 31, 2005, the United States requested establishment of a WTO panel to address its concern that EU subsidies were inconsistent with the WTO *Agreement on Subsidies and Countervailing Measures*. The WTO established the panel on July 20, 2005. In 2010, the dispute settlement panel found in favor of the United States on the central claims, and the Appellate Body upheld the finding of WTO inconsistency in 2011. On December 1, 2011, the EU submitted a notification to the WTO asserting that it had taken appropriate steps to bring its measures into conformity with its WTO obligations. On December 9, 2011, the United States requested consultations with the EU to address its concern that the EU had failed to bring its Airbus subsidies into conformity with WTO rules.

During this period, the ongoing WTO dispute did not cut the flow of money to Airbus. In 2009, EADS's total European government (UK, France, Germany, Spain) refundable advances outstanding amounted to €5.3 billion, of which €3.6 billion was for the A380, €1.2 billion for long-range wide body aircraft, and €0.2 billion for Eurocopter.

In September 2009, the UK government announced it would lend plane maker Airbus £340 million ($540 million) in launch aid to develop its new wide-body aircraft, the A350XWB. The loan for the A350 XWB model comes partly from the UK government's £750 million ($1.2 billion) Strategic Investment Fund. The launch aid is intended to safeguard 1,200 jobs at Airbus's plants in Filton, near Bristol, and Broughton in north Wales. It also secures Britain's share of the work on the Airbus aircraft and a further 5,000 jobs at Airbus suppliers. Airbus's sites in the UK specialize in wing manufacturing, but also make landing gear and fuel integration systems.

Government Support for Airbus Suppliers

Member State Measures:

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, 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, 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 aeronautical sector was illegal. However, in May 2010, after being provided with supplemental information from the government, the Commission ruled that the program, for €178 million, 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, of which €20.1 million were committed to the A380. In 2009, appropriations for the aeronautical sector amounted to €209 million, including €74 million in support of research and development. In 2010, such support amounted to €204.9 million. The government's 2011 budget included €202 million in reimbursable advances for the civil aviation sector, rising to €229 million in the draft budget for 2012, including €120 million for civil aviation research and development.

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 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 purchased a nearly 20 percent stake in Daher, a French company, for €80 million, to help that private aerospace group accelerate its development and seize strategic opportunities. On April 14, 2010, the European Commission authorized France to grant reimbursable advances of €35.14 million to Daher-Socata (€12.34 million) and Sogerma (€22.8 million) for two research and development projects for the future Airbus A350XWB. In addition, FSI allocated €1.5 billion for environmentally safe planes of the future and €500 million for aerospace, through a combination of development support, reimbursable advances, and direct equity investments. In November 2011, President Nicolas Sarkozy announced that a new FSI fund dedicated to investment in the aeronautical sector will take the place of AEROFUND II, which is due to disburse the last of its funds in 2012.

In 2007, OSEO (the state-backed company that provides financial support to innovative small and medium sized enterprises) signed a contract with the French Civil Aviation Authority for European aerospace project development. In 2010, OSEO announced €80 million in reimbursable advances over two years for French small and medium sized enterprise sub-contractors and suppliers of large aerospace firms. Zodiac Aerospace received €230 million in reimbursable advances during the August 2008 to August 2009 period. In 2009, Latécoère received €50.4 million in reimbursable advances. In 2011, Figeac Aero received €10 million.

Spain: In January 2011, the European Commission authorized Spain to grant an interest free reimbursable loan of €129 million to AERNNOVA for the development of the next generation horizontal tail plane of the future Airbus A350XWB. The subsidy, in the form of the foregone interest, is estimated at €37.4 million. The Commission found the state loan compatible with EU state aid rules, on the grounds that the positive effects of the research and development aid outweigh any distortion of competition that the aid may cause.

Government Support for Aircraft Engines

Member State Measures:

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 the Department for Business, Innovation, and Skills (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. In 2009, Safran received new reimbursable advances of €69 million.

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).

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 WTO on trade facilitation. In the WTO 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 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, Jersey, the Faroe Islands, and Israel as providing 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 Framework 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 Five 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 EU 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. In mid-2011, EU media reports suggested that U.S. laws such as the Patriot Act offer the U.S. Government *carte blanche* to obtain private data of EU citizens when stored by U.S. cloud computing service providers in Europe. The United States is seeking to correct misconceptions about U.S. law and practice and to engage with EU 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 EU legislative framework for data protection, encompassing both commercial and judicial/law enforcement uses of data. In January 2012, the Commission issued its legislative proposals, initiating a potentially lengthy process of consultation and negotiation with EU Member States and the European Parliament. 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.