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March 2012

LIST OF FREQUENTLY USED ACRONYMS AND ABBREVIATIONS

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

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

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FOREWORD

The 2012 National Trade Estimate Report on Foreign Trade Barriers (NTE) is the twenty-seventh in an annual series that surveys significant foreign barriers to U.S. exports. This document is a companion piece to the President's Trade Policy Agenda published in March. The issuance of the NTE Report continues the elaboration of an enforcement strategy, utilizing this report, among other tools, in that strategy.

On February 28, 2012, the President signed an Executive Order authorizing the creation of the Interagency Trade Enforcement Center within the Office of the United States Trade Representative. The Trade Enforcement Center will work to build on the strong enforcement record of the last few years to enhance the ability of the United States to combat unfair trading practices and trade barriers with a "whole-of-government" approach, drawing resources and personnel from agencies across the government. In particular, the Center will use substantially enhanced research, intelligence, and analysis capabilities, coupled with increased participation of stakeholders, to ensure that our trading partners play by the rules.

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

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

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

SCOPE AND COVERAGE

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

Trade barriers elude fixed definitions, but may be broadly defined as government laws, regulations, policies, or practices that either protect domestic products from foreign competition or artificially stimulate exports of particular domestic products.

This report classifies foreign trade barriers into nine different categories. These categories cover government-imposed measures and policies that restrict, prevent, or impede the international exchange of goods and services. They include:

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

- Government procurement (*e.g.*, "buy national" policies and closed bidding);

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

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

- Services barriers (*e.g.*, limits on the range of financial services offered by foreign financial institutions, regulation of international data flows, restrictions on the use of foreign data processing, and barriers to the provision of services by foreign professionals);

- Investment barriers (*e.g.*, limitations on foreign equity participation and on access to foreign government-funded research and development programs, local content requirements, technology transfer requirements and export performance requirements, and restrictions on repatriation of earnings, capital, fees and royalties);

- Government-tolerated anticompetitive conduct of state-owned or private firms that restricts the sale or purchase of U.S. goods or services in the foreign country's markets;

- Trade restrictions affecting electronic commerce (*e.g.*, tariff and nontariff measures, burdensome and discriminatory regulations and standards, and discriminatory taxation); and

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

Significant foreign government barriers to U.S. exports that prior to the 2010 NTE reports were addressed under the rubric of "standards, testing, labeling, and certification" measures are now treated separately in two specialized reports. One report is dedicated to identifying unwarranted barriers in the form of standards-related measures (such as product standards and testing requirements). A second report addresses unwarranted barriers to U.S. exports of food and agricultural products that arise from sanitary and phytosanitary (SPS) measures related to human, animal, and plant health and safety. Together, the three reports provide the inventory of trade barriers called for under U.S. law.

The two specialized reports were first issued in March 2010. USTR will issue new, up-to-date versions of these two reports in conjunction with the release of this report to continue to highlight the increasingly critical nature of standards-related measures and sanitary and phytosanitary issues to U.S. trade policy. The reports will identify and call attention to problems resolved during 2011, in part as models for resolving ongoing issues and to signal new or existing areas in which more progress needs to be made.

USTR continues to more vigorously scrutinize foreign labor practices and to redress substandard practices that impinge on labor obligations in U.S. free trade agreements (FTAs) and deny foreign workers their internationally recognized labor rights. USTR has also introduced new mechanisms to enhance its monitoring of the steps U.S. FTA partners have taken to implement and comply with their obligations under the environment chapters of those agreements. To further these initiatives, USTR has implemented interagency processes for systematic information gathering and review of labor rights practices and environmental enforcement measures in FTA countries, and USTR staff regularly visit FTA countries to monitor practices and directly engage governments and other actors. The Administration has reported on these activities in the *2012 Trade Policy Agenda and 2011 Annual Report of the President on the Trade Agreements Program*.

The NTE covers significant barriers, whether they are consistent or inconsistent with international trading rules. Many barriers to U.S. exports are consistent with existing international trade agreements. Tariffs, for example, are an accepted method of protection under the General Agreement on Tariffs and Trade 1994 (GATT 1994). Even a very high tariff does not violate international rules unless a country has made a commitment not to exceed a specified rate, *i.e.*, a tariff binding. On the other hand, where measures are not consistent with U.S. rights international trade agreements, they are actionable under U.S. trade law, including through the World Trade Organization (WTO).

This report discusses the largest export markets for the United States, including: 58 countries, the European Union, Taiwan, Hong Kong, and one regional body. Some countries were excluded from this report due primarily to the relatively small size of their markets or the absence of major trade complaints from representatives of U.S. goods and services sectors. However, the omission of particular countries and barriers does not imply that they are not of concern to the United States.

NTE sections report the most recent data on U.S. bilateral trade in goods and services and compare the data to the preceding period. This information is reported to provide context for the reader. In nearly all cases, U.S. bilateral trade continued to increase in 2011 compared to the preceding period (with world Gross Domestic Product and world trade up 4 percent and 7.5 percent, respectively). The merchandise trade data contained in the NTE are based on total U.S. exports, free alongside (f.a.s.)[ii] value, and general U.S. imports, customs value, as reported by the Bureau of the Census, Department of Commerce. (NOTE: These data are ranked in an Appendix according to size of export market). The services data are drawn from the October 2011 Survey of Current Business, compiled by the Bureau of Economic Analysis in the Department of Commerce (BEA). The direct investment data are drawn from the September 2011 Survey of Current Business, also from BEA.

TRADE IMPACT ESTIMATES AND FOREIGN BARRIERS

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

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

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

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

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

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

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

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

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

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

March 2012

Endnotes

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

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

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

The United States led efforts to launch the Organization for Economic Cooperation and Development (OECD) Convention on Combating Bribery of Foreign Public Officials in International Business Transactions (Antibribery Convention). In November 1997, the United States and 33 other nations adopted the Antibribery Convention, which currently is in force for 38 countries, including the United States. The Antibribery Convention obligates its parties to criminalize the bribery of foreign public officials in the conduct of international business. It is aimed at proscribing the activities of those who offer, promise, or pay a bribe. (*For additional information, see* http://www.export.gov/tcc *and* http://www.oecd.org*.)*

The United States also played a critical role in the successful conclusion of negotiations that produced the United Nations Convention Against Corruption, the first global anti-corruption instrument. The Convention was opened for signature in December 2003, and entered into force December 14, 2005. The Convention contains many provisions on preventive measures countries can take to stop corruption, and requires countries to adopt additional measures as may be necessary to criminalize fundamental anticorruption offenses, including bribery of domestic as well as foreign public officials. As of September 2010, 140 countries had signed the Convention, and there were 148 parties, including the United States.

In March 1996, countries in the Western Hemisphere concluded negotiation of the Inter-American Convention Against Corruption (Inter-American Convention). The Inter-American Convention, a direct result of the Summit of the Americas Plan of Action, requires that parties criminalize bribery and corruption. The Inter-American Convention entered into force in March 1997. The United States signed the Inter-American Convention on June 2, 1996 and deposited its instrument of ratification with the Organization of American States (OAS) on September 29, 2000. Thirty-one of the thirty-three parties to the Inter-American Convention, including the United States, participate in a Follow-up Mechanism conducted under the auspices of the OAS to monitor implementation of the Convention. The Inter-American Convention addresses a broad range of corrupt acts including domestic corruption and transnational bribery. Signatories agree to enact legislation making it a crime for individuals to offer bribes to public officials and for public officials to solicit and accept bribes, and to implement various preventive measures.

The United States continues to push its anti-corruption agenda forward. The United States seeks binding commitments in FTAs that promote transparency and that specifically address corruption of public officials. The United States also is seeking to secure a meaningful agreement on trade facilitation in the World Trade Organization (WTO) and has been pressing for concrete commitments on customs operations and on transparency of government procurement regimes in FTA negotiations. In the Trans-Pacific Partnership negotiations, the United States is seeking expanded transparency and anticorruption disciplines. The United States is also playing a leadership role on these issues in APEC and other fora.

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

ANGOLA

TRADE SUMMARY

The U.S. goods trade deficit with Angola was $12.1 billion in 2011, up $1.5 billion from 2010. U.S. goods exports in 2011 were $1.5 billion, up 16 percent from the previous year. Corresponding U.S. imports from Angola were $13.6 billion, up 13.9 percent. Angola is currently the 69th largest export market for U.S. goods.

The stock of U.S. foreign direct investment in Angola was $2.5 billion in 2009 (latest data available), up from $2.3 billion in 2008.

IMPORT POLICIES

Tariffs and Nontariff Measures

Angola is a Member of the WTO and the Southern African Development Community (SADC). However, Angola has delayed implementation of the 2003 SADC Protocol on Trade (which seeks to reduce tariffs) in hopes that the country can revive domestic production of non-petroleum goods, which remains low as a result of years of civil war and economic underdevelopment. The government is concerned that early implementation of the SADC Protocol on Trade would lead to a large increase in imports, particularly from South Africa.

In September 2008, a new tariff schedule came into force that removed duties on the import of raw materials, equipment, and intermediate goods for industries and reduced tariffs on 58 categories of basic goods. A new tax was also established on imports of luxury products, which are now subject to a one percent surcharge. The 2008 tariff schedule eliminated personal customs fees and transportation taxes. In addition to duties, fees associated with importing include clearing costs (2 percent), VAT (2 percent to 30 percent depending on the good), revenue stamps (0.5 percent), port charges ($500 per day per 20 foot container or $850 per day per 40 foot container), and port storage fees (free for the first 15 days, then $20 per 20 foot container or $40 per 40 foot container per day).

Tariff obligations for the oil industry are largely determined by individually negotiated contracts between international oil companies and the Angolan government. Because most U.S. exports to Angola consist of specialized oil industry equipment, which is largely exempt from tariffs, the annual impact of tariff barriers on U.S. exports is relatively low, estimated to be in the range of $10 million to $25 million. If companies operating in the oil and mining industries present a letter from the Minister of Petroleum or the Minister of Geology and Mines, they may import, without duty, equipment to be used exclusively for oil and mineral exploration.

Customs Barriers

Administration of Angola's customs service has improved in the last few years but remains a barrier to market access. The Angolan government implemented a new customs code in January 2007, which follows the guidelines of the World Customs Organization, the WTO, and the SADC. The recent creation of two dry ports for container storage and the diversion of some marine traffic to the Port of Lobito improved customs clearance to an extent. However, port clearance is still a slow process, averaging one month as of mid-2010, in part due to capacity constraints at the Port of Luanda. For instance, shipping containers, although cleared for release by customs, may be physically inaccessible because they are behind other containers.

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

Required customs paperwork includes the "*Documento Unico*" (single document) for the calculation of customs duties, proof of ownership of the good, bill of lading, commercial invoice, packing list, and specific shipment documents verifying the right to import or export the product. Any shipment of goods equal to or exceeding $1,000 requires use of a clearing agent. The number of clearing agents increased from 55 in 2006 to 155 in 2011, but competition among clearing agents has not reduced fees, which typically range from 1 percent to 2 percent of the value of the declaration.

Pre-shipment inspection is also a barrier for goods including cars, live animals and living plants, cereals, seeds, food produce, pharmaceuticals, chemicals, alcoholic beverages, and dairy products. The Bureau Inspection Valuation Assessment Control (BIVAC), a private company associated with Bureau Veritas, is the government's recommended agent for pre-shipment inspections. Exporters that use an agent other than the BIVAC for pre-shipment inspection are subject to additional inspection upon arrival, another time-consuming bureaucratic process.

GOVERNMENT PROCUREMENT

The government procurement process often lacks transparency. Information about government projects and procurements is often not readily available from the appropriate authorities and interested parties must spend considerable time to obtain the necessary information. Awards for government procurements are sometimes published in the government newspaper "*Jornal de Angola*." Under the Promotion of Angolan Private Entrepreneurs Law, the government gives Angolan companies preferential treatment in the procurement of goods, services and public works contracts.

In September 2010, a new public procurement law was adopted, but it has not yet been implemented. The new law would make significant changes to procedures for the procurement of goods and services and the award of concessions. These changes include additional local content requirements, the use of a competitive public tender as the standard procedure for government procurement, and the creation of a Public Tender Management Unit.

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

INTELLECTUAL PROPERTY RIGHTS PROTECTION

Angola is a party to the World Intellectual Property Organization (WIPO) Convention, the Paris Convention for the Protection of Industrial Property, and the WIPO Patent Cooperation Treaty. Intellectual property is protected by Law 3/92 for industrial property and Law 4/90 for the attribution and protection of copyrights. Intellectual property rights (IPR) are administered by the Ministry of Industry (trademarks, patents, and designs) and by the Ministry of Culture (authorship, literary, and artistic rights). Each petition for a patent that is accepted is subject to a fee that varies by type of patent requested.

Although Angolan law provides basic protection for IPR and the National Assembly is working to strengthen existing legislation, IPR protection remains weak in practice due to a lack of enforcement capacity. The government has worked with international computer companies on anti-piracy measures. No suits involving IPR owned by U.S. citizens or companies are known to have been filed in Angola.

INVESTMENT BARRIERS

Angola is formally open to foreign investment, but its regulatory and legal infrastructure is not adequate to facilitate significant foreign direct investment outside the petroleum sector or to provide sufficient protection to foreign investors. Smaller firms in non-extractive industries tend to have a more difficult time conducting business in Angola than larger, multinational corporations engaged in extractive industries. A new private investment law, passed in May 2011, altered benefits and incentives available for investors. The minimum size requirement for an investment to qualify for incentives was increased from $100,000 under the previous law to $1 million under the new law. Investors must enter into an investment contract with the Angolan state, represented by the National Agency for Private Investment (ANIP), which will establish the conditions for the investment as well as the incentives granted. The incentives and benefits, which can include repatriation of funds for foreign investments, tax deductions, and exemption from certain taxes and duties, will be negotiated with ANIP and other ministries of the Angolan government on a case-by-case basis. In determining whether to grant incentives, consideration will be given to the economic and social impact of the investment, taking into account the government's economic development strategy.

In addition to the process described above, investments with a value between $10 million and $50 million must be approved by the Council of Ministers, and investments above $50 million require the approval of an *ad hoc* presidential committee. By law, the Council of Ministers has 30 days to review an application, although in practice decisions are often subject to lengthy delays.

Angolan law has no provisions for international arbitration and requires that any investment dispute be resolved in Angolan courts. In 2008, Angola's Attorney General ruled that Angola's specialized courts for tax disputes were unconstitutional. Consequently, foreign investors effectively have no legal recourse to dispute claims for additional taxes imposed by the Ministry of Finance upon audit. Angola has not ratified major international arbitration treaties. The World Bank's "Doing Business in 2012" survey estimates that commercial contract enforcement, measured by the amount of time elapsed between the filing of a complaint and the receipt of restitution, generally takes 1,011 days in Angola. A law on voluntary arbitration that would provide the legal framework for speedier, non-judicial resolution of disputes has been drafted but not yet approved.

Angola's private investment law expressly prohibits private investment in the areas of defense, internal public order, and state security; in banking activities relating to the operations of the Central Bank and the

Mint; in the administration of ports and airports; and in other areas where the law gives the state exclusive responsibility.

Although the new private investment law is part of an overall effort by the Angolan government to create a more investor-friendly environment, many laws governing the economy have vague provisions that permit wide interpretation and inconsistent application across sectors. Investment in the petroleum, diamond, and financial sectors continues to be governed by sector-specific legislation. Foreign investors can establish fully-owned subsidiaries in many sectors, but frequently are strongly encouraged (though not formally required) to take on a local partner.

Obtaining the proper permits and business licenses to operate in Angola is time-consuming and adds to the cost of investment. The World Bank "Doing Business in 2012" report noted that it takes an average of 184 days in Angola compared to a regional average of 80 days to register a business.

The government is gradually implementing local content legislation for the petroleum sector, originally enacted in November 2003 (Order 127/03 of the Ministry of Petroleum). The legislation requires many foreign oil services companies currently supplying the petroleum sector to form joint-venture partnerships with local companies on any new ventures. For the provision of goods and services not requiring heavy capital investment or specialized expertise, foreign companies may only participate as a contractor to Angolan companies. For activities requiring a medium level of capital investment and a higher level of expertise (not necessarily specialized), foreign companies may only participate in association with Angolan companies.

In November 2011, the government passed a new law requiring oil companies to conduct a much greater share of their financial transactions through the Angolan banking system. The new law will be implemented in phases. Under the first phase, which will apply as soon as the law takes effect, oil companies will be required to pay their taxes owed to the Angolan government through a local bank. Under the final phase, oil companies operating in Angola must use local banks to make all payments, including payments to suppliers and contractors located outside of Angola.

OTHER BARRIERS

Corruption

Corruption is prevalent and reportedly due to corrupt powerful officials, the lack of adequately trained government staff, dependence on a centralized bureaucracy, and antiquated regulations dating back to the colonial era. As noted, the process to register a company is complicated and may involve up to seven steps with many different government ministries. Gratuities and other facilitation fees are often requested in order to secure quicker service and approval. It is also common for Angolan government officials to have substantial private business interests. These interests are not necessarily publicly disclosed and it can be difficult to determine the ownership of some Angolan companies. Some investors report pressure to form joint ventures with specific Angolan companies believed to have connections to political figures.

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

Investors have at times experienced harassment, political interference, and pressure to sell their investments. In some cases, these practices have involved individuals with powerful positions within the government who exert pressure directly or through the established bureaucracy. As a result, some investors have experienced significant delays in payments for government contracts and delays in obtaining the proper permits or approval of projects. Enforcing a contract in the local court system can be a slow and cumbersome process, and the courts are not always impartial.

In November 2009, President Dos Santos called for a zero tolerance policy against corruption. In March 2010, the National Assembly approved a law on Public Probity which requires most government officials to declare their assets to the Attorney General (though the information is not made available to the general public). In May 2010, the Angolan government passed a new anti-money laundering and terrorism financing law, which is being implemented. In May 2011, a Financial Intelligence Unit, created under the new law, began operations.

Infrastructure

Angola’s badly damaged and neglected infrastructure substantially increases the cost of doing business for investors. Poor roads, destroyed bridges, and mined secondary routes raise transportation costs. The country is in the process of rebuilding its communications, energy, transportation, and road infrastructure, and the government is actively seeking private investment in the power and housing sectors as part of an effort to restore public infrastructure. While domestic and international communications are improving, communication networks continue to be oversubscribed in the provinces and sometimes in the capital city of Luanda, and coverage can be unreliable. Frequent interruptions plague water and power supplies, while power surges can damage electronic equipment. Increased overhead for investors include outlays for security services, back-up electrical generators, and cisterns.

ARAB LEAGUE

The impact of the Arab League boycott of Israeli companies and Israeli-made goods on U.S. trade and investment in the Middle East and North Africa varies from country to country. While the boycott can still pose a significant potential barrier (because of associated compliance costs) for U.S. companies and their subsidiaries operating in certain parts of the region, it has for many years had an extremely limited practical effect overall on U.S. trade and investment ties with many key Arab League countries. The 22 Arab League members include the Palestinian Authority and the following states: Algeria, Bahrain, Comoros, Djibouti, Egypt, Iraq, Kuwait, Jordan, Lebanon, Libya, Mauritania, Morocco, Oman, Qatar, Saudi Arabia, Somalia, Sudan, Syria, Tunisia, Yemen, and the United Arab Emirates. About half of the Arab League members are also Members of the World Trade Organization (WTO) and are thus obligated to apply WTO commitments to all current WTO Members, including Israel. To date, no Arab League member upon joining the WTO has invoked the right of non-application of WTO rights and obligations with respect to Israel.

The United States has long opposed the Arab League boycott through both words and action. U.S. Government officials have urged Arab League member states to end enforcement of the boycott. Many agencies play a role in this effort. The U.S. Department of State and U.S. embassies in relevant host countries take the lead in raising U.S. boycott-related concerns with political leaders in Arab League member states. The U.S. Departments of Commerce and the Treasury and the United States Trade Representative monitor boycott policies and practices of Arab League member states and, aided by U.S. embassies, lend advocacy support to firms facing boycott-related pressures from host country officials.

Under U.S. antiboycott legislation enacted in 1978, U.S. firms are prohibited from responding to any request for information that is designed to determine compliance with the boycott and are required to report receipt of any such request to the U.S. Department of Commerce's Office of Antiboycott Compliance (OAC). Part of the U.S. Government's task involves noting for host country officials the persistence of prohibited boycott requests and those requests' impact on both U.S. firms and on the countries' ability to expand trade and investment ties with the United States. In this regard, U.S. Department of Commerce OAC officials periodically visit Arab League member states to consult with appropriate host country counterparts on antiboycott compliance issues. There is also a 1976 boycott statute implemented by the Department of the Treasury/IRS that denies certain foreign tax benefits to companies that agree to boycotting country requests to participate in certain types of boycotts.

The primary aspect of the boycott prohibits the importation of goods and services from Israel into boycotting countries. This prohibition may conflict with the obligation of Arab League member states that are also members of the WTO to treat products of Israel on a most favored nation basis. The secondary and tertiary aspects of the boycott discriminate against U.S. firms and those from other countries that wish to do business with both Israel and boycotting countries. The secondary aspect of the boycott prohibits individuals, companies (both private and public sector), and organizations in Arab League countries from engaging in business with U.S. firms and those from other countries that contribute to Israel's military or economic development. Such foreign firms are placed on a blacklist maintained by the Damascus-based Central Boycott Office (CBO), a specialized bureau of the Arab League; CBO often provides this list to other Arab League members, who decide whether or to what extent they follow it in implementing any national boycotts. The tertiary aspect of the boycott prohibits business dealings with U.S. and other firms that do business with blacklisted companies.

Enforcement of the boycott is the responsibility of individual Arab League member states and efforts vary widely from country to country. Some Arab League member governments have consistently maintained that only the League as a whole can revoke the boycott. Other member governments support the view that adherence to the boycott is a matter of national discretion; a number of states have taken steps to dismantle various aspects of it. Attendance by Arab League member governments of periodic meetings of the CBO is inconsistent; the U.S. Government has on numerous occasions indicated to Arab League members that attendance at these meetings is not conducive to improving trade and investment ties, either with the United States or within the region. A number of governments have responded that they only send representatives to CBO meetings in an observer capacity, or to push for additional discretion in national enforcement of the CBO-drafted prohibited company lists.

EGYPT: Egypt has not enforced any aspect of the boycott since 1980, pursuant to its peace treaty with Israel. However, U.S. firms occasionally have found some government agencies using outdated forms containing boycott language. In past years, Egypt has included boycott language drafted by the Arab League in documentation related to tenders funded by the Arab League. The revolution and resultant political uncertainty which gripped Egypt over the course of 2011 have left unclear the future of Egyptian approaches to boycott-related issues. As Egypt's new government fully establishes lines of authority and formulates basic foreign policy positions, the Administration will monitor its actions closely with regard to the boycott.

JORDAN: Jordan formally ended its enforcement of any aspect of the boycott with the signing of the Jordanian-Israeli peace treaty in 1994. Jordan signed a trade agreement with Israel in 1995, and later an expanded trade agreement in 2004 (essentially Israel's first free trade agreement with an Arab country). Jordanian-Israeli bilateral trade grew from $10 million in 1996 to approximately $374 million in 2008, though trade fell to an estimated $130 million in 2010 (likely a result of the international financial crisis). While some elements of society continue to oppose improving political and commercial ties with Israel, government policy does not condone such positions.

LIBYA: Libya does not maintain diplomatic relations with Israel and has a boycott law on its books. Since U.S. trade sanctions against Libya were rescinded in April 2004, U.S. companies have reported problems with Libya's implementation of its boycott law. Under the Qaddafi regime, Libyan government entities routinely inserted boycott language in contracts with foreign companies and government tenders. As a result, several U.S. firms have walked away from business opportunities because of Libya's enforcement of its boycott law. The 2011 revolution which preceded the downfall of the Qaddafi regime, and the uncertain political environment which has since evolved in Libya, have made it extremely difficult to predict the future course of Libyan government policy with respect to the boycott. The Administration will continue to monitor Libya's treatment of boycott issues.

IRAQ: The legal status of Iraq's boycott laws is ambiguous. According to data from the U.S. Department of Commerce, the number of prohibited requests from Iraq roughly doubled to 72 in 2011 (up from 37 in 2010). The Iraqi Ministry of Health continues to request compliance with the Arab League boycott and has not removed boycott-related requirements from tender documents. In addition, Iraq's Ministry of Planning requires U.S. companies to answer a boycott questionnaire about a firm's relationship with Israel as part of the patent registration process. There are also concerns about boycott-related language from the Ministry of Oil. U.S. Embassy officials have urged officials in these ministries to follow the 2009 Council of Ministers decision which held that Saddam-era boycott laws should not be applied and have solicited the assistance of the Ministry of Trade in advocating for compliance.

YEMEN: There are no specific laws on the books in Yemen regarding the boycott, though Yemen continues to enforce the primary aspect of the boycott and does not trade with Israel. Yemen in the past has stated that, absent an Arab League consensus to end the boycott, it will continue to enforce it. However, Yemen also continues to adhere to its 1995 governmental decision to renounce observance of the secondary and tertiary aspects of the boycott and does not maintain an official boycott enforcement office. Yemen has remained a participant in the meetings of the CBO in Damascus, but continuing serious political unrest within the country makes it difficult to predict Yemen's future posture toward boycott-related issues.

LEBANON: Since June 1955, Lebanese law has prohibited all individuals, companies and organizations from directly or indirectly contracting with Israeli companies and individuals or buying, selling or acquiring in any way products produced in Israel. This prohibition is reportedly widely adhered to in Lebanon. Lebanese legislation also requires that all CBO recommendations for the placing of companies on Lebanon's national boycott list be submitted to the Cabinet for approval; the Cabinet has had an uneven record of implementing specific CBO recommendations.

ALGERIA: Algeria does not maintain diplomatic, cultural, or direct trade relations with Israel, though indirect trade reportedly does take place. The country has legislation in place that supports the Arab League boycott, but domestic law contains no specific provisions relating to the boycott and government enforcement of the primary aspect of the boycott reportedly is sporadic. Algeria appears not to enforce any element of the secondary or tertiary aspects of the boycott.

MOROCCO: Moroccan law contains no specific references to the Arab League boycott. The government informally recognizes the primary aspect of the boycott due to Morocco's membership in the Arab League, but does not enforce the boycott in any of its aspects. Trade with Israel reportedly does take place, but cannot be quantified from official statistics. U.S. firms have not reported boycott-related obstacles to doing business in Morocco. Moroccan officials do not appear to attend CBO meetings in Damascus.

TUNISIA: Upon the establishment of limited diplomatic relations with Israel, Tunisia terminated its observance of the Arab League boycott. In the wake of the 2011 revolution, future Tunisian policy with respect to the boycott remains unclear.

SUDAN: The government of Sudan supports the Arab League boycott and has enacted legislation requiring adherence to it. There are no regulations in place to enforce the secondary and tertiary aspects of the boycott.

DJIBOUTI: Djibouti generally supports Palestinian causes in international organizations and there is little direct trade between Djibouti and Israel. Nevertheless, the government currently does not enforce any aspects of the Arab League boycott. No U.S. companies have reported boycott-related complaints to the American Embassy in Djibouti.

SYRIA: As host to the Arab League CBO, Syria continues to be the strictest adherent of the primary and secondary aspects of the boycott. Syria maintains its own boycott-related blacklist of firms, separate from the CBO list, which it regards as outdated. Syria's boycott practices have not had a substantive impact on U.S. businesses because of U.S. economic sanctions imposed on the country in 2004; the ongoing serious political unrest within the country has led to even greater restrictions on U.S. commercial interaction with Syria.

MAURITANIA: Though Mauritania 'froze' its diplomatic relations with Israel in March 2009 (in response to Israeli military engagement in Gaza), Mauritania enforces no aspect of the boycott.

GULF COOPERATION COUNCIL (GCC): In September 1994, the GCC member countries (Bahrain, Kuwait, Oman, Qatar, Saudi Arabia, and the United Arab Emirates) announced an end to their enforcement of the secondary and tertiary aspects of the boycott, eliminating a significant trade barrier to U.S. firms. In December 1996, the GCC countries recognized the total dismantling of the boycott as a necessary step to advance peace and promote regional cooperation in the Middle East and North Africa. Although all GCC states are complying with these stated plans, some commercial documentation containing boycott language continues on occasion to surface and impact individual business transactions.

The situation in individual GCC countries is as follows:

Bahrain does not have any restrictions on trade with U.S. companies that have relations with Israeli companies. Outdated tender documents in Bahrain have occasionally referred to the secondary and tertiary aspects of the boycott, but such instances have been remedied quickly when brought to authorities' attention. The government has stated publicly that it recognizes the need to dismantle the primary aspect of the boycott and is taking steps to do so. The U.S. Government has received assurances from the government of Bahrain that it is fully committed to complying with WTO requirements on trade relations with other WTO Members, and Bahrain has no restrictions on U.S. companies trading with Israel or doing business in Israel, regardless of their ownership or other relations with Israeli companies. Although there are no entities present in Bahrain for the purpose of promoting trade with Israel, Israeli-labeled products reportedly can occasionally be found in Bahraini markets.

Kuwait has not applied a secondary or tertiary boycott of firms doing business with Israel since 1991, and continues to adhere to the 1994 GCC decision. Although there is no direct trade between Kuwait and Israel, the government of Kuwait states that foreign firms have not encountered serious boycott-related problems for many years. Kuwait claims to have eliminated all direct references to the boycott in its commercial documents as of 2000 and affirms that it removed all firms and entities that were on the boycott list due to secondary or tertiary aspects of the boycott prior to 1991. Kuwait has a three person boycott office, which is part of the General Administration for Customs. While Kuwaiti officials reportedly regularly attend Arab League boycott meetings, it is unclear if they are active participants.

Oman does not apply any aspect of the boycott, and has no laws providing for boycott enforcement. Although outdated boycott language occasionally appears in tender documents, Omani officials are working to ensure that such language is not included in new tender documents and have immediately removed outdated language when brought to their attention. Omani customs processes Israeli-origin shipments entering with Israeli customs documentation, although Omani firms typically avoid marketing any identifiably Israeli consumer products. Telecommunications and mail flow normally between the two countries. Omani diplomatic missions are prohibited from taking part in Arab League boycott meetings.

Qatar does not have any boycott laws on the books and does not enforce the boycott. However, it normally sends an embassy employee to observe the CBO meetings in Damascus. Although Qatar renounced implementation of the boycott of U.S. firms that do business in Israel (the secondary and tertiary boycott) in 1994, U.S. firms and their subsidiaries occasionally report receiving boycott requests from public Qatari companies. An Israeli trade office opened in Qatar in May 1996, however, Qatar ordered that office closed in January 2009 in protest against the Israeli military action in Gaza. Despite this closure, Qatar continues to allow trade with Israel and allows Israelis to visit the country. Official data from the Qatari government indicated that there was approximately $3 million in trade between Qatar and

Israel in 2009. Actual trade, including Israeli exports of agricultural and other goods shipped via third countries, would likely double the official figures. Qatar permits the entry of Israeli business travelers who obtain a visa in advance. The chief executive of Qatar's successful 2022 World Cup bid indicated that Israeli citizens would be welcome to attend the World Cup.

Saudi Arabia, in accordance with the 1994 GCC decision, modified its 1962 law, resulting in the termination of the secondary and tertiary boycott. Senior Saudi government officials from relevant ministries have requested that U.S. officials keep them informed of any allegations that Saudi entities are seeking to enforce these aspects of the boycott. The Ministry of Commerce and Industry has established an office to address any reports of boycott-related violations; reported violations appear to reflect out-of-date language in recycled commercial and tender documents. Saudi companies have usually been willing to void or revise boycott-related language when they are notified of its use.

The United Arab Emirates (UAE) complies with the 1994 GCC decision and does not implement the secondary and tertiary aspects of the boycott. The UAE has not renounced the primary aspect of the boycott, but the degree to which it is enforced is unclear. According to data from the U.S. Department of Commerce, U.S. firms continue to face a relatively high number of boycott requests in the UAE (this could be attributed to the high volume of U.S.-UAE goods and services trade), which the government explains is mostly due to the use of outdated documentation, especially among private sector entities. The United States has had some success in working with the UAE to resolve specific boycott cases (Commerce Department OAC and Ministry of Economy officials will meet in early 2012 to continue their periodic meetings aimed at encouraging removal of boycott-related terms and conditions from commercial documents). The government has taken some steps to eliminate prohibited boycott requests, including the issuance of a series of circulars to public and private companies explaining that enforcement of the secondary and tertiary aspects of the boycott is a violation of Emirati policy.

Non-Arab League Countries

In recent years, press reports occasionally have surfaced regarding the implementation of officially sanctioned boycotts of trade with Israel by governments of non-Arab League member states, particularly some member states of the 57 member Organization of the Islamic Conference (OIC), headquartered in Saudi Arabia (Arab League and OIC membership overlaps to a considerable degree). Information gathered by U.S. embassies in various non-Arab League OIC member states does not paint a clear picture of whether the OIC institutes its own boycott of Israel (as opposed perhaps to simply lending support to Arab League positions). The degree to which non-Arab League OIC member states enforce any aspect of a boycott against Israel also appears to vary widely. Bangladesh, for example, does impose a primary boycott on trade with Israel, and one U.S. company has been unable to import key industrial inputs made in Israel. By contrast, OIC members Tajikistan, Turkmenistan, and Kazakhstan impose no boycotts on trade with Israel and in some cases actively encourage such trade.

ARGENTINA

TRADE SUMMARY

The U.S. goods trade surplus with Argentina was $5.4 billion in 2011, an increase of $1.8 billion from 2010. U.S. goods exports in 2011 were $9.9 billion, up 33.7 percent from the previous year. Corresponding U.S. imports from Argentina were $5.0 billion, up 18.3 percent. Argentina is currently the 29th largest export market for U.S. goods.

U.S. exports of private commercial services (*i.e.*, excluding military and government) to Argentina were $4.6 billion in 2010 (latest data available), and U.S. imports were $1.5 billion. Sales of services in Argentina by majority U.S.-owned affiliates were $6.3 billion in 2009 (latest data available), while sales of services in the United States by majority Argentina-owned firms were $85 million.

The stock of U.S. foreign direct investment (FDI) in Argentina was $12.1 billion in 2010 (latest data available), down from $14.3 billion in 2009. U.S. FDI in Argentina is mostly in mining and manufacturing sectors.

IMPORT POLICIES

Tariffs

Argentina is a member of the MERCOSUR common market, formed in 1991 and comprised of Argentina, Brazil, Paraguay, and Uruguay. MERCOSUR's Common External Tariff (CET) averages 11.5 percent and ranges from zero percent to 35 percent *ad valorem*. A number of country-specific exceptions and tariffs may be imposed by each MERCOSUR member on products imported from outside the region that transit through at least one or more MERCOSUR members before reaching their final destination.

In December 2011, the MERCOSUR members agreed to increase import duty rates temporarily to a maximum rate of 35 percent on 100 tariff items per member country. The increased duties went into effect in January 2012 and will remain in effect through the end of 2012, with the possibility of extension through the end of 2015. MERCOSUR member countries are also currently allowed to set import tariffs independently for computer and telecommunications equipment, sugar, and some capital goods. Argentina also has bilateral arrangements with Brazil and Uruguay on automobiles and automotive parts.

Several U.S. industries have raised concerns about prohibitively high tariffs and other taxes in Argentina on certain products, including apples, distilled spirits, restaurant equipment, and motorcycles. In early 2012, the Argentine government announced a tax increase on "high-end" imported cars and motorcycles with the stated purpose of protecting the domestic industry. Argentine consumers are now required to pay an additional 10 percent tax on such vehicles imported from outside MERCOSUR.

While the majority of tariffs are levied on an *ad valorem* basis, Argentina also charges compound rates consisting of *ad valorem* duties plus specific levies known as "minimum specific import duties" (DIEMs) on products in several sectors including textiles and apparel, footwear, and toys. These compound import duties do not apply to goods from MERCOSUR countries and cannot exceed an *ad valorem* equivalent of 35 percent. Although the DIEMs expired on December 31, 2010, and the government of Argentina has not formally extended them, they are still being charged.

During its 39th meeting in August 2010, MERCOSUR's Common Market Council (CMC) advanced toward the establishment of a Customs Union with its approval of a Common Customs Code (CCC) and a decision to implement a plan to eliminate the double application of the CET within MERCOSUR. The plan was to take effect in three stages with the first phase to have been implemented no later than January 1, 2012. That deadline was not met, however, and the CCC still must be ratified by MERCOSUR's member countries.

Nontariff Barriers

Argentina has imposed a growing number of customs and licensing procedures and requirements that makes importing U.S. products more difficult. The measures include additional inspections, port-of-entry restrictions, expanded use of reference prices, automatic and non-automatic license requirements, and requirements that importers have invoices notarized by the nearest Argentine diplomatic mission when imported goods are below reference prices. A number of U.S. companies with operations in Argentina have expressed concerns that the measures have delayed exports of U.S. goods to Argentina and, in some cases, stopped exports of certain U.S. goods to Argentina altogether. In response to U.S. Government inquiries, Argentine government officials have asserted that all of these measures are nondiscriminatory and WTO-consistent.

During 2011, the government of Argentina increased its reliance on a growth strategy that is based heavily on import substitution. To carry out this strategy, Argentina increased its use of non-automatic import licenses (see more detailed discussion below) and imposed other nontariff barriers. U.S. firms have reported long delays in obtaining import licenses, including delays that exceed the 60 day period contemplated by the WTO Agreement on Import Licensing Procedures. U.S. firms have also reported that applications for import licenses are often not approved unless they are accompanied by a plan to export from Argentina goods of equivalent value to those that are being imported or a plan to invest in local production facilities. These requirements are not codified in law or regulation. Rather, they are communicated to companies informally by the Argentine government, for example, via telephone calls.

In early January 2012, Argentina announced a new measure requiring companies to file online affidavits (known as the Advanced Sworn Statement on Imports) and wait for government review and approval before they can import. The measure became effective on February 1, 2012. U.S. companies are concerned that this requirement will create additional delays and will be used to restrict imports.

Since April 2010, importers have reported delays in the approval of certificates of free sale for imported food products by the *Instituto Nacional de Alimentos*, a division of Argentina's equivalent of the U.S. Food and Drug Administration. The certificate is necessary to import food products into Argentina. While there is no formal regulation restricting these imports, approval of the certificate is reportedly conditioned on the absence of a domestic substitute for the product.

Argentina prohibits the import of many used capital goods. Local legislation requires compliance with strict conditions on the entry of those used capital goods that may be imported, which are also subject to import taxes up to 28 percent and a 0.5 percent statistical tax. Argentina has carved out exceptions for some industries (*e.g.*, graphics, printing, machine tools, textiles, and mining), enabling importation of used capital goods at a zero percent import tax. The Argentina-Brazil Bilateral Automobile Pact also bans the import of used self-propelled agricultural machinery unless it is rebuilt. Argentina prohibits the importation and sale of used or retreaded tires (but in some cases allows remolded tires); used or refurbished medical equipment, including imaging equipment; and used automotive parts. Argentina generally restricts or prohibits the importation of any remanufactured good, such as remanufactured automotive parts, earthmoving equipment, medical equipment, and information and communications technology products. On December 31, 2010, Argentina reintroduced an import prohibition on used clothing, which is due to expire in 2015.

Import Licensing:

The government of Argentina has significantly expanded the list of products subject to both automatic and non-automatic import licensing requirements since 2008.

Argentina imposes automatic import licensing requirements on 2,100 tariff lines, mainly involving consumer products. Examples of products affected include food and drink, pet food, computer and audio equipment, cars, bicycles, cameras, mattresses, telephones, toys, and watches. Companies have reported not being granted import licenses unless they commit to export from, or invest in, Argentina.

In 2011, Argentina continued and expanded the use of non-automatic licenses to protect sectors that the Argentine government deems sensitive. U.S industry representatives complain that the wait time for the issuance of non-automatic licenses often extends beyond 60 days to 100 days or more, partly due to a backlog of license applications. Obtaining a license is reportedly burdensome and requires multiple duplicative reviews by several different government offices. Once issued, the certificates are generally valid for 60 days.

According to the most recently available official information, approximately 600 tariff lines are currently subject to non-automatic licenses, which include approximately 200 tariff lines that were added in 2011 to the list of products requiring non-automatic import licenses. The Minister of Industry stated in a February 2011 press release that this increase was designed to help domestic manufacturers and boost local production.

Of the products subject to the non-automatic license requirements, nearly half are textile products, yarn, and fabrics. However, a broad range of other sectors has been targeted, including metallurgical products, automotive parts, chemical products, general and special purpose machinery, and consumer goods.

Since 2005, the government of Argentina has also required non-automatic import licenses for toys and shoes. Shoe import licenses are valid for only 120 days and, according to exporters, obtaining them involves especially burdensome procedures. The government of Argentina says the licensing requirement is needed for informational purposes. Some U.S. companies, however, claim it is designed to delay footwear imports.

Customs Valuation:

Argentina currently applies reference values to several thousand products. In 2011, goods covered by approximately 50 tariff lines were added to that list of products. The stated purpose of reference pricing is to prevent under-invoicing, and authorities establish benchmark unit prices for customs valuation purposes for certain goods that originate in, or are imported from, specified countries. These benchmarks establish a minimum price for market entry and dutiable value. Importers of affected goods must pay duties calculated on the reference value, unless they can prove that the transaction was conducted at arm’s length.

Argentina requires importers of any goods from designated countries that are invoiced below the reference prices to have the invoice validated by both the exporting country’s customs agency and the appropriate Argentine Embassy or Consulate in that country. Argentina has stated that the rule is designed to discourage under-invoicing and fraudulent under-payment of customs duties. The government of Argentina publishes an updated list of reference prices and applicable countries which is available at: http://www.afip.gov.ar/aduana/valoracion/valores.criterios.pdf.

Customs External Notes 87/2008 of October 2008 and 15/2009 of February 2009 establish administrative mechanisms that restrict the entry of products deemed sensitive, such as textiles, apparel, footwear, toys, electronic products, and leather goods. While restrictions are not country-specific, they are to be applied more stringently to goods from countries considered "high risk" for under-invoicing, and to products considered at risk for under-invoicing as well as trademark fraud. The full text of Note 87/2008 can be found at: http://www.infoleg.gov.ar/infolegInternet/anexos/145000-149999/145766/norma.htm.

The tax collection agency (AFIP) charges import duties based on pre-established reference prices on these several thousand products. If an importer disagrees with the reference prices established by AFIP or wants to establish its own reference prices, it must submit large volumes of documentation to AFIP in support of its references prices. On October 14, 2011, AFIP issued Note 15/2011, which permits large importers to establish in-house customs services that are pre-approved by the Argentine government in order to establish their own reference prices.

Ports of Entry:

Argentina restricts entry points for several classes of goods, including sensitive goods classified in 20 Harmonized Tariff Schedule chapters (*e.g.*, textiles, shoes, electrical machinery, metal and certain other manufactured goods, and watches) through specialized customs procedures for these goods. A list of products affected and the ports of entry applicable to those products is available at: http://www.infoleg.gov.ar/infolegInternet/anexos/130000-134999/131847/norma.htm. Depending on their country of origin, many of these products are also subject to selective, rigorous "red channel" inspection procedures, and importers are required to provide guarantees for the difference in duties and taxes if the declared price of an import is lower than its reference price.

Since the first measure regarding the limitation of ports of entry was formally announced in 2005, several provincial and national legislative authorities have requested the elimination or modification of the specialized customs scheme. Through several new resolutions issued by the Customs Authority in 2007, 2008, 2010, and 2011, the government of Argentina has increased the number of authorized ports of entry for certain products.

Customs Procedures

Certificates of origin have become a key element in Argentine import procedures because of antidumping measures, criterion values, and certain geographical restrictions. In August 2009, AFIP revised certificate of origin requirements for a list of products with non-preferential origin treatment through External Note 4. These additions referred primarily to certain organic chemicals, tires, bicycle parts, flat-rolled iron and steel, certain iron and steel tubes, air conditioning equipment, wood fiberboard, most fabrics (*e.g.*, wool, cotton, other vegetable), carpets, most textiles (*e.g.*, knitted, crocheted), apparel, footwear, metal screws and bolts, furniture, toys and games, brooms, and brushes. To receive the most favored nation tariff rate, the certificate of origin must be certified by an Argentine consulate. The certificate is valid for 180 days, which has proven problematic for some companies that import goods subject to non-automatic licenses, and companies report that the major delays in obtaining an import license often put them beyond the 180 day validity period for the certificate of origin.

Simplified customs clearance procedures on express delivery shipments are only available for shipments valued at $1000 or less. Couriers also are now considered importers and exporters of goods, rather than transporters, and also must declare the tax identification codes of the sender and addressee, both of which render the process more time-consuming and costly. These regulations increase the cost not only for the courier, but also for users of courier services. The U.S. Government has raised these policies with the Ministry of Federal Planning, Public Investment and Services, the Directorate of Customs, and the National Administration of Civil Aviation.

EXPORT POLICIES

The Argentine government imposes export taxes on all but a few exports, including significant export taxes on key hydrocarbon and agricultural commodities. In many cases, the export tax for raw materials is set higher than the sale price of the processed product to encourage development of domestic value-added production. Crude hydrocarbon export taxes are indexed to world commodity benchmarks. Total export tax revenue in 2011 was equal to 15.6 percent of the value of all Argentine exports (down from 17 percent in 2010), including goods not subject to export taxes.

Despite proposals within and without the Argentine Congress to reduce or eliminate export taxes, the taxes continue to be actively supported and managed by the government of Argentina as they are a major source of fiscal revenue. The following major agricultural commodities are currently subject to export taxes: soybeans at 35 percent; soybean oil and soybean meal at 32 percent; sunflower meal and sunflower oil at 30 percent; wheat at 23 percent; and corn at 20 percent. The export tax on pure biodiesel was 20 percent in 2011, with a 2.5 percent rebate. The difference in tax rates between raw and processed products appears to create large incentives to process those commodities locally, particularly for soybeans, which are turned into oil and in turn provide the feedstock for Argentina's rapidly growing biodiesel industry.

The Common Customs Code (CCC), approved during the 39th MERCOSUR CMC meeting in August 2010, restricts future taxes and anticipates a transition to a common export tax policy. The CCC still must be ratified by MERCOSUR's member countries.

Export Registrations

In addition to levying high export taxes, the government of Argentina requires major commodities to be registered for export before they can be shipped out of the country. Until 2011, the National Organization of Control of Agricultural Commercialization (ONCCA) administered the Registry of Export Operations for meat, grain (including vegetable oils), and dairy products under the provisions of Resolution 3433/2008. After ONCCA was dismantled in early 2011, administration of the Registry of Export Operations was transferred to the Ministry of Agriculture, but reportedly there have been no major changes to procedures for registering exports. All exports must still be registered, and the government retains the authority to reject or delay exports depending on domestic price and supply conditions. One of the goals of the export registration process has been to control the quantity of goods exported, and thereby guarantee domestic supply. Export registrations of wheat, corn, beef, and dairy products continue to be subject to periodic restrictions due to shortfalls in domestic supplies.

Argentina continues to impose time restrictions on grain and oilseed exports depending on when the export tax is paid. Under applicable regulations, export permits are valid for 45 days after registration is approved, if the export tax is paid at the time of export. Export permits may be valid for up to 365 days for corn and wheat and 180 days for soybean and sunflowers products if the exporter pays 90 percent of the export tax at the time the export license is approved.

GOVERNMENT PROCUREMENT

Law 25551 of 2011 establishes a national preference for local industry for most government procurement where the domestic supplier's tender, depending on the size of the company, is no more than five percent to seven percent higher than the foreign tender. The preference applies to procurement by all government agencies, public utilities, and concessionaires. There is similar legislation at the provincial level. These preferences serve as barriers to participation by foreign firms.

In March 2011, the Argentine Senate approved an amendment to Law 25551 extending the entities subject to the "Buy Argentine" regime to include: (a) offices within the Argentine public sector (centralized and decentralized public administration); (b) social security institutions; (c) state-owned companies; (d) private legal entities engaged in public works and licensees and concessionaires of public utilities and other services (fixed and mobile communications, freight transportation, mining, oil and gas, etc.); (e) provincial public entities; and (f) private entities with tax benefits. As of December 2011, the Draft Law was still pending in the Argentine Lower House.

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

INTELLECTUAL PROPERTY RIGHTS PROTECTION

Argentina continued to be listed on the Priority Watch List in the 2011 Special 301 report. Recently, the Argentina has taken a number of positive and encouraging steps on intellectual property rights (IPR) protection. Argentina intensified its enforcement efforts beginning in 2010, and industry continues to report encouraging cooperation with police officers regarding raids. However, key concerns remain regarding the need to strengthen IPR legal enforcement to combat the widespread availability of pirated and counterfeit products. Problems persist in the civil and criminal enforcement areas. Delays in the adjudication of criminal IPR infringement cases are common, and there is a reluctance to impose strong penalties, such as incarceration, for repeated and/or serious violations. Argentina has taken steps to address its patent backlog, but it still does not provide adequate protection against unfair commercial use and unauthorized disclosure of undisclosed test and other data generated to obtain marketing approval for pharmaceutical products. In addition, Argentina lacks an effective system to address patent issues expeditiously in connection with applications to market patented pharmaceutical products.

SERVICES BARRIERS

Audiovisual Services

U.S. industry remains concerned with the added costs associated with exporting movies to Argentina due to measures governing the showing, printing, and dubbing of films. Industry also has concerns regarding the practice of charging *ad valorem* customs duties on U.S. exports based on the estimated value of the potential royalty generated from the film in Argentina rather than on the value of the physical materials being imported.

Beginning on August 30, 2011, under Resolution 2114/2011, the National Institute of Cinema and Audiovisual Arts is authorized to tax foreign films screened in local movie theaters. Distributors of foreign films in Argentina must pay screening fees that are calculated based on the number and geographical locations of theaters at which films will be screened within Argentina. Films that are screened in 15 or fewer movie theaters are exempted.

In October 2009, the Argentine Congress passed Law 26.522 regulating audiovisual communication services. Although the government of Argentina has promulgated implementing regulations, some provisions of the law have been suspended pending judicial review. If implemented, several aspects of the law appear problematic. Law 26.522 would limit foreign ownership of media outlets to 30 percent, require minimum national content of 60 percent to 70 percent, require that all signals owned wholly or partially by the national government be included, set a minimum screen quota for Argentine movies, and require a fee on foreign programmers in the amount of 0.5 percent of annual revenue for acquiring Argentine films. The law provides for different tax treatment for foreign media operations compared to local companies and imposes a limit on the number of broadcasting licenses (based on geography and market segment) in the hands of a single licensee.

Financial Services

Argentina limits lending by foreign bank branches based on local paid-in capital, as opposed to the parent bank's capital.

Insurance Services

The Argentine insurance regulator (SSN) issued an order (Resolution 36.615/2011) in February 2011 prohibiting cross-border reinsurance. Beginning on September 1, 2011, local insurers may only contract reinsurance from locally based reinsurers. Foreign companies without local operations are not allowed to enter into reinsurance contracts except when the SSN determines there is no local reinsurance capacity.

On October 27, 2011, the Argentine insurance regulator issued Resolution 36.162 requiring that "all investments and cash equivalents held by locally registered insurance companies be located in Argentina." These regulations do not formally require the exchange of dollars into pesos; companies can convert their holdings to dollar-denominated assets based in Argentina and still be in compliance. Nevertheless, foreign insurance firms have reported pressure by the Argentine government to sell their dollars for pesos. Many of these companies have liabilities denominated in dollars, making this foreign exchange requirement difficult to meet. Insurance firms also have said that complying with the Argentine government's requirements would force them to take losses due to what they believe is an official exchange rate that over-values the peso.

INVESTMENT BARRIERS

Pension System

The Argentine parliament approved a bill to nationalize Argentina's private pension system and transfer pensioner assets to the government social security agency in November 2008. Compensation to investors in the privatized pension system, including to U.S. investors, is still pending and under negotiation.

Foreign Exchange and Capital Controls

Hard currency earnings on exports, both from goods and services, must be converted to pesos in the local foreign exchange market. In November 2011, Argentina eliminated the exceptions previously granted to hydrocarbon and mining exporters. These firms must now exchange their revenues to pesos on the local foreign exchange market. Revenues from exporting to Argentine foreign trade zones and from re-exporting some temporary imports are still exempted from this requirement. To the extent that these foreign exchange restrictions negatively affect U.S. investors in Argentina, those investors may be able to invoke the United States-Argentina Bilateral Investment Treaty (BIT), which contains obligations regarding the free transfer of capital.

Time limits on fulfilling the obligation to convert to pesos range from approximately 60 days to 360 days for goods (depending on the goods involved) and 15 days for services. For certain capital goods and situations where Argentine exports receive longer-term financing not exceeding six years, Argentine exporters receive more generous time limits. A portion of foreign currency earned through exports may be used for foreign transactions.

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

Since 2004, both foreign and domestic institutional investors have been restricted to total currency transactions of $2 million per month, although transactions by institutions acting as intermediaries for others do not count against this limit. In June 2010, the Argentine Central Bank introduced a regulation that permitted Argentine residents to conduct more than $2 million per month in foreign exchange transactions for specific enumerated purposes (*e.g.*, to purchase bonds issued by the federal government, to deposit in the local banking system, and to finance investment projects). The Central Bank also requires Argentine residents who purchase more than $250,000 within a year to show that the purchase is compatible with personal income tax filings.

The Ministry of Economy implemented Decree 616 through resolutions in 2005 and 2006 that imposed more restrictive controls on the following classes of inbound investments: inflows of foreign funds from private sector debt (excluding foreign trade and initial public offerings of stock and bond issues); inflows for most fiduciary funds; inflows of nonresident funds that are destined for the holding of Argentine pesos or the purchase of private sector financial instruments (excluding foreign direct investment and the primary issuance of stocks and bonds); and investments in public sector securities purchased in the secondary market. These inflows are subject to three restrictions: (1) they may not be transferred out of the country for 365 days after their entry; (2) proceeds from foreign exchange transactions involving these investments must be paid into an account in the local financial system; and (3) a 30 percent unremunerated reserve requirement must be met, meaning that 30 percent of the amount of such transactions must be deposited in a local financial entity for 365 days in an account that must be denominated in dollars and pay no interest.

As of September 2006, a deposit is not required for capital inflows intended to finance energy infrastructure works. Furthermore, as of January 2008, a deposit is not required for inflows for the purchase of real estate property by foreigners as long as the foreign exchange liquidation occurs on the day of settlement (and transfer of the title). As of February 2009, a deposit is not required for inflows to be used for tax payments and social security contributions within the 10 days following settlement of the foreign currency exchange. Violations are subject to criminal prosecution. In October 2007, the Central Bank introduced new control measures, banning all foreign entities from participating in Central Bank initial public offerings. However, foreign firms may still trade Central Bank debt instruments on the secondary market. In November 2011, insurance firms converting non-Argentine assets to Argentine assets were also exempted from this requirement.

Argentina increased controls on retail foreign exchange in October 2008. Buyers are required to be approved by AFIP, which evaluates each request based on the individual's or company's revenue stream. Local business representatives have reported receiving amounts much lower than they requested. This has hampered the ability of Argentine importers to buy U.S. exports.

Non-Payment of Investment Treaty Awards

Nine U.S. firms have pending cases against the government of Argentina in investor-state arbitration under the United States-Argentina BIT, although there are reports that two of those claims have now been settled. Some of these claims allege that measures imposed by Argentina during the financial crisis that began in 2001 breached certain BIT obligations. Investor-state arbitral tribunals have ruled against Argentina in a number of these cases, awarding hundreds of millions of dollars to U.S. investors.

To date, Argentina has resisted paying any awards made to U.S. investors. Argentina has argued that, under the International Center for Settlement of Investment Disputes (ICSID) Convention, it is not required to pay damages until a prevailing claimant has completed the potentially lengthy additional process of taking all necessary steps to enforce a final ICSID award through the Argentine courts. In 2008, the U.S. Government filed a submission in an arbitration rebutting Argentina's argument and reaffirming its view that Argentina is obligated to pay final ICSID awards immediately. Arbitral tribunals have consistently rejected Argentina's argument.

As a result of Argentina's failure to pay two final ICSID awards, the two U.S. companies to which these awards are owed have filed petitions with the Office of the United States Trade Representative seeking the suspension of all benefits to Argentina under the Generalized System of Preferences (GSP). These petitions have been accepted for review and included in the U.S. Government's annual GSP review. Decisions on both petitions are pending.

ELECTRONIC COMMERCE

Argentina does not allow the use of electronically produced air waybills that would accelerate customs processing and the growth of electronic commerce transactions.

AUSTRALIA

TRADE SUMMARY

The U.S. goods trade surplus with Australia was $17.3 billion in 2011, up $4.1 billion from 2010. U.S. goods exports in 2011 were $27.5 billion, up 26.2 percent from 2010. Corresponding U.S. imports from Australia were $10.2 billion, up 19.3 percent. Australia is currently the 14th largest export market for U.S. goods.

U.S. exports of private commercial services (*i.e.*, excluding military and government) to Australia were $13.2 billion in 2010 (latest data available), and U.S. imports were $5.6 billion. Sales of services in Australia by majority U.S.-owned affiliates were $38.3 billion in 2009 (latest data available), while sales of services in the United States by majority Australia-owned firms were $12.6 billion.

The stock of U.S. foreign direct investment (FDI) in Australia was $134.0 billion in 2010 (latest data available), up from $109.8 billion in 2009. U.S. FDI in Australia is led by the finance and insurance, nonbank holding companies and mining sectors.

FREE TRADE AGREEMENT

The United States-Australia Free Trade Agreement (AUSFTA) entered into force on January 1, 2005. Since then, the U.S. and Australian governments have continued to closely monitor FTA implementation and discuss a range of FTA issues. Under the AUSFTA, trade in goods and services and foreign direct investment have continued to expand, and more than 99 percent of U.S. exports of consumer and industrial goods are now duty free.

In December 2009, the United States announced its intention to enter into an Asia-Pacific trade agreement called the Trans-Pacific Partnership (TPP), with the objective of shaping a high standard, broad-based regional agreement. This agreement will create a potential platform for economic integration across the Asia-Pacific region, a means to advance U.S. economic interests with the fastest-growing economies in the world, and a tool to expand U.S. exports, which are critical to U.S. economic recovery and the creation and retention of high-paying, high-quality jobs in the United States. In addition to Australia, the TPP negotiating partners currently include Brunei, Chile, Malaysia, New Zealand, Peru, Singapore, and Vietnam. Japan, Canada, and Mexico also have expressed interest in joining the negotiations.

GOVERNMENT PROCUREMENT

Australia is not a signatory to the WTO Agreement on Government Procurement, but it is an observer to the WTO Committee on Government Procurement. Under the AUSFTA, the Australian government opened its government procurement market to U.S. suppliers, eliminating discriminatory preferences for domestic suppliers and committing to use fair and transparent procurement procedures.

INTELLECTUAL PROPERTY RIGHTS PROTECTION

Australia generally provides strong intellectual property rights (IPR) protection and enforcement through legislation that, among other things, criminalizes copyright piracy and trademark counterfeiting.

Under the AUSFTA, Australia must notify the holder of a pharmaceutical patent of a request for marketing approval by a third party for a product claimed by that patent. U.S. and Australian pharmaceutical companies have raised concerns that unnecessary delays in this notification process restrict their options for action against third parties that would infringe their patents if granted marketing approval by the Australian Therapeutic Goods Administration.

Australia was an active participant in the Anti-Counterfeiting Trade Agreement (ACTA) negotiations and signed the ACTA in October 2011. The ACTA establishes an international framework that will assist Parties in their efforts to effectively combat the infringement of intellectual property rights (IPRs), in particular the proliferation of counterfeiting and piracy, which undermines legitimate trade and the sustainable development of the world economy.

SERVICES BARRIERS

Audiovisual Services

The AUSFTA limits or prohibits the extension of preexisting Australian-content requirements to other media or means of transmission. Australia's Broadcasting Services Amendment Act requires subscription television channels with significant drama programming to spend 10 percent of their programming budgets on new Australian drama programs. This local content requirement does not apply to new digital multi-channels.

The Australian Content Standard of 2005 requires commercial television broadcasters to produce and screen Australian content, including 55 percent of transmission between 6:00 a.m. and midnight. In addition, there are specific minimum annual sub-quotas for Australian (adult) drama, documentary, and children's programs. A broadcaster must ensure that Australian-produced advertisements occupy at least 80 percent of the total advertising time screened in a year between the hours of 6:00 am and midnight, other than the time occupied by exempt advertisements, which include advertisements for imported cinema films, videos, recordings and live appearances by overseas entertainers, and community service announcements.

In 2011, the Australian government launched a convergence review on whether local content rules should be extended to convergent media platforms (*e.g.*, computers or smart phones) or replaced with a subsidy model. The Convergence Review Committee will publish a final report in March 2012. USTR will work to ensure that policies implemented in the wake of the review are consistent with Australia's trade obligations.

Radio

The Australian commercial radio industry Code of Practice sets quotas for the broadcast of Australian music on commercial radio. The code requires that up to 25 percent of all music broadcast between 6:00 a.m. and midnight must be performed by Australians. In July 2010, the Australian Communications and Media Authority (ACMA) announced registration of a new code that provides a temporary exemption for digital-only commercial radio stations (stations not also simulcast in analog) from the Australian music quotas. The ACMA will review the exemption in 2013. Since January 2008, all licensees of regional commercial radio broadcasting licenses have been required to broadcast minimum levels of local content.

Telecommunications

The Parliament passed legislation for the National Broadband Network (NBN) in April 2011. The NBN is being implemented by the government-owned NBN Company (NBNCo), which is intended to be a neutral provider of wholesale broadband services nationwide. The NBN structure could improve the non-discriminatory access to network services, including for U.S. companies, since the wholesale provider will not compete in retail markets, as occurs currently with Telstra, the owner of the existing wholesale network. In October 2011, shareholders of Telstra, Australia's dominant telecommunications company, endorsed an agreement to progressively migrate the company's voice and broadband traffic from its copper and cable networks to NBNCo. The Australian Competition and Consumer Commission must also approve the deal. Other telecommunications companies, such as Optus, will also sign with the NBN as retail customers. The United States remains concerned about foreign equity limits in Telstra, which are still capped at 35 percent, and the fact that individual foreign investors are only allowed to own up to 5 percent of the company. The U.S. Government will monitor the development of the NBN to ensure that competitors are able to obtain fair access to services and customers.

Convergence Review

In September 2011, a "Convergence Review Committee" set up by the Department of Broadband, Communications, and the Digital Economy released five discussion papers on issues relevant to the convergence of telecommunications, broadcasting, and computer services (http://convergencereview.dbcde.gov.au/discussion-papers/). Topics included media diversity; competition and market structure; layering, licensing, and regulation; spectrum allocation and management; Australian and local content; and community standards.

While the outcome of this review, the timeframe for which remains unclear, may include recommendations to increase competition and enhance market access for foreign suppliers, the review is also looking at measures to extend support of Australian content from traditional platforms (cable TV and free-to-air broadcasting) to new Internet-based platforms. The U.S. Government will closely monitor this review to ensure that any such recommendation is consistent with the AUSFTA, which limits the extent to which Australia can discriminate against foreign content.

INVESTMENT BARRIERS

Inward foreign investment in Australia is regulated by the Foreign Acquisitions and Takeovers Act 1975 and Australia's Foreign Investment Policy. The Foreign Investment Review Board (FIRB), a division of Australia's Treasury, screens potential foreign investments in Australia above a threshold value of A$231 million ($231 million). Based on advice from the FIRB, the Treasurer may deny or place conditions on the approval of particular investments above that threshold on national interest grounds. Under the AUSFTA, all U.S. greenfield investments are exempt from FIRB screening. AUSFTA also raised the threshold for screening of most U.S. investments in Australia, which now stands at A$1.005 billion ($1.005 billion) (indexed annually). All foreign persons, including U.S. investors, must notify the Australian government and get prior approval to make investments of five percent or more in the media sector, regardless of the value of the investment.

ELECTRONIC COMMERCE

A number of U.S. companies have voiced concerns that various Australian government departments, such as the Department of Defense, the National Archives of Australia, the Department of Finance and

Deregulation's Australian Government Information Management Office, and the State of Victoria Privacy Commissioner, are sending negative messages about cloud computing services to potential Australian customers in both the public and private sectors, implying that hosting data overseas, including in the United States, by definition entails greater risk and unduly exposes consumers to their data being scrutinized by foreign governments. In the case of the United States, many such concerns appear based on misinterpretation of applicable U.S. law, including the U.S. Patriot Act and regulatory requirements. In November 2011, new draft legislation was introduced into Parliament that would prohibit the overseas storage of any Australian electronic health records. This would pose a significant trade barrier for U.S. information technology companies with data centers located in the United States or anywhere else outside of Australia. The bill has been referred to a Senate committee for inquiry. The U.S. business community has submitted comments recommending a risk-based approach to ensuring the security of sensitive data as opposed to a geographical one.

OTHER BARRIERS

Pharmaceuticals

In February 2011, the Australian government deferred listing some new medicines on its Pharmaceutical Benefits Scheme, even though an independent medical advisory panel had determined these medicines to be clinically effective and recommended listing. In September 2011, it reversed this decision, listing the deferred medicines and agreeing to work with key stakeholders, including the pharmaceutical industry and consumer health advocates, on a process to manage deferrals in the future.

Blood Plasma Products and Fractionation

In 2010, the National Blood Authority negotiated a new eight year contract with Australian company CSL Limited for the ongoing fractionation of Australian plasma and manufacture of key blood products, demonstrating its continued preference for handling fractionation of Australian plasma locally and without public tender. The United States remains concerned about the lack of an open and competitive tendering system for blood fractionation in Australia.

BAHRAIN

TRADE SUMMARY

The U.S. goods trade surplus with Bahrain was $695 million in 2011, down $135 million from 2010. U.S. exports in 2011 were $1.2 billion, down 2.9 percent from the previous year. Corresponding U.S. imports from Bahrain were $518 million, up 23.4 percent. Bahrain is currently the 75th largest export market for U.S. goods.

IMPORT POLICIES

Upon entry into force of the United States-Bahrain Free Trade Agreement (FTA) in August 2006, 100 percent of bilateral trade in consumer and industrial products became duty free immediately. Bahrain will phase out tariffs on the remaining handful of agricultural product lines by 2015. Textiles and apparel trade is duty free, providing opportunities for U.S. and Bahraini fiber, yarn, fabric, and apparel manufacturing. Generally, to qualify under the rules of origin and thus benefit from preferential tariffs under the FTA, textiles and apparel must be made from either U.S. or Bahraini yarn and fabric. The FTA provides a temporary transitional allowance for textiles and apparel that do not meet these requirements in order to assist U.S. and Bahraini producers in developing and expanding business contacts.

GOVERNMENT PROCUREMENT

Bahrain’s 2002 government procurement law specifies procurements on which international suppliers are allowed to bid. The Tender Board is chaired by a Minister of State who oversees all tenders and purchases with a value of BD10,000 ($26,525) or more. The Tender Board plays an important role in ensuring a transparent procurement process and awarded contracts worth $1.25 billion in 2010, an increase of 37.8 percent over 2009. The FTA requires procuring entities in Bahrain to conduct procurements covered by the FTA in a fair, transparent, and nondiscriminatory manner.

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

INTELLECTUAL PROPERTY RIGHTS PROTECTION

Bahrain signed the WIPO Copyright Treaty and the WIPO Performances and Phonograms Treaty in 2005. In addition, to implement obligations under the United States-Bahrain FTA, Bahrain enacted several key pieces of intellectual property rights (IPR) legislation to improve protection and enforcement in the areas of copyrights, trademarks, and patents. In addition, Bahrain has promulgated regulations to implement these laws.

Bahrain’s protection and enforcement of IPRs has been mixed. In 2009 and 2011, Bahrain launched several campaigns to combat piracy of cable and satellite television by blocking illegal signals and banning the sale of decoding devices. Bahrain has launched several public awareness campaigns. However, counterfeit movies, music, video games, software, clothing, watches, purses, and other consumer goods are sold openly.

The six Member States of the Gulf Cooperation Council (GCC) are working to harmonize their IPR regimes. In connection with that effort, the GCC recently approved a common trademark law. Each

Member State is expected to adopt that law. The United States has established a dialogue with GCC technical experts to discuss this law and other Customs Union efforts regarding IPR.

BOLIVIA

TRADE SUMMARY

The U.S. goods trade deficit with Bolivia was $236 million in 2011, up $63 million from 2010. U.S. goods exports in 2011 were $667 million, up 31.5 percent from the previous year. Corresponding U.S. imports from Bolivia were $903 million, up 32.8 percent. Bolivia is currently the 88th largest export market for U.S. goods.

The stock of U.S. foreign direct investment (FDI) in Bolivia was $300 million in 2009 (latest data available), down from $324 million in 2008.

IMPORT POLICIES

Bolivia's new constitution, adopted in February 2009, establishes broad new guidelines to give priority to local production. However, to date, the only legislation enacted to support this effort is Law 144 (the "Productive Revolution Law") approved on June 26, 2011. The law aims to achieve an adequate domestic food supply by supporting communal groups and unions of small producers. The "Productive Revolution Law" allows the production, importation, and commercialization of genetically modified products, though it calls for mandatory labeling. The Bolivian government has yet to issue regulations to implement the law.

Tariffs

In an effort to protect Bolivia's local industry, the government changed its tariff structure in November 2007. Under this scheme, imported capital goods designated for industrial development enter duty free; non-essential capital goods are subject to a 5 percent tariff; and most other goods are subject to tariffs of 10 percent to 20 percent. In May 2009, Bolivia established a 35 percent tariff on most apparel and textiles, home furnishing products, and wooden furniture (Supreme Decree 125). According to the WTO, Bolivia's simple applied average tariff is 10.3 percent. The simple average tariff is 12.4 percent for agricultural products and 10 percent for non-agricultural products.

Bolivia is a member of the Andean Community regional trade group. The other members of the Andean Community are Colombia, Ecuador, and Peru.

In February 2008, Bolivia established by decree a zero percent import tariff for live bovine animals; fresh bovine meat; fresh, frozen and refrigerated chicken meat; wheat and wheat flour; corn; rice; and vegetable oil. The decree also prohibits the export of these products, except for vegetable oils and oilseeds. The decree has been modified several times to establish export quotas and certificates in order to ensure adequate domestic supply and control domestic prices for specific commodities.

Additional tariff modifications occurred during a national food shortage that started in the last months of 2009 and continued in 2010. During that time, the Bolivian government enacted two supreme decrees affecting tariffs in order to assure adequate domestic food supply. In October 2009, the Bolivian government authorized the importation of frozen bovine meat, wheat, and wheat flour without the payment of tariffs for six months (Supreme Decree 346). Supreme Decree 671, approved October 13, 2010, authorized the duty-free importation of sugar cane and sugar until March 2011, and Supreme Decree 770 extended this benefit until the last day of August 2011.

To complement and support the "Productive Revolution Law," on August 2, 2011, the Bolivian government eliminated tariffs for the next five years on all products related to the agricultural sector (Supreme Decree 943). These products include seeds, salt for cattle feeding, animal vaccines, animal drugs, and all machinery that might be used during the agricultural process.

Nontariff Measures

The Bolivian government generally does not apply specific restrictions to trade in goods, such as permits or import licenses. However, since January 2008, all importers must register with the Bolivian National Customs Office.

Since December 2008, Supreme Decree 28963 has gradually reduced the age of vehicles that may be imported. Since January 2011, the maximum age of cars permitted for import is three years old. Additionally, Bolivia has prohibited the importation of diesel vehicles with engine displacement smaller than 4,000 cubic centimeters, all vehicles that use liquefied petroleum gas, and cars with right side steering. While the import restriction on cars older than three years limits the import of U.S.-made vehicles, the import prohibition on cars with right side steering has led to increased demand for U.S. vehicles.

Since October 15, 2008, the importation of guns and ammunition for civilian use (Supreme Decree 29747) has been prohibited. The only institutions authorized to import these items are the National Bolivian Police and the Bolivian Armed Forces, which must first obtain authorization from the government.

Since January 2004, Bolivia has banned the importation of certain types of used clothing, used shoes, and certain damaged textile articles. Since April 20, 2007, Bolivia has banned all used clothing imports.

GOVERNMENT PROCUREMENT

In 2004, Bolivia enacted the "*Compro Boliviano*" (Buy Bolivian) program through Supreme Decree 27328. This program supports domestic production by giving preference to Bolivian products in government procurement. Under procurement rules modified in 2007 and 2009, the government must give priority to small and microproducers and peasant associations in procurements under $100,000. In addition, the government requires fewer guarantees and imposes fewer requirements on suppliers that qualify as small or microproducers or peasant associations.

Bolivian companies also are given priority in government procurement valued between $142,000 and $5.7 million. Importers of foreign goods can participate in these procurements only where locally manufactured products and service providers are unavailable or where the Bolivian government does not select a domestic supplier. In such cases, and where procurement exceeds $5.7 million, the government can call for an international tender. At times foreign companies that want to submit a tender for government consultancy contracts have to do so in association with a Bolivian company.

As a general matter, the tendering process is nontransparent. Government requirements and the details of the tender are not always defined and procurement notices are not always made public. For example, none of the strategic companies (including YPFB, ENDE, Mutun, Evaporitic Resources, and the Hydrocarbon Industrialization Company) are required to publish their tenders through the official procurement website (SICOES or *Sistema de Información de Contrataciones Estatales*). Concerns have been raised that these companies are not required to follow the procedures established in the national procurement law.

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

INTELLECTUAL PROPERTY RIGHTS PROTECTION

Bolivia was listed on the Watch List in the 2011 Special 301 report. Key concerns cited in the report include rampant piracy and counterfeiting, including counterfeiting of medicines. The report noted the need for significant improvements to the Bolivian intellectual property rights (IPR) enforcement regime, against piracy and counterfeiting, including through substantial additional resources and a greater commitment by enforcement and judicial authorities. Bolivia should also increase its efforts to improve public awareness about IPR protection and enforcement.

INVESTMENT BARRIERS

Government policy changes stemming in part from the adoption of a new constitution in February 2009 have raised concerns among foreign investors. Although the new constitution has yet to be fully implemented, one of its most troubling provisions calls for a limit on foreign companies' access to international arbitration in cases of conflicts with the government. It also states that all bilateral investment treaties must be renegotiated to adjust to this and other new constitutional provisions. Citing these provisions, the government of Bolivia in June 2011 formally notified the United States of its intention to terminate the United States-Bolivia Bilateral Investment Treaty (BIT), which entered into force in June 2001. Pursuant to the terms of the BIT, and barring any further action by Bolivia, the United States-Bolivia BIT will terminate in June 2012, one year from the date on which notice of Bolivia's intent to terminate was transmitted. Existing investors in Bolivia at the time of termination would, however, continue to be protected by the BIT's provisions for 10 years after termination of the treaty. The BIT would be the first to be terminated by a U.S. treaty partner. In a related action, in October 2007, Bolivia became the first country to withdraw from the World Bank's International Centre for Settlement of Investment Disputes (ICSID).

The current Bolivian administration has reversed the privatization efforts of previous governments and has placed increasing emphasis on public ownership of enterprises. In an effort to control key sectors of the economy, the current administration has obtained through contract renegotiations, as required by Bolivian law, at least 51 percent government ownership in a number of companies in the oil, gas and telecommunications sectors. Additionally, in September 2009, as part of renationalization negotiations, the Bolivian government acquired 47 percent to 50 percent of the shares in four electric companies that were privatized twelve years ago; on May 1, 2010, the government took control of 100 percent of the shares and assumed management control of all four of these companies. The government has also announced that additional sectors, including water and railways, could be nationalized.

The government is also using means other than nationalization to reestablish public sector control over the economy. In the past few years, the Bolivian government has created 18 public companies to operate in "strategic" sectors such as food production, industrialization of natural resources, and internal and external market sales. Private sector entities have expressed concern that these public companies engage in subsidized, unfair competition and are leading to a state-driven economic system.

The new Bolivian constitution includes requirements for state involvement in natural resource companies. It states that all natural resources will be administered by the government of Bolivia. The government will grant ownership rights and control the exploitation, exploration, and industrialization of natural resources through public companies, communities, and private companies that will enter joint ventures with the public sector.

With respect to hydrocarbon resources, Article 359 of the new constitution stipulates that all hydrocarbon deposits, whatever their state or form, belong to the government of Bolivia. No concessions or contracts may transfer ownership of hydrocarbon deposits to private or other interests. The Bolivian government exercises its right to explore and exploit hydrocarbon reserves and trade-related products through the state-owned firm *Yacimientos Petrolíferos Fiscales Bolivianos* (YPFB). Beginning in 2006, YPFB benefitted from nationalization laws that required operators to turn over all production and to sign new contracts that give YPFB control over the distribution to gas stations of gasoline, diesel fuel, and liquefied petroleum gas. Article 359 allows YPFB to enter into joint venture contracts for limited periods of time with domestic or foreign entities wishing to exploit or trade hydrocarbons or their derivatives.

Outside the hydrocarbons sector, the government is considering a change to the mining code that may require all companies to enter into joint ventures with the state mining company, *Corporacion Minera de Bolivia* (COMIBOL).

Bolivian labor law limits foreign firms' ability to globally staff their companies by restricting foreign employees to 15 percent of the work force.

BRAZIL

TRADE SUMMARY

The U.S. goods trade surplus with Brazil was $11.6 billion in 2011, an increase of $104.3 million from 2010. U.S. goods exports in 2011 were $42.9 billion, up 21.2 percent from the previous year. Corresponding U.S. imports from Brazil were $31.4 billion, up 30.9 percent. Brazil is currently the 8th largest export market for U.S. goods.

U.S. exports of private commercial services (*i.e.*, excluding military and government) to Brazil were $16.5 billion in 2010 (latest data available), and U.S. imports were $5.2 billion. Sales of services in Brazil by majority U.S.-owned affiliates were $24.7 billion in 2009 (latest data available), while sales of services in the United States by majority Brazil-owned firms were $972 million.

The stock of U.S. foreign direct investment (FDI) in Brazil was $66.0 billion in 2010 (latest data available), up from $55.2 billion in 2009. U.S. FDI in Brazil is led by the manufacturing and finance/ insurance sectors.

IMPORT POLICIES

Tariffs

Brazil is a member of the MERCOSUR customs union, formed in 1991 and comprised of Argentina, Brazil, Paraguay, and Uruguay. MERCOSUR maintains a Common External Tariff (CET) schedule with a limited number of country-specific exceptions, with most favored nation (MFN) applied rates ranging from zero percent to 35 percent *ad valorem*. Brazil's import tariffs effectively determine the MERCOSUR CET, with few exceptions. Brazil's MFN applied tariff rate averaged 11.64 percent in 2011, compared to 10.3 percent and 10.5 percent in Paraguay and Uruguay, respectively. Brazil's average bound tariff in the WTO is significantly higher, at 31.4 percent. Given the large disparities between bound and applied rates, U.S. exporters face significant uncertainty in the Brazilian market because the government routinely changes tariffs to protect fledgling domestic industries from import competition or to manage prices and supply. In December 2009, Brazil, along with the other MERCOSUR members, approved tariff increases in the CET for hundreds of products, including dairy, toys, textiles, bags, backpacks, and suitcases. In many cases, the applied tariffs were increased up to the WTO bound levels.

Brazil imposes high tariffs on U.S. exports across diverse sectors, including automobiles, automotive parts, information technology and electronics, chemicals, plastics, industrial machinery, and textiles and apparel. Brazil is permitted by MERCOSUR to maintain 100 exceptions to the CET until December 31, 2015, through which it maintains higher tariffs than its MERCOSUR partners on certain goods, including cell phones, telecommunications equipment, computers and computer printers, wind turbines, certain chemicals and pharmaceuticals, sardines, and mushrooms. In 2011, Brazil proposed a temporary allowance for an additional 100 tariff line exceptions to the CET. At the MERCOSUR summit in December 2011, MERCOSUR members agreed to increase import duty rates temporarily to a maximum rates of 35 percent on 100 tariff items per member country. The increased duties went into effect in January 2012 and will remain in effect through the end of 2012, with the possibility of an extension through the end of 2015.

During the 39th meeting in August 2010, MERCOSUR's Common Market Council (CMC) advanced toward the establishment of a Customs Union with its approval of a Common Customs Code and decision to implement a plan to eliminate the double application of the CET within MERCOSUR. The plan was to take effect in three stages with the first phase to have been implemented no later than January 1, 2012. The deadline was not met, however, and the CCC still must be ratified by MERCOSUR's member countries.

Nontariff Barriers

Brazil applies federal and state taxes and charges to imports that can effectively double the actual cost of imported products in Brazil. The complexities of the domestic tax system, including multiple cascading taxes and tax disputes among the various states, pose numerous challenges for U.S. companies operating in Brazil. For example, in September 2011, Brazil announced a significant increase of 30 percent of the base price to its Industrial Products Tax on vehicles that do not meet a 65 percent domestic content requirement (defined as content from MERCOSUR countries or Mexico) and certain other investment and production requirements. This tax increase is to remain in effect until December 2012 and targets imports that compete with domestic production of automobiles.

Brazil also prohibits a number of imports, including foreign blood products and all used consumer goods, such as automobiles, clothing, and tires, as well as used medical equipment and information and communications technology products. Brazil also restricts the entry of certain types of remanufactured goods (*e.g.*, earthmoving equipment, automotive parts, and medical equipment) through onerous import licensing procedures. In general, Brazil only allows the importation of such goods if an importer can provide evidence that the goods are not or cannot be produced domestically. A 25 percent merchant marine tax on long distance freight at Brazilian ports puts U.S. agricultural products at a competitive disadvantage vis-à-vis MERCOSUR products. Brazil applies a 60 percent flat import tax on most manufactured retail goods imported by individuals via mail and express shipment, which go through a simplified customs clearance procedure called RTS (simplified tax regime). Goods with a value of over $3,000 cannot be imported using this regime.

Import Licensing/Customs Valuation

All importers must register with the Secretariat of Foreign Trade (SECEX) to access the Brazilian Secretary of Foreign Trade's computerized documentation system ("SISCOMEX"). SISCOMEX registration requirements are onerous, including a minimum capital requirement. Fees are assessed for each import statement submitted through SISCOMEX.

Brazil has both automatic and non-automatic import license requirements. Brazil's non-automatic import licensing system covers imports of products that require authorization from specific ministries or agencies, such as beverages (Ministry of Agriculture), pharmaceuticals (Ministry of Health), and arms and munitions (National Defense Ministry). Although a list of products subject to non-automatic import licensing procedures is available on the SISCOMEX system, specific information related to non-automatic import license requirements and explanations for rejections of non-automatic import license applications are lacking. The lack of transparency surrounding these procedures can create additional burdens for U.S. exporters.

U.S. footwear and apparel companies have expressed concern about the imposition of non-automatic import licenses and certificate of origin requirements on non-MERCOSUR footwear, which have been expanded to include textiles and apparel. They also note the imposition of additional monitoring, enhanced inspection, and delayed release of certain goods, all of which negatively impact the ability to sell U.S. made and U.S. branded apparel, footwear and textiles in the Brazilian market.

In May 2011, the Brazilian government imposed non-automatic import licensing requirements on imported vehicles, including those originating in MERCOSUR countries. The delays in issuing non-automatic import licenses negatively affect U.S. automobile manufacturers that produce vehicles in Argentina for export to Brazil.

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

U.S. companies have also complained that customs officials often apply a higher dutiable value based on a retail price rather than recognizing the company's stated transaction value.

SUBSIDIES

In October 2007, Brazil restored tax breaks to exporters with the enactment of Law 11529, the stated intention of which was to help industries hurt by the strengthening of the national currency, the *real*. This law allows firms in certain Brazilian industrial sectors (textiles, furniture, ornamental stones, woodworking, leatherworking, shoes, leather goods, heavy and agricultural machinery manufacturers, apparel, and automotive, including parts) and producers of certain agricultural products (including cattle semen and embryos, horticultural and fruit products, eggs, seeds, wheat and wheat flour, day-old chicks, fluid and pasteurized milk, cheeses, whey, blends for bakery products, fertilizers, and pesticides) to apply tax credits under the social integration (PIS) and social security (COFINS) programs to the purchase of capital goods, both domestic and imported, to be used for manufacturing finished products. The law also expands the government's program for exporting companies purchasing capital goods. Under this program, to be exempt from paying the 9.25 percent PIS-COFINS tax on these purchases, companies normally must prove they derive at least 70 percent of their revenues from exportation. This benchmark was lowered to 60 percent for companies in the sectors covered by the legislation.

The *Brasil Maior* ("Greater Brazil") industrial policy offers an additional variety of tax, tariff, and financing incentives to encourage production for export. The Reintegra Program, launched in December 2011 as part of *Brasil Maior*, exempts exports of goods covering 8,630 tariff codes, representing R$80 billion (approximately $46.5 billion) of exports, from certain taxes and introduces a tax credit for exporters of industrialized goods equal to three percent of the value of their exports. To qualify, the imported content of the exported goods must not exceed 40 percent, except in the case of high-technology goods such as pharmaceuticals, electronics, and aircraft and parts, which are permitted to have imported content of up to 65 percent. *Brasil Maior* calls for the creation of funds designed to aid small and medium sized exporters and to cover non-payment by customers in countries where the risk of non-payment is high.

Brazil's National Bank for Economic and Social Development (BNDES) provides long-term financing to Brazilian industries through several programs, such as the R$75 billion (approximately $43.6 billion)

Investment Maintenance Program. At between four percent and eight percent, the interest rates charged on financing under this program are substantially lower than the prevailing market interest rates for commercial financing. One BNDES program, FINAME, provides financing for Brazilian firms to purchase Brazilian-made machinery and equipment and capital goods with a high level of domestic content. These programs can be used for financing capacity expansions and equipment purchases in industries such as steel and agriculture.

Brazil's Special Regime for the Information Technology Exportation Platform (REPES) suspends PIS and COFINS taxes on goods imported and information technology services provided by companies that commit to export software and information technology services to the extent that those exports account for more than 80 percent of their annual gross income. The Special Regime for the Acquisition of Capital Goods by Exporting Enterprises (RECAP) suspends these same taxes on new machines, instruments, and equipment imported by companies that commit for a period of at least three years to export goods and services such that they account for at least 80 percent of their overall gross income for the previous calendar year. According to Law 11174/2008, the Brazilian government may lower the required ratio to 60 percent for some industries (*e.g.*, textiles and furniture) and 50 percent for others (*e.g.*, software and IT services). As of February 2012, 265 companies benefited from RECAP.

GOVERNMENT PROCUREMENT

U.S. companies without a substantial in-country presence regularly face significant obstacles to winning government contracts and are often more successful in subcontracting with larger Brazilian firms. Regulations allow a Brazilian state enterprise to subcontract services to a foreign firm only if domestic expertise is unavailable. Additionally, U.S. and other foreign firms may only bid to provide technical services where there are no qualified Brazilian firms.

In 2010, then-President Lula signed a provisional measure that later was approved by the Brazilian Congress and became law, giving procurement preference to firms that produce in Brazil, whether foreign-owned or Brazilian, that fulfill certain economic stimulus requirements such as generating employment or contributing to technological development, even when their bids are up to 25 percent more expensive than bids submitted by foreign firms not producing in Brazil. In August 2011, this system of preference margins was folded into *Plano Brasil Maior*. Government procurement is just one of 35 components under *Brasil Maior* intended to support Brazilian exporters and protect domestic producers, particularly the labor-intensive sectors threatened by exports from abroad. The textile, clothing and footwear industries were the first to benefit from *Brasil Maior* when, in November 2011, the Ministry of Development, Industry and Commerce implemented an eight percent preference margin for domestic producers in these industries when bidding on government contracts.

Pursuant to Decree number 2745/98, the state-controlled oil company Petrobras may issue tenders through invitation letters, electronic auctions, or national or international bids. From time to time, however, suppliers have found that Brazil's Federal Attorney General will question procurement conducted pursuant to these simplified procedures resulting in delays in tenders from Petrobras.

Petrobras's local content requirements are currently established and regulated by Brazil's National Petroleum Agency (ANP), which is gradually introducing higher local content requirements with each bidding round. In addition, local content requirements vary by block (the geographic area that is awarded by the Brazilian government to oil companies for oil exploration), and within that block, the local content requirements differ for equipment, workforce, and services. In the past, local content requirements were as low as 5 percent; however, Brazilian officials have indicated that local content requirements for Petrobras and other oil companies could reach 80 percent to 95 percent by 2020. Technology-intensive equipment and services will likely be subject to higher local content regulations than low-technology equipment and services. The new Oil and Gas Regulatory Framework introduced in December 2010 will require Petrobras to be the majority operator of new projects, and as a result, Petrobras will be responsible for ensuring that its workforce and its entire supply chain adhere to these increasingly high local content requirements. ANP has fined Petrobras and other oil exploration and production companies over the last few years for noncompliance with local content requirements; in September 2011, Petrobras was fined R$29 million (approximately $16.85 million) for noncompliance.

Brazil's regulations regarding the procurement of information technology goods and services require federal agencies and parastatal entities to give preferences to locally produced computer products based on a complicated and nontransparent price/technology matrix.

The United States continues to urge Brazil to become a signatory to the WTO Agreement on Government Procurement in order to ensure that companies in both countries have access to each others' procurement markets.

INTELLECTUAL PROPERTY RIGHTS PROTECTION

Brazil was listed on the Watch List in the 2011 Special 301 report. In January 2011, the Federal Attorney General reissued an opinion that ANVISA does not have the authority to review patentability requirements when analyzing pharmaceutical patent applications. This resolves a longstanding concern of the United States with respect to ANVISA's double examination of patents. Brazil has taken steps to address a backlog of pending patent applications, but long delays still exist. Brazil has also continued to make important progress in enhancing the effectiveness of intellectual property enforcement, including some significant raids. However, concerns remain with respect to Brazil's high levels of piracy and counterfeiting, especially with respect to book piracy and piracy over the Internet, and inadequate protection against unfair commercial use of undisclosed test and other data generated to obtain marketing approval for human use pharmaceutical products. Brazil also needs to make improvements in its border enforcement and provide for expeditious and deterrent sentences for copyright infringement.

SERVICES BARRIERS

Audiovisual Services and Broadcasting

Brazil imposes a fixed tax on each foreign film released in theaters, on foreign home entertainment products, and on foreign programming for broadcast television.

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

Brazil also requires that 100 percent of all films and television shows be printed locally. Importation of color prints for the theatrical and television markets is prohibited. Domestic film quotas also exist for theatrical screening and home video distribution.

In September 2011, President Rousseff signed Law 12.485 covering the subscription television market, including satellite and cable television. The law permits telecommunications companies to offer television packages with their services, and also removes the previous 49 percent limit on foreign ownership of cable television companies. However, it also establishes new content quotas which require every channel to air at least three and one-half hours per week of Brazilian programming during prime time. Additionally, one-third of all channels included in any television package must be Brazilian. As before, foreign cable and satellite television programmers are subject to an 11 percent remittance tax which does not need to be paid if the programmer invests three percent of its remittances in co-production of Brazilian audiovisual services. In addition, the law delegates significant programming and advertising regulatory authority to ANCINE, the national film industry development agency.

National cable and satellite operators are subject to a fixed title levy on foreign content and foreign advertising released on their channels. Law 10610 of 2002 limits foreign ownership in media outlets to 30 percent, including the print and "open broadcast" (non-cable) television sectors. Eighty percent of the programming aired on "open broadcast" television channels must be Brazilian.

Express Delivery Services

U.S. express delivery service companies face significant challenges in the Brazilian market due to numerous barriers, such as high import taxes, an automated express delivery clearance system that is only partially functional, and low *de minimis* levels for express export and import shipments.

The Brazilian government charges a flat 60 percent duty for all goods imported through the Simplified Customs Clearance process used for express delivery shipments. U.S. industry contends that this flat rate is higher than duties normally levied on goods arriving via regular mail, putting express delivery companies at a competitive disadvantage. Moreover, Brazilian Customs has established maximum value limits of $5,000 for exports and $3,000 for imports sent using express services. These limits severely restrict the Brazilian express delivery market's growth potential and impede U.S. exporters doing business with Brazil.

Financial Services

U.S. companies wanting to enter Brazil's insurance and reinsurance market must establish a subsidiary, enter into a joint venture, or acquire or partner with a local company. Market entry for banks is subject to case-by-case approval. The Brazilian reinsurance market was opened to competition in 2007. However, in December 2010 and March 2011, the Brazilian National Council on Private Insurance (CNSP) effectively rolled back market liberalization through the issuance of Resolutions 225 and 232, which disproportionately affect foreign insurers operating in the Brazilian market. Resolution 225 requires that 40 percent of all reinsurance risk be placed with Brazilian companies. In addition, Resolution 232 allows insurance companies to place only 20 percent of risk with affiliated reinsurance companies.

Telecommunications

Brazil is currently conducting a proposal for comment regarding the auctioning of certain radioelectric spectrum and is proposing substantial requirements on the use of local technology and equipment. This is of concern to U.S. telecommunications equipment suppliers who could be discriminated against and telecommunications operators, many of whom operate international networks and need the ability to choose the most adequate technology for their networks.

In September 2011, Brazil passed a law allowing telecommunications operators to offer subscription video services, including cable television services, and removing the 49 percent cap on foreign ownership of cable operators.

INVESTMENT BARRIERS

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

Foreign Ownership of Agricultural Land

On December 9, 2011, the National Land Reform and Settlement Institute (INCRA) published a set of new rules covering the purchase of Brazilian agricultural land by foreigners. These rules follow an August 2010 opinion issued by the Attorney General that limited foreign agricultural ownership in Brazil. Under the new rules, the area bought or leased by foreigners cannot account for more than 25 percent of the overall area in its respective municipal district. Additionally, no more than 10 percent of the land in any given municipal district may be owned or leased by foreign nationals from the same country. The rules also make it necessary to obtain congressional approval before large plots of land can be purchased by foreigners, foreign companies, or Brazilian companies with the majority of shareholders from foreign countries. These restrictions and the accompanying uncertainty of how they will be applied in practice may discourage U.S. investment in Brazilian agricultural land.

BRUNEI DARUSSALAM

TRADE SUMMARY

The U.S. goods trade surplus with Brunei was $161 million in 2011, an increase of $49 million from 2010. U.S. goods exports in 2010 were $184 million, up 48.4 percent from the previous year. Corresponding U.S. imports from Brunei were $23 million, up 97.2 percent. Brunei is currently the 134th largest export market for U.S. goods.

The stock of U.S. foreign direct investment (FDI) in Brunei was $34 million in 2010 (latest data available), up from $20 million in 2009.

In December 2009, the United States announced its intention to enter into an Asia-Pacific trade agreement called the Trans-Pacific Partnership (TPP), with the objective of shaping a high standard, broad-based regional agreement. This agreement will create a potential platform for economic integration across the Asia-Pacific region, a means to advance U.S. economic interests with the fastest-growing economies in the world, and a tool to expand U.S. exports, which are critical to U.S. economic recovery and the creation and retention of high-paying, high-quality jobs in the United States. In addition to Brunei, the TPP negotiating partners currently include Australia, Chile, Malaysia, New Zealand, Peru, Singapore, and Vietnam. Japan, Canada, and Mexico also have expressed interest in joining the negotiations.

IMPORT POLICIES

Tariffs

Brunei has bound nearly 93 percent of its tariff lines. The average bound rate is 25.8 percent, and applied rates averaged 3.6 percent in 2008 (down from 4.8 percent in 2007) and ranged from zero percent to 30 percent. With the exception of a few products, including coffee, tea, tobacco, and alcohol, tariffs on agricultural products are zero. Roughly 130 products, including alcoholic beverages, tobacco, coffee, tea, petroleum oils, and lubricants, are subject to specific rates of duty and greater overall protection. Brunei also applies high duties of up to 20 percent on automotive parts, machinery, and electrical equipment.

Brunei offers preferential tariff rates to many Asia-Pacific countries under various trade agreements. As a member of the Association of South East Asian Nations (ASEAN), Brunei is reducing intraregional tariffs as agreed under the ASEAN Free Trade Agreement. Brunei also accords preferential access to its market to Australia, New Zealand, China, India, South Korea, and Japan (as part of free trade agreements concluded by ASEAN); to Chile, Singapore, and New Zealand (as part of the Trans-Pacific Strategic Economic Partnership); and to Japan (under a bilateral Economic Partnership Agreement).

GOVERNMENT PROCUREMENT

All procurement is conducted by Ministries, Departments, and the State Tender Board of the Ministry of Finance. Most invitations for tenders or quotations below B$250,000 (approximately $168,000) are published in a bi-weekly government newspaper, but often are selectively tendered only to locally registered companies. The relevant ministry may approve purchases up to a B$250,000 threshold, but tender awards above B$250,000 must be approved by the Sultan in his capacity as Minister of Finance based on the recommendation of the State Tender Board. The award process often lacks transparency, with tenders sometimes not being awarded or being re-tendered for reasons not made public.

Military procurement is a closed process. The Ministry of Defense selectively invites companies to bid on large procurements. Similarly, Royal Brunei Technical Services, a wholly government-owned military enterprise, does not publish open tenders.

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

INTELLECTUAL PROPERTY RIGHTS PROTECTION

Brunei was listed on the Watch List in the 2011 Special 301 report, primarily because of the continued high rate of copyright piracy. Movie and software piracy is prevalent, and pirated optical discs and unlicensed software are openly sold in legitimate retail shops and department stores throughout Brunei.

In August 2009, Brunei enforcement authorities undertook several raids in connection with a Recording Industry Malaysia music anti-piracy campaign. Although the raids had the immediate effect of temporarily reducing music piracy in Brunei, they do not appear to have had a long-term effect on piracy rates. In addition, there has been a long delay in the drafting of proposed amendments to Brunei's copyright law that would provide police with *ex officio* authority to take action against pirated goods.

A positive development in 2011 was the Brunei government's announcement that it intended to establish a Patents Registry Office, which was set up in January 2012 to promote and protect local innovation.

OTHER BARRIERS

Transparency is lacking in many areas of Brunei's economy. Brunei operates state-owned monopolies in key sectors of the economy, such as oil and gas, telecommunications, transport, and energy generation and distribution. However, Brunei has not yet notified its state trading enterprises to the WTO Working Party on State Trading Enterprises. In addition, some of Brunei's foreign investment policies are unclear, including with respect to restrictions on foreign investment and equity participation in specific sectors.

CAMBODIA

TRADE SUMMARY

The U.S. goods trade deficit with Cambodia was $2.5 billion in 2011, up $380 million from 2010. U.S. goods exports in 2011 were $186 million, up 32.0 percent from the previous year. Corresponding U.S. imports from Cambodia were $2.7 billion, up 17.9 percent. Cambodia is currently the 133rd largest export market for U.S. goods.

The stock of U.S. foreign direct investment (FDI) in Cambodia was $4 million in 2010 (latest data available).

IMPORT POLICIES

Tariffs

Cambodia is one of the few least-developed WTO Members that took on binding tariff commitments on all products in its tariff schedule. Its overall simple average bound tariff rate is 20.1 percent, while the average applied rate is 11.7 percent. Its highest tariff rate of 35 percent is imposed on several semi-processed goods, including processed meat and dairy, processed vegetables and fruits, beverages and tobacco, footwear, and motor vehicles.

Customs

Cambodia joined the WTO in 2004 and was given a transition period until January 1, 2009 to implement the WTO Customs Valuation Agreement. The Cambodian government has not yet fully implemented this agreement, but has drawn up a revised plan for the modernization and streamlining of customs procedures for the period 2009 to 2013. Both local and foreign businesses have raised concerns that the Customs and Excise Department engages in practices that are nontransparent and often appear arbitrary. Importers frequently cite problems with undue processing delays, unnecessarily burdensome paperwork and delays driven by excessively discretionary practices. The United States and Cambodia continue to discuss these and other customs issues under the bilateral Trade and Investment Framework Agreement.

Taxation

Cambodia levies trade-related taxes in the form of customs duties, an additional tax on gasoline ($0.02 per liter) and on diesel oil ($0.04 per liter), export tax, and two indirect taxes which are levied on the value of imports: value-added tax (VAT) and excise tax. The VAT is a uniform 10 percent. The VAT has been selectively imposed only on large companies, although the Cambodian government is in the process of expanding the tax base. VAT is not collected on exports and services consumed outside of Cambodia (technically, a zero percent VAT applies). Subject to certain criteria, the zero percent rate also applies to supporting industries or subcontractors supplying goods and services to exporters, such as garment manufacturers and the textile and footwear industries.

GOVERNMENT PROCUREMENT

A draft public procurement law, approved by the Cambodian National Assembly in January 2012, is expected to be implemented this year. In 2006, Cambodia modified its legislation that regulated government procurement with Sub-decree No. 105, and in 2010 issued updated implementation rules for public procurement under Prakas 381.

The law will codify current procurement regulations, as set forth by a number of internal guidelines and regulations, providing for competitive bidding, domestic canvassing, direct shopping, and direct contracting. Competitive bidding is mandatory for the purchase of goods or services worth more than $25,000, except when there is an urgent need or procurement after natural disasters, when the use of non-competitive procurement methods, such as direct contracting, is allowed. The Council of Ministers must approve any politically or environmentally sensitive purchases on the basis of recommendations formulated by the Ministry of Economy and Finance. Despite these regulations, the conduct of government procurement often is nontransparent. The Cambodian government frequently provides short time frames to respond to public announcements of tenders, which often are not widely publicized. For construction projects, only bidders registered with the Ministry of Economy and Finance's Department for Public Procurement are permitted to participate in tenders. Prequalification procedures are also used at the provincial level.

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

INTELLECTUAL PROPERTY RIGHTS PROTECTION

While Cambodia has made progress in implementing the WTO Agreement on Trade-Related Aspects of Intellectual Property Rights (TRIPS), intellectual property rights (IPR) protection and enforcement need to be strengthened. Specifically, Cambodia's IPR enforcement has been ineffective at addressing continued widespread copyright piracy and trademark counterfeiting. Pirated CDs, videos, software, and other copyrighted materials as well as a vast array of counterfeit goods, including counterfeit pharmaceuticals, are widely available in Cambodia's markets. Additionally, while the 1996 United States-Cambodia Bilateral Trade Agreement contained a broad range of IPR commitments, Cambodia has not yet enacted legislation regarding, for example, protection of encrypted satellite signals or for semiconductor layout designs. Work also remains ongoing on draft legislation to implement commitments with respect to the protection of trade secrets. The lack of strong laws on unfair competition and franchising also hamper civil enforcement efforts to protect IPR.

SERVICES BARRIERS

Legal Services

Efforts by Cambodian law firms to propose a 49 percent equity limitation on foreign firms and restrictions on their forms of commercial arrangement, although unsuccessful, have introduced a measure of legal uncertainty for firms in this sector.

INVESTMENT BARRIERS

Cambodia's Constitution restricts foreign ownership of land. Foreign investors may use land through concessions and renewable leases. In 2010, a new law allowing foreign ownership of properties above the ground floor was enacted. The law stipulates that no more than 70 percent of a building can be foreign-owned, and that foreigners cannot own property within 30 kilometers of the national border.

ELECTRONIC COMMERCE

Electronic commerce is a nascent concept in Cambodia. Online commercial transactions are extremely limited, and Internet access is still in its infancy. The Cambodian government has not imposed any specific restrictions on products or services traded via electronic commerce and no existing legislation governs this sector. Legislation on electronic commerce has been drafted, but not yet adopted. The legislation is intended to facilitate domestic and international electronic commerce by eliminating legal barriers (*e.g.*, to electronic signatures) and promoting public confidence in the authenticity, integrity, and reliability of data messages and electronic communications.

OTHER BARRIERS

Corruption

Both local and foreign businesses have identified corruption in Cambodia as a major obstacle to business and a deterrent to foreign direct investment. Several recent polls and perception surveys indicate that the public institutions and agencies considered to be the most corrupt are the courts, police, and customs. In 2010, Cambodia adopted anti-corruption legislation and established a national Anti-Corruption Unit to undertake investigations, law enforcement measures, and public outreach. The law went into effect in August 2011.

Judicial and Legal Framework

Cambodia's legal framework is incomplete and unevenly enforced. While numerous trade and investment laws have been passed over the past five years, including a law on commercial arbitration in 2006, many business related draft laws are still pending. The judicial system reportedly is often arbitrary and subject to corruption, and many Cambodian and foreign business representatives perceive the court system to be unreliable and susceptible to external political and commercial influence. To address these concerns, the Cambodian government established a commercial arbitration body in 2009 called the National Arbitration Center, which aims to be Cambodia's first alternative dispute resolution mechanism able to resolve commercial disputes more efficiently than the court system. However, disagreements between the Ministry of Commerce and the arbitrators have delayed its launch. Disputes also can be resolved through international arbitration, including, where applicable, through the World Bank's International Center for Settlement of Investment Disputes. In practice, most commercial disputes in Cambodia are still resolved through negotiations facilitated by the Ministry of Commerce, the Cambodian Chamber of Commerce, and other commercial institutions.

Smuggling

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

CANADA

TRADE SUMMARY

The U.S. goods trade deficit with Canada was $35.7 billion in 2011, up $7.2 billion from 2010. U.S. goods exports in 2011 were $280.8 billion, up 12.7 percent from the previous year. Corresponding U.S. imports from Canada were $316.5 billion, up 14.0 percent. Canada is currently the largest export market for U.S. goods.

U.S. exports of private commercial services (*i.e.*, excluding military and government) to Canada were $50.5 billion in 2010 (latest data available), and U.S. imports were $25.6 billion. Sales of services in Canada by majority U.S.-owned affiliates were $101.4 billion in 2009 (latest data available), while sales of services in the United States by majority Canada-owned firms were $70.0 billion

The stock of U.S. foreign direct investment (FDI) in Canada was $296.7 billion in 2010 (latest data available), up from $266.6 billion in 2009. U.S. FDI in Canada is led by the manufacturing, nonbank holding companies, and finance/insurance sectors.

NORTH AMERICAN FREE TRADE AGREEMENT

The North American Free Trade Agreement (NAFTA), signed by the United States, Canada, and Mexico, entered into force on January 1, 1994. At the same time, the United States suspended the United States-Canada Free Trade Agreement, which had entered into force in 1989. Under the NAFTA, the United States and Canada agreed to progressively eliminate tariff and nontariff barriers to trade in goods, provide improved access for services, and strengthen the protection of foreign investment and intellectual property rights. After signing the NAFTA, the parties concluded supplemental agreements on labor and the environment which obligate them to enforce their national environmental and labor laws.

IMPORT POLICIES

Tariffs

On January 1, 1998, per the terms of the NAFTA, Canada eliminated tariffs on all industrial and most agricultural products imported from the United States. In 2010, Canada announced the unilateral elimination of most favored nation (MFN) tariffs on imported manufacturing inputs. Most tariffs were eliminated immediately. The Canadian government announced further tariff relief on 70 items in Canada's manufacturing sector in November 2011. Canada has pledged to eliminate all MFN tariffs on imported machinery and equipment by 2015.

Agricultural Supply Management

Canada uses supply management systems to regulate its dairy, chicken, turkey, and egg industries. Canada's supply management regime involves production quotas, producer marketing boards to regulate price and supply, and border protection achieved through tariff-rate quotas (TRQs). Canada's supply management regime severely limits the ability of U.S. producers to increase exports to Canada above the TRQ levels and inflates the prices Canadians pay for dairy and poultry products. The United States has pressed for expanded in-quota quantities for these products as part of the negotiations regarding disciplines on TRQs in the WTO Doha Round agricultural negotiations.

Canada's compositional standards for cheese entered into force on December 14, 2008, and further restrict U.S. access to the Canadian dairy market. These regulations limit the ingredients that can be used in cheese making, set a minimum for raw milk in the cheese making process, and make cheese importers more accountable for ensuring that imported product is in full compliance. The regulations are also applicable to cheese that is listed as an ingredient in processed food. One of the barriers created by Canada's dairy policies is a 245 percent *ad valorem* tariff on U.S. exports of breaded cheese sticks.

Canada announced in 2008 its intention to implement the Special Safeguard (SSG) under the WTO Agreement on Agriculture for supply-managed goods. The SSG is a provision that would allow additional duties to be imposed on over-quota trade when import volumes rise above a certain level, or if prices fall below a certain level. Canada continues to work on the details of this mechanism and monitor over-quota trade, but has not established a timeframe for announcing the SSG price and volume triggers.

Restrictions on U.S. Grain Exports

Canada has varietal registration requirements on wheat. Canada eliminated a portion of the varietal controls in 2008 by no longer requiring that each registered variety of grain be visually distinguishable based on a system of Kernel Visual Distinguishability (KVD) requirements. This KVD requirement limited U.S. export access to Canada's grain market because U.S. varieties are not visually distinct and cannot be registered for use in Canada. While this policy change is a step in the right direction, it will take years before U.S. wheat varieties are able to complete the necessary field trials to determine whether they will be registered for use in Canada. In the meantime, U.S. wheat, regardless of quality, will continue to be sold in Canada as "feed" wheat at sharp price discounts compared to Canadian varieties.

Personal Duty Exemption

The United States continues to urge Canada to facilitate cross-border trade for returning residents by relaxing its taxation of goods that Canadian visitors purchase in the United States. Canada's allowance is linked to the length of a visitor's absence from Canada and allows no exemption for Canadians absent less than a day. Canadians who are absent from Canada for at least 24 hours can bring in goods worth C$50 duty free and tax free to Canada. The exemption is C$400 for visits exceeding 48 hours and C$750 for visits exceeding 7 days. The United States provides much more generous treatment for its returning travelers, with a minimum allowance of $200, even for visits of less than 24 hours. The United States allows visitors returning after 48 hours an exemption of $800 once a month.

Wine and Spirits

Market access barriers in several provinces severely distort origin of imports and hamper exports of U.S. wine and spirits to Canada. These include cost of service markups, listings, reference prices, labeling, discounting, distribution and warehousing policies. In addition, the high Canadian tariffs even for casual, personal imports along the border severely limit Canadian travelers in purchasing U.S. wines and spirits for their personal use.

The Canadian Wheat Board and State Trading Enterprises

The United States has had longstanding concerns about the monopolistic marketing practices of the Canadian Wheat Board. In December 2011, Canada passed the Marketing Freedom for Grain Farmers Act which is designed to transition the Canadian Wheat Board from a crown corporation to a commercial entity over a period of five years.

SOFTWOOD LUMBER

The Softwood Lumber Agreement (SLA) entered into force on October 12, 2006 and was set to expire on October 12, 2013. Article XVIII of the agreement contemplated extension stating: "the SLA 2006 shall remain in force for seven years after the Effective Date and may be extended by agreement of the Parties for an additional two years." On January 23, 2012, the United States and Canada signed a two year extension of the SLA, under which the agreement will remain in effect through October 12, 2015.

SLA implementation in 2006 settled extensive litigation and resulted in the revocation of U.S. antidumping and countervailing duty orders on softwood lumber from Canada. The SLA is designed to create a downward adjustment in softwood lumber exports from Canada into the United States through the imposition of export measures by Canada when demand in the United States is low. The SLA also provides for binding arbitration to resolve disputes between the United States and Canada regarding interpretation and implementation of the Agreement. Under the SLA, arbitration is conducted under the rules of the LCIA (formerly the London Court of International Arbitration). The bilateral Softwood Lumber Committee, established pursuant to the SLA, meets to discuss a range of implementation issues and Canadian provincial assistance programs for softwood lumber industries.

The United States expressed concerns in 2007 regarding Canada's implementation of SLA export measures, in particular the operation of the Agreement's surge mechanism and quota volumes, and several federal and provincial assistance programs. An arbitral tribunal found in February 2009 that the equivalent of an additional $54.8 million should be collected on imports of softwood lumber products from the provinces of Ontario, Quebec, Manitoba, and Saskatchewan. When Canada did not cure the breach voluntarily, the United States imposed a 10 percent *ad valorem* tariff on softwood lumber products exported from Ontario, Quebec, Manitoba, and Saskatchewan. Canada's arguments that it had cured its breach by offering to pay the United States $36.66 million were rejected in September 2009 by the tribunal. The United States agreed in September 2010 that Canada could undertake domestic export measures to cure the breach in a manner consistent with the tribunal's decision.

The United States filed a request for arbitration in 2008 challenging a number of assistance programs implemented by Quebec and Ontario, which the United States considers inconsistent with Canada's obligations under the anti-circumvention provision of the SLA. The LCIA found in January 2011 that certain of the challenged programs breached the Agreement and determined that Canada should impose additional charges on exports of softwood lumber to the United States originating in Quebec and Ontario. Canada began collecting the additional charges on March 1, 2011. These additional export charges will remain in place for the duration of the SLA and it is anticipated that they will result in the collection of $59.4 million.

The United States again requested arbitration under the SLA in January 2011 regarding the under pricing of timber harvested from public lands in the Interior region of British Columbia. The dispute involves the mis-assignment of public timber to the salvage "grade 4," which British Columbia sells to Canadian softwood lumber producers at the very low fixed rate of 25 cents per cubic meter. The hearing before an LCIA tribunal was held from February 27, 2012 through March 9, 2012.

DOMESTIC SUPPORT MEASURES

Aerospace Sector Support

Canada established the Strategic Aerospace and Defence Initiative (SADI) in 2007, replacing Technology Partnership Canada. The SADI "provides repayable support for strategic industrial research and pre-competitive development projects in the aerospace, defence, space and security industries." There is no minimum or maximum limit on how much a company can apply to receive through SADI, although typically SADI is expected to contribute about 30 percent of a project's eligible costs. SADI repayment is generally based on a royalty applied to the company's gross business revenues. To receive funding through SADI, the level of assistance from all government sources shall not normally exceed 75 percent of a project's eligible costs. The first SADI funds were disbursed in early 2008; SADI is expected to invest nearly C$900 million between 2007 and 2012, with funding to reach a maximum of C$255 million per year.

In 2008, the Canadian federal government and the Quebec provincial government announced aid to the Bombardier aircraft company not to exceed C$350 million (federal) and C$117 million (provincial) to support research and development (R&D) related to the launch of a new class of Bombardier C-Series jets. Under this program, Bombardier received a contribution of C$39.6 million from the federal government in fiscal year 2009 (April 1 to March 31) and C$36.9 million in fiscal year 2010. Bombardier is scheduled to receive a contribution of C$67 million in fiscal year 2011.

About one-half of the federal money is for general R&D. The other half is tied specifically to the development of the C-Series aircraft. The government of the United Kingdom is also contributing to the C-Series development, as major components of the aircraft, specifically the wings, are to be produced in Northern Ireland.

The United States has expressed its concerns to Canada that any launch aid associated with the C-Series must be consistent with Canada's international trade obligations. The United States has also expressed concern over the possible use of official export credits to support commercial aircraft sales in the U.S. market.

Ontario Feed-In Tariff Program

The Province of Ontario instituted a feed-in tariff renewable energy program as part of the Green Energy and Green Economy Act of 2009. Under the program, the Ontario Power Authority provides a guaranteed tariff for energy produced through renewable means (including wind, solar/photovoltaic) on the condition that suppliers use a provincially mandated percentage of local content (equipment, services) in their generating activity. U.S. suppliers of equipment and services have complained about the program because its domestic content requirement is a disincentive to purchase from U.S. suppliers.

Japan filed a request for consultations with the WTO Dispute Settlement Body in September 2010 regarding the domestic content requirements of the Green Economy Act. The WTO agreed to establish a dispute settlement panel to hear Japan's challenge in July 2011. The United States was granted third party status in these proceedings.

The European Union joined Japan in issuing a formal challenge to the WTO concerning the Green Economy Act in August 2011. The EU alleges that the local content requirements in the Canadian law violate WTO rules that prohibit linking subsidies to the use of domestic products. The EU contends that its exports in wind power and photovoltaic equipment to Canada would be higher if the law's local content provisions were reformed.

A Texas-based renewable energy firm initiated an investor-state claim under NAFTA Chapter 11 against the Canadian government in July 2011, claiming the Green Economy Act violates Canada's obligations under NAFTA to provide foreign investors with fair and equitable treatment.

INTELLECTUAL PROPERTY RIGHTS PROTECTION

Canada has been listed since 2009 on the U.S. Special 301 Priority Watch List. Concerns listed in the report relate to Canada's failure to implement key copyright reforms, its weak border enforcement system, and its failure to implement the World Intellectual Property Organization (WIPO) Internet Treaties (*i.e.*, the WIPO Copyright Treaty and the WIPO Performances and Phonograms Treaty), which Canada signed in 1997. The Canadian government reintroduced the Copyright Modernization Act in September 2011 in an effort to align its copyright laws with international standards and implement the rights and protections of the WIPO Internet Treaties. The United States continues to urge Canada to enact legislation to strengthen its copyright laws and implement these treaties.

The United States also urges Canada to enact legislation to give customs officers the authority, without the need for a court order, to seize products suspected of being pirated or counterfeit. Canada's intellectual property rights (IPR) enforcement regime would also benefit from the provision of increased resources and training to customs officers and domestic law enforcement personnel.

U.S. stakeholders have also expressed strong concerns about Canada's current administrative process for appeals of the regulatory approval of pharmaceutical products, and limitations in Canada's trademark regime.

Canada, the United States and other key trading partners, signed the Anti-Counterfeiting Trade Agreement (ACTA) in October 2011. The ACTA establishes an international framework that will assist Parties in their efforts to effectively combat the infringement of IPR, in particular the proliferation of counterfeiting and piracy, which undermines legitimate trade and the sustainable development of the world economy.

SERVICES BARRIERS

Telecommunications

Canada maintains a 46.7 percent limit on foreign ownership of suppliers of facilities-based telecommunications services, except for submarine cable operations. This is one of the most restrictive regimes among developed countries. Of the OECD countries, Canada is ranked last in its level of liberalization. Canada also requires that at least 80 percent of the members of the board of directors of facilities-based telecommunications service suppliers be Canadian citizens. As a consequence of these restrictions on foreign ownership, U.S. firms' presence in the Canadian market as wholly U.S.-owned operators is limited to that of a reseller, dependent on Canadian facilities-based operators for critical services and component parts. These restrictions deny foreign providers certain regulatory advantages only available to facilities-based carriers (*e.g.*, access to unbundled network elements and certain bottleneck facilities). This limits those U.S. companies' options for providing high quality end-to-end telecommunications services, since they cannot own or operate their own telecommunications transmission facilities.

The Canadian government pledged in March 2010 to further open key sectors to foreign investment, including its telecommunications industries. Canada is considering a range of possible legislative steps to further liberalize the sector, but the narrow range of options (*e.g.*, options do not include providing cable platforms, one of the most viable means to compete in the telecommunications sector) and uncertain political support diminish the potential for progress. The government has promised to clarify its position on foreign telecommunications investment before the next wireless spectrum auction in 2012.

A cell phone service provider with significant U.S. financial backing was permitted in 2009 to acquire wireless spectrum rights in Canada. This represented a rare new entry into a telecommunications sector dominated by several large Canadian-owned firms. The provider has since faced numerous legal challenges from its competitors, who claim that the company violates the Canadian ownership requirements in the *Telecommunications Act*, because a foreign conglomerate controls a majority of its debt. Canada's Federal Court of Appeal ruled in the provider's favor in June 2011, securing the company's right to operate in Canada. An appeal against this decision has been filed to the Supreme Court of Canada.

Canadian Content in Broadcasting

The Canadian Radio-television and Telecommunications Commission (CRTC) requires that for Canadian over-the-air broadcasters, Canadian programs must make up 60 percent of television broadcast time overall and 50 percent from 6 p.m. to midnight. It also requires that 35 percent of popular musical selections broadcast on the radio should qualify as "Canadian" under a Canadian government-determined point system. For cable television and direct-to-home broadcast services, more than 50 percent of the channels received by subscribers must be Canadian programming services.

The CRTC also requires that the English and French television networks operated by the Canadian Broadcasting Corporation not show popular foreign feature movies between 7 p.m. and 11 p.m. The only non-Canadian films that may be broadcast during that time must have been released in theaters at least two years previously. Non-Canadian channels must be pre-approved ("listed") by the CRTC. For other services, such as specialty television and satellite radio services, the required percentage of Canadian content varies according to the nature of the service. Canadian licensees may appeal the listing of a non-Canadian service which is thought to compete with a Canadian pay or specialty service. The CRTC will consider removing existing non-Canadian services from the list, or shifting them into a less competitive location on the channel dial, if they change format to compete with a Canadian pay or specialty service.

Distributors of theatrical films in Canada must submit their films to six different provincial or regional boards for classification; there is no national classification system. Most of these boards also classify products intended for home video distribution.

Canada's traditional broadcasters have called for Canadian content requirements to be imposed on "over-the-top" (OTT) providers such as Netflix, iTunes, and Google video. The results of a CRTC study found insufficient evidence to suggest that online media companies have negatively impacted Canada's traditional broadcasters. The CRTC found no reason to pursue regulatory restrictions on OTT providers. The CRTC pledged to closely monitor the impact of OTT providers on the Canadian broadcasting environment and plans to begin another study on the subject in May 2012.

OTHER BARRIERS

The strong growth of cross-border data flows resulting from widespread adoption of broadband-based services in Canada and the United States has refocused attention on the restrictive effects of privacy rules in two Canadian provinces, British Columbia and Nova Scotia. These two provinces have laws mandating that personal information in the custody of a public body must be stored and accessed only in Canada unless one of a few limited exceptions applies. These laws prevent public bodies such as primary and secondary schools, universities, hospitals, government-owned utilities, and public agencies from using U.S. services when personal information could be accessed from or stored in the United States. The public sector represents approximately one-third of the Canadian economy, and is a major consumer of U.S. services. In today's information-based economy, particularly where a broad range of services are moving to "cloud" based delivery where U.S. firms are market leaders, this law hinders U.S. exports of a wide array of products and services. The United States will continue seeking to work with Canadian authorities to identify means of addressing this issue.

INVESTMENT BARRIERS

General Establishment Restrictions

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

The ICA has regulated foreign investment in Canada since 1985. Foreign investors must notify the government of Canada prior to the direct or indirect acquisition of an existing Canadian business of substantial size (as defined below). The Canadian government also reviews the acquisition by non-Canadians of existing Canadian businesses, as well as the establishment of new Canadian businesses in designated types of business activity relating to Canada's culture, heritage, or national identity where the federal government has authorized such review as in the public interest. The Canadian government amended the ICA to increase the threshold for review to C$1 billion over a four year period. This increase will take affect once regulations implementing the amendments come into force.

At the same time, the government added national security considerations as an additional component of investment review. Industry Canada is the reviewing authority for most investments, except for those related to cultural industries, which come under the jurisdiction of the Department of Heritage. The ICA sets time limits for the reviews. Once an application for review is received, the Minister has 45 days to determine whether or not to allow the investment. A 30 day extension is permitted if the investor is notified prior to the end of the initial 45 day period. Reviews of investments in cultural industries usually require the full 75 days to complete.

Under the ICA, the Minister of Industry can make investment approval contingent on meeting certain conditions such as minimum levels of employment and R&D. Since the global economic slowdown in 2009, some foreign investors in Canada have had difficulties meeting these conditions. On November 3, 2010, the Canadian government blocked a C$38.6 billion hostile takeover by an Australian company, BHP Billiton, of Potash Corp. of Saskatchewan, as not being of "net benefit" to Canada under the ICA. This was only the second time an investment has been blocked since 1985.

GOVERNMENT PROCUREMENT BARRIERS

Canadian Crown Corporations

Canada is a signatory to three international agreements relating to government procurement (the WTO Agreement on Government Procurement, NAFTA, and the 2010 United States-Canada Agreement on Government Procurement). The agreements provide U.S. businesses with access to procurement conducted by most Canadian federal departments and certain provincial entities. U.S. suppliers have access under trade agreements to procurement of only seven of Canada's Crown Corporations. The Canadian Air Transportation Security Authority (CATSA), a Crown Corporation not covered by a trade agreement, awarded sole-source contracts for baggage screening X-ray systems in 2009 and 2010 to a UK supplier and unreasonably excluded a U.S. supplier from the procurements based on claims of urgency and unique technical specifications. The U.S. supplier has been unable to challenge this procurement because foreign companies may not use Canada's bid-challenge mechanism, administered by the Canadian International Trade Tribunal, unless the procurement is covered by a trade agreement. CATSA has effectively shielded itself from applying competitive procedures in two procurements worth approximately $46 million.

CHILE

TRADE SUMMARY

The U.S. goods trade surplus with Chile was $6.8 billion in 2011, an increase of $2.9 billion from 2010. U.S. goods exports in 2011 were $15.9 billion, up 45.6 percent from the previous year. Corresponding U.S. imports from Chile were $9.1 billion, up 29.4 percent. Chile is currently the 20th largest export market for U.S. goods.

U.S. exports of private commercial services (*i.e.*, excluding military and government) to Chile were $2.3 billion in 2010 (latest data available), and U.S. imports were $1.2 billion. Sales of services in Chile by majority U.S.-owned affiliates were $5.9 billion in 2009 (latest data available), while sales of services in the United States by majority Chile-owned firms were $342 million.

The stock of U.S. foreign direct investment (FDI) in Chile was $26.3 billion in 2010 (latest data available), up from $21.5 billion in 2009. U.S. FDI in Chile is reported mostly in the mining, finance/insurance, and manufacturing sectors.

In December 2009, the United States announced its intention to enter into an Asia-Pacific trade agreement called the Trans-Pacific Partnership (TPP), with the objective of shaping a high standard, broad-based regional agreement. This agreement will create a potential platform for economic integration across the Asia-Pacific region, a means to advance U.S. economic interests with the fastest-growing economies in the world, and a tool to expand U.S. exports, which are critical to U.S. economic recovery and the creation and retention of high-paying, high-quality jobs in the United States. In addition to Chile, the TPP negotiating partners currently include Australia, Brunei, Malaysia, New Zealand, Peru, Singapore, and Vietnam. Japan, Canada, and Mexico also have expressed interest in joining the negotiations.

IMPORT POLICIES

Tariffs

The United States-Chile Free Trade Agreement (FTA) entered into force on January 1, 2004. Under the FTA, the Parties immediately eliminated tariffs on 87 percent of bilateral trade. All industrial trade will be duty free by 2013. Remaining agriculture tariffs will be eliminated by 2016.

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

Import Controls

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

Chile prohibits the importation of used vehicles, used motorcycles, and used retreaded tires (with the exception of wheel-mounted tires). Some used items originating from a country without an FTA with Chile are subject to an additional importation charge of three percent over the CIF (cost, insurance, and freight). This additional charge can be eliminated or reduced, depending on the product, if the used item is imported from a third country that has an FTA with Chile. However, if the used item is imported from a country that does not have an FTA with Chile, even if the importing company is from a country with whom Chile has an FTA, they will be subject to the additional charge of three percent over the CIF.

Nontariff Barriers

Chile maintains a complex price band system for wheat, wheat flour, and sugar that, under the FTA, will be phased out by 2016 for imports from the United States. Mixtures containing more than 65 percent sugar (*e.g.*, high fructose corn syrup) content are subject to the sugar price band system. The price band system was created in 1985 and is intended to guarantee a minimum and maximum import price for the covered commodities. When certain CIF prices (as calculated by Chilean authorities) fall below the set minimum price, a special tax is added to the tariff rate to raise the price to the minimum price. The government sets a minimum import price that is normally higher than both international and Chilean domestic prices. Beginning in 2008, the minimum price has been adjusted downward by two percent per year on U.S. imports; in 2014 Chile's President will evaluate whether to continue the price band system or eliminate it prior to 2016 as required under the FTA.

Companies are required to contract the services of a customs agent when importing or exporting goods valued at over $1,000 free on board (FOB). The customs agent is the link between the exporter or importer and the National Customs Service and is responsible for facilitating foreign trade operations and acting as the official representative of the exporter or importer in the country.

Customs agents' fees are not standardized. Companies established in any of the Chilean duty-free zones are exempt from the obligation to use a customs agent when importing or exporting goods.

EXPORT POLICIES

Chile currently provides a simplified duty drawback program for nontraditional exports. The program reimburses a firm up to three percent of the value of the exported good, if 50 percent of that good consists of imported raw materials. Exported goods produced with imported capital equipment must have a minimum CIF value of $3,813 in order to be eligible for duty drawback. The net value of the invoice is used if the capital equipment in question is also manufactured domestically. Exported goods produced with imported capital equipment must have a minimum CIF value of $3,813 in order to be eligible for duty drawback. Another export promotion measure lets all exporters defer import duties for up to seven years on imported capital equipment or receive an equivalent government subsidy for domestically produced capital goods.

In accordance with its commitments under the FTA, Chile is eliminating, over a transition period, the use of duty drawback and duty deferral for imports that are incorporated into any goods exported to the United

States. Full drawback rights are allowed through 2012. Beginning in 2013, the amount of drawback allowed is reduced until it reaches zero in 2016.

Under Chile's separate VAT reimbursement policy, exporters have the right to recoup the VAT they have paid when purchasing goods and using services intended for export activities. Any company that invests in a project in which production will be for export is eligible for VAT reimbursement.

Exporters of services can only benefit from this policy when the services are rendered to people or companies with no Chilean residency. Also, the service must qualify as an export through a resolution issued by the Chilean customs authority. The VAT reimbursement is calculated as the percentage of FOB exported in relation to the total sale of goods and services of the same taxable period.

GOVERNMENT PROCUREMENT

The FTA requires procuring entities to use fair and transparent procurement procedures, including advance notice of purchases and timely and effective bid review procedures for procurement covered by the Agreement. It also includes nondiscrimination provisions that require Chilean entities covered by the FTA to allow U.S. suppliers to participate in their procurement on the same basis as Chilean suppliers in procurements covered by the Agreement. The FTA covers the procurement of most Chilean central government entities, 15 regional governments, 11 ports and airports, and 346 municipalities.

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

INTELLECTUAL PROPERTY RIGHTS PROTECTION

Chile was listed on the Priority Watch List in the 2011 Special 301 Report. The report notes the Piñera Administration's significant commitment to address outstanding intellectual property rights (IPR) issues under the FTA. The report also highlights Chile's implementation of new copyright legislation, ratification of the Convention Relating to the Distribution of Programme-Carrying Signals Transmitted by Satellites (Brussels Convention), ratification of the Trademark Law Treaty (for which implementing legislation is pending), and the launch of a ministerial-level interagency committee on IPR with a mandate to examine the outstanding FTA issues. In 2011, the Chilean Senate approved the International Convention for the Protection of New Varieties of Plants. Implementing legislation is currently under consideration.

The United States has urged Chile to create a system to address patent issues expeditiously in connection with applications to market pharmaceutical products and to implement protections against the circumvention of technological protection measures. Chile should also provide adequate protection against unfair commercial use, as well as unauthorized disclosure, of undisclosed test or other data generated to obtain marketing approvals for pharmaceutical products, amend its Internet service provider liability regime to permit effective action against any act of infringement of copyright and related rights, implement protections for encrypted program-carrying satellite signals, and to ensure that effective administrative and judicial procedures and deterrent remedies are made available to rights holders.

In 2012, the United States will continue to work with Chile to improve IPR enforcement and to ensure that Chile is meeting its FTA commitments.

CHINA

TRADE SUMMARY

The U.S. goods trade deficit with China was $295.5 billion in 2011, up $22.4 billion from 2010. U.S. goods exports in 2011 were $103.9 billion, up 13.1 percent from the previous year. Corresponding U.S. imports from China were $399.3 billion, up 9.4 percent. China is currently the 3rd largest export market for U.S. goods.

U.S. exports of private commercial services (*i.e.*, excluding military and government) to China were $21.1 billion in 2010 (latest data available), and U.S. imports were $10.0 billion. Sales of services in China by majority U.S.-owned affiliates were $23.1 billion in 2009 (latest data available), while sales of services in the United States by majority China-owned firms were $624 million.

The stock of U.S. foreign direct investment (FDI) in China was $60.5 billion in 2010 (latest data available), up from $49.8 billion in 2009. U.S. FDI in China is led by the manufacturing and banking sectors.

IMPORT BARRIERS

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

Trading Rights

In its Protocol of Accession to the WTO, China committed to substantial liberalization in the area of trading rights. Although China did not fully adhere to the agreed phase-in schedule, it put in place a registration system implementing the required liberalization of trading rights, both for wholly Chinese-owned enterprises and for Chinese-foreign joint ventures, wholly foreign-owned enterprises and foreign individuals, including sole proprietorships. This liberalization is reflected in China’s revised Foreign Trade Law, issued in April 2004. It provides for trading rights to be automatically available through a registration process, effective July 1, 2004. In June 2004, the Ministry of Commerce (MOFCOM) issued implementing rules establishing the procedures for registering as a foreign trade operator. U.S. companies have reported few problems with the trading rights registration process.

Consistent with the terms of China’s Protocol of Accession to the WTO, the importation of some goods, such as petroleum and sugar, is still reserved for state trading enterprises. In addition, for goods still subject to tariff-rate quotas (TRQ), such as grains, cotton, vegetable oils and fertilizers, China reserves a portion of the in-quota imports for state trading enterprises, while it makes the remaining portion (ranging from 10 percent to 90 percent, depending on the commodity) available for importation through non-state traders. In some cases, the percentage available to non-state traders increases annually for a fixed number of years. (*For further information, please refer to the section below on Tariff-Rate Quotas.*)

China has continued to restrict the importation (and distribution) of copyright-intensive products such as books, newspapers, journals, theatrical films, DVDs, and music, in contravention of its trading rights (and distribution services) commitments, leading the United States to mount a successful WTO challenge to these policies. China agreed to remove these restrictions by March 2011 in order to comply with the WTO ruling against it. China subsequently issued several revised measures and repealed other measures relating to the restrictions on books, newspapers, journals, DVDs, and music. China did not issue any measures addressing theatrical films but requested bilateral discussions. In February 2012, the two sides signed a Memorandum of Understanding (MOU) addressing the film-related aspects of the WTO ruling. The MOU provides for increased market access for imported films and better terms of compensation for foreign film producers. The MOU will be reviewed after five years. The United States will continue to closely monitor China's implementation measures to comply with other aspects of the WTO ruling. (*For further information, please refer to the section below on Audiovisual and Related Services.*)

Import Substitution Policies

When it acceded to the WTO, China agreed to eliminate all subsidies prohibited under Article 3 of the WTO Agreement on Subsidies and Countervailing Measures (Subsidies Agreement), including all forms of subsidies contingent on the use of domestic over imported goods. In its Protocol of Accession to the WTO, China also committed that it would not condition import or investment approvals on whether there are competing domestic suppliers or impose other performance requirements. In anticipation of this commitment, China enacted legal changes in 2000 and 2001 to eliminate local content requirements for foreign investments. Under the prevailing rules, however, investors are still "encouraged" to follow some of the formerly mandated practices. In the agriculture sector where certain categories of subsidies are permitted, China notifies its subsidies at the lowest *de minimis* level, yet there have been reports of additional subsidies to agriculture as part of China's recent agricultural reform policy. Instances in which the Chinese government has reportedly pursued import substitution or similar policies are described below.

Ministry of Industry and Information Technology Equipment Catalogue:

On November 14, 2011, China's Ministry of Industry and Information Technology (MIIT) published a revised draft *Guiding Catalogue of Indigenous Innovation in Key Technologies and Equipment* for public comment. On a positive note, the revision removes specific eligibility criteria contained in the 2009 *Catalogue Guiding Indigenous Innovation in Major Technology Equipment* relating to import substitution and to the generation of foreign exchange earnings through exports. In addition, the revised catalogue no longer provides that products will be eligible for government procurement preferences, nor does it any longer identify subsidies and other benefits for which listed products are eligible. However, the catalogue's revised product selection criteria are subjective and vague and the government benefits to be accorded are not specifically enumerated. As a result, it is still possible that listed products could receive benefits that conflict with China's WTO obligations. The United States will continue to monitor China's practices in connection with use of the catalogue.

Automobile Policy:

U.S. automakers and automotive parts manufacturers have significant challenges in China's automobile market as China has implemented a series of policies that have had a discriminatory effect on foreign enterprises. In May 2004, China issued a new automobile industrial policy, the Policy on Development of the Automotive Industry, and subsequently it issued implementing regulations that unfairly discriminated against imported automotive parts and discouraged automobile manufacturers in China from using imported automotive parts in the assembly of vehicles. In 2006, the United States, the EU and Canada initiated dispute settlement proceedings against China at the WTO. The WTO ultimately ruled in favor of the United States. In September 2009, China repealed the challenged measures.

Additional problems began to arise after China's economic policymakers began devoting substantial resources, and creating new policies, to assist Chinese automobile enterprises in developing cutting-edge New Energy Vehicle (NEV) technologies and building domestic brands that could succeed in global markets. China introduced regulations, issued by the National Development and Reform Commission (NDRC) in 2007 and by MIIT in 2009, requiring manufacturers of NEVs in China to "demonstrate mastery" over, and hold intellectual property rights in, core NEV technologies. Because China only allows foreign automobile manufacturers to operate in China through joint ventures with Chinese enterprises, and none of these joint ventures can be majority foreign-owned, this requirement effectively required foreign automobile manufacturers to transfer their core NEV technologies. There were also widespread reports that China also would require all NEVs manufactured in China to be sold under Chinese, rather than foreign, brands. China has also pursued related policies similarly designed to promote the development of a Chinese NEV component industry at the expense of foreign enterprises. For example, in March 2011, the NDRC issued a draft *Catalogue Guiding Foreign Investment in Industry ("Foreign Investment Catalogue")* that proposed a new limitation on foreign ownership in NEV parts manufacturing facilities in China to no more than 50 percent. Previously, foreign automotive parts manufacturers could establish in China as wholly foreign-owned enterprises. Foreign enterprises also raised questions about whether new consumer subsidies and other incentive programs being introduced by the Chinese government would be made available to both domestic and imported NEVs, raising national treatment concerns.

In 2011, the United States repeatedly raised serious concerns about China's NEV policies during the preparations for the November 2011 U.S.-China Joint Commission on Commerce and Trade (JCCT) meeting. As a result of these efforts, at the JCCT meeting, China confirmed that it will not require foreign automobile manufacturers to transfer technology to Chinese enterprises or to establish Chinese brands in order to invest in China's market for NEVs. China also confirmed that foreign-invested enterprises would have equal access to subsidies and other preferential policies for NEVs and that these policies would conform to WTO rules. With regard to the new investment restrictions contained in the draft *Foreign Investment Catalogue*, in the final version, released in January 2012, China removed the 50 percent limit on foreign capital for almost all of the key components of NEVs, but retained the restriction on NEV batteries. The retention of the limit is a significant limitation on foreign ownership in the NEV sector and the United States will continue to urge China to eliminate this restriction as well.

Steel:

China issued a *Steel and Iron Industry Development Policy* (Steel Policy) in July 2005. The 2005 Steel Policy includes a host of objectives and guidelines that raise serious concerns. For example, the Steel Policy requires that foreign enterprises seeking to invest in Chinese iron and steel enterprises possess proprietary technology or intellectual property in the processing of steel. Given that foreign investors are not allowed to have a controlling share in steel and iron enterprises in China, this requirement would seem to constitute a *de facto* technology transfer requirement, raising concerns given China's commitments under its Protocol of Accession to the WTO not to condition investment rights or approvals on the transfer of technology. The Steel Policy also appears to discriminate against foreign equipment and technology imports, encouraging the use of local content by calling for a variety of government financial supports for steel and iron projects using newly developed domestic equipment. Even more troubling, however, it calls for the use of domestically produced steel manufacturing equipment and domestic technologies whenever domestic suppliers exist, raising questions, given China's commitment under its Protocol of Accession to the WTO not to condition importation on whether competing domestic suppliers exist.

China's steel production has grown rapidly and at a rate faster than the growth in its domestic steel consumption. China became the largest steel exporting economy in 2006, and its steel exports have increasingly become subject to trade remedy actions by other countries in the past two years. In March 2006, the United States and China held the inaugural meeting of a new JCCT dialogue on the steel industry (Steel Dialogue). Since then, the two sides have held three more Steel Dialogue meetings. The next meeting is envisioned to take place in 2012. In bilateral and multilateral meetings, the United States has argued that China has acted to impose different levels of taxes on different exports of steel products and steelmaking inputs in a manner that appears to encourage the export of certain value-added steel products. In response to the financial downturn in the fall of 2008, China rapidly reduced or removed export duties on many, but not all, steel products to encourage exports during a period of steeply declining global demand. In a series of moves over the next several months, China eliminated export duties on additional semi-finished and finished steel products while it also reinstated or increased VAT export rebates. As a result, Chinese steel production reached a record 567 million MT for 2009, a 14 percent increase when compared to 2008. Later, in June 2010, the Ministry of Finance (MOF) and the State Administration of Taxation removed the nine percent VAT export rebate on a limited set of steel products, primarily intermediate hot-rolled products. Because the VAT export rebates on finished pipes, tubes and other tubular products remained in place, the differential VAT treatment between exports of hot-rolled products and tubular products actually increased, which had the effect of further incentivizing the production and export of tubular products.

In March 2009, China issued a stimulus plan to revitalize its steel industry. This plan represents the first major adjustment to the 2005 steel policy. The plan seeks to control steel output volume and to eliminate outdated and inefficient capacity while emphasizing technological improvement. The plan also seeks to stimulate exports, a significant difference from the 2005 steel policy. In addition, the plan calls for further industry consolidation and the creation of large steel enterprises with capacities exceeding 50 million MT.

In June 2010, the State Council published the *Opinions on Strengthening Energy Saving and Emission Reduction and Accelerating Structural Adjustment in the Iron and Steel Sector*. This measure reiterated existing steel policies, specifically identifying a number of well-known objectives for the sector, such as controlling steel industry growth, strengthening efforts to eliminate outdated capacity, promoting energy savings and emissions reduction, technical innovation, accelerating mergers, disciplining access to iron ore imports and promoting domestic iron ore mining, and encouraging domestic steel producers to explore mining and steel investments abroad.

In July 2010, MIIT released the Regulations and Conditions of Production and Operation of the Iron and Steel Industry. These regulations are intended to support the objectives laid out in the State Council's June 2010 measure. They indicate that small steel mills will be shut down, establish operating standards for larger steelmakers and address issues such as product quality and environmental protection. MIIT published a list of 762 steel mills that were required to close by September 2010 in order to improve the country's energy efficiency. Reportedly, these steel mills represent approximately 35 million MT of crude steelmaking capacity. However, these efforts did not yield net capacity decreases in the Chinese steel sector. Capacity grew from 725 million MT in 2009 to 770 million MT in 2010, according to OECD estimates. Chinese steel production also increased from 573 million MT in 2009 to 627 million MT in 2010. Despite China's stated goal of eliminating inefficient steel capacity, and despite slowing growth in domestic steel demand and stagnant demand in export markets, steel production in China in 2011 continued to grow, reaching a record 695.5 MT for 2011, an 8.9 percent increase over 2010.

Steelmaking capacity in China is also projected to grow significantly through 2012. In October 2011, MIIT published its Twelfth Five-Year Development Plan for the Iron and Steel Industry, covering the period of 2011 to 2015. The plan itself notes that China's steel production grew from 350 million MT in 2005 to 630 million MT in 2010. The steel industry's rate of growth during this period exceeded the growth rate of the Chinese economy as a whole, as well as the growth of the global steel industry. The United States is still analyzing the plan but has several immediate concerns. The plan continues to place the Chinese government in the role of closely managing the development of the steel industry. The plan specifies where to build, close, or relocate steelmaking capacity, how much to spend on research and development, and the types of products that will and will not be produced. The plan also emphasizes "self-sufficiency" in steel production and sets specific market share targets to be met by domestic steel producers, implying that imports of certain steel products are a problem to be addressed. This high degree of government direction and decision-making, including regarding the allocation of resources into and out of China's steel industry, raises concerns in light of China's WTO commitments. Meanwhile, the plan provides no indication that China plans to liberalize restrictions on foreign investment in the Chinese domestic sector, yet it sets out objectives for overseas investment by Chinese iron and steel producers. The plan also states that incentives will be provided to support investment in foreign iron ore mines and steel plants to create groups with "powerful international competitive strength."

The United States is working with Canada, Mexico, the EU and other trading partners to monitor and support concrete steps by China to rein in its steelmaking capacity. The United States will also continue to closely scrutinize the new five year plan's development and the implementation of China's 2010 and 2011 steel measures.

Semiconductors:

China's Twelfth Five-Year Plan calls for an increase in research and development in the Chinese semiconductor sector, replacing the emphasis on production capacity found in former five year plans. In spite of government investment in the semiconductor sector, this sector remains fairly weak in terms of innovation. The United States continues to monitor closely new financial support that China is making available to its domestic integrated circuit producers for consistency with the WTO Subsidies Agreement's disciplines.

Fertilizer:

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

Telecommunications Equipment:

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

The Twelfth Five-Year Plan, which began in 2011, anticipates investing up to RMB 600 billion in the telecommunications sector by 2015. This plan calls for explosive growth in broadband capacity. The United States and the private sector have criticized China in the past for heavily promoting, supporting, and favoring one technical standard over others in the telecommunications sphere. During the 2010 JCCT meeting, China committed to be "technologically neutral" for current and future services and technologies related to 3G networks and future networks based on new technologies, allowing operators to choose freely among those technologies. The Chinese government also committed not to provide any preferential treatment based on the standard or technology used by an operator. In 2011, the United States carefully monitored developments in this area, stressing to China in bilateral meetings the importance of a continuing commitment to technology neutrality in line with China's JCCT commitments. The United States will continue to work in 2012 to ensure that China's regulators adhere to China's JCCT commitments.

Agricultural Support:

Since 2004, China has significantly increased its support to agriculture. China established a direct payment program, instituted minimum support prices for basic commodities, and sharply increased input subsidies. At the end of 2011, China submitted overdue notifications on its domestic support policies to the WTO. China's classification of certain programs and the methodology China used to calculate certain measures of its support, particularly with its price support policies and direct payments present potential concerns. The United States will continue to monitor and evaluate the potential trade-distorting effects of China's new policies.

Tariffs and Other Import Charges

China still maintains high duties on some products that compete with sensitive domestic industries. For example, the tariff on large motorcycles is 30 percent. Likewise, most video, digital video and audio recorders and players still face duties of approximately 30 percent. Some agricultural items continue to have high tariffs; for instance, raisin imports face duties of 35 percent.

Tariff Classification

Chinese customs officers appear to have wide discretion in classifying goods, and U.S. companies have expressed concern that classifications sometimes appear to be arbitrary. While foreign businesses might at times benefit from their ability to negotiate classification of products into tariff categories with lower import duty rates, lack of uniformity makes it difficult to anticipate border charges.

Customs Valuation

China still has not uniformly implemented the various customs valuation measures issued following its accession to the WTO. U.S. exporters continue to report that they are encountering valuation problems at many ports. According to U.S. exporters, even though the Customs Administration's measures provide that imported goods normally should be valued on the basis of their transaction price, meaning the price the importer actually paid, many Chinese customs officials are still improperly using "reference pricing," which usually results in a higher dutiable value. It appears that the practice of using reference prices has been increasing recently. Imports of information technology products are often subjected to reference pricing, as are other imported products, such as wood products.

In addition, some of China's customs officials are reportedly not applying the rules set forth in the Customs Administration's measures as they relate to software royalties and license fees. Following their pre-WTO accession practice, these officials are still automatically adding royalties and license fees to the dutiable value (for example, when an imported personal computer includes pre-installed software), even though the rules expressly direct them to add those fees only if they are import-related and a condition of sale for the goods being valued.

U.S. exporters also have continued to complain that some of China's customs officials are assessing duties on digital products based on the imputed value of the content, such as the data recorded on a floppy disk or CD-ROM. China's own regulations require this assessment to be made on the basis of the value of the underlying carrier medium, meaning the floppy disk or CD-ROM itself.

China has indicated that it is working to establish more uniformity in its adherence to WTO customs valuation rules. The United States has assisted in this effort by conducting technical assistance programs for Chinese government officials. In addition, the United States has raised its concerns about particular valuation problems during meetings of the WTO's Committee on Customs.

More generally, U.S. exporters continue to be concerned about inefficient and inconsistent customs clearance procedures in China. These procedures vary from port to port, lengthy delays are not uncommon, and the fees charged appear to be excessive, giving rise to concerns that they are not related to the cost of services rendered as required under the GATT 1994.

Border Trade

China's border trade policy also continues to generate MFN and other concerns. China provides preferential import duty and VAT treatment to certain products, often from Russia, apparently even when those products are not confined to frontier traffic as envisioned by Article XXIV of GATT 1994. In June 2003, China began to address these concerns when it eliminated preferential treatment for boric acid and 19 other products. However, several other products continue to benefit from preferential treatment.

Antidumping, Countervailing Duty, and Safeguard Measures

Since acceding to the WTO, China has emerged as a significant user of antidumping measures, underscoring the importance of China's full adherence to the transparency and procedural fairness requirements embodied in WTO rules, as well as all substantive standards. As of year-end 2011, China had a total of 107 antidumping measures in place (some of which predate China's membership in the WTO) affecting imports from 18 countries and regions, and nine antidumping investigations in progress. The greatest shortcomings in China's antidumping practice continue to be in the areas of transparency and procedural fairness.

Most of the rules and regulations that MOFCOM uses to conduct its antidumping investigations were issued by its predecessor agencies, the Ministry of Foreign Trade and Economic Cooperation (MOFTEC) and the State Economic and Trade Commission (SETC). While these measures generally represent good faith efforts to implement the relevant WTO commitments and to improve China's pre-WTO accession measures, they also contain vague language, have gaps in areas of practice and allow inordinate discretion in their application. In July 2009, MOFCOM solicited public comment on draft revisions of its rules on new shipper reviews, antidumping duty refunds and price undertakings. Once finalized, China is obligated to notify these revised rules to the WTO to give Members an opportunity to review the rules for compliance with the WTO Antidumping Agreement and seek any clarifications.

In 2011, respondents from the United States and other WTO Members continued to express concerns about key lapses in transparency and procedural fairness in China's conduct of antidumping investigations. The principal areas of concern include: inadequate disclosure of key documents placed on the record by domestic Chinese producers; insufficiently detailed disclosures of the essential facts underlying MOFCOM decisions, such as the results of on-site verification, all others rate calculations, and evidence supporting injury and dumping conclusions; and inadequate responses to critical arguments or evidence put forward by interested parties.

Meanwhile, as China's antidumping regime has matured, many of the antidumping orders put in place have reached the five year mark, warranting sunset reviews. As of year-end 2011, MOFCOM was conducting 11 sunset reviews, 3 of which involve products from the United States, and several more are scheduled for 2012. To date, every sunset review involving U.S. products has resulted in the measure being extended. Because of the problems that respondents have encountered in China's antidumping investigations, it is critical that China publish rules and procedures specifically governing the conduct of expiry reviews, as required by the WTO Antidumping Agreement. The United States has pressed China to issue regulations governing sunset reviews for more than two years and will continue to do so.

To date, it appears that only one interested party, a Russian exporter, has filed for judicial review of a Chinese antidumping proceeding. However, China has not released any information to the public about the case. As China continues to launch antidumping investigations and apply antidumping measures against imports, the opportunity for interested parties to seek judicial review will become more critical.

China initiated its first three countervailing duty investigations in 2009. Each of these investigations involved imports of products from the United States: grain-oriented electrical steel (GOES), chicken broiler products, and automobiles. China's conduct in these countervailing duty investigations raises the same types of concerns regarding transparency and procedural fairness as those raised by China's antidumping practice. The methodologies used by China in these countervailing duty investigations also raise significant concerns in light of WTO Subsidies Agreement rules.

The United States is currently pursuing two WTO disputes alleging multiple violations of WTO rules in China's antidumping and countervailing duty investigations of imports of GOES and chicken broiler products from the United States. The United States initiated the GOES dispute in September 2010. A WTO panel was established in March 2011, and eight other WTO members joined as third parties. Hearings took place in September and December 2011 and the panel is scheduled to issue its report in 2012. The United States initiated the chicken broiler products dispute in September 2011. Consultations were held in October 2011, and the United States requested the establishment of a panel in December 2011. A WTO panel was established in January 2012.

Nontariff Barriers

Nine years after China's WTO accession, many U.S. industries complain that they face significant nontariff barriers to trade, which are discussed in more detail in various sections below. These barriers include, for example, regulations that set high thresholds for entry into service sectors such as banking, insurance and telecommunications, selective and unwarranted inspection requirements for agricultural imports, and the use of questionable sanitary and phytosanitary (SPS) measures to control import volumes. (*China's SPS measures are addressed in a separate report issued by USTR entitled "2012 Report on Sanitary and Phytosanitary Measures.")*

Beef

China continues to maintain market access barriers to U.S. beef and beef product exports that are inconsistent with international standards of the World Animal Health Organization (OIE). Reopening China's beef market consistent with science and international standards as well as in a commercially viable manner is an important priority. This issue is discussed in detail in USTR's annual Report on Sanitary and Phytosanitary Measures.

Tariff-Rate Quotas

As part of its WTO accession commitments, China was to establish large and increasing tariff-rate quotas (TRQs) for imports of wheat, corn, rice, cotton, wool, sugar, rapeseed oil, palm oil, soybean oil and fertilizer, with most in-quota duties ranging from one percent to nine percent. Under these TRQ systems, China places quantitative restrictions on the amount of these commodities that can enter at a low "in-quota" tariff rate, and any imports over that quantity are charged a prohibitively high duty. Each year, a portion of each TRQ is to be reserved for importation through non-state trading entities. China's Protocol of Accession to the WTO sets forth specific rules for administration of the TRQs, including increased transparency and reallocation of unused quotas to end users that have an interest in importing. China phased out the vegetable oil TRQs in 2006, but currently maintains a TRQ regime on six agricultural products including wheat, cotton, corn, rice, wool and sugar, as well as three chemical fertilizers, including DAP.

The administration of China's TRQ system for fertilizer has suffered from systemic problems since China's WTO accession, including insufficient transparency and administrative guidance affecting how the allocated quota is used. Although the United States has repeatedly engaged China bilaterally and at the WTO, concerns about inadequate transparency remain. U.S. fertilizer exports to China have declined throughout the post-WTO accession period, due in part to Chinese government policies, such as export duties and discriminatory internal taxes that promote the use of domestic fertilizer.

INTERNAL POLICIES

Nondiscrimination

Wind Power Projects:

At the October 2009 JCCT meeting, China committed to remove a measure imposing local content requirements for wind turbines being manufactured in China. In December 2009, China followed through on this commitment by eliminating this requirement. However, since then, China has imposed criteria for obtaining approval to pursue new wind power projects that, in effect, appear to discriminate against foreign enterprises. For example, China imposes a requirement of prior experience in supplying large-scale wind power projects in China, but foreign-invested enterprises only have prior experience with these projects outside of China.

Throughout 2010, the United States pressed China to revise the criteria being applied to wind power projects. At the December 2010 JCCT meeting, China agreed to modify its criteria for the approval of new wind power projects by no longer requiring foreign enterprises to have prior experience in China in providing large-scale wind power projects and instead recognizing their prior experience outside China. China further agreed that foreign enterprises could submit documentation based on existing installed wind power projects outside China in order to meet technical requirements for eligibility to supply large-scale wind power projects in China.

Taxation

Value-Added Taxes:

China gains a significant amount of annual tax revenue from value-added taxes (VAT). This revenue is shared between the central government, which receives 75 percent, and the local government, which receives 25 percent. In 2009, the central government implemented VAT reforms by changing the VAT from being production-based to being consumption-based. All enterprises and individuals engaged in the sale of goods, provision of processing, repairs and replacement services, and import of goods within China are required to pay the VAT, although there are a few exemptions.

China's State Council, in October 2011, announced a VAT reform program aimed at resolving multiple-taxation issues and providing support to the development of China's service sector. Effective January 1, 2012, the VAT will replace business taxes in selected regions and for selected industries on a pilot basis. The trial will first cover transportation and some modern service industries in Shanghai. It will be expanded nationwide at an unspecified time. Two lower VAT rates (11 percent and 6 percent) will be added to the current standard rate of 17 percent and the preferential rate of 13 percent.

This extension of the VAT to services is expected to reduce the tax burden on the service sector, although the State Council did not announce specifically which VAT rates will be applied to which service industries. Uneven application of the VAT continues. Importers from a wide range of sectors report that, because taxes on imported goods are reliably collected at the border, they are sometimes subject to the application of a VAT that their domestic competitors often fail to pay. In addition, China's selective exemption of certain fertilizer products from the VAT has operated to the disadvantage of imports from the United States.

China retains an active and constantly changing VAT rebate program for exports. The effect of many of China's VAT rebate adjustments, which are often used in conjunction with export duties, is to make larger quantities of primary and intermediate products in a particular sector available domestically at lower prices than the rest of the world, giving China's downstream producers of finished products using these inputs a competitive advantage over foreign downstream producers. China discourages the export of the relevant primary and intermediate products by reducing or eliminating VAT rebates and perhaps also imposing export duties on them, resulting in increased domestic supply and lower domestic prices. China's downstream producers, in turn, benefit from these lower input prices as well as full VAT rebates on export of their finished products. In some situations, China has also used its border taxes to encourage the export of certain finished products over other finished products within a sector, especially the steel and aluminum sectors.

Following the onset of the global economic crisis in 2008, China expressed a desire to remove barriers to exports as part of its stimulus programs. Since then, China has increased export VAT rebates multiple times on many products, including textiles, clothing, bamboo products, toys, furniture, high technology products, electrical machinery products, electronics, selected steel products, sewing machines, certain agricultural products, selected plastic and glass products, and alcohol. Among the products affected by recent changes in VAT treatment was soda ash. In April 2009, China raised the VAT rebate from zero percent to nine percent for exports of soda ash, which compete with U.S. exports in important third-country markets.

Business Tax on Foreign Services:

Effective January 1, 2009, China issued amendments to its business tax regulations that reinterpreted the scope of taxable services. Previously, taxes were imposed only on taxable services provided within China. Under the amendments, if services are provided to an enterprise, a non-business organization or an individual in China, the service provider is liable for business tax regardless of where the services are performed.

EXPORT REGULATION

Export Quotas, Duties and Licenses

Since its accession to the WTO, China has continued to impose restraints on exports of raw materials, including quotas, duties and related fees, licensing requirements and other restraints, as the Chinese government has continued to guide the development of downstream industries. These export restraints are widespread. For example, China maintains export quotas and sometimes export duties on antimony, bauxite, coke, fluorspar, indium, magnesium carbonate, molybdenum, rare earths, silicon, talc, tin, tungsten, yellow phosphorus, and zinc, all of which are of key interest to U.S. producers of downstream products. These types of export restraints can significantly distort trade, and for that reason WTO rules normally outlaw them. In the case of China, the trade-distortive impact is exacerbated because, for many of the raw materials at issue, China is the world's leading producer.

China's export restraints affect U.S. and other foreign producers of a wide range of downstream products, such as steel, chemicals, hybrid and electric cars, energy efficient light bulbs, wind turbines, hard-disc drives, magnets, lasers, ceramics, semiconductor chips, refrigerants, medical imagery, aircraft, refined petroleum products, fiber optic cables, and catalytic converters, among numerous others. The export restraints can create serious disadvantages for these foreign producers by artificially increasing China's export prices for the raw material inputs, which also drives up world prices. At the same time, the export restraints can artificially lower China's domestic prices for the raw materials due to significant increases in domestic supply, enabling China's domestic producers of downstream products to produce lower-priced products from the raw materials and thereby creating significant advantages for China's domestic downstream producers when competing against foreign producers of these products both in the China market and in other countries' markets. The export restraints can also create incentives for foreign downstream producers to move their operations and technologies to China.

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

In June 2009, the United States and the EU initiated a WTO case challenging export quotas, export duties and other restraints maintained by China on the export of several key raw material inputs for which China is a leading producer. The materials at issue include bauxite, coke, fluorspar, magnesium, manganese, silicon carbide, silicon metal, yellow phosphorus, and zinc. A WTO panel was established to hear the case in December 2009, and 13 other WTO members joined the case as third parties. The panel issued its decision in July 2011, finding in favor of the United States and its co-complainants on all of the significant claims. China appealed the decision in August 2011. In a decision issued in January 2012, the WTO's Appellate Body upheld the panel's core findings that China's export quotas and export duties violate its WTO obligations.

In 2010, China's export restraints on rare earths, a collection of 17 different chemical elements used in a variety of green technology products, among other products, generated significant concern among China's trading partners. Even though it controls about 97 percent of the global rare earths market, China has been imposing increasingly restrictive export quotas and export duties on rare earth ores, oxides, and metals. In July 2010, China sharply reduced its export quotas, causing world prices for some of the rare earths to rise dramatically higher than China's domestic prices, and further hindering efforts in other countries to develop expertise in the increasingly important downstream manufacturing of green technology products. In 2011, China expanded the scope of the products covered by the rare earths quota to include more downstream products, making the quota even more restrictive than it had been in 2010. In addition, according to several reports, China's customs authorities began rejecting rare earth exports that were not priced above certain minimum export prices. It appears that this practice disrupted the export quota process and contributed to rapidly increasing prices outside China.

In March 2012, the United States initiated a WTO case challenging China's export quotas, export duties and other export restraints on rare earths, tungsten, and molybdenum. The European Union and Japan joined in as co-complainants. These materials are key inputs in a multitude of U.S made-products and manufacturing sectors, including hybrid car batteries, wind turbines, energy-efficient lighting, steel, advanced electronics, automobiles, petroleum, and chemicals. Because China is a top global producer of these inputs, its export restraints can artificially increase prices for the inputs outside of China while lowering prices in China. This price dynamic creates significant cost advantages for China's producers when competing against U.S. producers, both in China's market and in other markets around the world. It also contributes to creating substantial pressure on U.S. and other non-Chinese downstream producers to move their operations and technologies to China.

Export Subsidies

A general lack of transparency makes it difficult to identify and quantify possible export subsidies provided by the Chinese government. China's subsidy programs are often the result of internal administrative measures and are not publicized. U.S. industry has alleged that subsidization is a key reason that Chinese exports are undercutting prices in the United States and gaining market share. Of particular concern are China's practices in the steel, petrochemical, high technology, forestry and paper products, textiles, hardwood, plywood, machinery, aerospace, clean energy, and copper and other nonferrous metals industries.

China acceded to the WTO in December 2001, but did not submit the first of its annually required subsidies notifications to the WTO's Subsidies Committee until April 2006, nearly five years late. The notification was incomplete and failed to notify any subsidies provided by provincial and local governments or by state-owned banks. In addition, while China notified several subsidies that appeared to be prohibited under WTO rules, it did so without making any commitment to withdraw them. Following the submission of China's 2006 notification, the United States repeatedly raised concerns about the incomplete notification. During Subsidies Committee meetings in 2009 and 2010, China pledged to finalize a second subsidies notification. When China failed to submit the notification, the United States filed a counter notification under Article 25.10 of the Subsidies Agreement in October 2011. The United States identified 200 unreported subsidy programs in its counter notification, including many provided by provincial and local authorities. As a result of the counter notification, China submitted a new subsidies notification. However, the new notification only covered the period of 2005 to 2008 and was incomplete. The United States will continue to press China to submit a complete and current subsidies notification and to withdraw any subsidies that are prohibited by WTO rules.

To date, the United States has pursued three WTO dispute settlement cases against China involving claims of prohibited subsidies. In the first case, initiated in February 2007, the United States, with Mexico as a co-complainant, challenged a number of subsidies that appeared to be prohibited, including both export subsidies and import substitution subsidies. These subsidies benefited a wide range of industries in China, principally through income tax and VAT exemptions and reductions. Following negotiations, China agreed to eliminate all of the prohibited subsidies at issue by January 1, 2008, and, as agreed, China subsequently issued measures that formally eliminated these subsidies effective January 1, 2008. Next, in December 2008, the United States requested WTO dispute settlement consultations regarding China's "Famous Brand" initiatives, with Mexico and subsequently Guatemala joining as co-complainants. Designed primarily to promote the development of global Chinese brand names and increase sales of Chinese branded merchandise around the world, these initiatives appeared to incorporate prohibited export subsidies. Following discussions as China concurrently took steps to repeal or modify the numerous measures at issue, the parties to the dispute concluded a settlement agreement in December 2009 in which China confirmed that it had eliminated all of the export-contingent benefits in the challenged measures. Finally, in December 2010, following an investigation in response to a petition filed under section 301 of the Trade Act of 1974, as amended, the United States initiated a WTO case challenging what appear to be prohibited import substitution subsidies being provided by the Chinese government to support the production of wind turbine systems in China. Consultations with China at the WTO took place in February 2011. Following consultations, China issued a notice invalidating the measures that created the challenged subsidy program.

INTELLECTUAL PROPERTY RIGHTS PROTECTION

China was listed again on the Priority Watch List in the 2011 Special 301 report. Persistent inadequacies in the protection and enforcement of intellectual property rights (IPR) present barriers to U.S. exports and investment. Key concerns listed in the report included unacceptable levels of retail and wholesale counterfeiting, as well as persistently high levels of book and journal piracy, end-user piracy of business software and copyright piracy over the Internet. The report describes these enforcement-related concerns and summarizes the legal difficulties rights holders face when attempting to assert their IPR rights in China. The lack of deterrent penalties and other policies, such as barriers to the market for legitimate products, contribute to the poor record on reducing IPR crime in China. The report also recognizes industry concerns about the possibility that laws or policies in a variety of fields might be used to unfairly favor domestic intellectual property (IP) over foreign IP, including procurement preferences for products with domestically developed IP and the treatment of IPR in setting standards.

Chinese markets were also prominent in USTR's publication of the first and second Out-of-Cycle Review of Notorious Markets in 2011, which identified physical and Internet markets that had significant levels of piracy and counterfeiting. Following the publication of the first list, the Chinese website Baidu reached a precedent-setting licensing agreement with U.S. and international rights holders in the recording industry to curtail illegal music downloads.

With respect to copyright piracy and trademark counterfeiting, weaknesses in China's enforcement system, criminal, civil and administrative, contribute to China's poor IPR enforcement record. There are also a number of other obstacles to effective enforcement. High value and volume thresholds must be met in order to initiate criminal prosecution of IPR infringement. U.S. trademark and copyright industries also report that administrative fines are too low, and imposed too infrequently, to be a deterrent. Consequently, infringers view administrative seizures and fines merely as a cost of doing business. Civil damages for infringement are likewise inadequate.

An exacerbating factor contributing to China's poor IPR protection has been China's maintenance of restrictions on the right to import and distribute legitimate copyright-intensive products, such as theatrical films, DVDs, music, books, newspapers and journals. These restrictions impose burdens on legitimate, IPR-protected goods and delay their introduction into the market. These burdens and delays faced by legitimate products create advantages for infringing products and help to ensure that those infringing products continue to dominate markets within China. As discussed above in the sections on Trading Rights and Distribution Services, the United States challenged these restrictions in a WTO dispute filed in April 2007. A WTO panel ruled in favor of the United States on all significant issues in August 2009, and the WTO's Appellate Body rejected China's subsequent appeal on all counts in December 2009. China subsequently agreed to comply with these rulings by March 2011. China subsequently issued several revised measures, and repealed other measures, relating to its distribution of restrictions on imported books, newspapers, journals, DVDs, and music. However, China did not issue any measures addressing theatrical films. In February 2012, after China had sought an alternative solution to its compliance with the films-related aspects of the WTO ruling, the two sides entered into an MOU that provides for increased market access for imported films and better terms of compensation for foreign film producers. The MOU will be reviewed after five years. The United States will continue to closely monitor China's implementation of other aspects of the WTO ruling.

The United States and China continued to engage in bilateral efforts to address a variety of IPR issues. During the December 2010 JCCT meeting, China announced that it would conduct a special six month campaign to step up enforcement against a range of IPR infringements. It also agreed to expand and enhance its software legalization program, to take steps to eradicate the piracy of electronic journals, to work intensively toward adopting more effective rules for addressing Internet piracy, and to crack down on landlords who rent space to counterfeiters.

Just prior to the November 2011 JCCT meeting, China committed to establish a State Council-level leadership structure, headed by a Vice Premier, to lead and coordinate IPR enforcement across China in order to enhance China's ability to crack down on IPR infringement, thereby making permanent the leadership structure under the special campaign. China also made significant commitments on software legalization at the 2011 JCCT meeting. China specifically committed to complete its software legalization efforts at the provincial government level by the middle of 2012 and at the local and municipal levels by the end of 2013. In addition, China stated it would increase resources for audits and inspections of government agencies and would improve the efficiency and accuracy of the audits and inspections. To help achieve these goals, Chinese government agencies promised to further improve the management of their software assets, including by the use of technical means. China also pledged to publish the results of the audits to ensure that there is an accurate accounting of all types of software used by government agencies. Finally, China committed to further promote the use of licensed software by state-owned enterprises, conduct additional enterprise software management projects, and publish progress reports on the projects.

SERVICES BARRIERS

China imposes restrictions in a number of services sectors that prevent or discourage foreign suppliers from gaining or further expanding market access. For example, for certain sectors, China does not grant new licenses or maintains a licensing review process that is opaque or slow-moving. For certain sectors, China also imposes foreign equity limitations or other discriminatory measures on foreign suppliers. Excessive and sometimes discriminatory capital requirements continue to prove unduly burdensome for foreign enterprises in many sectors, including telecommunications and construction services.

Insurance Services

China continues to maintain certain market access barriers for the insurance sector. Although foreign insurance companies saw very modest growth following China's WTO accession, China's various formal and informal practices have combined to keep foreign market share very low. Foreign-invested insurance companies' market share in the life sector was only five percent and was a meager one percent for non-life (property and casualty). China's market for political risk insurance is closed to foreign participation. Foreign life insurance companies can only be established as joint ventures, with foreign equity capped at 50 percent. In February 2012, China made a high level commitment that it had decided to open its mandatory third party liability motor vehicle insurance market to foreign participation. The United States will continue to actively follow up with China to push for rapid implementation of the commitment.

U.S. companies already established in China continue to have difficulty setting up internal branches in order to expand their operations. The China Insurance Regulatory Commission (CIRC) is not always consistent in following its own deadlines for reviewing and approving internal branch applications from foreign life and non-life companies. U.S. companies also report difficulties in applying for and receiving multiple, concurrent approvals for new internal branches. In addition, the United States has urged China to ensure that *China Post*, which has been granted a license to supply insurance through its existing network of postal facilities, is not given advantages in terms of how it is regulated and to what extent it is required to provide distribution possibilities for insurance products of other companies.

Private Pensions – Enterprise Annuities

Foreign companies have found it difficult to obtain a license to participate in China's market for "enterprise annuities" services (private pensions similar to the U.S. 401(k) system), which will grow in importance as China develops alternatives to its state-funded social security system. China has not granted any new enterprise annuities licenses for more than four years. Even under previous licensing windows, China licensed very few foreign operators and only for limited elements of enterprise annuities services. If China were to re-open its licensing procedure, any license to manage enterprise annuities would need to be obtained from the Ministry of Human Resources and Social Security, which must include the China Banking Regulatory Commission (CBRC), the China Securities Regulatory Commission and CIRC in its decision-making process. The United States will continue to urge China to re-open its licensing process and ensure that any such licensing procedures do not discriminate against qualified suppliers.

Banking Services

The Regulations for the Administration of Foreign-Funded Banks, issued in November 2006, allow foreign banks to compete in all lines of banking business on the same terms as domestic banks, subject to certain conditions. These regulations require foreign banks to incorporate in China, and there are currently approximately 40 foreign banks with locally incorporated units operating in China. Moreover, the regulations mandate that only foreign-funded banks that have had a representative office in China for two years and that have total assets exceeding $10 billion can apply to incorporate in China. After incorporating, these banks only become eligible to offer full domestic currency services to Chinese individuals if they can demonstrate that they have operated in China for three years and have had two consecutive years of profits.

To date, numerous foreign banks have received approval to convert to subsidiaries. In 2008, the first application to issue local currency credit and debit cards was approved, although administrative barriers have hindered the approval of other applications and the actual issuance of RMB credit and debit cards. At the July 2009 U.S.-China Strategic & Economic Dialogue (S&ED) meeting, China reiterated its commitment to allow foreign-invested banks incorporated in China to underwrite bonds on the interbank market on the same terms as domestic banks. In September 2011, China announced that eight banks were approved to underwrite bonds. The group was the first batch of approvals to include foreign entities under the new assessment process. However, access to the bond underwriting market is still difficult to obtain and subject to strict limitations that are not always transparent.

Locally incorporated foreign banks operating in China face numerous administrative barriers to competing on equal terms with Chinese banks. However, in May 2011, China made a high level commitment to amend relevant regulations to allow qualified locally incorporated foreign banks to enjoy the same rights as domestic banks to distribute mutual funds and to provide custody services to mutual funds.

Foreign banks in China are subject to rules that set a 20 percent ownership limit on any single foreign investment in a Chinese bank, with total foreign ownership capped at 25 percent. These limits have been in place since 2001, restricting the capacity of foreign banks to grow in the Chinese market. At the beginning of 2011, the market share of foreign banks in China (in terms of total banking assets) was below 2 percent, down from its 2007 peak of 2.38 percent.

China's latest *Foreign Investment Catalogue*, which went into effect on January 30, 2012, states that banking and securities companies in China remain "restricted" and that joint-venture requirements remain in place. The catalogue added "household services" to the list of encouraged financial services, but failed to define the term.

Securities Services

China continues to apply a 33 percent foreign equity limit in this sector (as well as a 49 percent foreign equity limit in the fund management sector). In addition, China's 2007 rules relating to joint venture securities companies' expansion of their scope of business contain onerous seasoning requirements that will continue to limit competition in the securities sector to the advantage of Chinese firms.

Electronic Payment Services

In the Services Schedule accompanying its Protocol of Accession to the WTO, China committed to remove market access limitations and provide national treatment for foreign suppliers providing payment and money transmission services, including credit, charge and debit cards, with this commitment becoming effective with regard to the domestic currency (RMB) business of retail clients. China also committed to allow the provision and transfer of financial information, financial data processing, and advisory, intermediation and other financial services auxiliary to payments and money transmission services. These electronic payment and related commitments were to be implemented by no later than December 11, 2006.

In the years leading up to 2006, China's regulator, the People's Bank of China (PBOC), had placed severe restrictions on foreign suppliers of electronic payment services, like the major U.S. payment card companies, which typically provide electronic payment services in connection with the operation of electronic networks that process payment transactions involving credit, charge, debit, prepaid, and other payment cards. These services enable, facilitate, and manage the flow of information and the transfer of funds from cardholders' banks to merchants' banks. However, the PBOC prohibited foreign suppliers from handling the typical payment card transaction in China, in which a Chinese consumer makes a payment in China's domestic currency. Instead, through a variety of measures, China allows only one domestic entity, China UnionPay (CUP), to supply these services.

After the December 11, 2006 deadline passed without China taking any action, the United States pursued extensive bilateral engagement, which did not resolve U.S. concerns. The United States accordingly requested WTO consultations in September 2010 over China's various restrictions on foreign suppliers of electronic payment services. Consultations were held in October 2010, but failed to resolve the dispute. At the United States' request, a WTO panel was established to hear the case in March 2011, and six other WTO members joined the case as third parties. Hearings before the panel took place in October and December 2011, and the panel is scheduled to issue its decision in 2012.

In 2010, the PBOC issued a set of rules requiring licenses for online payment transmission services, and began a process of accepting and processing applications for Payment Settlement Organization licenses. The rules stipulate that foreign-invested service providers will be governed by a separate set of rules to be issued by PBOC and set a deadline of September 1, 2011 for existing providers to comply with the licensing requirement. As no rules for foreign-invested providers have been issued to date, service providers with foreign investment facing a possible shutdown of their businesses had to divest their foreign-owned stakes in order to obtain licenses by the September 1 deadline. In 2011, PBOC, which has yet to clarify how it will treat foreign-affiliated suppliers, issued 40 licenses in two tranches. To date, no foreign-affiliated suppliers have been licensed.

Retailing Services

The United States continues to have concerns that China treats domestic companies more favorably than foreign companies regarding zoning and urban development requirements and imposes additional informal minimum capital requirements on foreign suppliers. In addition, China maintains ownership restrictions on foreign retailers operating more than 30 stores in China and restrictions on selling certain commodities.

Sales Away From a Fixed Location

In 2010, MOFCOM delegated authority for approving direct sales products to provincial authorities, a move that allowed localization of products and faster approvals. This is a welcome step, but a number of concerns remain, as China maintains unduly burdensome "service center" establishment requirements, caps and other restrictions on sales force compensation, and discriminatory qualification requirements affecting foreign direct sellers.

Express Delivery Services

A number of aspects of China's express delivery regime continue to cause concern for the United States. The United States continues to monitor China's implementation of its 2009 Postal Law and related regulations and standards closely and is concerned that China's regime will not treat foreign and domestic companies equally. For example, it already is clear that the Postal Law excludes foreign suppliers from the important document segment of China's domestic express delivery market. The United States will also continue to press China to quickly approve pending express delivery business permit applications. In addition, The United States is also concerned that China may interpret the universal service fund requirement of the law to require private companies to pay into that fund and, in effect, be forced to subsidize China Post's own express delivery services.

In July 2010, the General Administration of Customs of China (GACC) eliminated the RMB 400 *de minimis* exemption for advertising materials and samples imported to China. As a result, importers of these goods that had previously been exempted now are required to obtain a customs registration code. However, the process of obtaining such a code is cumbersome and limiting. Further, GACC practices relating to the classification of packages for tax purposes and GACC processes for the collection of duty run counter to international best practices, creating confusion for companies. These requirements add administrative and cost burdens to express delivery service providers and slow the shipping process.

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

Construction, Engineering, Architectural and Contracting Services

In 2002, the Ministry of Construction (re-named the Ministry of Housing and Urban-Rural Development in 2008) and the Ministry of Foreign Trade and Economic Cooperation (now MOFCOM) issued the Rules on Administration of Foreign-Invested Construction Enterprises (known as Decree 113) and Rules on the Administration of Foreign-Invested Construction Engineering and Design Enterprises (known as Decree 114). Decrees 113 and 114 create concerns for foreign firms by imposing more restrictive conditions than existed prior to China's WTO accession, when they were permitted to work in China on a project-by-project basis pursuant to Ministry of Construction rules. These decrees, for the first time, require foreign-invested enterprises to incorporate in China. The decrees also impose high minimum registered capital requirements as well as technical personnel staff requirements that are difficult for many foreign-invested enterprises to satisfy. Decree 113 also limits the scope of projects (in terms of size and scale) open to participation by foreign-invested enterprises in comparison with the rights enjoyed by domestic companies.

Regarding Decree 113, the United States has urged China to broaden the scope of projects that can be undertaken by foreign-invested enterprises. The United States also is asking China to reduce its minimum capital requirements and/or consider bonding and other guarantee arrangements in lieu of minimum capital.

Implementing rules for Decree 114 became effective in 2007. These rules are important, as U.S. companies have a very strong interest in providing engineering and design services in China. The implementing rules were generally positive, in that they temporarily lifted foreign personnel residency requirements imposed by Decree 114, and recognized the foreign qualifications of technical experts for licensing purposes. U.S. and other foreign companies would like to see these improvements in the implementation of Decree 114 made permanent. In addition, under existing rules, set forth in Circular 202, issued by the Ministry of Construction in August 2007, foreign construction engineering design companies do not have the right to apply for a comprehensive, “Grade A” design license, as domestic companies can.

Under Circular 200, issued by the Ministry of Construction in 2004, foreign suppliers of project management services are subject to certain qualification requirements that U.S. industry finds overly burdensome. Specifically, China does not allow foreign companies to provide project management services without already holding construction or design enterprise approvals.

Logistics Services

The Ministry of Transport (MOT) has been slow to approve applications by foreign logistics firms and is unwilling to issue nationwide trucking licenses, limiting the ability of foreign firms to build economies of scale. In addition, local regulations in almost all major Chinese cities restrict daytime access by trucks. China's enforcement efforts are often targeted at foreign transport/logistics firms, while local firms are permitted to operate without being in full compliance.

In February 2009, China's State Council announced a support plan for the logistics industry as part of the Chinese government's industry revitalization plans for 10 key industries. Foreign logistics firms with investments in China have raised concerns about inadequate transparency for implementing measures, equitable treatment and efforts to strengthen industry standardization. Although modern logistics is listed in the encouraged investment category in the latest *Foreign Investment Catalogue*, China includes a prohibition on foreign participation in certain aspects of its domestic express delivery sector and includes certain freight rail transportation in the restricted category, both of which are inconsistent with further development of its logistics sector.

Aviation Services

Under the auspices of the U.S.-China Strategic Economic Dialogue (SED), the United States and China negotiated an amended bilateral air services agreement, which they signed in July 2007. Although the agreement brings significant economic benefits to the aviation industry, passengers, shippers and local communities, China's interpretation of cargo hub provisions in the agreement has resulted in U.S. cargo carriers experiencing difficulties in getting their operating schedules approved by the General Administration of Civil Aviation of China. U.S. and Chinese negotiators are currently involved in a series of technical discussions to resolve this issue.

Telecommunications

Foreign participation in China's telecommunications market, including both basic and value-added telecommunications services, remains very limited. China maintains foreign equity restrictions and a multitude of other barriers in the telecommunications sector, including investment approval procedures that are nontransparent and lengthy. Although China has the world's largest fixed landline, mobile and broadband markets measured by subscribership, the lack of opportunities for foreign service suppliers is striking. China's regulator for the sector, MIIT, while nominally separate from current telecommunications operators, maintains extensive influence and control over their operations and the overall structure of the market. China's foreign equity restrictions (a maximum of 49 percent foreign equity for basic telecommunications and 50 percent for value-added telecommunications) severely diminish commercial opportunities in the sector.

Regarding basic telecommunications, not only has there been no new market entry in that sector over the past decade, China forced a consolidation of this sector in 2008, reducing the number of national operators from six to three: China Mobile, China Telecom and China Unicom. China's policy is to permit only foreign joint ventures with existing, state-owned licensees. This policy has further reduced market access opportunities for U.S. suppliers and the potential for additional competition in the Chinese telecommunications market. Although not explicitly stated in rule or policy, China appears to apply an economic needs test to new entrants in this sector to avoid "unhealthy competition." China also shows reluctance to authorize new services or technologies which might compete with the revenue of incumbent operators, such as cable modem service, Voice over Internet Protocol (VoIP) or WiFi over a mobile handset. In September 2008, in response to a long-standing U.S. request, China slightly reduced basic telecommunications capitalization requirements to RMB 1 billion (approximately $146 million). This level is still excessively high and makes it commercially unattractive for most foreign operators to invest in the sector, particularly for leased line, resale and corporate data services, which require no new building of facilities.

In January 2009, China's MIIT issued 3G licenses based on the three different existing technologies, with a TD-SCDMA license for China Mobile, a W-CDMA license for China Unicom and a CDMA2000 EV-DO license for China Telecom. However, despite the issuance of licenses for all three standards, the Chinese government continued to heavily promote, support and favor the TD-SCDMA standard. For example, China's economic stimulus-related support plan for Information Technology and Electronics, approved by the State Council and published in April 2009, specifically identifies government support for TD-SCDMA as a priority.

In March 2010, U.S. concerns over China's preferential treatment of TD-SCDMA were exacerbated by the inclusion of products based on this technology in the Opinions on Advancing Third-Generation Communications Network Construction, issued by MIIT, NDRC, the Ministry of Science and Technology (MOST), MOF, the Ministry of Land and Resources, the Ministry of Housing and Urban-Rural Development and the State Administration of Taxation. This measure entitles these products to tax preferences and to indigenous innovation product status to receive government procurement preferences.

Throughout 2010, the United States continued to press China to reaffirm the principle of technology neutrality for current and future services and technologies. In an important development at the December 2010 JCCT meeting, China agreed to technology neutrality for 3G networks and future networks based on new technologies, such as 4G, allowing operators to choose freely among those technologies and without the Chinese government providing any preferential treatment based on the standard or technology used by an operator. The United States will continue to monitor this situation closely.

Regarding value-added telecommunications, although there are over 20,000 licensed domestic telecommunications value-added suppliers in China, MIIT has issued, as of December 2009, only 19 value-added licenses to foreign companies, including licenses to five U.S.-affiliated companies. One difficulty foreign companies face in obtaining a license is the lack of clarity regarding which services a foreign-affiliated firm is permitted to offer. In addition, MIIT seems to classify certain value-added corporate data services (IP-VPN) as value-added when offered domestically, but as basic (and thus capped at lower foreign equity levels and subject to higher capitalization requirements) when offered internationally. MIIT has provided no justification for this practice. China agreed at the 2011 JCCT meeting to publish in draft and allow public comment on the revision to its value-added telecommunications services catalogue.

Regarding satellite services, such as video transport services for Chinese broadcasters or cable companies, foreign satellite operators remain severely hampered by Chinese policies that prohibit foreign satellite operators from obtaining licenses to operate these services in China. China's rules only allow foreign operators to use a licensed Chinese satellite operator as an agent to provide these services. The policies make it difficult for foreign operators to develop their own customer base in China, as Chinese satellite operators essentially have a right of first refusal with regard to potential customers.

China made a draft of its Telecommunications Law available for review and comment on an unofficial basis in the fall of 2009. This draft contains troubling elements, including provisions that would codify China's foreign equity limitations for the sector, complicating ongoing efforts in the WTO and other fora to encourage China to liberalize this sector, and other issues of concern to industry. China has been working on the draft law for over 10 years. MIIT still lacks a specific authorizing statute for its powers.

Online Services

China operates the world's most comprehensive Internet filtering regime, which affects a broad range of commercial activity conducted via the Internet. Chinese authorities routinely filter Internet traffic entering China, focusing primarily on the content they deem objectionable on political, social, or religious grounds. In 2002, China lifted filters on most major western news sites. Nevertheless, since then, foreign news and other content websites have periodically been blocked, some apparently permanently. While the 2008 Olympics resulted in some previously blocked sites being unblocked, once the Olympics were over, a concerted effort to reassert control appears to have been instituted, through what the Open Net Initiative termed "Control 2.0" and an effort to "set the agenda for coverage, rather than suppress it."

Changes to Internet filtering can occur without warning or public explanation. While ostensibly to address issues of the public interest enumerated in law, Chinese government authorities may issue lists of banned search terms or banned sites weekly, with little justification or means of appeal, putting Internet-enabled services in a precarious position, caught between complying with the law and implementing apparently arbitrary restrictions.

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

This complex regulatory regime governing online services has resulted in several high-profile cases which have affected foreign firms' delivery of online services, such as search engine and web domain registration. There continues to be uncertainty in a number of other online service areas such as mapping and other online content distribution methods.

In 2011, in an effort to streamline the bureaucratic regulatory process governing the Internet, China established the State Internet Information Office. Its officers are drawn from the agencies mentioned above that have authority over Internet content and access. In light of this development, and SIIO publication of a White Paper on Internet regulation, USTR took the opportunity to pose a series of questions to China, through its WTO representative, on how such policies and practices are implemented. China provided an initial response in November 2011. The United States will continue its outreach to China to discuss these issues in more detail and to ensure more transparency and predictability in such regulations.

Audiovisual and Related Services

Importation and distribution of books, newspapers, journals, sound recordings, videos, films, and television programs remains highly restricted. Inconsistent and subjective application of censorship regulations further impedes market growth for foreign providers. China's large black market for foreign

DVDs and other home entertainment video products continues to grow because these market access restrictions create a demand for pirated goods in the absence of legitimately licensed home or theatrical entertainment.

At both the central and regional levels, interconnected agencies under the State Administration for Radio, Film and Television (SARFT) dictate the terms under which films can be produced and distributed. SARFT permits only one film importer and two film distributors (which are both components of the same monopoly managed by SARFT) to operate in China. For theatrical releases, the monopoly dictates the number of films that will be imported, when the films will be released in China's market, and the compensation paid to foreign film producers. (The recently signed MOU relating to the films aspects of the WTO dispute on audiovisual products liberalizes the treatment accorded to imported films.) In addition, the Chinese government sets strict guidelines with respect to the public screening of foreign films. Under Article 44 of the Regulations for the Administration of Films, issued by the State Council in 2001, the total annual screening time for foreign films must not exceed one-third of the total screening time of all films (domestic and foreign).

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

In addition to censorship reviews by Chinese authorities, which can delay the arrival of imported foreign films on Chinese movie screens, the Chinese government has historically decreed "black-out periods" during which no new revenue-sharing blockbuster foreign films may be released in order to prevent competition with Chinese films being released during the same period. Banning the release of new foreign titles or removing popular foreign films during peak seasons not only hurts theatrical revenues but also contributes to increased piracy, as pirates meet immediate consumer demand for foreign titles by offering illegal downloads through the Internet, on pirate optical discs and pirate video-on-demand channels.

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

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

For sound recordings, China limits market access opportunities for imported sound recordings in a manner similar to the limitations imposed on films for theatrical release or home viewing. The Ministry of Culture's Opinion on the Development and Regulation of Network Music bans foreign ownership of firms supplying digital music services, requiring that entities engaging in the online distribution of sound recordings in China be wholly Chinese-owned entities. In late 2007, this regulation was amplified in new rules established jointly by MIIT and SARFT, explicitly restricting audio and video distribution services (including over electronic networks such as the Internet) to state-owned entities.

As discussed above in the section on Trading Rights, the United States initiated a WTO dispute settlement case against China in April 2007 challenging the importation and distribution restrictions applicable to certain copyright-intensive products, including books, newspapers, journals, theatrical films, videos and sound recordings, and associated services. The WTO panel that heard the case issued its decision in August 2009, ruling in favor of the United States on all significant issues. China appealed the panel's decision in September 2009. The WTO's Appellate Body rejected China's appeal on all counts in December 2009. China agreed to comply with these rulings by March 2011. China subsequently issued several revised measures, and repealed other measures, relating to its distribution of restrictions on imported books, newspapers, journals, DVDs, and music. However, China did not issue any measures addressing theatrical films. In February 2012, after China had sought an alternative solution to its compliance with the films-related aspects of the WTO ruling, the two sides entered into an MOU that provides for increased market access for imported films and better terms of compensation for foreign film producers. The MOU will be reviewed after five years.

Investment in China's audiovisual sector is highly restricted. For television production, joint ventures or cooperative firms must have a minimum capital requirement of RMB 2 million ($275,000), and foreign capital is capped at 49 percent. In February 2005, SARFT issued a circular placing further restrictions on foreign partners and requiring two-thirds of the programs of a joint venture or cooperative firm to have Chinese themes.

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

Travel and Tourism Services

In December 2007, the United States and China signed an MOU to facilitate Chinese group leisure travel to the United States and the marketing in China of U.S. destinations or businesses. The first group of Chinese leisure travelers visited the United States under the MOU in June 2008. In November 2009, the United States and China agreed to implement the second phase of the MOU to include an additional 12 jurisdictions, bringing the total to 21. As part of the December 2010 JCCT meeting, the United States and China agreed to implement the third phase of the MOU, opening the market to three additional provinces in China. During the 2011 JCCT meeting, China and the United States agreed to expand the MOU, opening the market for the sale of packaged travel to three additional provinces, and bringing the total number of provinces covered by the MOU to 27. The United States will continue to press China to broaden the scope of access to include the remaining provinces.

Foreign travel and tourism firms in China are still restricted from competing under the same conditions as Chinese firms for any aspect of the travel and tourism market not specific to group leisure travel. For example, wholly foreign-owned enterprises and Chinese-foreign joint ventures continue to be restricted in selling outbound travel packages and airline tickets. In addition, China requires all travel agents and airlines to connect into China's nationally owned and operated computer reservation system when booking airline tickets for domestic flights and outbound international flights. China also continues to apply an annual sales requirement on foreign travel agencies, although there are no such requirements for domestic agencies.

Education and Training Services

The Ministry of Education (MOE) restricts participation by foreign educators and trainers. China permits only nonprofit educational activities that do not compete with the MOE-supervised nine years of compulsory education, thereby inhibiting much-needed foreign investment in the education sector. China also bans foreign companies and organizations from offering educational services via satellite networks. Foreign universities may set up nonprofit operations. However, they must have a Chinese university host and partner to ensure that programs bar subversive content and that imported informational material is adapted to suit local conditions.

Legal Services

Foreign law firms face numerous restrictions on the scope and structure of their activities in China, as well as other barriers affecting market access. Current Chinese laws and regulations prohibit foreign firms from practicing Chinese law, which means that they are unable to hire Chinese-qualified lawyers to practice Chinese law as employees of their firms, or otherwise provide advice on Chinese law to clients. China also maintains restrictions on cooperation with Chinese law firms (including investment and profit-sharing restrictions) that further limit market opportunities. Foreign law firms are also barred from directly representing clients in, or even from attending along with local Chinese counsel, regulatory proceedings administered by Chinese government agencies. In addition, foreign law firms are concerned that China may make it even more difficult to provide other legal services (such as advisory and consultation services) that are currently widely regarded as permissible.

China also maintains regulatory requirements for foreign representative legal offices that are not applied to Chinese law firms, as set forth in the December 2001 Regulations on the Administration of Foreign Firm Representative Offices and July 2002 implementing rules. The measures appear to create an economic needs test for foreign law firms seeking to establish representative offices in China. In addition, a foreign law firm may not establish an additional representative office until its most recently established office has been in practice for three consecutive years. China also requires that representatives of foreign law firms must have practiced for no less than two years outside of China as a member of a bar or law society of a WTO Member. New foreign representatives must undergo a lengthy approval process that can take more than one year, during which they must leave the country periodically to renew their visas.

Substantial differences in official tax policies applied to the representative offices of foreign law firms in comparison with taxes applied to Chinese law firms, coupled with inconsistent enforcement policies, represent an additional significant hurdle to supplying legal services in China.

INVESTMENT BARRIERS

The volume of foreign direct investment (FDI) in China rose by 8.1 percent in 2011 amid a 17 percent increase in FDI flows globally and in spite of China's maintenance of significant investment barriers. According to the United Nations Conference on Trade and Development, China received $124 billion in FDI in 2011. China was the world's second largest destination for FDI, after the United States. In 2011, investors continued to complain of a lack of transparency, inconsistently enforced laws and regulations, weak IPR protection, corruption and an unreliable legal system that fails to enforce contracts and judgments.

China's leadership has repeatedly affirmed its commitment to further open China to foreign investment, including a strong statement at the S&ED meeting in May 2010 in which China reiterated its commitment to open trade and investment. However, there is growing concern that other steps China has taken continue to discriminate against or otherwise disadvantage foreign investors. These restrictions are often accompanied by other problematic industrial policies, such as the increased use of subsidies and the development of China-specific standards. Many of these developments appear to represent protectionist tools created by industrial planners to shield inefficient or monopolistic enterprises, particularly those in which the Chinese government has an ownership interest, from competition.

The United States has continued to raise its concerns about China's investment restrictions on multiple occasions in bilateral fora, such as the JCCT, the S&ED, and the Investment Forum, as well as in WTO meetings. The United States and China also continue to pursue bilateral investment treaty negotiations.

Investment Requirements

Upon its accession to the WTO, China assumed the obligations of the Agreement on Trade Related Investment Measures (TRIMS Agreement), which prohibits trade-related investment measures that violate GATT Article III obligations to treat imports no less favorably than domestic products and GATT Article XI obligations not to impose quantitative restrictions on imports. In its Protocol of Accession to the WTO, China also specifically agreed to eliminate export performance, local content and foreign exchange balancing requirements from its laws, regulations and other measures, and not to enforce the terms of any contracts imposing these requirements. In addition, China agreed that it would no longer condition importation or investment approvals on these requirements or on other requirements such as technology transfer and offsets.

Although China has revised many of its laws and regulations to conform to its WTO investment commitments, some of these measures continue to raise WTO concerns, including those that "encourage" technology transfers to China, without formally requiring them. U.S. companies remain concerned that this "encouragement" in practice can amount to a "requirement," particularly in light of the high degree of discretion provided to Chinese government officials when reviewing investment applications. Similarly, some laws and regulations "encourage" exportation or the use of local content. Moreover, according to U.S. companies, some Chinese government officials in 2010, even in the absence of encouraging language in a law or regulation, still considered factors such as export performance and local content when deciding whether to approve an investment or to recommend approval of a loan from a Chinese policy bank, which is often essential to the success of an investment project.

Investment Guidelines

Catalogue Guiding Foreign Investment:

China's foreign investment objectives are defined in part through its *Foreign Investment Catalogue*, which is revised every few years. China's latest revised *Foreign Investment Catalogue* went into effect on January 30, 2012. As was the case with previous catalogues, the latest version supports China's economic and commercial goals and policies by placing China's strategic emerging industries, such as information technology, biotechnology, and new energy vehicles, in the encouraged category for foreign investors. The *Foreign Investment Catalogue* also continues to restrict investment in key sectors, such as telecommunications, finance, legal services, and logistics. The *Foreign Investment Catalogue* employs vague language and lacks transparency. For example, sections of the *Foreign Investment Catalogue* appear to be inconsistent with foreign investment regulations and policies issued by ministries and/or local governments.

Using both the JCCT process and the S&ED process, the United States has pressed China to increase the transparency of its revisions to the *Foreign Investment Catalogue*. At the May 2010 S&ED meeting, China committed to publish proposed future revisions of the *Foreign Investment Catalogue* in advance for public comment. China fulfilled its commitment by issuing a draft of the newly revised *Foreign Investment Catalogue* in April 2011 for a 30 day public comment period. The United States submitted comments on the draft, noting that the proposed revisions failed to make substantial progress in opening China's markets to greater foreign investment and, in some cases, imposing new limitations in sectors that had previously been more open.

In April 2010, the State Council issued the *Opinions on Improving Foreign Capital Utilization*. This measure instructs relevant Chinese ministries to amend the *Foreign Investment Catalogue* to encourage foreign investment in high-end manufacturing, high technology, modern services, alternative energies and energy saving and environmentally friendly industries and to restrict foreign investment in industries that are energy intensive, resource intensive, highly polluting, use "obsolete" technology, or have overcapacity. In May 2010, MOFCOM issued a Notice on Relevant Issues about Decentralizing Foreign Investment Approval Authority, which raised the threshold for central MOFCOM government approval of investments in the "encouraged" category from $100 million to $300 million. In October 2010, the State Council issued a Decision on Accelerating the Cultivation and Development of Strategic Emerging Industries, which called for amendments to the catalogue to encourage foreign investment in a set of "strategic emerging" industries similar to those listed in April 2010, including energy conservation and environmental protection, next-generation information technology, biotechnology, high-end equipment manufacturing, alternative energy, advanced materials, and alternative energy automobiles.

Administrative Measures to Restrict Investment:

Over the past few years, Chinese regulators have announced a number of measures limiting the ability of foreign firms to invest in China's market. For example, in November 2006, the NDRC released a five year plan on foreign investment, which promised greater scrutiny over foreign capital utilization. The plan called for the realization of a "fundamental shift" from "quantity" to "quality" in foreign investment during the period from 2006 to 2010. The state's focus would change from shoring up domestic capital and foreign exchange shortfalls to introducing advanced technology, management expertise and talent. In addition, the plan specifically encouraged foreign investments contributing to natural resource conservation and environmental protection, and discouraged foreign investment in industries with a high rate of pollution and water resource depletion. The plan also demanded tighter tax supervision of foreign enterprises and sought to restrict foreign firms' acquisition of "dragon head" enterprises to prevent the "emergence or expansion of foreign capital monopolies," to protect national economic security and to prevent the "abuse of intellectual property."

In December 2006, the State-Owned Assets Supervision and Administration Commission of the State Council (SASAC) issued the Guiding Opinion Concerning the Advancement of Adjustments of State Capital and the Restructuring of State-Owned Enterprises. Statements accompanying the release of this measure identified an expansive list of sectors deemed critical to the national economy. This measure explained that "pillar" and "backbone" industries, such as automotive, chemical, construction, electronic information, equipment manufacturing, iron and steel, nonferrous metal, science and technology, and survey and design, must maintain relatively strong state control. Reportedly, SASAC officials also identified a separate set of seven strategic sectors in which state capital must play a leading role, including aviation, coal, defense, electric power and grid, oil and petrochemicals, shipping and telecommunications. SASAC committed to restrict foreign participation in these sectors by preventing further foreign investment in state-owned enterprises operating in these sectors. In October 2008, the National People's Congress (NPC) issued the *Enterprise State-Owned Assets Law*, which later took effect in May 2009. Among other provisions, Article 57 of the law states that where state-owned assets are transferred to a foreign investor, the transfer must not harm the national security or public interests of China. It remains unclear how SASAC implements these policies in practice or, in the context of the Enterprise State-Owned Assets Law, how it interprets the "national security" and "public interests" of China. In August 2010, the State Council issued the Opinions on Promoting Enterprise Merger and Restructuring, which promotes consolidation of enterprises in six industries, most of which are dominated by state-owned enterprises, including the automobile, steel, cement, aluminum, rare earths, and machinery manufacturing industries. China also continued to employ various sector-specific measures designed to impose new requirements on foreign investors. For example, in January 2010, China imposed a new restriction on foreign investment in the offshore wind market. At that time, China's National Energy Administration and the State Oceanic Administration jointly issued the Interim Measures for Offshore Wind Power Development and Construction, which stipulate that offshore wind farm investment projects in China must be undertaken by either a Chinese enterprise or a Chinese majority-controlled enterprise with foreign ownership of no greater than 49 percent. Measures affecting foreign investment in the automotive and steel sectors are discussed above in the section on Import Substitution Policies.

In June 2009, revisions to the Provisions on the Mergers and Acquisitions of Domestic Enterprises by Foreign Investors, which had been issued in 2006, were promulgated by MOFCOM and five other government agencies. Under the 2006 measure, foreign mergers and acquisitions of domestic enterprises that would result in "actual control" of a domestic enterprise in a "key industry" with "potential impact on national economic security" or that would give control of a famous Chinese trademark or traditional Chinese brand to a foreign investor require approval at the central government level by MOFCOM. The 2006 measure also placed MOFCOM in the role of determining if the domestic acquisition target has been appropriately valued. The 2009 revisions neither removed nor provided greater clarity with respect to terms such as "national economic security" and "critical industries," and also retained the provision permitting denial of a foreign investor's acquisition if a famous trademark or a traditional Chinese brand is being acquired. Changes in these areas would have provided useful clarity for foreign investors, and the continued lack of precision raises concerns that administrative ambiguity will continue to provide a basis for uneven administration and for differential treatment of Chinese and foreign investors.

In February 2011, China released the *State Council Notice Regarding the Establishment of a Security Review Mechanism for Foreign Investors Acquiring Domestic Enterprises*. The notice established an interagency Joint Conference, led by NDRC and MOFCOM, with the authority to block foreign mergers and acquisitions of domestic firms that it believes may have an impact on national security. The Joint Conference is instructed to consider the impact of a proposed transaction on national defense, economic stability, social stability, and the research and development capabilities of key national security technologies. MOFCOM issued implementing rules for the system in August 2011. The United States has voiced its strong concerns about the broad scope and opaque structure of the review mechanism. The concerns center on China's application of the broad scope of review allowed for under the system, the determination of "actual control" under the system, the criteria for determining risks to national security, the relationship between the review process and other existing reviews of foreign investment, and the ability of non-government entities to call for reviews of transactions in which they are not directly involved.

Other Investment Issues

Private Equity and Venture Capital:

Foreign private equity and venture capital investments are subject to a variety of regulatory limitations in China. Restrictions on foreign exchange conversion, for instance, are still a major hurdle for private equity funds investing in China. Some progress has been achieved through China's new Qualified Foreign Limited Partnerships (QFLP) pilot program, based in Shanghai, which has made establishing an RMB fund somewhat easier for qualified foreign firms by eliminating the requirement for State Administration of Foreign Exchange (SAFE) approval of every single foreign exchange transaction. Under the QFLP program, qualified foreign private equity firms can launch RMB-denominated funds using overseas capital up to a quota permitted by the license granted to that firm. However, QFLPs must still work with the Ministry of Commerce for approval of investment plans, acquisitions, and capital contribution transactions. In addition, the quota limits will likely restrict participation by some of the largest foreign private equity firms, and China's continued concerns about "hot money" inflows will likely limit the pace of continued reform and opening in this sector. In general, China still lacks a uniform set of national rules for foreign private equity investment. In addition, further clarity is required on how SAFE will allocate quotas to foreign private equity firms.

Holding Companies:

Foreign-invested holding companies in China are at least 25 percent, and usually 100 percent, owned by foreign investors to manage their investments and provide services to their subsidiaries in China. Holding companies are barred from engaging in manufacturing or other types of production but may engage in trading (import and export), distribution and research and development. Because holding companies are subject to a $30 million minimum registered capital investment requirement, and must already have at least one subsidiary in China, only large multinationals with ambitious expansion plans in China tend to be interested in establishing holding companies. Some restrictions on services provided by holding companies and on holding companies' financial operations remain in place, in addition to constraints on the ability to balance foreign exchange internally. Profit and loss consolidation within holding companies also remains prohibited. In addition, rules promulgated in August 2011 require that all dividends, interest, liquidation proceeds and other income received by holding companies be treated as an increase to registered capital before it can be reinvested in projects in China. This requirement appears inconsistent with government policy to encourage the establishment of holding companies, as it is likely to force foreign-invested holding companies to make capital-inefficient reinvestments of income, delaying or reducing their ability to declare and repatriate dividends to their shareholders.

Securities Investments:

China continues to open its domestic equity markets to investments from foreign firms. Through the Qualified Foreign Institutional Investor (QFII) program, foreign securities firms may apply for QFII status, which permits limited access to the RMB-denominated A-share market. As of January 2012, China had granted QFII status to 142 foreign entities, with quotas allotted totaling over $22.24 billion.

Access to Capital Markets:

Foreign-invested firms in China are limited in their ability to raise capital domestically. China's controls on capital flows and differences between its accounting standards and those of other countries remain the main obstacles in developing the so-called "panda bond market," where foreign entities issue RMB-denominated debt in China. Meanwhile, the market for RMB-denominated debt issued in Hong Kong ("dim sum" bonds) was opened to foreign companies in 2010, and has seen tremendous growth over the past year. Although China agreed at the SED meeting in December 2007 to allow, in accordance with relevant prudential regulations, qualified foreign-invested companies to issue RMB-denominated stocks, implementation has been delayed. In late 2011, China appears to have put on hold plans to allow foreign companies to list on an "international board" of the Shanghai Stock Exchange. Allowing foreign firms greater access and freedom to trade in these assets would add substantial expertise, liquidity and competition to the Chinese market.

Foreign exchange transactions on China's capital account are tightly regulated and often require case-by-case review by SAFE. To date, foreign firms remain generally satisfied with their ability to repatriate profits. With respect to capital inflows, several foreign firms continue to note difficulties in obtaining government approval to bring in foreign capital to expand their businesses.

GOVERNMENT PROCUREMENT

According to the Ministry of Finance (MOF), China's government procurement for 2010 was approximately $130 billion, using MOF's definition of government procurement spending, a 14 percent increase over 2009. Over the past 5 years, China's government procurement has seen a year on year average increase of over 23 percent.

Accession to the WTO Agreement on Government Procurement

China is not a signatory to the WTO Agreement on Government Procurement (GPA). In accordance with China's Protocol of Accession to the WTO, it became an observer to the WTO Committee on Government Procurement in 2002. China also committed, in its Protocol of Accession, to initiate negotiations for accession to the GPA "as soon as possible." China initiated GPA accession by submitting its application for accession and initial offer of coverage in December 2007.

The United States and other GPA Parties noted that significant improvements would be needed in China's initial offer to bring China's coverage to the level of other Parties' coverage. In accordance with its commitment at the May 2010 S&ED meeting, China submitted its first revised offer in its GPA accession efforts in July 2010. While the revised offer reflected some improvements over China's initial offer, the United States and other GPA Parties noted a number of improvements that would be necessary to bring China's coverage to a level comparable to that of the other GPA Parties. The Parties particularly emphasized the need for China to include sub-central entities and certain state-owned enterprises that engage in government activities in its next offer.

At the December 2010 JCCT meeting, China committed to accelerate its accession to the GPA, and to submit a robust revised offer of coverage in 2011. In addition, during Chinese President Hu's state visit in January 2011, China agreed that its revised offer would include sub-central entities. On November 30, 2011, China submitted its second revised offer, which included several sub-central entities. Although the revised offer was an improvement over the last, the United States has noted that China still has some distance to go before the procurement that it is offering is comparable to the extensive procurement that the United States and other Parties cover under the GPA. The improvements needed include coverage of state-owned enterprises engaged in procurements for government purposes, additional sub-central entities and services, reduction of its thresholds that determine the size of covered procurement, and the removal of broad exclusions.

Government Procurement Regime

In January 2003, China implemented a Government Procurement Law (GPL), which generally reflects GPA obligations and incorporates provisions from the United Nations Model Law on Procurement of Goods. However, the GPL also directs central and sub-central government entities to give priority to "local" goods and services, with limited exceptions.

In 2010, China circulated two draft measures intended to implement its Government Procurement Law. The first draft measure, the Regulations to Implement the Government Procurement Law, was issued by MOF in January. The United States submitted comments in February, in which, among other things, it expressed concern that the draft measure did not provide a GPA-consistent regime. The United States also expressed concern that the draft measure did not provide more specificity about the conduct of government procurement. The second draft measure, the Administrative Measures for Government Procurement of Domestic Products, was issued for public comment in May by MOF, MOFCOM, NDRC, and the General Administration of Customs. In accordance with China's October 2009 JCCT commitment, this draft measure sets out the requirements for a product to qualify as a "domestic product," ensuring that products produced in China by foreign-invested enterprises receive the same treatment as products produced by domestic firms. The United States submitted comments on this draft measure in June, in which it expressed concerns about the lack of details regarding how the draft measure would be implemented. As of December 2011, neither of the draft regulations had been issued in final form.

The GPL generally does not cover tendering and bidding for public works and government infrastructure projects. Those projects are subject to a different regulatory regime, established by China's Tendering and Bidding Law (TBL), which entered into force in January 2000. While official figures for procurement covered under the TBL are not available, analysts estimate that this procurement may exceed $200 billion. In September 2009, the State Council finally circulated NDRC's draft implementing regulations for the TBL for public comment. In October 2009, the United States submitted written comments on these draft regulations in which it emphasized, among other things, the need for greater clarification of the relationship between the TBL and the GPL, and the need to define "domestic products." At the end of December 2011, the State Council issued the final implementing rules for the TBL. The new rules entered into effect on February 1, 2012.

Indigenous Innovation Policies

In 2006, MOF, MOST, and NDRC issued the *Measures for the Administration of the Accreditation of National Independent Innovation Products.* These measures, known as document 539, instructed sub-central governments to implement on a trial basis a system for procuring products that gave preferences to indigenous innovation products, and disadvantaging products not considered to meet this standard. In December 2007, MOF issued two measures that would further restrict the Chinese government's purchase of foreign goods and services. The first measure, the *Administrative Measures on the Government Procurement of Imported Products*, severely restricts government procurement of imported foreign products and technologies. The second measure, the *Administrative Measures for Government Procurement on Initial Procurement and Ordering of Indigenous Innovation Products*, is directed at restricting government procurement of "indigenous innovation" products to Chinese products developed by domestic enterprises or research institutions. Provincial and municipal governments followed up by creating catalogues of qualifying "indigenous innovation" products. While China may maintain these measures until it completes its GPA accession, the United States has raised strong concerns with regard to them, as they run counter to the liberalization path expected of a WTO Member seeking to accede to the GPA.

In 2009, China reinforced its existing "Buy China" measures at the central, provincial and local government levels. For example, in May 2009, MIIT issued a circular entitled *Government Procurement Administration Measures*, which applies to MIIT and its direct subsidiaries. The measure requires priority to be given in government procurement to domestic products and services, as well as to indigenous innovation products, except where the products or services cannot be produced or provided in China or are for use outside of China. In May 2009, nine central government ministries and agencies jointly issued the *Opinions on Further Strengthening Supervision of Tendering and Bidding Activities in Construction Projects*, which included a "Buy China" directive for all projects under China's stimulus package. The directive specifically requires that priority be given to "domestic products" for all government-invested projects, unless the products are not available in China, cannot be purchased on reasonable commercial terms in China, or are for use abroad.

In November 2009, MOST, NDRC, and MOF issued the *Circular on Launching the 2009 National Indigenous Innovation Product Accreditation Work*, requiring companies to file applications by December 2009 for their products to be considered for accreditation as "indigenous innovation products." This measure provides for preferential treatment in government procurement to any products that are granted this accreditation, which is based on criteria such as the ownership or development of a product's intellectual property in China. Subsequently, the United States and U.S. industry, along with the governments and industries of many of China's other trading partners, expressed serious concerns to China about this measure, as it appears to establish a system designed to provide preferential treatment in government procurement to products developed by Chinese enterprises.

In April 2010, MOST, NDRC, and MOF issued a draft measure for public comment, the *Circular on Launching 2010 National Innovation Product Accreditation Work*. The draft measure would amend certain of the product accreditation criteria set forth in the November 2009 measure, but would leave other problematic criteria intact, along with the accreditation principles, application form and link to government procurement. In addition, the draft measure originally was to become effective the day after comments were due. The United States submitted comments in May 2010, in which it asked China to suspend the implementation of the indigenous innovation accreditation system and to engage in consultations with the United States to address U.S. concerns with the system. This draft measure was not finalized. At the May 2010 S&ED, China agreed that its innovation policies would be consistent with these principles: nondiscrimination; support for market competition and open international trade and investment; strong enforcement of intellectual property rights; and, consistent with WTO rules, leaving the terms and conditions of technology transfer, production processes and other proprietary information to agreement between individual enterprises. In addition, the United States and China began intensive multi-agency discussions of their respective innovation policies.

At the December 2010 JCCT meeting, China took important steps to address U.S. concerns about its indigenous innovation policies. China agreed not to maintain any measures that provide government procurement preferences for goods or services based on the location where the intellectual property is owned or was developed. China also agreed to take into account U.S. views on its *Draft Regulations Implementing the Government Procurement Law*, which provide for government procurement preferences for indigenous innovation products. During Chinese President Hu Jintao's January 2011 state visit, China further committed to delink its innovation policies from the provision of government procurement preferences. To implement President Hu's commitment, at the May 2011 S&ED, China agreed to eliminate all of its government procurement product accreditation catalogues and revise the *Draft Regulations Implementing the Government Procurement Law* to eliminate the provision requiring government procurement preferences for indigenous innovation products. During the 2011 JCCT meeting, China announced that the State Council had issued a measure requiring provincial, municipal, and autonomous regional governments to eliminate by December 1, 2011 any catalogues or other measures linking innovation policies to government procurement preferences.

ELECTRONIC COMMERCE

China has experienced dramatic growth in Internet usage since 1999. According to the 26th Internet Survey Report recently published by the China Internet Network Information Center (CNNIC), the number of Internet users in China reached approximately 420 million as of June 2010, representing an Internet penetration rate of 31.8 percent. The majority of these people are accessing the Internet through non-computer means, *i.e.*, cell phones, etc. With regard to broadband, there are reportedly now more than 125 million subscribers in China. Meanwhile, 3G mobile subscribers surpassed 50 million as of January 2011, representing a three-fold increase in one year.

China is experiencing the rapid development of online businesses such as search engines, network education, online advertisements, audio-video service, paid electronic mail, short message, online job searches, Internet consulting, electronic trading, and online gaming. However, CNNIC reported that only 28 percent of surveyed Chinese Internet users frequently use the Internet for online shopping services.

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

A number of technical problems also inhibit the growth of electronic commerce in China. Rates charged by government-approved Internet service providers make Internet access expensive for most Chinese citizens. Slow connection speeds are another problem, although this is changing quickly as broadband connections become more readily available. At the same time, Internet penetration is still relatively low in China, and there is a large urban/rural divide in penetration rates (the urban penetration rate is six times higher than the rural penetration rate), so there is still significant room for growth.

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

ANTICOMPETITIVE PRACTICES

Competition Policy Laws and Regulations

China maintains many laws and regulations in the competition policy area. The national government has legislated that production in certain sectors be concentrated in monopolies or near monopolies or authorized oligopolies. As in some other countries, these enterprises are concentrated in capital intensive sectors, like electricity and transportation, or in industries such as fixed-line telephony and postal services, in which this approach may be used to ensure national coverage. Some of the key laws and regulations include the *Law on Electricity* (1996), *Civil Aviation Law* (1995), *Regulations on Telecommunication* (2000), *Postal Law* (1986), *Railroad Law* (1991) and *Commercial Bank Law* (amended in 2003), among others. The enforcement of these laws and regulations is uneven as a result of the challenges inherent in attempting to coordinate their implementation nationally and as a result of inconsistent local and provincial enforcement. More troubling are efforts by government authorities at all levels in China to regulate competition with specific firms, often state-owned enterprises. Official statements frequently suggest that these efforts are tied primarily to employment concerns. However, the ultimate beneficiaries of the resulting measures are often unclear. In addition, local governments frequently enact rules that restrict interprovincial trade. Since the central government has difficulty enforcing its own competition policy measures at the local level, these local government rules continue to restrict market access for certain imported products, raise production costs and limit market opportunities for foreign invested enterprises.

The NPC in August 2007 passed China's first Anti-monopoly Law, which took effect in August 2008. Under this law, an Anti-monopoly Commission with oversight and coordinating responsibilities has been established, drawing its members from several Chinese ministries and agencies. Enforcement responsibilities have been divided among three agencies. MOFCOM has assumed responsibility for reviewing mergers. NDRC has assumed responsibility for reviewing monopoly activities, abuse of dominance, and abuse of administrative power when they involve pricing, while SAIC reviews these same types of activities when they are not price related.

After the Anti-monopoly Law was issued, MOFCOM, SAIC, NDRC, and other Chinese government ministries and agencies began to formulate implementing regulations, departmental rules, and other measures. Generally, these ministries and agencies have been willing to seek public comment on their proposed measures. In commenting on these proposed implementing measures, the United States has urged China to implement the Anti-monopoly Law in a manner consistent with global best practices, with a focus on consumer welfare and the protection of the competitive process, rather than consideration of industrial policy or other non-competition objectives. The United States has also specifically pressed China to ensure that any implementing measures do not create disguised or unreasonable barriers to trade and do not provide less favorable treatment to foreign goods and services or foreign investors and their investments.

The Anti-monopoly Law does contain provisions that have generated concern. For example, it remains unclear how China will implement one provision that requires protection for the lawful operations of state-owned enterprises and government monopolies in industries deemed nationally important. On the other hand, the inclusion of provisions on the abuse of administrative power in the Anti-monopoly Law, which also appear in NDRC's and SAIC's implementing regulations, could be important instruments for promoting the establishment and maintenance of increasingly competitive markets in China. In addition, because trade associations in China frequently appear to have strong government ties, the United States has encouraged the Chinese agencies charged with enforcing the Anti-monopoly Law to work with Chinese regulatory agencies with sectoral responsibilities to emphasize the importance of trade associations refraining from engaging in conduct that would violate the Anti-monopoly Law.

Since the Anti-monopoly Law went into effect in 2008, China's administrative enforcement of it has been most active in the merger area overseen by MOFCOM, largely due to the requirement to pre-notify merger transactions. Ten of twelve cases in which approval was granted with conditions have involved offshore transactions between foreign parties rather than transactions between Chinese enterprises. In addition, MOFCOM has formally blocked only one transaction, and that transaction involved a foreign enterprise's attempt to acquire a well-known Chinese enterprise.

Measures Restricting Inward Investment

In 2006, China began to revise its policies toward inward investment. While insisting that it remains open to foreign investment, China adopted policies that restrict inward investment in a range of "strategic" sectors, which appear designed to shield domestic enterprises from foreign competition. As discussed above in the Investment Barriers section, these policies include the State Council's June 2006 *Opinions on the Revitalization of the Industrial Machinery Manufacturing Industries*, which calls for China to expand the market share of domestic companies in 16 equipment manufacturing industries, as well as the February 2011 *State Council Notice Regarding the Establishment of a Security Review Mechanism for Foreign Investors Acquiring Domestic Enterprises*. Finally, the *Catalogue Guiding Foreign Investment in Industry*, as discussed above in the Investment Barriers section, suggests China's policies toward inward investment may be more selective.

In addition, in August 2006, MOFCOM and five other agencies issued revised rules for foreign mergers and acquisitions, which, among other things, establish a vague "national economic security" basis for rejecting proposed transactions. In November 2006, the NDRC issued a Five Year Plan on foreign investment that seeks to restrict foreign acquisitions of leading Chinese enterprises, prevent the emergence of foreign capital monopolies, protect industrial security and prevent abuse of intellectual property. In December 2006, SASAC published an expansive list of seven "critical economic sectors" in which China should restrict foreign participation, including armaments, electrical power and distribution, oil, chemicals, telecommunications, coal, aviation, and shipping.

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

OTHER BARRIERS

Transparency

Official Journal:

In its WTO accession agreement, China committed to establish or designate an official journal dedicated to the publication of all laws, regulations and other measures pertaining to or affecting trade in goods, services, TRIPS or the control of foreign exchange. China also agreed to publish the journal regularly and to make copies of all issues of the journal readily available to enterprises and individuals. Following its accession to the WTO, however, China did not establish or designate an official journal. Rather, China relied on multiple channels, including ministry websites, newspapers and a variety of journals, to provide information on trade-related measures. Following sustained U.S. engagement, the State Council issued a notice in March 2006 directing all central, provincial and local government entities to begin sending copies of all of their trade-related measures to MOFCOM for immediate publication in the MOFCOM Gazette. The United States subsequently monitored the effectiveness of this notice, both to assess whether all government entities regularly publish their trade-related measures in the MOFCOM Gazette and whether all types of measures are being published. It appeared that adherence to the State Council's notice was far from complete. As a result, the United States continued to engage China bilaterally on the need for a fully compliant single official journal, and at the December 2007 SED meeting China reconfirmed its WTO commitment to publish all final trade-related measures in a designated official journal before implementation. Since then, the United States has been monitoring the effectiveness of this commitment, and it appears that most government entities are now regularly publishing their trade-related measures in this journal, although it is still not clear whether all types of trade-related measures are being published.

Public Comment:

In its WTO accession agreement, China committed to provide a reasonable period for public comment on new or modified trade-related laws and regulations before implementing them, except in certain enumerated instances. However, China has been slow to implement this commitment. Following sustained U.S. engagement, the NPC's Standing Committee instituted notice-and-comment procedures for draft laws in April 2008. Two months later, in June 2008, China agreed to publish in advance for public comment, subject to specified exceptions, all trade and economic-related administrative regulations and departmental rules that are proposed for adoption, and provide a public comment period of not less than 30 days from the date of publication. China further agreed to publish such measures for comment in a single location: the Chinese Government Legislative Information Website of the Legislative Affairs Office of the State Council. Since then, the United States has been monitoring the effectiveness of these changes. While the NPC has been regularly publishing draft laws for public comment, and the State Council has also been regularly publishing draft regulations for public comment, it appears that China has had more difficulty implementing China's new policy regarding trade- and economic-related departmental rules. Since June 2008, China has increased the number of proposed departmental rules published for public comment on the State Council's website. However, a significant number of departmental rules are still issued without first having been published for public comment on the State Council's website. While some ministries publish departmental rules on their own websites, they often allow less than 30 days for public comment, making it difficult for foreign interested parties to submit timely and complete comments.

In October 2010, the State Council issued the *Opinions on Strengthening the Building of a Government Ruling by Law*, which directs ministries and agencies at the central and provincial levels of government to solicit public comment when developing their rules, subject to certain exceptions primarily related to guarding state secrets. In addition, the measure does not dictate the procedures or times to be used.

At the May 2011 S&ED meeting, China committed to issue a measure in 2011 to implement the requirement to publish all proposed trade- and economic-related administrative regulations and departmental rules on the State Council's website for a public comment period of not less than 30 days from the date of publication, subject to certain exceptions. To date, China has not issued the agreed measure.

Legal Framework

Laws and Regulations:

Laws and regulations in China often contain provisions that are relatively general and ambiguous. While this approach allows the Chinese authorities to apply laws and regulations flexibly, it also results in inconsistency and confusion in application. Companies often have difficulty determining whether their activities contravene a particular law or regulation.

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

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

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

Commercial Dispute Resolution:

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

At the same time, the Chinese government is moving to establish consistent and reliable mechanisms for dispute resolution through the adoption of improved codes of ethics for judges and lawyers and increased emphasis on the consistent and predictable application of laws. For example, Supreme Court rules provide that foreign or Chinese enterprises and individuals may bring cases in the designated courts raising challenges under the Administrative Litigation Law to decisions made by China's administrative agencies relating to international trade matters. The rules also state that when there is more than one reasonable interpretation of a law or regulation, the courts should choose an interpretation that is consistent with the provisions of international agreements to which China has committed, such as the WTO rules.

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

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

Labor Issues:

In recent years, China has expanded the scope of its national labor laws and regulations. Three important labor laws went into effect in 2008: the *Labor Contract Law*, which clarifies the rights and obligations of workers and employers to promote better labor relations; the *Labor Dispute Mediation and Arbitration Law*, which improves and streamlines the labor dispute resolution process; and the *Employment Promotion Law*, which aims to stimulate employment opportunities. However, China reportedly does not adhere to certain internationally recognized labor standards, including the freedom of association and the right to bargain collectively. In addition, reports continue to indicate that China does not effectively enforce its labor laws and regulations concerning issues such as minimum wages, hours of work, occupational safety and health, bans on child labor, forced prison labor, and participation in social insurance programs. Many foreign invested companies have expressed concern about their domestic competitors' lack of compliance with labor and social welfare laws due to lax enforcement, which allows the domestic firms to avoid the costs associated with compliance. Providing for internationally recognized labor standards and effectively enforcing its own labor laws and regulations would help ensure that China is not promoting trade at the expense of its workers.

Chinese law provides for the right to associate and form a union, but does not allow workers to form or join an independent union of their own choice. Unions must affiliate with the official All-China Federation of Trade Unions (ACFTU), which is under the direction of the Communist Party of China. Once a union chapter is established, the enterprise is required to pay fees to the ACFTU, often through the local tax bureau, equaling two percent of total payroll, regardless of the number of union members in the enterprise. The workers at these enterprises are required to accept the ACFTU as their representative; they cannot instead select another union or decide not to have any union representation.

In addition, skilled workers are in relatively short supply. Restrictions on labor mobility continue to distort labor costs. China is gradually easing restrictions under the country's household registration system, which has traditionally limited the movement of workers within the country, in part due to the recognition that labor mobility is essential to the continued growth of the economy.

Corruption:

Many people expected that China's entry into the WTO, which mandated a significant reduction in tariffs, would in turn reduce incentives for smuggling-related corruption. While WTO membership has increased China's exposure to international best practices and resulted in some overall improvements in transparency, corruption remains endemic. Chinese officials themselves admit that corruption is one of the most serious problems the country faces, and China's leadership has called for an acceleration of the country's anticorruption drive with a focus on closer monitoring of provincial-level officials. According to official reports, the Communist Party's Central Commission for Discipline Inspection (CDIC) punishes and disciplines an average of 130,000-190,000 party officials each year for misdeeds and more serious crimes.

On February 25, 2011, the National People's Congress amended China's criminal law to criminalize the payment of bribes to officials of foreign governments and international public organizations. The amendment took effect on May 1, 2011.

In July 2004, China implemented the Administrative Licensing Law. This law is designed to increase transparency in the licensing process, an area that has long served as a source of official corruption. This law seeks to ensure the reasonable use of administrative licensing powers to protect the interests of corporations and individuals and to promote efficient administrative management by requiring government agencies to set up special offices for issuing licenses and to respond to applications within 20 days. Since its 2004 implementation, the law has increased transparency in the licensing process, while reducing procedural obstacles and strengthening the legal environment for domestic and foreign enterprises. At the 2011 JCCT meeting, the United States and China agreed to meet in 2012 to focus on enhancing understanding of administrative licensing procedures.

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

Land Issues:

China's constitution specifies that all land is owned in common by all the people. In practice, agricultural collectives, under the firm control of local Communist Party chairmen, distribute agricultural land to rural residents, while provincial and municipal governments distribute land for residential and industrial use. The State and collectives can either "grant" or "allocate" land-use rights to enterprises in return for the payment of fees, or in some cases without the payment of any fees. Enterprises granted land-use rights are guaranteed compensation if the State asserts eminent domain over the land, while those with allocated rights are not. Granted land-use rights cost more, not surprisingly, than allocated rights. However, the law does not define standards for compensation when eminent domain supersedes granted land-use rights. This situation creates considerable uncertainty when foreign investors are ordered to vacate premises. The absence of public hearings on planned public projects, moreover, can give affected parties, including foreign investors, little advance warning.

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

China’s National People’s Congress passed a Property Rights Law on March 16, 2007, the first comprehensive legal protection for private property since the founding of the People's Republic in 1949. This law, which generated years of controversy in the Chinese government but was never published in draft form, grants equal legal status to private, state, and collectively-owned property, although at the same time it explicitly affirms the dominant role of public property in the economy. In addition, this law covers the “means of production,” such as factories, but agricultural land remains a collective possession subject to 30 year leases. It is unclear at this time how the law will be implemented.

Given the scarcity of land resources in China, the price of land-use rights and land allocation are important considerations from both a market access and competition standpoint and from the perspective of their effect on production and trade. It is therefore of some concern to the United States that the Chinese government is recentralizing control over land administration, with the objective, in part, to ensure that land use-rights are allocated in accordance with a compulsory national land-use plan and state industrial development policies.

COLOMBIA

TRADE SUMMARY

The U.S. goods trade deficit with Colombia was $8.8 billion in 2011, up $5.2 billion from 2010. U.S. goods exports in 2011 were $14.3 billion, up 18.6 percent from the previous year. Corresponding U.S. imports from Colombia were $23.1 billion, up 47.6 percent. Colombia is currently the 22nd largest export market for U.S. goods.

The stock of U.S. foreign direct investment (FDI) in Colombia was $6.6 billion in 2010 (latest data available), up from $6.2 billion in 2009. U.S. FDI in Colombia is primarily concentrated in the mining and manufacturing sectors.

TRADE PROMOTION AGREEMENT

The United States-Colombia Trade Promotion Agreement (CTPA) was signed on November 22, 2006. Colombia's Congress approved the CTPA and a protocol of amendment in 2007. The U.S. Congress enacted legislation approving the CTPA on October 12, 2011, and Colombia is currently in the process of taking the measures necessary to comply with those provisions of the CTPA that take effect when the agreement enters into force.

The CTPA is a comprehensive free trade agreement. Once the agreement enters into force, Colombia will immediately eliminate most of its tariffs on U.S. exports, with all remaining tariffs phased out over defined time periods. Colombia will accord substantially improved market access for U.S. suppliers. The CTPA also includes important disciplines relating to: customs administration and trade facilitation; technical barriers to trade; government procurement; investment; telecommunications; electronic commerce; intellectual property rights; transparency; and labor and environmental protection.

On April 7, 2011, the U.S. and Colombian governments announced an Action Plan on Labor Rights in which the Colombian government committed to a series of measures in defined time frames to improve the protection of internationally recognized labor rights, the prevention of violence against labor leaders, and the prosecution of the perpetrators of such violence. The Santos Administration is meeting these milestones under the Action Plan.

IMPORT POLICIES

Tariffs

Colombia reduced applied import duties on November 5, 2010 for more than 4,000 tariff lines. Decrees 4114 and 4115 list the reductions. The average import duty was reduced from 12.2 percent to 8.3 percent. Consumer goods, capital goods, and raw materials produced outside of Colombia were the main reduction targets. As part of a concerted effort to stimulate the economy and address the effects of massive flooding, additional reductions were enacted by Decrees 511, 1750, 2916, and 2917 of February, May, and August 2011. The additional reductions instituted either zero percent or five percent duties, which are valid for one year after publication.

Most of Colombia's import duties have been consolidated into three tariff levels: zero percent to 5 percent on capital goods, industrial goods, and raw materials not produced in Colombia; 10 percent on manufactured goods, with some exceptions; and 15 percent to 20 percent on consumer and "sensitive" goods. Exceptions include: automobiles, which are subject to a 35 percent duty; beef and rice, which are subject to an 80 percent duty; and milk and cream, which are subject to a 98 percent duty. Whey is currently subject to a 20 percent in-quota duty (3,000 tons) and a 94 percent duty outside the quota. Other agricultural products fall under the Andean Price Band System (APBS) established by Decision 371 of the Andean Community (AC), which includes Bolivia, Colombia, Ecuador, and Peru. The APBS protects domestic industry with a variable levy by increasing tariffs when world prices fall and decreasing tariffs when world prices rise.

The APBS includes 14 product groups and covers more than 150 tariff lines. This system can result in duties exceeding 100 percent, depending on world commodity prices, for important U.S. exports to Colombia, including corn, wheat, soybeans, pork, poultry parts, and cheeses. The APBS also negatively affects U.S. access to Colombian markets for products that contain corn, such as dry pet food. By contrast, processed food imports from Chile and AC Members enter duty free.

Under the CTPA, Colombia will immediately cease to apply the APBS to imports from the United States. This, and other tariff-related provisions of the CTPA, will help U.S. exports compete more effectively in Colombia's market. Under the CTPA, over half of the value of current U.S. agricultural exports to Colombia would enter duty free, including high quality beef, an assortment of poultry products, soybeans and soybean meal, cotton, wheat, whey, and most horticultural and processed food products. U.S. agricultural exporters also will benefit from duty-free access through tariff-rate quotas (TRQs) on corn, rice, poultry parts, dairy products, sorghum, dried beans, beef, animal feeds, and soybean oil.

About 80 percent of U.S. exports of consumer and industrial products to Colombia will become duty free immediately upon entry into force of the CTPA, with remaining tariffs phased out within 10 years. Colombia also agreed to join the WTO Information Technology Agreement, under which countries eliminate tariffs on a most favored nation (MFN) basis for a wide range of information technology products.

Nontariff Measures

Nontariff barriers include discretionary import licensing, which has been used to restrict imports of milk powder (Resolution 2551 of 2002) and poultry parts (Resolution 001 of 1991). The CTPA contains provisions that should address this issue. The Colombian government maintains 67 TRQs, including on rice, soybeans, yellow corn, white corn, and cotton (Decree 430 of 2004), and requires that importers purchase local production in order to import under the TRQ. Under the CTPA, the Colombian government committed to ensuring that U.S. access to the TRQ in-quota quantity will not be conditioned on the purchase of domestic production.

Based on AC Decision 331, Colombia does not permit the importation of used clothing. Importers of used and remanufactured goods may apply for licenses to import products into Colombia under limited circumstances (Resolution 001 of 1995). U.S. industry reports that, in practice, authorities do not grant such licenses, resulting in an effective import prohibition of these products. In addition, Decree 4725 of 2005 prohibits the importation of used or refurbished medical equipment that is older than five years, thereby limiting market access for high quality remanufactured products, such as imaging equipment. Under the CTPA, Colombia affirmed that it would not adopt or maintain prohibitions or restrictions on trade in remanufactured goods and that some existing prohibitions on trade in used goods would not apply to remanufactured goods. This will provide significant new export and investment opportunities for firms involved in remanufactured products, such as machinery, computers, cellular phones, and other devices.

Colombia assesses a consumption tax on alcoholic beverages through a system of specific rates per degree (percentage point) of alcohol strength (Law 788 of 2002, Chapter V). Arbitrary breakpoints have the effect of applying a lower tax rate to domestically produced spirits and therefore create a barrier for imported distilled spirits. Under the CTPA, Colombia committed to eliminate the breakpoints for imports of distilled spirits within four years of the Agreement's entry into force. Additionally, Colombia committed to eliminate practices that have restricted the ability of U.S. distilled spirits companies to conduct business in Colombia.

GOVERNMENT PROCUREMENT

U.S. companies are required to have a local partner in order to qualify for government procurement. Under the CTPA, Colombia agreed to accord national treatment to U.S. goods, services, and suppliers in procurements covered by the Agreement. Under the CTPA, U.S. firms will have greater access to procurement by Colombia's ministries and departments, legislature, courts, and first tier sub-central entities, as well as a number of Colombia's government enterprises, including its oil company. In addition, Colombia will not apply Law 816 of 2003 to CTPA-covered procurements, as that law mandates preferential treatment for tenders that provide Colombian goods or services. U.S. companies have complained about the lack of transparency in government procurement practices.

Colombia is not a signatory to the WTO Agreement on Government Procurement, but it has been an observer to the WTO Committee on Government Procurement since 1996.

EXPORT SUBSIDIES

In a 2008 effort to ease the impact of an appreciating peso, the Colombian government issued tax rebate certificates (known as "CERTs") to exporters in certain sectors. The value of the CERT is equal to four percent of the value of exports of designated goods. While no CERTs were issued in 2009 or 2010, as a result of the expiration of Andean Trade Preference Act benefits in February 2011, the government of Colombia approved the issuance of up to $25 billion in CERTS for the partial or full reimbursement to exporters of tariffs paid between January 1, 2011 and October 31, 2011. The sectors that benefitted from this measure were textiles, footwear, foodstuffs, plastic manufactures, furniture, leather products, jewelry, automotive parts, and editorial products.

INTELLECTUAL PROPERTY RIGHTS PROTECTION

Colombia was listed on the Watch List in the 2011 Special 301 Report. During 2011, Colombia continued to improve its efforts against intellectual property rights (IPR) violators through enforcement action and improved coordination among IPR enforcement agencies and with rights holders. This builds on the Colombian government's concerted effort in recent years to combat IPR violations, including through conducting raids to seize counterfeit and pirated products and deter the counterfeiting of pharmaceuticals.

Colombia also took steps in 2011 to address its patent backlog. Despite these positive developments, there remains a need for further IPR improvements in Colombia, particularly through additional training and resources for agencies involved in enforcing IPR. A key concern cited in the Special 301 Report is the lack of deterrent sentences. Actions are still needed to reduce book and optical media piracy, combat piracy over the Internet, and television signal piracy, and to address the need for an effective system to prevent the issuance of marketing approvals for unauthorized copies of patented pharmaceutical products.

Colombia is developing, with USTR, a joint cooperation plan to improve enforcement of intellectual property rights in Colombia, with a goal of removing the country from the Watch List.

SERVICES BARRIERS

Implementation of the CTPA will require Colombia to accord substantial market access across its entire services regime, subject to a limited number of exceptions. Some restrictions, such as economic needs tests and residency requirements, still remain in sectors such as accounting, tourism, legal services, insurance, distribution services, advertising, and data processing.

Legal Services

Foreign law firms can only operate in Colombia by forming a joint venture with a Colombian law firm and operating under the licenses of Colombian lawyers in the firm.

Financial Services

Insurance companies must maintain a commercial presence to sell policies other than those for international travel or reinsurance. Colombia prohibits the sale of maritime insurance by foreign companies. Foreign banks must establish a subsidiary to operate in Colombia.

Under the CTPA, Colombia will phase in further liberalization in financial services, such as allowing branching by banks and allowing the cross-border supply of international maritime shipping and commercial aviation insurance within four years of the Agreement's entry into force. Under the CTPA, mutual funds and pension funds will be allowed to seek advice from portfolio managers in the United States.

Transportation

Trans-border transportation services are restricted in Colombia. Land cargo transportation must be provided by Colombian citizens or legal residents with a commercial presence in the country and licensed by the Ministry of Transportation. Colombian law permits international companies to provide cabotage services (*i.e.*, transport between two points within Colombian territory) "only when there is no national capacity to provide the service." Under the terms of the CTPA, Colombia committed to allow 100 percent foreign ownership of land cargo transportation enterprises in Colombia.

Telecommunications

Colombia currently permits 100 percent foreign ownership of telecommunications providers and has committed to ensure that competitors can interconnect with Colombian dominant suppliers' fixed networks at nondiscriminatory and cost-based rates.

Express Delivery

Law 1369 of 2009 regulates postal services in Colombia. U.S. industry reports delays in obtaining express delivery licenses and establishing facilities.

INVESTMENT BARRIERS

Foreign investment in Colombia is accorded national treatment, and 100 percent foreign ownership is permitted in most sectors. Exceptions exist for broadcasting and the disposal of hazardous waste. In certain cases, the Colombian government does not include arbitration clauses in contracts to which it is a party. Enforcement of arbitration judgments against the Colombian government, as well as municipal and departmental governments, can be very difficult.

Colombia agreed to strong protections for U.S. investors in the CTPA. The CTPA includes provisions that will provide a stable legal framework for U.S. investors operating in Colombia. All forms of investment will be protected under the CTPA. In almost all circumstances, U.S. investors will enjoy the right to establish, acquire, and operate investments in Colombia on an equal footing with domestic investors. The CTPA includes a transparent, binding investor-state arbitration mechanism.

COSTA RICA

TRADE SUMMARY

The U.S. goods trade deficit with Costa Rica was $4.0 billion in 2011, up $483 million from 2010. U.S. goods exports in 2011 were $6.1 billion, up 18.1 percent. Corresponding U.S. imports from Costa Rica were $10.1 billion, up 16.3 percent. Costa Rica is currently the 41st largest export market for U.S. goods.

The stock of U.S. foreign direct investment (FDI) in Costa Rica was $1.7 billion in 2010 (latest data available), roughly the same as in 2009. U.S. FDI in Costa Rica is primarily in the manufacturing sector.

IMPORT POLICIES

Free Trade Agreement

On August 5, 2004, the United States signed the Dominican Republic-Central America-United States Free Trade Agreement (CAFTA-DR or "Agreement") with five Central American countries (Costa Rica, El Salvador, Guatemala, Honduras, and Nicaragua) and the Dominican Republic (the "Parties"). Under the Agreement, the Parties are significantly liberalizing trade in goods and services. The CAFTA-DR also includes important disciplines relating to customs administration and trade facilitation; technical barriers to trade; government procurement; investment; telecommunications; electronic commerce; intellectual property rights; transparency; and labor and environmental protection.

The Agreement entered into force for the United States, El Salvador, Guatemala, Honduras, and Nicaragua in 2006 and for the Dominican Republic in 2007. The CAFTA-DR entered into force for Costa Rica on January 1, 2009.

In 2008, the Parties implemented amendments to several textile-related provisions of the CAFTA-DR, including, in particular, changing the rules of origin to require the use of U.S. or regional pocket bag fabric in originating apparel. The Parties also implemented a reciprocal textile inputs sourcing rule with Mexico. Under this rule, Mexico provides duty-free treatment on certain apparel goods produced in a Central American country or the Dominican Republic with U.S. inputs, and the United States will provide reciprocal duty-free treatment under the CAFTA-DR on certain apparel goods produced in a Central American country or the Dominican Republic with Mexican inputs. These changes further strengthen and integrate regional textile and apparel manufacturing and create new economic opportunities in the United States and the region.

In February 2011, the CAFTA-DR Free Trade Commission (FTC), the central oversight body for the Agreement, met for the first time in San Salvador, El Salvador. The FTC reviewed the implementation of the Agreement and its trade and economic impact on the region and agreed to certain changes to strengthen the Agreement's operation. The FTC discussed a broad range of ways to enhance competitiveness in the region and endorsed several initiatives to generate new opportunities for all of the countries to realize the benefits of the CAFTA-DR Agreement, with a heightened focus on small and medium sized businesses.

The United States hosted an FTC meeting on January 23, 2012 in Miami at which CAFTA-DR countries recognized continued growth in trade and integration, and acted to further strengthen CAFTA-DR institutions and initiatives.

Tariffs

As a member of the Central American Common Market, Costa Rica applies a harmonized external tariff on most items at a maximum of 15 percent with some exceptions.

Under the CAFTA-DR, however, 100 percent of U.S. industrial trade will enter Costa Rica duty free by 2015. Nearly all textile and apparel goods that meet the Agreement's rules of origin now enter Costa Rica duty free and quota free, creating economic opportunities for U.S. and regional fiber, yarn, fabric, and apparel manufacturing companies.

Under the CAFTA-DR, more than half of U.S. agricultural exports now enter Costa Rica duty free. Costa Rica will eliminate its remaining tariffs on virtually all agricultural products by 2020 (2022 for chicken leg quarters and 2025 for rice and dairy products). For certain agricultural products, tariff-rate quotas (TRQs) will permit some duty-free access for specified quantities during the tariff phase out period, with the duty-free amount expanding during that period. Costa Rica will liberalize trade in fresh potatoes and onions through expansion of a TRQ, rather than by tariff reductions.

Nontariff Measures

Under the CAFTA-DR, all CAFTA-DR countries, including Costa Rica, committed to improve transparency and efficiency in administering customs procedures, including the CAFTA-DR rules of origin. The CAFTA-DR countries also committed to ensuring greater procedural certainty and fairness in the administration of these procedures, and agreed to share information to combat illegal trans-shipment of goods.

Costa Rica implemented the Information Technology Customs Control (TICA) system in 2007 for imports and in early 2009 for exports (other than exports from free trade zones). The TICA system has significantly improved what had been a complex and bureaucratic import process. Under the TICA system, the Costa Rican customs authority has changed its focus from the verification of goods to the verification of processes and data. Customs officials now have up to four years to review the accuracy of import declarations, which allows customs to facilitate the free flow of goods while gathering necessary documentation.

Costa Rica has ratified the "Hague Convention Abolishing the Requirement for Legalization of Foreign Public Documents" or "Apostille Convention," to which the United States is also a party. With implementation of this agreement on December 14, 2011, official documents originating in the United States are subject to a single act of authentication, which is expected to facilitate paperwork for commerce between the United States and Costa Rica.

GOVERNMENT PROCUREMENT

The CAFTA-DR requires that procuring entities use fair and transparent procurement procedures, including advance notice of purchases and timely and effective bid review procedures, for procurement covered by the Agreement. Under the CAFTA-DR, U.S. suppliers are permitted to bid on procurements of most Costa Rican government entities, including key ministries and state-owned enterprises, on the same basis as Costa Rican suppliers. The anticorruption provisions in the Agreement require each government to ensure under its domestic law that bribery in matters affecting trade and investment, including in government procurement, is treated as a criminal offense or is subject to comparable penalties.

The government of Costa Rica's "Digital Government" development group, in partnership with the Costa Rican Electricity Institute and others, is currently implementing an automated procurement system dubbed "MerLink." MerLink is streamlining procurement procedures and should significantly reduce the risk of corruption or fraud in the procurement process. In late 2011 and early 2012, the United States Trade and Development Agency disbursed a $430,000 grant to support the "Digital Government" group by providing a roadmap and guidelines for implementation of a government-wide backbone network and shared data center.

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

EXPORT SUBSIDIES

Tax holidays are available for investors in free trade zones, unless tax credits are available in an investor's home country for taxes paid in Costa Rica.

Under the CAFTA-DR, Costa Rica may not adopt new duty waivers or expand existing duty waivers that are conditioned on the fulfillment of a performance requirement (*e.g.*, the export of a given level or percentage of goods). However, under the CAFTA-DR, Costa Rica was permitted to maintain such measures through 2009, provided that it maintained the measures in accordance with its obligations under the WTO Agreement on Subsidies and Countervailing Measures. The U.S. Government is working with the government of Costa Rica in an effort to ensure compliance with its CAFTA-DR obligations.

INTELLECTUAL PROPERTY RIGHTS PROTECTION

Costa Rica was again listed on the Watch List in the 2011 Special 301 report. Recent improvements include passage of legislation to strengthen intellectual property rights (IPR) protection and enforcement in Costa Rica, and the publication of regulations to clarify Internet intermediary liability for copyright infringement. Key concerns include the need to publish better judicial IPR statistics and to seek deterrent penalties for, assign higher priority to, and allocate greater resources for combating piracy and counterfeiting.

The Costa Rican Attorney General's office has recently voiced a willingness to pursue IPR crimes more forcefully than in the past. The United States looks forward to seeing a corresponding improvement in IPR enforcement and will continue to monitor Costa Rica's implementation of its IPR obligations under the CAFTA-DR.

SERVICES BARRIERS

Under the CAFTA-DR, Costa Rica committed to open important segments of its telecommunications market, including private network services, Internet services, and mobile wireless services. Costa Rica's telecommunications market is now open for competition in private network services, Internet services, and mobile wireless services. However, while this market opening is a notable achievement, Costa Rica's new wireless service providers continue to face obstacles, including reluctance by some municipal governments to approve cell tower structures. Furthermore, a prospective supplier that has been seeking to provide Internet services via satellite in Costa Rica since Costa Rica implemented its obligations under CAFTA-DR has been subjected to a lengthy and onerous regulatory review and has not been able to obtain the required license authorization from Costa Rica's telecommunications regulator, the *Superintendencia de Telecomunicaciones* and the telecommunications ministry. Industry claims that competition in Costa Rica's mobile telephony market is hindered by a still under-developed regime to ensure that operators are able to share certain microwave links that are needed to connect base stations to towers throughout the country.

Costa Rica's insurance monopoly no longer exists, and 10 private companies are operating in the market, including four U.S. companies. The new market entrants continue to face challenges from the market power of the former monopoly provider, the National Insurance Institute (INS). In addition, the regulatory regime is not fully developed. Specific concerns relate to deceptive advertising by the former monopoly, the product approval process, and the potential extension of exclusivity contracts between INS and insurance retailers designated as "agents."

INVESTMENT BARRIERS

The regulatory environment can pose significant barriers to successful investment in Costa Rica. One common problem is inconsistent government action between institutions within the central government or between the central government and the municipal government. Another concern for U.S. investors is the frequent recourse to legal challenges before Costa Rica's constitutional court to review whether government authorities have acted illegally or to review the constitutionality of legislation or regulations. Some U.S. investors believe that such challenges have been used at times to undermine their investments or hinder the quick resolution of disputes.

ELECTRONIC COMMERCE

The CAFTA-DR includes provisions on electronic commerce that reflect its importance to global trade. Under the CAFTA-DR, Costa Rica has committed to provide nondiscriminatory treatment of digital products, and not to impose customs duties on digital products transmitted electronically.

OTHER BARRIERS

Some U.S. firms and citizens have found corruption in government, including in the judiciary, to be a concern and a constraint to successful investment in Costa Rica. Administrative and judicial decision making appear at times to be inconsistent, nontransparent, and very time-consuming.

In July 2009, Costa Rica notified the WTO that Costa Rica exceeded its $15.9 million Total Aggregate Measurement of Support (TAMS) ceiling with $17.2 million of trade-distorting domestic support in 2007. Costa Rica later revised its notification for 2007 upwards to $23.3 million. Costa Rica subsequently notified for the years 2008 through 2010 that Costa Rica had continued to exceed its TAMS ceiling at ever increasing levels (*i.e.*, $62.5 million in 2008, $91.7 million in 2009, and $109.7 million in 2010). The entirety of Costa Rica's notified TAMS since 2008 and a majority prior to 2008 is accounted for by price support for rice. Costa Rica's administered price for rice has steadily increased from $258 per ton in 2004 to the current rate of $602 per ton. The United States and other WTO Members have urged Costa Rica to take steps to lower its TAMS below its ceiling commitment, but with no Costa Rican action leading to results to date. The United States is exploring its enforcement options.

DEMOCRATIC REPUBLIC OF THE CONGO

TRADE SUMMARY

The U.S. goods trade deficit with the Democratic Republic of Congo (DRC) was $439 million in 2011, up $5 million from 2010. U.S. goods exports in 2011 were $166 million, up 78.3 percent from the previous year. Corresponding U.S. imports from the DRC were $606 million, up 14.8 percent. The DRC is currently the 136th largest export market for U.S. goods.

The stock of U.S. foreign direct investment (FDI) in the DRC was $129 million in 2010 (latest data available), down from $169 million in 2009.

IMPORT POLICIES

Tariffs

The DRC is a member of the WTO, the Central African Economic Community (CEEAC), the Great Lakes Economic Community, the Common Market for Eastern and Southern Africa (COMESA), and the Southern African Development Community (SADC). Because the DRC government is strongly dependent on tariff revenue, the DRC does not currently participate in the COMESA or the SADC free trade areas. However, as of January 2012, the DRC is preparing to join the free trade areas of the COMESA, the SADC, and the CEEAC.

The DRC has liberalized its importation regime since the beginning of the 1990s. According to the WTO, the DRC's average applied tariff rate was 12 percent in 2008. All DRC's tariffs are *ad valorem* and charged on a cost, insurance and freight (CIF) basis. The tariff structure consists of three bands: 5 percent for equipment goods, raw materials, agricultural and veterinary supplies and unassembled equipment; 10 percent for large consumable food items, industrial inputs, spare parts, and items for social services, such as hospitals and disabled persons; and 20 percent for clothing, furniture, cigarettes, and other finished products.

A new value-added tax (VAT) ratio of 16 percent came into effect on January 1, 2012. The VAT replaces the previous consumption tax (ICA). The adoption of the VAT should increase collection of fiscal revenues and appears to be more transparent than the ICA, however, businesses fear that it could lead to price inflation. Certain products are exempted from the VAT, including wheat, flour, oil, milk, pharmaceuticals, and agricultural inputs. The Directorate General of Taxes (DGI) has published on its website a list of those goods and services subject to, and exempt from, the VAT.

In addition to tariffs, there are several taxes collected on imported goods by different government agencies. These additional taxes that importers pay on goods and services average between 10 percent and 40 percent. The primary DRC agencies that collect taxes on imports include the following: the customs authority (DGDA), tax authority (DGI), General Direction of Administrative Incomes, Industrial Promotion Fund, Office of Maritime Freight Management, National Office of Transportation, and the Import-Export Control Agency (OCC).

The DGDA assesses and collects tariffs and duties based on established rates under the DRC's tariff schedule. The OCC charges a 2 percent tax (*ad valorem*) on the CIF value of all imports exceeding

$2,500, plus an additional charge of $5 per ton of goods, and uses a sliding scale for imports valued less than $2,500. Importers of duty-free goods must pay an *ad valorem* administrative fee of five percent.

Customs Procedures

The DRC's expensive, slow, and burdensome customs procedures impede the country's integration into the global marketplace. To streamline customs procedures as well as improve the DRC's investment climate, President Kabila promulgated a new customs code in August 2010. The new customs code provides numerous potential improvements, such as simplified customs procedures, intellectual property rights protection, verification of goods before payment, payment facilities, established special economic areas, and a customs decision appeals process.

Since June 2006, a French-owned company has been the DRC's authorized agent for pre-shipment inspection (PSI) of imports valued at $2,500 or more. Firms exporting to the DRC must provide the PSI agent with an invoice containing a detailed description of the goods that will be shipped and a statement accepting inspection. Imports that arrive in country without a PSI certificate are charged 40 percent of the free-on-board value. Other required shipment documents are a commercial invoice, packing lists, bills of lading/airway bill, import license, *pro forma* invoice, the U.S. shipper's export declaration, an insurance certificate, and often a certificate of origin.

A U.S. company is currently experiencing a third occurrence of extreme retroactive taxation for an unsubstantiated customs infraction by the DRC Customs office in the amount of $969 million. The taxation issue was resolved during the mining contract revisitation process of 2009 and subsequently raised and resolved again in 2010. The DRC Customs office is currently threatening to stop the U.S. company from exporting or to automatically deduct the amount from the company if it is not paid.

GOVERNMENT PROCUREMENT

The DRC's public administration reforms implemented since 2002 have allowed foreign suppliers to bid on government contracts. However, contracts on public procurement have sometimes been carried out without complying with international standards, thus reducing transparency.

With sponsorship and technical assistance from the World Bank, a tender board now operates under the supervision of the Ministry of Budget. In April 2010, President Kabila promulgated a new public procurement law which, according to analysts, should facilitate transparency and competitiveness among local and international companies. The World Bank provided financial and technical assistance for development of the new procurement law. The law should facilitate participation in procurement by both foreigners and national suppliers. The DRC has also adopted key implementing steps, institutions, and a manual of procedures to implement the new procurement law.

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

INTELLECTUAL PROPERTY RIGHTS PROTECTION

In theory, intellectual property receives full legal protection in the DRC under the 2006 Constitution, but the DRC's enforcement of its intellectual property rights (IPR) regulations is weak. Pirated books, sound recordings, and visual media are readily available. Privately-owned television stations in Kinshasa routinely broadcast U.S. films apparently without securing exhibition rights from the owners. The DRC is also unable to prevent most pirated goods from being imported into the country or their subsequent distribution and sale. However, the DRC is working to improve IPR related legislation and build its capacity for implementation and enforcement. Additionally, DRC officials have participated in several U.S. Government-sponsored training programs organized by the U.S. Patent and Trademark Office.

INVESTMENT BARRIERS

The DRC remains a highly challenging environment in which to do business. Underdeveloped infrastructure, inadequate contract enforcement, limited access to credit, continued insecurity in the eastern part of the country, lack of adequate intellectual property rights protection, administrative and bureaucratic delay, corruption, and ineffective enforcement of laws and regulations continue to constrain private sector development. Despite these challenges, there are few formal impediments to foreign investment in the DRC.

The one-stop shop or "*guichet unique*," established in 2005 within the National Agency for the Promotion of Investment, aims to simplify the process of registering a company by unifying under one roof the required procedures of various government ministries. However, the "*guichet unique*" lacks sufficient authority to approve licenses, permits and other requirements, and therefore has had limited success in expediting company registration. The most time-consuming step to establish a company is securing a presidential decree.

In October 2010, the government completed a lengthy review of 61 mining contracts between DRC public enterprises and private companies dating from 1997-2002. The review, which was initiated in 2007, led to the renegotiation or cancellation of many contracts, faced numerous delays and attracted criticism over its lack of transparency. In October 2011, the IMF and World Bank criticized two August 2011 mining contracts that the state-owned copper mining company, GECAMINES, concluded without proper adherence to transparency principles. As a result, the IMF has refused to conclude its fourth review of the DRC under the PEG 2 (the DRC government's Economic Program) until the DRC addresses these issues. According to a November 2011 British Parliamentarian's report, questionable sales of mines and oil assets owned by public enterprises have cost the DRC treasury more than $5.5 billion over the past four years.

In 2008, the DRC became a candidate for membership in the Extractive Industries Transparency Initiative (EITI), an effort to increase transparency in transactions between governments and companies in the extractive industries organized by foreign assistance agencies from multiple countries. Though the government has taken some positive steps under EITI, including establishment of a National EITI Committee, publication of the first report on EITI in the DRC, and the hiring of an independent auditor to carry out the validation of the EITI process, the DRC did not meet its March 9, 2010 validation deadline. The EITI Secretariat granted the DRC a six month extension to complete validation. The report was subsequently validated by the independent auditor, approved by the National EITI Committee and transmitted to the President of the International EITI Secretariat in Berlin on September 8, 2010. The validation of the first EITI report was hailed as an important step towards improving transparency and accountability in DRC's management of natural resources. On December 14, 2010, the EITI Board designated the DRC as an EITI Candidate Country that is "close to compliant" and gave the DRC six months (until June 12, 2011) to complete the remaining steps in order to achieve "compliant" status. However, the DRC did not meet the Board's requirements. The EITI Secretariat has given the DRC an 18 month extension until March 2013 by which time it must become compliant or withdraw from EITI consideration for membership.

OTHER BARRIERS

Corruption

U.S. businesses often complain about corruption in the DRC, citing it as a principal constraint to doing business in the country. Protracted negotiations with numerous officials are mandatory in commercial matters.

In principle, there are legal provisions for fighting corruption. The DRC is a member of the UN Anti-Corruption Convention and passed its own anticorruption law in 2003. Additional legislation includes the 2004 Money Laundering Act, under which the DRC cooperates with African and European crime fighting organizations. Despite these reform efforts, bribery is still common in business transactions, especially in the area of government procurement, dispute settlement, and taxation.

Bribery is illegal in the DRC and, in principle, is investigated and prosecuted. While current law calls for imprisonment and fines of both parties involved in bribery no matter the circumstances, enforcement remains a challenge.

Bureaucracy

As is the case in much of the DRC's business environment, many of the country's trade barriers result from complex regulations, a multiplicity of overlapping administrative agencies and a frequent lack of professionalism and control by officials responsible for the regulatory environment. The DRC has numerous agencies with legal authority in trade matters. Required signatures are often difficult to obtain, and regulations are complex and poorly codified. Enforcement of regulations varies widely across the country. Many local traders run their own private networks for expediting the movement of goods.

To ensure a secure legal and judicial environment in the DRC, Parliament approved a law in December 2009 authorizing the DRC's accession to the Organization for the Harmonization of Business Law in Africa (OHADA), and President Kabila promulgated this law in February 2010. The core purpose of OHADA is to promote economic development and integration between its members, as well as to ensure a secure legal and judicial environment in Africa. The government officially launched the National OHADA Commission in April 2010. The DRC had expected to complete OHADA accession by November 2010, and the OHADA treaty was to have taken effect on January 1, 2011. However, President Kabila ordered that judges be trained in the OHADA law prior to signing and depositing the instrument of OHADA accession. As of January 2012, the government had not completed OHADA accession.

Deficient Infrastructure

The DRC is slowly emerging from more than three decades of mismanagement, pillaging and war. All of these factors have negatively affected the country's physical infrastructure, especially the condition and security of transportation links. President's Kabila's five year national development plan, known as the "Five Pillars," is currently focusing on five priority areas: infrastructure, employment, education, water/electricity, and health. Numerous road, rail, and hydroelectric projects are underway, but progress is slow and the government continues to seek financing for its extremely long list of needs.

DOMINICAN REPUBLIC

TRADE SUMMARY

The U.S. goods trade surplus with the Dominican Republic was $3.2 billion in 2011, up $248 million from 2010. U.S. goods exports in 2011 were $7.3 billion, up 11.7 percent from the previous year. Corresponding U.S. imports from the Dominican Republic were $4.2 billion, up 14.1 percent. The Dominican Republic is currently the 36th largest export market for U.S. goods.

The stock of U.S. foreign direct investment (FDI) in the Dominican Republic was $1.3 billion in 2010 (latest data available), up from $1.1 billion in 2009. U.S. FDI in the Dominican Republic is primarily in the manufacturing sector.

IMPORT POLICIES

Free Trade Agreement

On August 5, 2004, the United States signed the Dominican Republic-Central America-United States Free Trade Agreement (CAFTA-DR or "Agreement") with five Central American countries (Costa Rica, El Salvador, Guatemala, Honduras, and Nicaragua) and the Dominican Republic (the "Parties"). Under the Agreement, the Parties are significantly liberalizing trade in goods and services. The CAFTA-DR also includes important disciplines relating to customs administration and trade facilitation; technical barriers to trade; government procurement; investment; telecommunications; electronic commerce; intellectual property rights; transparency; and labor and environmental protection.

The Agreement entered into force for the United States, El Salvador, Guatemala, Honduras, and Nicaragua in 2006 and for the Dominican Republic in 2007. The CAFTA-DR entered into force for Costa Rica on January 1, 2009.

In 2008, the Parties implemented amendments to several textile-related provisions of the CAFTA-DR, including, in particular, changing the rules of origin to require the use of U.S. or regional pocket bag fabric in originating apparel. The Parties also implemented a reciprocal textile inputs sourcing rule with Mexico. Under this rule, Mexico provides duty-free treatment on certain apparel goods produced in a Central American country or the Dominican Republic with U.S. inputs, and the United States provides reciprocal duty-free treatment under the CAFTA-DR on certain apparel goods produced in a Central American country or the Dominican Republic with Mexican inputs. These changes further strengthen and integrate regional textile and apparel manufacturing and create new economic opportunities in the United States and the region.

In February 2011, the CAFTA-DR Free Trade Commission (FTC), the central oversight body for the Agreement, met for the first time in San Salvador, El Salvador. The FTC reviewed the implementation of the Agreement and its trade and economic impact on the region and agreed to certain changes to strengthen the Agreement's operation. The FTC discussed a broad range of ways to enhance competitiveness in the region and endorsed several initiatives to generate new opportunities for all of the countries to realize the benefits of the CAFTA-DR Agreement, with a heightened focus on small and medium sized businesses.

The United States hosted an FTC meeting on January 23, 2012 in Miami at which CAFTA-DR countries recognized continued growth in trade and integration, and acted to further strengthen CAFTA-DR institutions and initiatives.

Tariffs

As a member of the Central American Common Market, the Dominican Republic applies a harmonized external tariff on most items at a maximum of 15 percent with some exceptions.

Under the CAFTA-DR, however, 100 percent of U.S. industrial and consumer goods will enter the Dominican Republic duty free by 2015. Nearly all textile and apparel goods that meet the Agreement's rules of origin now enter the Dominican Republic duty free and quota free, creating economic opportunities for U.S. and regional fiber, yarn, fabric, and apparel manufacturing companies.

More than half of U.S. agricultural exports enter the Dominican Republic duty free under the CAFTA-DR. The Dominican Republic will eliminate its remaining tariffs on nearly all agricultural goods by 2020. For certain agricultural products, tariff-rate quotas (TRQs) permit some duty-free access for specified quantities during the tariff phase out period, with the duty-free amount expanding during that period. Under the CAFTA-DR, the TRQs are to be made available for the entire calendar year, beginning on January 1 of each year. The Dominican Republic has a record of failing to open TRQs on January 1, as required by the Agreement. In 2010, the Dominican Republic again did not open any of the TRQs on January 1, and many of these TRQs were not available until March 28. Further, the corresponding certificates required to use the rice and bean TRQs were not released until May 2010, over five months late.

In 2011, the Dominican Republic again did not open the TRQs on January 1 as required, instead only opening them on March 17, 2011. Moreover, the Dominican Republic failed to reassign and reallocate unused 2011 TRQ volumes that had initially been licensed to particular importers in September 2011 so that the volume could be used prior to the end of the calendar year. This denied U.S. exporters the opportunity to ship the volumes of product provided for under the Agreement. These continuing problems with the Dominican Republic's administration of its CAFTA-DR TRQ commitments are of increasing concern, particularly since, in order to strengthen the Office of Agricultural Commerce Treaties within the Dominican Republic's Ministry of Agriculture, the U.S. Government has provided technical assistance to improve the transparent allocation of TRQs of agricultural imports and to enhance the reporting of TRQs statistics. Nonetheless, the Ministry of Agriculture's Commercial Treaties Agreement Office (OTCA) has made little information publically available, making it difficult to determine if all the TRQs have been allocated and if U.S. products covered by TRQs have the appropriate access to the Dominican market, as provided for by the CAFTA-DR.

The Dominican Republic has promised full, timely opening of all the TRQs on February 1, 2012, an improvement, but again falling short of the requirement to have the TRQs open on January 1. As of January 20, 2012, all the TRQs were allocated; however, as of the date of this report, no consignees had received their certificates and therefore cannot proceed with importing the product.

Nontariff Measures

The Dominican Republic's customs policies and procedures frequently provoke complaints by businesses, and arbitrary clearance requirements sometimes delay the importation of merchandise for lengthy periods of time.

The Dominican Ministry of Agriculture continues to use discretionary import permits. The United States continues to raise this concern with Dominican authorities and is working to stop this practice. The 17 percent tax on the first *matricula* (registration document) for all vehicles, which was set by the government in 2006, remains in effect.

Under the CAFTA-DR, all CAFTA-DR countries, including the Dominican Republic, committed to improve transparency and efficiency in administering customs procedures, including the CAFTA-DR rules of origin. The CAFTA-DR countries also committed to ensuring greater certainty and fairness in the administration of these procedures, and all the CAFTA-DR countries agreed to share information to combat the illegal trans-shipment of goods. On October 31, 2005, the United States and the Dominican Republic signed a Customs Mutual Assistance Agreement that allows customs officials to exchange information, intelligence, and documents designed to help prevent customs offenses. The agreement provides a basis for cooperation and investigation in the areas of trade fraud, money laundering, smuggling, export controls, and related security. The United States donated nonintrusive (X-ray) verification equipment that has upgraded and expedited the verification process. The Dominican customs authority is still in the process of expanding the project by either purchasing or leasing additional equipment, as well as through technical assistance.

GOVERNMENT PROCUREMENT

The CAFTA-DR requires that procuring entities use fair and transparent procurement procedures, including advance notice of purchases and timely and effective bid review procedures, for procurement covered by the Agreement. Under the CAFTA-DR, U.S. suppliers are permitted to bid on procurements of most Dominican government entities, including key ministries and state-owned enterprises, on the same basis as Dominican suppliers. The anticorruption provisions in the Agreement require each government to ensure under its domestic law that bribery in matters affecting trade and investment, including in government procurement, is treated as a criminal offense or is subject to comparable penalties. Nevertheless, U.S. suppliers have complained that Dominican government procurement is not conducted in a transparent manner and that corruption is widespread.

The Dominican Republic is not a signatory to the WTO Agreement on Government Procurement.

EXPORT SUBSIDIES

The Dominican Republic does not have export promotion schemes other than the tariff exemptions for inputs given to firms in the free trade zones. Under the CAFTA-DR, the Dominican Republic may not adopt new duty waivers or expand existing duty waivers that are conditioned on the fulfillment of a performance requirement (*e.g.*, the export of a given level or percentage of goods). However, under the CAFTA-DR, the Dominican Republic was permitted to maintain such measures through 2009, provided that it maintained the measures in accordance with its obligations under the WTO Agreement on Subsidies and Countervailing Measures. Under 2011 Law 139, the Dominican Republic now levies a 2.5 percent tax on goods sold from free trade zones into the local market. The U.S. Government is working with the Dominican Republic government in an effort to ensure it implements its CAFTA-DR obligations.

INTELLECTUAL PROPERTY RIGHTS PROTECTION

In 2011, the Dominican Republic remained on the Watch List in the Special 301 report. Key concerns cited in the report included the widespread availability of pirated goods and excessive delays in the issuance of patents.

Despite these concerns, progress was made in a few areas during the year. For example, the Dominican Republic continued its efforts to implement its obligations under the CAFTA-DR, its government use of licensed software and addressing television broadcast piracy. The Dominican Republic also expanded the use of a system originally adopted with the technical assistance of the United States in 2010 to help reduce pharmaceutical marketing approval processing time. This system was expanded in 2011 to facilitate and expedite the Ministry of Public Health's marketing approval process for foods, medicinal products, cosmetics, and home and personal hygiene products. The Dominican Republic also acceded to the Trademark Law Treaty.

During 2012, the United States will continue to monitor the Dominican Republic's implementation of its intellectual property rights (IPR) obligations under the CAFTA-DR, particularly in trademarks, data protection for pharmaceuticals and enhancing judges' capacity to manage IPR issues. The United States also will continue to monitor the Dominican Republic's implementation of its bilateral and multilateral obligations to provide an effective system for protecting against the unfair commercial use and unauthorized disclosure of undisclosed test or other data generated to obtain marketing approvals for pharmaceutical and agrochemical products.

OTHER BARRIERS

Some U.S. firms and citizens have found corruption in government, including in the judiciary, to be a significant concern and a constraint to successful investment in the Dominican Republic. Administrative and judicial decision making at times appear to be inconsistent, nontransparent, and very time-consuming.

ECUADOR

TRADE SUMMARY

The U.S. goods trade deficit with Ecuador was $3.6 billion in 2011, up $1.5 billion from 2010. U.S. goods exports in 2011 were $6.1 billion, up 12.0 percent from the previous year. Corresponding U.S. imports from Ecuador were $9.6 billion, up 29.1 percent. Ecuador is currently the 42nd largest export market for U.S. goods.

The stock of U.S. foreign direct investment (FDI) in Ecuador was $1.3 billion in 2010 (latest data available), up from $1.2 billion in 2008. U.S. FDI in Ecuador is led by the manufacturing and mining sectors.

IMPORT POLICIES

The Organic Code for Production, Trade, and Investment (Production Code), which came into effect on December 29, 2010, covers an array of issues, including import and export policies, customs procedures, taxes, and investment and labor rules. Among other things, the Production Code provides incentives intended to spur local and foreign investment and to promote export expansion and diversification.

The Production Code created a Committee on Foreign Trade (COMEX) to replace the former Trade and Investment Council (COMEXI) as Ecuador's interagency body in charge of trade policy formulation and regulation. The Production Code identifies trade policy tools available to the government to address certain objectives, including: guaranteeing "fundamental rights" contained within Ecuador's 2008 Constitution; implementing treaties or international agreements; preserving the environment and biodiversity; responding to unjustifiable and unilateral restrictions applied by other countries to Ecuadorian exports; correcting balance of payments imbalances; preventing illicit trafficking of drugs; avoiding shortages of essential products and controlling the prices of such products; securing supplies of raw materials for domestic producers as part of a government industrial development plan; and protecting nonrenewable natural resources and the national cultural and historic heritage. In addition, the Production Code authorizes the use of trade remedies, including antidumping, countervailing duty, and safeguard measures.

Since January 26, 2011, Ecuador has pursued a strategic import substitution policy drawing on mechanisms included in the Production Code. The products subject to selective import substitution measures include: fertilizers, agrichemicals, pesticides and fungicides, soaps, detergents and cosmetics, other chemicals, ceramic tiles and floors, textiles, clothing, footwear, leather, radios, television, telephones, electronics, and electrical appliances. To date, Ecuador has applied a combination of tariff and nontariff measures, such as non-automatic import licensing, to most of the sectors listed above. The Production Code also includes a provision for cutting the corporate tax rate by 1 percentage point per year until it reaches 22 percent in 2013, as well as 3 types of tax incentives to promote investment in domestic production activities.

Tariffs

Ecuador is a member of the Andean Community (AC), which also includes Bolivia, Colombia, and Peru. When Ecuador joined the WTO in January 1996, it bound most of its tariff rates at 30 percent *ad valorem* or less, except for agricultural products covered by the Andean Price Band System (APBS). Ecuador's second Trade Policy Review (TPR) by the WTO was concluded in November 2011. According to the WTO Secretariat's TPR report, Ecuador's tariff structure has become more complex over the last couple of years. Until recently, Ecuador had generally applied a simple four-tiered tariff structure with levels of five percent for most raw materials and capital goods; 10 percent or 15 percent for intermediate goods; and 20 percent for most consumer goods.

Balance of payments safeguards, imposed by Ecuador on over 600 products in January 2009, were phased out by July 2010. However, in June 2010, Ecuador instituted mixed tariffs on over 300 tariff line items including footwear, textile and apparel products, providing continued protection to these domestic industries, which had benefitted substantially from the previous balance of payments safeguard measures. A mixed tariff of 10 percent *ad valorem* plus a $6 per pair specific tariff was applied to 28 tariff lines (at the 8-digit level) corresponding to footwear, and a mixed tariff of $5.50 per kilo plus 10 percent *ad valorem* tariff was applied to imported garments and linens. Mixed tariffs have also been applied to televisions.

According to the information available to the WTO, Ecuador's applied average most favored nation (MFN) tariff rate was 9.3 percent in 2011. While its average applied MFN tariff rate for industrial products declined from 10.6 percent in 2005 to 7.6 percent in 2011, for agricultural products it increased from 16.7 percent to 19.6 percent. However, as Ecuador had not supplied to the WTO the *ad valorem* equivalents for its mixed tariffs, the actual average applied MFN tariff rates may be higher than those noted above and may exceed Ecuador's bound tariff rates. The WTO Secretariat identified 19 tariffs at the ten-digit level that exceeded Ecuador's bound tariff rates by 5 to 15 percentage points.

On September 1, 2011, COMEX imposed new tariffs ranging from 5 percent to 18 percent on CKDs (automobile knock-down kits). Previously, CKDs were not subject to a tariff. The tariff is eligible for a discount at a ratio of one percent for every two percentage points of local content incorporated into the finished vehicle. The Ministry of Industry and Productivity (MIPRO) is responsible for auditing vehicle assemblers to determine local content percentage.

Ecuador applies the APBS with respect to more than 150 agricultural products imported from outside the AC. These products include wheat, rice, sugar, barley, white and yellow corn, soybeans, soybean meal, African palm oil, soy oil, chicken meat, pork meat, and powdered milk, as well as certain products derived from them. The APBS protects domestic industry with a variable levy by increasing tariffs when world prices fall and decreasing tariffs when world prices rise.

When Ecuador became a WTO Member, it agreed to phase out its participation in the APBS, starting in January 1996, with a total phase out by December 2001. To date, no steps have been taken to phase out use of the APBS. The extent to which the APBS restricts trade varies by product. For some U.S. exports, such as wheat, barley, malt barley, and their byproducts, the price band total duty (*ad valorem* tariff plus variable levy) is usually below Ecuador's WTO bound tariff and is often zero. However, price band total duties as high as 85.5 percent and 46 percent have been applied to chicken parts and pork, respectively, restricting those imports.

On October 11, 2010, Ecuador imposed a safeguard measure on imports of automotive windshields based on a determination of serious injury to the national industry due to increased imports. The safeguard measure will be applied for three years and consists of the application of a $12.72 specific tariff on top of the current applied 15 percent *ad valorem* tariff; imports from Peru and Chile are exempted from the measure.

Tariff-Rate Quotas

When Ecuador became a WTO Member in 1996, it established tariff-rate quotas (TRQs) for a number of agricultural imports. Products subject to TRQs include wheat, corn, sorghum, barley, barley malt, soybean meal, powdered milk, frozen turkeys, and frozen chicken parts. The Ecuadorian government's process for TRQ administration lacks transparency, and for some products, such as frozen chicken parts, a TRQ has not yet been established. The U.S. Department of Agriculture (USDA) is currently working with the Ministry of Agriculture, Livestock, Aquaculture, and Fisheries (MAGAP) to address this issue using information management systems.

Nontariff Measures

Importers must register with Ecuador's National Customs Service (formerly the Ecuadorian Customs Corporation) to obtain an import code for all products. In August 2011, Ecuador instituted a non-automatic import licensing program covering 42 tariff subheadings. The products affected are tires, vehicles, mobile telephones, televisions/monitors, refrigerators/freezers, and semi-finished iron and steel products. According to the Ecuadorian government, the licensing regime was put into place to monitor compliance with so-called voluntary import agreements within these sectors. According to Ecuador's Central Bank, this measure affected imports from the United States worth $332 million in 2010, nearly 16 percent of the total of these products imported into Ecuador. The WTO noted in its TPR report that Ecuador had not yet provided a notification to the WTO of its import licensing regime.

Ecuador also still requires prior authorization from the MAGAP for imports of more than 80 agricultural items originating in countries other than AC Members (COMEXI Resolution 383 of June 11, 2007). Many of these products are also protected under the APBS (*e.g.*, poultry, beef, dairy, horticultural products, corn, rice, palm oil, and soybean meal). For several types of agricultural imports, the Minister or a designee must provide prior import authorization. The MAGAP argues that the authorization ensures that sanitary standards and tax rules are followed, but in some instances where entry has been denied these justifications do not appear to apply. Subsequent to a visit by MAGAP officials to the U.S. Department of Agriculture in Washington, D.C. in September 2009, the MAGAP requested assistance in developing a more transparent and quantifiable system of prior import authorization. Through its PL-480 program, USDA has provided funding to support a MAGAP initiative to use information management systems for the issuance of import permits.

Another administrative hurdle for agricultural importers is the MAGAP's use of "Consultative Committees" for import authorizations. Import authorizations usually are subject to crop absorption programs, which were to be eliminated as part of Ecuador's WTO accession in 1996. These Committees, composed primarily of local producers, often advise the MAGAP against granting import authorizations for products such as corn, soybean meal, dairy products, and meats. The MAGAP often requires that all local production be purchased at high prices before authorizing imports.

The Ministry of Health must provide prior authorization in the form of a sanitary registration for imported and domestically produced pharmaceuticals, natural products, pesticides, and processed, canned, and packaged foods. Importers have concerns regarding the confidentiality of information they must provide on product formulas and compositions. In addition, importers report that U.S. "Certificates of Free Sale" are not accepted in lieu of sanitary registration, but only as one of the many documents required for registration.

In January 2008, Ecuador's special consumption tax (ICE) on a number of products, largely luxury items, was increased. The ICE was increased mostly for imported products rather than those produced domestically, such as perfumes, vehicles (tiered increases by vehicle price starting at $20,000), video games, firearms, airplanes, helicopters, boats, and cable television service. In December 2011, a new tax package increased the ICE *ad valorem* rate on spirits from 40 percent to 75 percent, and added a specific tax of $6.20 for every liter-equivalent of alcohol, phased in over 3 years. However, the legislation is supposed to make assessment of the ICE for domestically produced and imported spirits more equitable by establishing factory and pre-import duty prices as the new taxable bases, respectively. The IVA on cigarettes is slated to increase by $0.08 per cigarette over a 3 year period. The package also included an increase, effective immediately, of Ecuador's capital exit tax from two percent to five percent. Importers claim this indirect tax on imports will substantially increase the cost of purchasing abroad. Imports of raw materials, basic inputs, and capital goods are eligible for offsetting tax credits, but the process has been criticized as convoluted.

Since 2007, Ecuador's customs service has used a risk analysis system rather than Ecuador's existing pre-shipment inspection regime for imports with f.o.b. values of more than $4,000. Under this system, low risk importers benefit from fewer physical inspections and expedited release of their cargo. In August 2010, a policy was implemented requiring that for every shipment, importers must provide net weight figures per product lot number, rather than prorating the weight of the container by product as was previously allowed.

GOVERNMENT PROCUREMENT

Foreign bidders must register and have a local legal representative in order to participate in government procurement in Ecuador. Bidding on government procurement can be cumbersome and relatively nontransparent. The lack of transparency creates opportunities for manipulation by procuring entities.

Since 2008, Ecuador's public contracting law requires that priority be given to locally produced and supplied products and services, although foreign suppliers can compete for the procurements. Based on Article 25 of the public contracting law, INCOP (Public Contracting Institute) established that at least 40 percent of the value of a product must be locally produced to qualify for this preference. Bidders are required to register and submit bids for government procurement through an online system (http://www.compraspublicas.gov.ec).

As a general rule, all public institutions are subject to the public contracting law. However, the same law establishes exceptions, including special regimes established pursuant to norms set by the President (Article 2); international agreements for the purchase of goods and services (Article 43); exploration and exploitation of hydrocarbons; emergency situations (Article 57); and national security contracts.

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

INTELLECTUAL PROPERTY RIGHTS PROTECTION

Ecuador was listed on the Watch List in the 2011 Special 301 report. The report cited progress made by Ecuador in extending intellectual property rights (IPR) services throughout the country and in facilitating access to patent information. However, the report also cited key remaining concerns, including: weak enforcement of intellectual property rights; lack of effective protection against unfair commercial use of undisclosed test or other data generated to obtain marketing approval for pharmaceutical products; and lack of an effective system to prevent the issuance of marketing approvals for unauthorized copies of patented pharmaceutical products. Although Ecuador has established special IPR units that conduct investigations and execute seizures of pirated and counterfeit products, overall IPR enforcement in Ecuador remains seriously inadequate, resulting in high piracy levels in the software, publishing, recording, and film industries. In addition, Ecuador has yet to put in place specialized IPR courts, which were required under its 1998 IPR law.

In 2009, President Correa signed two presidential decrees establishing a compulsory license policy for patented pharmaceutical products and agricultural chemical products. On April 14, 2010, Ecuador's Intellectual Property Institute (IEPI) granted a compulsory license for a patented drug used in the treatment of HIV/AIDS that is manufactured by a U.S. company. To date, no other compulsory licenses have been granted by IEPI for either patented pharmaceutical or agricultural chemical products. The United States will continue to monitor these developments.

SERVICES BARRIERS

Telecommunications

In the area of basic telecommunications, Ecuador has only undertaken WTO commitments for domestic cellular services. Accordingly, it does not have market access or national treatment obligations for other domestic and international telecommunications services, such as fixed-line voice telephony and data transmission services. In addition, Ecuador has not committed to adhere to the pro-competitive regulatory commitments of the WTO Reference Paper.

INVESTMENT BARRIERS

Ecuador's investment climate remains uncertain as the government's economic policies continue to evolve. While Ecuador is still relatively open to foreign investment in most sectors, new laws and regulations limit to some extent private sector participation in sectors deemed "strategic," most notably in extractive industries. In addition, inconsistent application and interpretation of its investment laws negatively impacts the transparency and stability of Ecuador's investment regime. This legal complexity increases the risks and costs of doing business in Ecuador.

Ecuador's framework for investment protection is still unsettled. Ecuador's withdrawal from the World Bank's International Centre for Settlement of Investment Disputes (ICSID) became effective January 7, 2010. In September 2009, the Ecuadorian government requested approval from the country's National Assembly to terminate 13 bilateral investment treaties (BITs), including its BIT with the United States, arguing they contained provisions that were unconstitutional. On November 24, 2010, Ecuador's Constitutional Court ruled that provisions within Ecuador's BIT with the United States were unconstitutional due to a conflict with Article 422 of the 2008 Constitution. In its ruling, the Court stated that Article 422 of Ecuador's Constitution prohibited the State from concluding treaties or international instruments in which Ecuador would cede sovereign jurisdiction to international arbitration tribunals in commercial disputes between the State and private investors and concluded that the BIT with the United States constituted such an instrument. The Constitutional Court has delivered similar rulings on the other BITs under review. Based on the Constitutional Court's rulings, Ecuador's National Assembly has so far approved termination of five of the BITs, but did not approve termination of four others. It has not yet acted on Ecuador's BIT with the United States. To date, the Ecuadorian government has only officially terminated its BIT with Finland. The Ecuadorian government has indicated it may be open to negotiating international arbitration clauses within individual contracts, as provided for under the Production Code.

Certain sectors of Ecuador's economy are reserved for the State, while equity caps apply in other sectors, such as a 49 percent cap on foreign investment in domestic fishing operations and a 25 percent limit with respect to broadcast stations. Petroleum exploration and development is reserved for the State, but foreign investment can be conducted through "exceptional" contracts with the State. In the past, a number of disputes have arisen related to these contracts and to the laws regulating petroleum exploration and development generally. In 2010, the Ecuadorian government enacted a policy that requires all contracts in extractive industries to be in the form of service, or "for fee," contracts, rather than production sharing agreements. On November 23, 2010, the Ecuadorian government completed negotiations with most resident foreign oil companies to transition from production sharing to service contracts. Several companies declined to renegotiate their contracts and negotiated compensation for operations turned over to the Ecuadorian government. The last U.S. oil and gas production company operating in Ecuador departed in 2011 after negotiating a sale of its operations to the Ecuadorian government. Some U.S. companies that have operated in Ecuador, notably in the petroleum sector, have filed for international arbitration resulting from investment disputes.

EGYPT

TRADE SUMMARY

The U.S. goods trade surplus with Egypt was $4.1 billion in 2011, a decrease of $473 million from 2010. U.S. goods exports in 2011 were $6.2 billion, down 9.5 percent from the previous year. Corresponding U.S. imports from Egypt were $2.1 billion, down 8.0 percent. Egypt is currently the 39th largest export market for U.S. goods.

The stock of U.S. foreign direct investment (FDI) in Egypt was $11.7 billion in 2010 (latest data available), up from $9.1 billion in 2009.

The revolution and resultant political uncertainty, which gripped Egypt over the course of 2011, have left unclear the future of Egyptian approaches to tackling needed trade reforms. As Egypt's new government fully establishes lines of authority and formulates basic foreign policy positions, the Administration will monitor its actions closely.

IMPORT POLICIES

In recent years, the government of Egypt has gradually liberalized its trade regime and economic policies, although the reform process has been slow and uneven. Challenges to opening Egypt's markets remain, including a need to reduce corruption, reform the cumbersome bureaucracy, implement a fully transparent regulatory regime, and eliminate sanitary, phytosanitary, and safety standards that do not appear to be based on science.

Tariffs

As part of the government's stimulus package in February 2009, Presidential Decree 51/2009 amended the customs tariff schedule for 255 additional items, lowering or eliminating tariffs on some raw materials and on capital and intermediate goods such as inputs for spun and woven products.

The liberalizing reforms undertaken by the government of Egypt in the past seven years have reduced the overall weighted tariff average from 14.6 percent to 10.1 percent. Tariffs on the vast majority of goods entering Egypt are below 15 percent. Vehicles, alcohol, tobacco, and selected cereals are the only items on which tariffs are still 40 percent or higher. Tariffs on some cereals are well over 1,000 percent. Tariffs on passenger cars with engines under 1,600 cubic centimeters (cc) are taxed at 40 percent, but cars with engines over 1,600cc are taxed at 135 percent. In addition, cars with engines over 2,000cc are subject to an additional escalating sales tax of up to 45 percent. All clothing also faces a relatively high tariff of 30 percent.

Tariffs on most U.S. agricultural product exports to Egypt are no higher than 5 percent; however, a number of processed and high value food products, including poultry meat, face tariff rates ranging from 20 percent to 30 percent.

There is a 300 percent duty on alcoholic beverages for use in the tourism sector, including for hotels, plus a 40 percent sales tax. The general tariff for alcoholic beverages ranges from 1,200 percent on beer to 1,800 percent on wine and to 3,000 percent on sparkling wine and spirits.

Foreign movies are subject to duties and import taxes amounting to 46 percent and are subject to sales taxes and box offices taxes higher than those for domestic films.

Customs Procedures

In 2004, the Ministry of Finance committed to a comprehensive reform of Egypt's customs administration and is reorganizing the Customs Authority to meet international standards. Modern customs centers are being established at major ports to test new procedures, such as risk management, and new information technology systems are being implemented to facilitate communications among ports and airports. These systems were to become fully operational in 2009, but implementation remains delayed.

The Ministry of Finance in August 2008 finalized a draft of a new customs law to streamline procedures and facilitate trade. The proposed legislation has yet to be submitted to parliament for consideration. Its status at this point is unclear.

Import Bans and Barriers

The Egyptian Ministry of Industry and Foreign Trade and the Ministry of Agriculture and Land Reclamation issued a ministerial decree on October 25, 2011, banning the importation of cotton of any origin, effective each year the country's domestic crop is sold. In response to Egyptian industrial demands, the ministries relaxed the prohibition on November 22, 2011 to allow importation of cotton used in the production of exports.

Passenger vehicles may only be imported into Egypt by their original owners, and the owner must have purchased the car within the first 12 months of its production for it to be eligible for importation. Vitamin supplements can only be sold in Egypt if they are produced in Egypt by an Egyptian firm, and only such a firm can import the materials to use in the manufacturing process.

The National Nutrition Institute or the Drug Planning and Policy Center of the Ministry of Health and Population (MOHP) registers and approves all nutritional supplements, specialty foods, and dietary foods. The definition of specialty foods is very broad and includes processed foods with labels claiming that the food is "high in" or "enriched with" vitamins or minerals. The government attempts to complete the approval process in 6 weeks to 8 weeks, but some products face waiting periods of 4 months to 12 months for approval. Importers must apply for a license for dietary products and renew the license every 1 year to 5 years depending on the product, at a cost of approximately $1,000 per renewal.

The MOHP must approve the importation of new, used, and refurbished medical equipment and supplies to Egypt. This requirement does not differentiate between the most complex computer-based imaging equipment and basic supplies. The MOHP approval process entails a number of steps which can be burdensome. Importers must submit a form requesting the MOHP's approval to import, provide a safety certificate issued by health authorities in the country of origin, and submit a certificate of approval from the U.S. Food and Drug Administration or the European Bureau of Standards. The importer must also present an original certificate from the manufacturer indicating the production year of the equipment and, if applicable, certifying that equipment is new. All medical equipment must be tested in the country of origin and proven safe. The importer must prove it has a service center to provide after-sales support for the imported medical equipment, including spare parts and technical maintenance.

GOVERNMENT PROCUREMENT

A 1998 law regulating government procurement requires that technical factors, along with price, be considered in awarding contracts. A preference is granted to Egyptian companies whose bids are within 15 percent of the price of other bids. In the 2004 Small and Medium Sized Enterprises (SMEs) Development Law, Egyptian SMEs were given the right to supply 10 percent of the goods and services in every government procurement.

Egyptian law grants potential suppliers certain rights, such as speedy return of their bid bonds and an explanation of why a competing supplier was awarded a contract. However, concerns about a lack of transparency remain. For example, the Prime Minister retains the authority to determine the terms, conditions, and rules for procurement by specific entities.

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

INTELLECTUAL PROPERTY RIGHTS PROTECTION

Egypt remained on the Watch List in the 2011 Special 301 Report. Egypt undertook positive efforts, including the creation of the National Observatory for Industry Products, an organization tasked with inspecting goods for patent and trademark infringement. Egypt also conducted successful public awareness campaigns about counterfeit pharmaceutical products, and conducted several operations that resulted in the seizure of large amounts of counterfeit goods. However, piracy and counterfeiting continue to be serious problems. Online music piracy has increased, and book and entertainment software piracy remain a concern. The United States continues to urge the Ministry of Health to clarify its commitment to take steps to protect undisclosed test or other data generated to obtain marketing approvals for pharmaceutical products against unfair commercial use and unauthorized disclosure. The United States also continues to seek clarification of the Ministry of Health's commitment to provide an effective system to address patent infringement concerns expeditiously in connection with applications to market pharmaceutical products.

SERVICES BARRIERS

Egypt restricts foreign equity in construction and transport services to 49 percent. Egypt limits the employment of non-nationals to 10 percent of an enterprise's general workforce, although the Ministry of Manpower and Migration can waive this limitation. In computer-related industries, Egypt requires that 60 percent of top level management must be Egyptian within three years of the start-up date of the venture. According to Egyptian labor law, foreigners cannot be employed as tourist guides.

Banking

No foreign bank seeking to establish a new bank in Egypt has been able to obtain a license in the past 20 years, and in November 2009, the Central Bank reaffirmed that no new banks would be given licenses.

Since banking reform began in 2004, the government has divested itself from many joint venture banks and privatized the government-owned Bank of Alexandria in 2006. However, efforts to restructure the remaining three state-owned banks have been mixed, and the Central Bank rejected privatization of the three banks in 2009 on the grounds that market conditions were not right. The three remaining state-owned banks still control at least 40 percent of the banking sector's total assets. The banking reforms of the past six years have succeeded in significantly reducing the share of non-performing loans.

In 2010, in reaction to high meat and poultry prices, the Central Bank relaxed a requirement of 100 percent foreign exchange cover for Letters of Credit issued for the purchase of agricultural and food products, reducing the requirement to 50 percent. As of mid-December 2011, this practice continues.

Telecommunications

The state-owned telephone company, Telecom Egypt, which was wholly state-owned until a 20 percent stake was floated in December 2005, continues to hold a *de facto* monopoly on the fixed line network and is the only provide currently licensed to provide international gateway services. Despite Egypt's WTO commitments to issue additional licenses, the National Telecommunications Regulatory Authority (NTRA) postponed a plan to issue a second license in mid-2008, citing a lack of interest by potential applicants. In its WTO commitments, Egypt reserved for itself the right to condition market entry on an "economic needs test" (ENT), but agreed to decide if the ENT needed to be continued after 2005, subject to consultations between Egypt and WTO Members taking into consideration the progress of the Council on Trade in Services on ENTs. It is unclear whether as a policy matter Egypt continues to apply an ENT when examining license applications. One trade association has raised complaints since Egypt limits the provision of general Voice over Internet Protocol (VoIP) service to licensed wireline providers, effectively limiting the provision of VoIP services to its incumbent operator. All Class A (*i.e.*, facilities-based) licensed Internet service providers, however, may offer VoIP services within closed user groups, either within a company or via VPNs, and only on a PC-to-PC basis. In 2010, the NTRA issued two new licenses for "triple play" services of data, voice, and video to consumers, but these licenses apply only for the provision of such services to newly-constructed gated housing compounds.

The mobile phone sector is highly competitive. Three private companies, Etisalat, Mobinil, and Vodafone Egypt, serve the market. Telecom Egypt holds a 45 percent stake in Vodafone Egypt. The provision of international traffic without a license for an international gateway is illegal and the NTRA has therefore prohibited international calls made via mobile Internet connections such as those provided by Skype.

Transportation

The United States-Egypt Air Transport Agreement limits the flexibility of airlines to take advantage of commercial opportunities and respond to market conditions. Furthermore, the agreement has no provisions on charter services. Some *ad hoc* charter flights, however, are conducted to and from Cairo with the explicit approval of the national carrier, Egypt Air.

Courier and Express Delivery Services

Private courier and express delivery service suppliers seeking to operate in Egypt must receive special authorization from the Egyptian National Postal Organization (ENPO). In addition, although express delivery services constitute a separate for-profit, premium delivery market, private express operators are required to pay ENPO a "postal agency fee" of 10 percent of annual revenue on shipments under 20 kilograms. In 2010, ENPO imposed an additional fee on private couriers and express delivery services of £E5 ($0.87) on all shipments under five kilograms.

OTHER BARRIERS

Pharmaceutical Price Controls

In 2009, the MOHP issued Decree 373 to replace Egypt's "cost-plus" system of pharmaceutical pricing with a new system that would set the price of brand-name drugs in Egypt 10 percent lower than the lowest international sale price for the drug. The decree also sets the price ceiling for generic drugs at 60 percent to 70 percent of the amount of the brand-name drug, which is higher than the average sale price for generics in Egypt. The decree, however, was prevented from taking effect by an April 2010 ruling by the Administrative Court. The MOHP has appealed and the Supreme Administrative Court is expected to rule on the case soon.

EL SALVADOR

TRADE SUMMARY

The U.S. goods trade surplus with El Salvador was $889 million in 2011, an increase of $661 million from 2010. U.S. goods exports in 2011 were $3.4 billion, up 38.6 percent from the previous year. Corresponding U.S. imports from El Salvador were $2.5 billion, up 12.6 percent. El Salvador is currently the 49th largest export market for U.S. goods.

The stock of U.S. foreign direct investment (FDI) in El Salvador was $3.7 billion in 2010 (latest data available), up from $3.3 billion in 2009.

IMPORT POLICIES

Free Trade Agreement

On August 5, 2004, the United States signed the Dominican Republic-Central America-United States Free Trade Agreement (CAFTA-DR or "Agreement") with five Central American countries (Costa Rica, El Salvador, Guatemala, Honduras, and Nicaragua) and the Dominican Republic (the "Parties"). Under the Agreement, the Parties are significantly liberalizing trade in goods and services. The CAFTA-DR also includes important disciplines relating to customs administration and trade facilitation; technical barriers to trade; government procurement; investment; telecommunications; electronic commerce; intellectual property rights; transparency; and labor and environmental protection.

The Agreement entered into force for the United States, El Salvador, Guatemala, Honduras, and Nicaragua in 2006 and for the Dominican Republic in 2007. The CAFTA-DR entered into force for Costa Rica on January 1, 2009.

In 2008, the Parties implemented amendments to several textile-related provisions of the CAFTA-DR, including, in particular, changing the rules of origin to require the use of U.S. or regional pocket bag fabric in originating apparel. The Parties also implemented a reciprocal textile inputs sourcing rule with Mexico. Under this rule, Mexico provides duty-free treatment on certain apparel goods produced in a Central American country or the Dominican Republic with U.S. inputs, and the United States provides reciprocal duty-free treatment under the CAFTA-DR on certain apparel goods produced in a Central American country or the Dominican Republic with Mexican inputs. These changes further strengthen and integrate regional textile and apparel manufacturing and create new economic opportunities in the United States and the region.

In February 2011, the CAFTA-DR Free Trade Commission (FTC), the central oversight body for the Agreement, met for the first time in San Salvador, El Salvador. The FTC reviewed the implementation of the Agreement and its trade and economic impact on the region and agreed to certain changes to strengthen the Agreement's operation. The FTC discussed a broad range of ways to enhance competitiveness in the region and endorsed several initiatives to generate new opportunities for all of the countries to realize the benefits of the CAFTA-DR Agreement, with a heightened focus on small and medium sized businesses.

The United States hosted an FTC meeting on January 23, 2012 in Miami at which CAFTA-DR countries recognized continued growth in trade and integration, and acted to further strengthen CAFTA-DR institutions and initiatives.

Tariffs

As a member of the Central American Common Market, El Salvador applies a harmonized external tariff on most items at a maximum of 15 percent with some exceptions.

Under the CAFTA-DR, however, 100 percent of U.S. industrial trade will enter El Salvador duty free by 2015. Nearly all textile and apparel goods that meet the Agreement's rules of origin now enter El Salvador duty free and quota free, creating economic opportunities for U.S. and regional fiber, yarn, fabric, and apparel manufacturing companies.

Under the CAFTA-DR, more than half of U.S. agricultural exports now enter El Salvador duty free. El Salvador will eliminate its remaining tariffs on nearly all agricultural products by 2020 (2023 for rice and chicken leg quarters and 2025 for dairy products). For certain agricultural products, tariff-rate quotas (TRQs) permit some duty-free access for specified quantities during the tariff phase out period, with the duty-free amount expanding during that period. El Salvador will liberalize trade in white corn through expansion of a TRQ, rather than by tariff reductions.

Nontariff Measures

Under the CAFTA-DR, all CAFTA-DR countries, including El Salvador, committed to improve transparency and efficiency in administering customs procedures, including the CAFTA-DR rules of origin. The CAFTA-DR countries also committed to ensuring greater procedural certainty and fairness in the administration of these procedures, and agreed to share information to combat illegal trans-shipment of goods. However, over the last year, U.S. exporters and Salvadoran importers of U.S. products, particularly agricultural goods, are increasingly complaining about customs-related problems they are encountering in El Salvador. The United States is continuing to engage with El Salvador on these issues. In addition, El Salvador has negotiated agreements with express delivery companies to allow for faster handling of their packages, but the Salvadoran customs administration and U.S. express delivery companies disagree on whether the agreements have been implemented. In particular, U.S. express delivery companies have raised concerns regarding customs clearance delays, acceptance of electronic documents, and the submission of a single manifest covering all goods contained in an express delivery shipment.

In 2009 and again in 2010, El Salvador amended its law regulating the production and sale of alcoholic beverages. The amendments applied an eight percent *ad valorem* tax on domestic products and imports. The amendments also adjusted taxes on alcoholic beverages which are ostensibly based on percentage of alcohol by volume. This tax structure applies a lower rate per percentage of alcohol on alcoholic beverages that are typically produced locally or imported from other Central American countries (*e.g.*, *aguardiente*) than on alcoholic beverages that are imported from non-Central American countries (*e.g.*, whiskey and gin). The U.S. Government has raised concerns with the legislation with the government of El Salvador and continues to work with that government in an effort to address those concerns.

GOVERNMENT PROCUREMENT

The CAFTA-DR requires that procuring entities use fair and transparent procurement procedures, including advance notice of purchases and timely and effective bid review procedures, for procurements covered by the Agreement. Under the CAFTA-DR, U.S. suppliers are permitted to bid on procurements of most El Salvador government entities, including key ministries and state-owned enterprises, on the same basis as Salvadoran suppliers. The anticorruption provisions in the Agreement require each government to ensure under its domestic law that bribery in matters affecting trade and investment, including in government procurement, is treated as a criminal offense or is subject to comparable penalties.

The LACAP (*Ley de Adquisiciones y Contrataciones de la Administración Pública*), which regulates government procurement, entered into force in 2000.

In May 2011, the Legislative Assembly approved a series of reforms to the LACAP, including easing procurement to expedite contract valued at less than $35,856, or the equivalent of 160 salaries at the minimum urban wage. In addition, under the 2011 reforms, the Ministry of Health is authorized to acquire medicines without complying with the LACAP in cases of need.

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

EXPORT SUBSIDIES

Beginning on February 1, 2011, El Salvador eliminated the six percent tax rebate it had applied to exports shipped outside Central America for goods that had undergone a transformation process adding at least 30 percent to the original value. To compensate for the elimination of the six percent rebate, in January 2011, the government approved a new form of drawback, consisting of a refund of custom duties paid on imported inputs and intermediate goods exclusively used in the production of products exported outside of the Central American region. The new regulations also include the creation of a Business Production Promotion Committee with the participation of the private and public sector to work on policies to strengthen the export sector, and the creation of an Export and Import Center. The Export and Import Center will replace the current system under which export procedures are handled by the Central Bank and import procedures are handled by the Ministry of Finance.

Under the CAFTA-DR, El Salvador may not adopt new duty waivers or expand existing duty waivers that are conditioned on the fulfillment of a performance requirement (*e.g.*, the export of a given level or percentage of goods).

INTELLECTUAL PROPERTY RIGHTS PROTECTION

To implement its CAFTA-DR intellectual property rights (IPR) obligations, El Salvador undertook legislative reforms providing for stronger IPR protection and enforcement. Despite these efforts, the piracy of optical media, both music and video, in El Salvador remains a concern. In addition, the business software industry continues to report very high piracy rates for El Salvador. Optical media imported from the United States into El Salvador are being used as duplication masters for unauthorized copies of copyrighted works. The United States has expressed concern to the Salvadoran government about inadequate enforcement of cable broadcast rights and the competitive disadvantage it places on legitimate providers of this service. The United States will continue to monitor El Salvador's implementation of its IPR obligations under the CAFTA-DR.

SERVICES BARRIERS

Under the CAFTA-DR, El Salvador granted U.S. services suppliers substantial access to its services market, including financial services. El Salvador maintains a few barriers to services trade, however: foreign investors are limited to 49 percent of equity ownership in free reception television and AM/FM radio broadcasting, and notaries must be Salvadoran citizens.

Since June 2009, every international telephone call, regardless of origin, is charged a $0.04 per minute tax. A previous exemption for calls from other Central American countries is no longer in effect.

INVESTMENT BARRIERS

There are few formal investment barriers in El Salvador, except as noted in the services section above. However, the United States has expressed concerns regarding the impact of duplicative regulations and regulatory decision-making processes that appear to be inconsistent and contradictory. Such barriers have affected sectors including energy, mining, and retail sales.

OTHER BARRIERS

Some U.S. firms and citizens have found corruption in government, including in the judiciary, to be a significant concern and a constraint to successful investment in El Salvador. Administrative and judicial decision-making appear at times to be inconsistent, nontransparent, and very time-consuming. Bureaucratic requirements, such as certification of imported food products, have at times reportedly been excessive and unnecessarily complex.

ETHIOPIA

TRADE SUMMARY

The U.S. goods trade surplus with Ethiopia was $546 million in 2011, a decrease of $100 million from 2010. U.S. goods exports in 2011 were $690 million, down 10.8 percent from the previous year. Corresponding U.S. imports from Ethiopia were $144 million, up 12.9 percent. Ethiopia is currently the 87th largest export market for U.S. goods.

The stock of U.S. foreign direct investment (FDI) in Ethiopia was $6 million in 2010 (latest data available), up from $2 million in 2009.

IMPORT POLICIES

Ethiopia is not a Member of the World Trade Organization (WTO), but is actively involved in a WTO accession process. Ethiopia held a second working party meeting in May 2011 and submitted its goods offer in early 2012. Ethiopia has made progress in drafting new legislation and implementing capacity building measures relevant to WTO accession with the help of technical assistance from a number of donors, including the U.S. Government.

Ethiopia is a member of the Common Market for Eastern and Southern Africa (COMESA), but does not participate in COMESA's free trade area.

Tariffs

According to the WTO, Ethiopia's average applied tariff rate was 17.3 percent in 2010. Although generally, revenue generation, not protection of local industry, appears to be the primary justification of Ethiopia's tariffs, high tariffs are applied to protect certain local industries, including the textile and leather industries. Goods imported from COMESA members are granted a 10 percent tariff preference. *Ad valorem* duties range from zero percent to 35 percent, with a simple average of 16.8 percent. Beginning in February 2007, the government levied a 10 percent surtax on selected imported goods, with the proceeds designated for distribution of subsidized wheat in urban areas.

Nontariff Barriers

A cereals export ban imposed in 2009 due to supply shortages remains in effect. An export ban was imposed on cotton in November 2010 and another ban on raw and semi-processed hides and skins took effect at the end of 2011; both bans are aimed to shore up domestic supply and strengthen the export of value-added products.

An importer must apply for an import permit and obtain a letter of credit for the total value of the imports before an order can be placed. Even then, import permits are not always granted. Ethiopia currently maintains four requirements and potential restrictions for payments and transfers of international transactions, which include: (1) a tax certification requirement for repatriation of dividend and other investment income; (2) regulations covering the repayment of legal external loans and foreign partner credits; (3) rules for issuance of import permits by commercial banks; and (4) a requirement to obtain a clearance certificate from the National Bank of Ethiopia (central bank) to obtain import permits.

Foreign Exchange Controls

Ethiopia's central bank administers a strict foreign currency control regime and the local currency (Birr) is not freely convertible. While larger firms, state-owned enterprises, and enterprises owned by the ruling party do not typically face major problems obtaining foreign exchange, less well connected importers, particularly smaller, new-to-market firms, face delays in arranging trade-related payments.

GOVERNMENT PROCUREMENT

A high proportion of Ethiopian import transactions are conducted through government procurement, reflecting the heavy involvement of the government in the overall economy. Tender announcements are usually made public. Bureaucratic procedures and delays in the decision-making process sometimes impede foreign participation in procurements. U.S. firms have complained about the abrupt cancellation of some procurements, a perception of favoritism toward Chinese suppliers, a frequent requirement that would-be suppliers appear in person to collect solicitation packages, and a general lack of transparency in the procurement system. Business associations complain that state-owned and ruling party-owned enterprises have enjoyed *de facto* advantages over private firms in government procurement. Several U.S. firms have complained of pressure to offer supplier financing or other low-cost financing in conjunction with tenders. Several significantly large contracts have been signed in recent years between government enterprises and Asian companies outside of the government procurement process.

As a non-member of the WTO, Ethiopia is not a signatory to the WTO Agreement on Government Procurement.

INTELLECTUAL PROPERTY RIGHTS PROTECTION

The Ethiopian Intellectual Property Office (EIPO) is responsible for the administration of patents, trademarks, copyrights, and has competence in intellectual property policy. In the past few years, Ethiopia has enacted a series of new laws pertaining to copyright and related rights, crop varieties, and trademarks. In July 2008, EIPO confiscated and destroyed close to 500,000 pirated copies of locally produced songs and films in Addis Ababa. EIPO focuses mainly on protecting Ethiopian copyrighted materials, and has taken virtually no action to confiscate or impede the sale of pirated foreign works in Ethiopia.

Trademark infringement of major international brands appears to be widespread in Ethiopia. The lack of government registration requirements and enforcement capacity leave the government in a position of only responding to formal intellectual property rights challenges brought to Ethiopia's Competition Commission.

SERVICES BARRIERS

The state-owned Ethio Telecom maintains a monopoly on wire and wireless telecommunications and Internet service, though private investors are allowed to enter into joint ventures with the government. Ethio Telecom's management was outsourced to France Telecom (Orange) in December 2010. The Value Added Service Directive No. 2/2005 allows private companies to provide Internet service through the government's infrastructure, but implementing regulations have yet to be promulgated. The Ministry of Information and Communication Technology allows companies and organizations whose operations are Internet-dependent or are located in remote areas of the country to use Very Small Aperture Terminals (VSATs), but does not allow the general public to use VSATs. The government of Ethiopia bans Voice over Internet Protocol per the Proclamation on Telecommunications 281/2002.

INVESTMENT BARRIERS

Official and unofficial barriers to foreign investment persist. Investment in telecommunications services and in defense industries is permitted only in partnership with the Ethiopian government. The banking, insurance, and microcredit industries are restricted to domestic investors. Other areas of investment reserved exclusively for Ethiopian nationals include broadcasting, domestic air transport services using aircraft with a seating capacity of over 20 passengers, and forwarding/shipping agency services. Foreign investors are also barred from investing in a wide range of small retail and wholesale enterprises (*e.g.*, printing, restaurants, and beauty shops).

The government is privatizing a large number of state-owned enterprises. Most, but not all, of the tenders issued by the Privatization and Public Enterprises Supervising Agency are open to foreign participation. Some investors bidding on these properties have alleged a lack of transparency in the process. Investors in formerly state-owned businesses subject to privatizations reportedly have encountered problems that include impediments to transferring title, delays in evaluating tenders, and issues with tax arrears.

All land in Ethiopia belongs to the state; there is no private land ownership. Land may be leased from local and regional authorities for up to 99 years. A land-lease regulation passed in late 2011 places time limits for completing construction on leased urban land, allows for revaluation of leases at a government-set benchmark rate, places previously-owned land ("old possessions") under leasehold, and restricts transfer of leasehold rights. Compensation is paid for real property seized upon the termination of a lease, but is not paid for the land on which the property is built.

OTHER BARRIERS

Parastatal and Party-affiliated Companies

Ethiopian and foreign investors alike complain about patronage networks and *de facto* preferences shown to businesses owned by the government or associates of the ruling party, including preferential access to bank credit, foreign exchange, land, procurement contracts, and favorable import duties.

Judiciary

Companies that operate businesses in Ethiopia assert that its judicial system remains inadequately staffed and inexperienced, particularly with respect to commercial disputes. While property and contractual rights are recognized, and there are commercial and bankruptcy laws, judges often lack understanding of commercial matters and scheduling of cases often suffer from extended delays. Contract enforcement remains weak. There is no guarantee that the award of an international arbitral tribunal will be fully accepted and implemented by Ethiopian authorities. Ethiopia has signed, but never ratified, the 1965 Convention on the Settlement of Investment Disputes between States and Nationals of Other States. Ethiopia has also neither signed nor ratified the 1958 Convention on the Recognition and Enforcement of Foreign Arbitral Awards (the "New York Convention.")

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.

GHANA

TRADE SUMMARY

The U.S. goods trade surplus with Ghana was $414 million in 2011, a decrease of $302 million from 2010. U.S. goods exports in 2011 were $1.2 billion, up 20.5 percent from the previous year. Corresponding U.S. imports from Ghana were $779 million, up 184.9 percent. Ghana is currently the 77th largest export market for U.S. goods.

The stock of U.S. foreign direct investment in Ghana was $974 million in 2006 (latest data available).

IMPORT POLICIES

Tariffs

Ghana is a member of the World Trade Organization (WTO) and the Economic Community of West African States (ECOWAS). According to the WTO, Ghana's average most favored nation (MFN) applied tariff rate in 2010 was 12.8 percent. For agricultural goods, the average applied tariff is 17.4 percent, and for non-agricultural products it is 12.3 percent. In 2008, along with other ECOWAS countries, Ghana adopted a common external tariff (CET) with five bands. The 5 tariff bands are: zero duty on social goods (*e.g.*, medicine, publications); 5 percent duty on imported raw materials; 10 percent duty on intermediate goods; 20 percent duty on finished goods; and 35 percent duty will be charged on goods in certain sectors that the government seeks to protect, such as poultry and rice. Ghana currently maintains 190 exceptions to the CET, and the highest applied tariff is 20 percent.

Ghana has bound all agricultural tariffs in the WTO at an average of 97.2 percent, more than 5 times the average level of its MFN applied rates on agricultural goods. On industrial goods, almost all of Ghana's tariffs are unbound at the WTO, meaning that Ghana could raise tariffs to any rate at any time without violating WTO commitments, contributing to uncertainty for traders.

Nontariff Measures

Importers are confronted by a variety of fees and charges in addition to tariffs. Ghana levies a 12.5 percent value-added tax (VAT) plus a 2.5 percent National Health Insurance levy on the duty-inclusive value of all imports as well as on locally produced goods, with a few selected exemptions. In addition, Ghana imposes a 0.5 percent ECOWAS surcharge on all goods originating in non-ECOWAS countries and charges 0.4 percent of the free on board (FOB) value of goods (including VAT) for the use of the automated clearing system, the Ghana Community Network. Further, under the Export Development and Investment Fund Act, Ghana imposes a 0.5 percent duty on all non-petroleum products imported in commercial quantities. Ghana also applies a one percent processing fee on all duty free imports.

Imports are subject to an inspection fee of one percent of cost, insurance, and freight (CIF) of the goods. Importers have reported that the flat fee is not based on the cost of the services rendered. Destination inspection companies (DICs) are licensed by the Ghanaian government. Inspection by the DICs accounts for the longest delays in import clearance.

In December 2009, the Ghanaian government changed Ghana's excise tax regime on certain non-alcoholic beverages, spirits, imported beer, and tobacco products from a specific excise tax to an *ad valorem* excise tax. Although this amendment eliminated the difference in tax treatment of malt drinks and carbonated soft drinks, it did so by increasing the excise tax on carbonated soft drinks. Subsequently, the Ghanaian government reduced the tax rate on non-alcoholic beverages from 20 percent to 17.5 percent of the wholesale price, excluding transportation costs.

An examination fee of one percent is applied to imported vehicles. Imported used vehicles that are more than 10 years old incur an additional tax ranging from 2.5 percent to 50 percent of the CIF value. The Ghana Customs, Excise, and Preventive Service maintains a price list that is used to determine the value of imported used vehicles for tax purposes. There are complaints that this system is not transparent because the price list used for valuation is not publicly available.

Each year, between May and October, there is a temporary ban on the importation of fish, except canned fish, to protect local fishermen during their peak season.

Certificates are required for imports of food, cosmetics, and agricultural and pharmaceutical goods. Permits are required for poultry and poultry product imports. At the time the permit is issued, a non-standardized quantity limit is imposed.

All communications equipment imports require a clearance letter from the National Communications Authority. Securing a clearance letter prior to importation can help avoid delays at the port of entry.

EXPORT SUBSIDIES AND OTHER EXPORT PROMOTION PROGRAMS

The government uses preferential credits and tax incentives to promote exports. The Export Development Investment Fund provides financing at below market rates. The Export Processing Zone (EPZ) Law, enacted in 1995, leaves corporate profits untaxed for the first 10 years of business operation in an EPZ, after which the rate climbs to 8 percent (the same rate for non-EPZ companies). Seventy percent of production in the EPZ zones must be exported.

GOVERNMENT PROCUREMENT

Large public procurements are conducted with open tendering and non-domestic firms are allowed to participate in them. A draft guideline that applies to current tenders gives a margin of preference of 7.5 percent to 20 percent to domestic suppliers of goods and services in international competitive bidding. Notwithstanding the public procurement law, companies report that locally funded contracts lack full transparency. Supplier or foreign government subsidized financing arrangements appear in some cases to be a crucial factor in the award of government procurements. Allegations of corruption in the tender process are fairly common.

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

INTELLECTUAL PROPERTY RIGHTS PROTECTION

Since December 2003, Ghana’s Parliament has enacted six bills into law designed to implement Ghana’s obligations under the WTO TRIPS Agreement. The new laws pertain to copyright, trademarks, patents, layout-designs (topographies) of integrated circuits, geographical indications, and industrial designs. Ghana is a signatory to the Berne Convention for the Protection of Literary and Artistic Works, the Paris Convention for the Protection of Industrial Property, the Patent Cooperation Treaty, the World Intellectual Property Organization (WIPO) Copyright Treaty, and the African Regional Industrial Property

Organization. Ghana has signed and ratified the WIPO Performances and Phonograms Treaty, but despite being signed, it has not been entered into force. This issue has been raised in bilateral consultations.

In recent years, intellectual property rights owners have filed very few trademark, patent, or copyright infringement cases in local courts. Companies that do initiate cases report prolonged waits for resolution, a possible factor in discouraging other companies from filing cases.

There is virtually no government-initiated enforcement. However, the Copyright Office, which is under the Attorney General's Office, periodically initiates raids on markets for pirated works. The Customs Service has collaborated with concerned companies to inspect import shipments.

SERVICES BARRIERS

Ghana's investment code excludes foreign investors from participating in four economic sectors: petty trading; the operation of taxi and car rental services with fleets of fewer than 10 vehicles; lotteries (excluding soccer pools); and the operation of beauty salons and barber shops.

Foreign investors are required by law to have local partners in the insurance and extractive industries. In the insurance sector, Ghana limits foreign ownership to 60 percent, except for auxiliary insurance services. There is compulsory local participation in the extractive sector. By law, the government of Ghana acquires an automatic 10 percent carried interest of all interests in mining, oil, and gas ventures. The 2006 Minerals and Mining Law also allows the government of Ghana to negotiate any other form of participation.

Ghana offers access to foreign telecommunications providers for most services, but requires that these services be provided through joint ventures with Ghanaian nationals. On December 31, 2009, Ghana enacted legislation requiring a minimum rate of $0.19 per minute for terminating international calls into Ghana, significantly increasing the cost of terminating international calls into the country from approximately $0.07 per minute for fixed networks and $0.13 per minute for mobile networks. All local and international calls are subject to a tax of $0.06 per minute.

INVESTMENT BARRIERS

A highly regulated economy, a politicized business community, and lack of transparency in certain government operations create risks for potential investors. Entrenched local interests can derail or delay new entrants. The political leanings of the Ghanaian partners of foreign investors are often subject to government scrutiny. Resisting demands for bribes in order to ensure compliance with the U.S. Foreign Corrupt Practices Act remains a challenge.

Foreign investment projects must be registered with the Ghana Investment Promotion Center, a process meant to take no more than five business days but that often takes significantly longer. Foreign investments are also subject to the following minimum capital requirements: $10,000 for joint ventures with a Ghanaian; $50,000 for enterprises wholly-owned by a non-Ghanaian; and $300,000 for trading companies (firms that buy or sell finished goods) either wholly or partly owned by non-Ghanaians. Trading companies are also required to employ at least 10 Ghanaian nationals.

OTHER BARRIERS

Foreign investors have experienced difficulties and delays in securing required work visas for their non-Ghanaian employees. The process for generating required work permits can be unpredictable and take several months from application to delivery. Foreign investors' access to land can also be challenging. Non-Ghanaians are only permitted to access land on a long-term leasehold basis, while Ghana's complex land tenure system makes establishing clear title on real estate difficult.

Port inefficiencies increase import and export costs. During the last quarter of 2002, Ghana's Customs Service phased in an automated customs declaration system to facilitate customs clearance. Although the new system has reduced the number of days for clearing goods through the ports, inefficiencies remain because complementary services from Ghanaian government agencies, banks, destination inspection companies, and security services have not been effective. Such inefficiencies are a significant contributing factor to the absence of a direct shipping route to Ghana, which in turn has a significant adverse impact on U.S. exports.

GUATEMALA

TRADE SUMMARY

The U.S. goods trade surplus with Guatemala was $2.1 billion in 2011, an increase of $777 million from 2010. U.S. goods exports in 2011 were $6.2 billion, up 38.6 percent from the previous year. Corresponding U.S. imports from Guatemala were $4.1 billion, up 29.7 percent. Guatemala is currently the 38th largest export market for U.S. goods.

The stock of U.S. foreign direct investment (FDI) in Guatemala was $1.1 billion in 2010 (latest data available), up from $971 million in 2009.

IMPORT POLICIES

Free Trade Agreement

On August 5, 2004, the United States signed the Dominican Republic-Central America-United States Free Trade Agreement (CAFTA-DR or "Agreement") with five Central American countries (Costa Rica, El Salvador, Guatemala, Honduras, and Nicaragua) and the Dominican Republic (the "Parties"). Under the Agreement, the Parties are significantly liberalizing trade in goods and services. The CAFTA-DR also includes important disciplines relating to customs administration and trade facilitation; technical barriers to trade; government procurement; investment; telecommunications; electronic commerce; intellectual property rights; transparency; and labor and environmental protection.

The Agreement entered into force for the United States, El Salvador, Guatemala, Honduras, and Nicaragua in 2006 and for the Dominican Republic in 2007. The CAFTA-DR entered into force for Costa Rica on January 1, 2009.

In 2008, the Parties implemented amendments to several textile-related provisions of the CAFTA-DR, including, in particular, changing the rules of origin to require the use of U.S. or regional pocket bag fabric in originating apparel. The Parties also implemented a reciprocal textile inputs sourcing rule with Mexico. Under this rule, Mexico provides duty-free treatment on certain apparel goods produced in a Central American country or the Dominican Republic with U.S. inputs, and the United States provides reciprocal duty-free treatment under the CAFTA-DR on certain apparel goods produced in a Central American country or the Dominican Republic with Mexican inputs. These changes further strengthen and integrate regional textile and apparel manufacturing and create new economic opportunities in the United States and the region.

In February 2011, the CAFTA-DR Free Trade Commission (FTC), the central oversight body for the Agreement, met for the first time in San Salvador, El Salvador. The FTC reviewed the implementation of the Agreement and its trade and economic impact on the region and agreed to certain changes to strengthen the Agreement's operation. The FTC discussed a broad range of ways to enhance competitiveness in the region and endorsed several initiatives to generate new opportunities for all of the countries to realize the benefits of the CAFTA-DR Agreement, with a heightened focus on small and medium sized businesses.

The United States hosted a FTC meeting on January 23, 2012 in Miami at which CAFTA-DR countries recognized continued growth in trade and integration and acted to further strengthen CAFTA-DR institutions and initiatives.

Tariffs

As a member of the Central American Common Market, Guatemala applies a harmonized external tariff on most items at a maximum of 15 percent with some exceptions.

Under the CAFTA-DR, however, 100 percent of U.S. industrial trade will enter Guatemala duty free by 2015. Nearly all textile and apparel goods that meet the Agreement's rules of origin now enter Guatemala duty free and quota free, promoting new opportunities for U.S. and regional fiber, yarn, fabric, and apparel manufacturing companies.

Under the CAFTA-DR, more than half of U.S. agricultural exports now enter Guatemala duty free. Guatemala will eliminate its remaining tariffs on nearly all agricultural products by 2020 (2023 for rice and chicken leg quarters and 2025 for dairy products). For certain products, tariff-rate quotas (TRQs) permit some duty-free access for specified quantities during the tariff phase out period, with the duty-free amount expanding during that period. Guatemala will liberalize trade in white corn through expansion of a TRQ, rather than by tariff reductions.

Nontariff Measures

Under the CAFTA-DR, all CAFTA-DR countries, including Guatemala, committed to improve transparency and efficiency in administering customs procedures, including the CAFTA-DR rules of origin. The CAFTA-DR countries also committed to ensuring greater procedural certainty and fairness in the administration of these procedures, and agreed to share information to combat illegal trans-shipment of goods.

U.S. companies have raised concerns that the Guatemalan customs authority has not provided adequate advance notice regarding administrative changes in documentation requirements for imported shipments, such as information needed on certifications of origin. The United States raised this issue with the customs authority and received assurances that future changes will be communicated in advance and will be available on the tax and customs website: http://portal.sat.gob.gt/sitio/. However, in 2010, Guatemala began reviewing some imports from prior years and assessing duties and penalties for certifications of origin that were deemed to have been improperly completed, despite the lack of advance notice of requirements. U.S. companies continued to raise concerns in 2011 about the procedures imposed by the Guatemalan government regarding certification of origin under CAFTA-DR. These procedures have sometimes led to the denial of preferential tariffs under the CAFTA-DR and other penalties. The United States continues to raise these customs-related issues with Guatemalan authorities.

GOVERNMENT PROCUREMENT

The CAFTA-DR requires that procuring entities use fair and transparent procurement procedures, including advance notice of purchases and timely and effective bid review procedures, for procurement covered by the Agreement. Under the CAFTA-DR, U.S. suppliers are permitted to bid on procurements of most Guatemalan government entities, including government ministries and state-owned enterprises, on the same basis as Guatemalan suppliers. The anticorruption provisions of the Agreement require each government to ensure under its domestic law that bribery in matters affecting trade and investment, including in government procurement, is treated as a criminal offense or is subject to comparable penalties.

In 2009, the Guatemalan Congress approved reforms to the Government Procurement Law, which simplified bidding procedures, eliminated the fee previously charged to suppliers for bidding documents, and provided an additional opportunity for suppliers to raise objections to the bidding process. Foreign suppliers must submit their bids through locally registered representatives, a process that can place foreign bidders at a competitive disadvantage.

Some U.S. companies have complained that the procurement process is not transparent, especially when the government makes a direct purchase. The government has canceled some direct purchases after complaints from interested bidders.

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

EXPORT SUBSIDIES

Under the CAFTA-DR, Guatemala may not adopt new duty waivers or expand existing duty waivers that are conditioned on the fulfillment of a performance requirement (*e.g.*, the export of a given level or percentage of goods). However, under the CAFTA-DR, Guatemala was permitted to maintain such measures through December 31, 2009, provided that it maintained the measures in accordance with its obligations under the WTO Agreement on Subsidies and Countervailing Measures. The U.S. Government is working with the Guatemalan government in an effort to ensure compliance with its CAFTA-DR obligations.

Guatemala provides tax exemptions to investors in free trade zones and maintains duty drawback programs aimed mainly at garment manufacturing and assembly operations or "*maquiladoras*" (firms that are permitted to operate outside a free trade zone and still receive tax and duty benefits). The Law for the Promotion and Development of Export Activities and Drawback provides tax and duty benefits to companies that import over half of their production inputs/components and export their completed products. Investors in this sector are granted a 10 year exemption from both income taxes and the Solidarity Tax, which is Guatemala's temporary alternative minimum tax. Additionally, companies are granted an exemption from payment of tariffs and value-added taxes on imported machinery, and a one year suspension (extendable to a second year) of the same tariffs and taxes on imports of production inputs and packing material. Taxes are waived when the goods are re-exported.

INTELLECTUAL PROPERTY RIGHTS PROTECTION

Guatemala was listed on the Watch List in the 2011 Special 301 report. The United States recognized Guatemala's efforts to increase enforcement actions, highlighting the efforts of the intellectual property rights (IPR) prosecutor and the increase in raids, seizures, and corresponding convictions of IPR violators. However, inadequate resources for the IPR prosecutor's office were noted as an area of concern. The report highlighted the need for continued efforts to implement Guatemala's obligations under the CAFTA-DR, including those to ensure that proper resources are available for its enforcement activities, to achieve improved coordination among enforcement agencies, and to concentrate its enforcement efforts on manufacturers of pirated and counterfeit goods.

The United States will continue to monitor Guatemala's implementation of its IPR obligations under the CAFTA-DR.

SERVICES BARRIERS

Under the CAFTA-DR, Guatemala granted U.S. services suppliers substantial access to its services market, including financial services.

Under the CAFTA-DR, Guatemala has in addition agreed to ensure reasonable and nondiscriminatory access to essential telecommunications facilities. It also has agreed to ensure that major suppliers provide interconnection at cost-oriented rates.

However, concerns remain over the ability of the Guatemalan telecommunications regulator, the Superintendency of Telecommunications (which operates as a division of the Ministry of Communications, Infrastructure and Housing), to carry out Guatemala's obligations under the CAFTA-DR. The United States continues to work with the Guatemalan government to ensure compliance with its obligations under the CAFTA-DR.

Foreign enterprises may provide licensed professional services in Guatemala only through a contract or other relationship with an enterprise established in Guatemala.

INVESTMENT BARRIERS

Some U.S. companies operating in Guatemala have complained that complex and unclear laws and regulations continue to constitute practical barriers to investment.

OTHER BARRIERS

Some U.S. firms and citizens have found corruption in government, including in the judiciary, to be a significant concern and a constraint to successful investment in Guatemala. Administrative and judicial decision-making appear at times to be inconsistent, nontransparent, and very time-consuming.

HONDURAS

TRADE SUMMARY

The U.S. goods trade surplus with Honduras was $1.6 billion in 2011, up $965 million from 2010. U.S. goods exports in 2011 were $6.1 billion, up 33.3 percent from the previous year. Corresponding U.S. imports from Honduras were $4.5 billion, up 14.4 percent. Honduras is currently the 40th largest export market for U.S. goods.

The stock of U.S. foreign direct investment (FDI) in Honduras was $1.0 billion in 2010 (latest data available), up from $870 million in 2009. U.S. FDI in Honduras is mostly in the manufacturing sector.

IMPORT POLICIES

Free Trade Agreement

On August 5, 2004, the United States signed the Dominican Republic-Central America-United States Free Trade Agreement (CAFTA-DR or “Agreement”) with five Central American countries (Costa Rica, El Salvador, Guatemala, Honduras, and Nicaragua) and the Dominican Republic (the “Parties”). Under the Agreement, the Parties are significantly liberalizing trade in goods and services. The CAFTA-DR also includes important disciplines relating to customs administration and trade facilitation, technical barriers to trade, government procurement, investment, telecommunications, electronic commerce, intellectual property rights, transparency, and labor and environmental protection.

The Agreement entered into force for the United States, El Salvador, Guatemala, Honduras, and Nicaragua in 2006 and for the Dominican Republic in 2007. The CAFTA-DR entered into force for Costa Rica on January 1, 2009.

In 2008, the Parties implemented amendments to several textile-related provisions of the CAFTA-DR, including, in particular, changing the rules of origin to require the use of U.S. or regional pocket bag fabric in originating apparel. The Parties also implemented a reciprocal textile inputs sourcing rule with Mexico. Under this rule, Mexico provides duty-free treatment on certain apparel goods produced in a Central American country or the Dominican Republic with U.S. inputs, and the United States provides reciprocal duty-free treatment under the CAFTA-DR on certain apparel goods produced in a Central American country or the Dominican Republic with Mexican inputs. These changes further strengthen and integrate regional textile and apparel manufacturing and create new economic opportunities in the United States and the region.

In February 2011, the CAFTA-DR Free Trade Commission (FTC), the central oversight body for the Agreement, met for the first time in San Salvador, El Salvador. The FTC reviewed the implementation of the Agreement, and its trade and economic impact on the region, and agreed to certain changes to strengthen the Agreement’s operation. The FTC discussed a broad range of ways to enhance competitiveness in the region and endorsed several initiatives to generate new opportunities for all of the parties to realize the benefits of the CAFTA-DR Agreement, with a heightened focus on small and medium sized businesses.

The United States hosted an FTC meeting on January 23, 2012 in Miami at which CAFTA-DR countries recognized continued growth in trade and integration, and acted to further strengthen CAFTA-DR institutions and initiatives.

Tariffs

As a member of the Central American Common Market, Honduras applies a harmonized external tariff on most items at a maximum of 15 percent with some exceptions.

Under the CAFTA-DR, however, 100 percent of U.S. industrial trade will enter Honduras duty free by 2015. Nearly all textile and apparel goods that meet the Agreement's rules of origin became duty free and quota free immediately, thus creating new opportunities for U.S. fiber, yarn, fabric, and apparel manufacturers.

Under the CAFTA-DR, more than half of U.S. agricultural exports now enter Honduras duty free. Honduras will eliminate its remaining tariffs on nearly all agricultural products by 2020 (2023 for rice and chicken leg quarters and 2025 for dairy products). For certain products, tariff-rate quotas (TRQs) will permit some immediate duty-free access for specified quantities during the tariff phase out period, with the duty-free amount expanding during that period. Honduras will liberalize trade in white corn through expansion of a TRQ, rather than by tariff reductions.

Nontariff Measures

Under the CAFTA-DR, Honduras committed to improve transparency and efficiency in administering customs procedures, including the CAFTA-DR's rules of origin. A law passed in August 2011 established a new inter-institutional Presidential Commission for the Modernization of Customs Services (COPREMSA in Spanish) with the intent to improve the transparency and efficiency of customs procedures. All CAFTA-DR countries, including Honduras, also committed to ensuring greater procedural certainty and fairness in the administration of these procedures, and all CAFTA-DR countries agreed to share with each other information to combat illegal trans-shipment of goods.

The *Dirección Ejecutiva de Ingresos* (DEI), the Honduran customs and tax authority, has taken over verification of origin certifications from the Ministry of Industry and Trade. The DEI verifies that the origin certifications from producers, exporters, or importers comply with the minimum requirements according to the CAFTA-DR and other international agreements.

GOVERNMENT PROCUREMENT

The CAFTA-DR requires that procuring entities use fair and transparent procurement procedures, including advance notice of purchases and timely and effective bid review procedures, for procurement covered by the Agreement. Under the CAFTA-DR, U.S. suppliers are permitted to bid on procurements of most Honduran government entities, including key ministries and state-owned enterprises, on the same basis as Honduran suppliers. The anticorruption provisions in the CAFTA-DR require each government to ensure under its domestic law that bribery in matters affecting trade and investment, including in government procurement, is treated as a criminal offense or is subject to comparable penalties. Since the CAFTA-DR came into effect, Honduran government agencies have routinely declared "emergencies" to circumvent competitive bidding procedures for public procurements, including for large infrastructure projects. Implementation of the CAFTA-DR eliminated the requirement that U.S. firms must act through a local agent (with at least 51 percent Honduran ownership) to participate in public tenders.

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

EXPORT SUBSIDIES

Honduras provides tax exemptions to firms in free trade zones. Under the CAFTA-DR, Honduras may not adopt new duty waivers or expand existing duty waivers that are conditioned on the fulfillment of a performance requirement (*e.g.*, the export of a given level or percentage of goods). However, Honduras may maintain such duty waiver measures for such time as it is an Annex VII country for the purposes of the WTO Agreement on Subsidies and Countervailing Measures. The U.S. Government is working with the Honduran government in an effort to ensure compliance with its CAFTA-DR obligations.

INTELLECTUAL PROPERTY RIGHTS PROTECTION

In 2010, Honduras reestablished its intellectual property rights (IPR) prosecutors office as an independent entity within the Public Ministry, reversing a 2009 decision to merge it into the common crimes office. While the IPR prosecutor's office has achieved successes in seizing counterfeit goods, the United States remains concerned about the prospects for effective IPR enforcement in Honduras given that its IPR enforcement office lacks necessary personnel and resources to wage a truly effective campaign. The United States will continue to monitor Honduras' implementation of its IPR obligations under the CAFTA-DR.

SERVICES BARRIERS

Under the CAFTA-DR, Honduras granted U.S. services suppliers substantial access to its services market, including financial services.

Hondutel, the government-owned incumbent telecommunications operator, officially lost its monopoly on fixed-line telephony services on December 25, 2005. Although there are regulations in place that allow the government to grant licenses, permits, and concessions for different telecommunications services in Honduras, competitive services continue to be provided through sub-operator agreements signed between Hondutel and private companies. The Honduran Congress is reviewing several draft telecommunications laws which would fully liberalize the telecommunications market. The United States will continue to monitor efforts to introduce new telecommunications legislation to ensure that any new legislation is consistent with Honduras' obligations under the CAFTA-DR.

INVESTMENT BARRIERS

Honduran law places certain restrictions on foreign ownership of land within 40 kilometers of the coastlines and national boundaries. However, recognizing that the constitutional prohibition of foreign property ownership in Honduras was a barrier to development of tourism and the economic potential of Honduras' coastal and island areas, the Honduran National Congress passed a law in 1990 to allow foreigners to purchase properties in designated tourism zones established by the Ministry of Tourism in order to construct permanent or vacation homes.

Inadequate land title procedures have led to numerous investment disputes involving U.S. nationals who are landowners. Resolving disputes in court can be very time-consuming. There have been claims of widespread corruption in land sales and property registry, and in the dispute resolution process, including claims against attorneys, real estate companies, judges, and local officials. The property registration system is highly unreliable, which represents a major constraint on investment. In addition, the lack of implementing regulations can lead to long delays in the awarding of titles in certain regions. A law passed in April 2008 authorized the government to award certain agricultural lands that have been under dispute for more than two years to squatters with only nominal compensation to legal titleholders. A number of properties owned by U.S. citizens are potentially subject to confiscation under this law.

OTHER BARRIERS

Some U.S. firms and citizens have reported corruption in government, including in the judiciary, to be a significant concern and a constraint to successful investment in Honduras. These reports suggest that corruption is pervasive in government procurement, issuance of government permits, real estate transactions (particularly land title transfers), performance requirements, and the regulatory system. The telecommunications and energy sectors appear to be particularly problematic. In response to concerns expressed by investors and the donor community, the government is currently implementing the first four year transparency and anticorruption plan to address transparency in government processes, including in contracting, hiring, permitting, and procurement. In addition, the government is working to improve transparency and good governance at the municipal level and within federal ministries and has succeeded, for example, in reducing the time it takes to award environmental licenses.

U.S. industry has expressed concern that some investors in Honduras have at times been subject to practices that might be considered anticompetitive. In 2006, the Honduran Congress enacted a competition law, establishing an antitrust enforcement commission, the Commission for the Defense and Promotion of Competition, to combat such conduct. The Commission commenced operations in 2007. From January 2009 through December 2010, six complaints were filed with the Commission, and the commission initiated two investigations. All eight cases were subsequently investigated. As of November 2011, the Commission has resolved all pending cases. In November 2010, after a two year investigation, the commission fined two cement companies 87 million Lempiras (approximately $4.6 million) for violating the competition law by engaging in collusive pricing. These issues have negatively affected Honduras's ability to attract foreign investment.

HONG KONG

TRADE SUMMARY

The U.S. goods trade surplus with Hong Kong was $32.2 billion in 2011, an increase of $9.9 billion from 2010. U.S. goods exports in 2011 were $36.5 billion, up 37.4 percent from the previous year. Corresponding U.S. imports from Hong Kong were $4.3 billion, roughly the same as in 2010. Hong Kong is currently the 10th largest export market for U.S. goods.

U.S. exports of private commercial services (*i.e.*, excluding military and government) to Hong Kong were $5.5 billion in 2010 (latest data available), and U.S. imports were $6.5 billion. Sales of services in Hong Kong by majority U.S.-owned affiliates were $29.4 billion in 2009 (latest data available), while sales of services in the United States by majority Hong Kong-owned firms were $3.8 billion.

The stock of U.S. foreign direct investment (FDI) in Hong Kong was $54.0 billion in 2010 (latest data available), up from $49.2 billion in 2009. U.S. FDI in Hong Kong is primarily concentrated in nonbank holding companies, wholesale trade, and finance/insurance sectors.

IMPORT POLICIES

Hong Kong is a special administrative region (SAR) of the People's Republic of China. However, for trade, customs, and immigration purposes, Hong Kong is an independent administrative entity with its own tariffs, trade laws, and regulations, and its own seat at the WTO and APEC. The Hong Kong government (HKG) pursues a market-oriented approach to commerce. Hong Kong is a duty-free port with few barriers to trade in goods and services and few restrictions on foreign capital flows and investment.

COMPETITION POLICY

Hong Kong does not have a comprehensive competition law, although individual regulatory regimes exist for certain sectors. In late 2006, the HKG established an independent Competition Policy Review Committee to discuss the need, scope, and application of a comprehensive and cross-sector law. Between 2008 and 2010, the HKG conducted two rounds of public consultations before a bill was finally introduced to the Legislative Council (LegCo) in July 2010. The draft law is primarily aimed at eliminating cartel behavior and abuses of dominant market positions. Critics of the bill note that it does not contain provisions dealing with merger control and that it will not apply to government or statutory bodies such as the Hospital Authority, Housing Authority, and the Trade Development Council. For the time being, mergers and acquisitions rules will apply only to the telecommunications sector until the government determines that it is appropriate to broaden the scope of the rules. A Bills Committee on the Competition Bill was formed in October 2010 to analyze the draft, and a series of Committee meetings have been scheduled. Media reports indicate that a vote could occur by June 2012.

INTELLECTUAL PROPERTY RIGHTS PROTECTION

The HKG generally provides robust intellectual property rights (IPR) protection and enforcement. Hong Kong has strong laws in place, a dedicated and effective enforcement capacity, a judicial system that supports enforcement efforts with deterrent fines and prison sentences, and youth education programs that discourage IPR-infringing activities. Hong Kong remains vulnerable, however, to some forms of IPR infringement, such as online copyright piracy, including as a result of the rapid growth of unauthorized file sharing over peer-to-peer networks and a result of end-user business software piracy. In 2010, after industry groups failed to reach an agreement on a voluntary framework to address online infringements, the HKG drafted digital IPR protection amendments to the Copyright Ordinance of 1997, which could be voted on as soon as April 2012.

Separately, in August and September 2011, the HKG solicited views from select industry groups and the general public on a voluntary draft code of practice for online service providers (OSPs), which will provide guidelines to follow in order to take advantage of the bill's safe harbor provision, which limits and defines the liabilities of OSPs.

In addition, in February 2011, the HKG initiated a dialogue to elicit views from the public on whether to create an original patent grant system in Hong Kong to replace the re-registration system based on patents granted in the United Kingdom, the EU, or Mainland China. Public discussions continue.

Although Hong Kong Customs routinely seizes IPR infringing products arriving from Mainland China and elsewhere, stakeholders report that large quantities of counterfeit pharmaceuticals, luxury goods, and other infringing products continue to enter Hong Kong, destined for both the local market and places outside Hong Kong. In January 2012, the Hong Kong authorities cooperated with the U.S. Department of Justice to shut down the Hong Kong-based web site Megaupload, which is accused of racketeering, criminal copyright infringement, and money laundering in conjunction with charging users to watch and download pirated material. The U.S. Government continues to monitor the situation to ensure that Hong Kong sustains its IPR protection and enforcement efforts and addresses remaining problem areas.

INDIA

TRADE SUMMARY

The U.S. goods trade deficit with India was $14.5 billion in 2011, up $4.3 billion from 2010. U.S. goods exports in 2011 were $21.6 billion, up 12.4 percent from the previous year. Corresponding U.S. imports from India were $36.2 billion, up 22.5 percent. India is currently the 17th largest export market for U.S. goods.

U.S. exports of private commercial services (*i.e.*, excluding military and government) to India were $10.3 billion in 2010 (latest data available), and U.S. imports were $13.7 billion. Sales of services in India by majority U.S.-owned affiliates were $13.1 billion in 2009 (latest data available), while sales of services in the United States by majority India-owned firms were $7.2 billion.

The stock of U.S. foreign direct investment (FDI) in India was $27.1 billion in 2010 (latest data available), up from $20.9 billion in 2009. U.S. FDI in India is led by the information, professional, scientific, and technical services, and manufacturing sectors.

IMPORT POLICIES

U.S. exporters continue to encounter tariff and nontariff barriers that impede imports of U.S. products, despite the government of India's ongoing economic reform efforts. The United States has actively sought bilateral and multilateral opportunities to open India's market. The USTR and India's Minister of Commerce and Industry chair the United States-India Trade Policy Forum, which meets regularly to discuss the full range of bilateral trade and investment issues outlined in this chapter. Other bilateral dialogues, such as the Information Communication Technology Working Group and the Commercial Dialogue, also work to increase U.S. exports by highlighting areas and sectors of bilateral commercial opportunity and resolving practical issues that affect doing business in India.

Tariffs and other Charges on Imports

The structure of India's customs tariff and fees system is complex and characterized by a lack of transparency in determining net effective rates of customs tariff, excise duty and other duties and charges on imports into India. The tariff structure of general application is composed of a basic customs duty, an "additional duty" (also referred to as a "countervailing duty"), a "special additional duty," and an education assessment ("cess"). The additional duty, which is applied to all imports except for wine, spirits, or other alcoholic beverages, is applied on top of the basic customs duty, and is intended to correspond to the excise duties imposed on similar domestic products. The special additional duty is a four percent *ad valorem* duty that applies to all imports, including alcoholic beverages, except those exempted from the duty pursuant to an official customs notification. It is calculated on top of the basic customs duty and the additional duty. In addition, there is a three percent education cess (surcharge) applicable on the total import duty (not on the customs value of the imported product) on most imports, except those exempted from the cess pursuant to an official customs notification. A landing fee of one percent is included in the valuation of all imported products unless exempted through separate notification.

While India publishes applied tariff and other customs duty rates applicable to imports, there is no single official publication available to traders that includes all relevant information on tariffs, fees, and tax rates on imports. In addition to being announced with the annual budget, India's customs rates are modified on an *ad hoc* basis through notifications in the Gazette of India and numerous exemptions that vary according to product, user, or specific export promotion program, rendering the system complex to administer and more open to administrative discretion.

In order to determine the applicable applied tariff or other customs duty rate, importers must cross-reference separate customs and excise tax schedules with any applicable customs or excise notification that may subject the product to higher or lower rates than set forth in the schedules. Determining whether such notifications exist is extremely difficult and in some cases nearly impossible. For example, in conjunction with the publication of the annual budget in 2011, India's Central Board of Excise and Customs (CBEC) published a list of the almost 1,000 notifications in effect on that date, which modified the applicable duty rates on an even greater number of Harmonized System tariff lines. An importer must then determine whether CBEC issued any tariff-related notifications in respect of a given product subsequent to that listing at the time of the annual budget. In 2011, CBEC issued 130 such notifications. When these notifications are read with accompanying product lists and qualifying conditions issued separately by CBEC, it can be very difficult to determine what the net customs tariff and total effective duty rates are on a given imported product. This system lacks transparency and imposes significant burdens on importers. Working with a private publisher, the Ministry of Finance has implemented a subscription-based online database (http://www.custadaindia.com/) and CD database of tariff rates and nontariff measures.

India's tariff regime is also characterized by pronounced disparities between bound rates (*i.e.*, the rates that under WTO rules generally cannot be exceeded) and the most favored nation (MFN) applied rates charged at the border. According to the WTO, India's average bound tariff rate was 46.4 percent, while its simple MFN average applied tariff for 2010 was 12 percent. Given this large disparity between bound and applied rates, U.S. exporters face tremendous uncertainty because India has considerable flexibility to change tariff rates at any time. While India has bound all agricultural tariff lines in the WTO, over 30 percent of India's non-agricultural tariffs remain unbound, *i.e.*, there is no WTO ceiling on the rate.

Despite its goal of moving toward Association of Southeast Asian Nations (ASEAN) tariff rates (approximately five percent on average), India has not reduced the basic customs duty in the past four years. India also maintains very high tariff peaks on a number of goods, including flowers (60 percent), natural rubber (70 percent), automobiles and motorcycles (60 percent for new products, 100 percent for used products), coffee (100 percent), poultry (30 percent to 100 percent), and textiles (some *ad valorem* equivalent rates exceed 300 percent).

Many of India's bound tariff rates on agricultural products are among the highest in the world, ranging from 100 percent to 300 percent, with an average bound tariff of 118.3 percent. While many Indian applied tariff rates are lower (averaging 33.2 percent on agricultural goods in 2010), they still present a significant barrier to trade in agricultural goods and processed foods used by food processors and retailers (*e.g.*, potatoes, apples, grapes, canned peaches, chocolate, cookies, and frozen french fries and other prepared foods used in quick-service restaurants). The large gap between bound and applied tariffs in the agriculture sector allows India to use tariff policy frequently to adjust the level of protection in the market, creating uncertainty for traders. For example, in April 2008, in an effort to curb inflation, India reduced applied duties on crude edible oils and corn to zero, refined oils to 7.5 percent, and butter to 30 percent. However, in November 2008, India raised crude soy oil duties back to 20 percent and then reduced them again to zero in March 2009.

India has taken steps to reduce and simplify the general rate of central excise duty for domestic products, reducing the corresponding "additional duties" paid on imported products. For example, in 2009, as part of an economic stimulus package, India cut the excise duty on most products from 10 percent to 8 percent.

Later that year, India implemented dual excise rates of four percent and eight percent *ad valorem*, which actually doubled the four percent duty rate on several items (*e.g.*, man-made textiles, ceramic tiles, plywood, wood products, writing ink, zip fasteners, and MP3/MP4 players). The fiscal year 2009-2010 budget, however, reversed the stimulus cut in the general excise duty and set it back to 10 percent, where it remains.

In July 2007, after the United States initiated WTO dispute settlement procedures to challenge the additional duty on alcoholic beverages, India issued a customs notification exempting alcoholic beverages from the additional duty. (Under the prior customs notification, imports of alcoholic beverages were subject to rates of additional duty ranging from 20 percent to 150 percent *ad valorem* and in some cases higher specific duties.) Simultaneously, India raised the basic customs duty on wine from 100 percent to 150 percent. The basic customs duty on distilled spirits remained at 150 percent. When India exempted alcoholic beverages from the additional duty, it announced it was doing so in lieu of applying state-level excise duties on wine and spirits. These state-level taxes can result in imported wine and spirits being taxed at a significantly higher rate than like domestic products.

Imports also are subject to state-level value-added or sales taxes and the Central Sales Tax as well as various local taxes and charges. In September 2007, India issued a customs notification allowing importers to apply for a refund of the special additional duty paid on imports subsequently sold within India and for which the importer has paid state-level value-added taxes. Importers report that the refund procedures are cumbersome and time-consuming. India announced its intention to implement a national goods and services tax (GST) by 2011, which has been extended to 2012, that would replace most indirect taxes, including various charges on imports. Implementation of a national GST, however, will first require amending the Indian Constitution.

Import Licensing

India maintains a "negative list" of imported products subject to various forms of nontariff regulation. The negative list is currently divided into three categories: banned or prohibited items (*e.g.*, tallow, fat, and oils of animal origin); restricted items that require an import license (*e.g.*, livestock products and certain chemicals); and "canalized" items (*e.g*., petroleum products and some pharmaceuticals) importable only by government trading monopolies subject to cabinet approval regarding timing and quantity. India, however, often fails to observe customary transparency requirements such as publication of this information in the Official Gazette or notification to WTO Committees, which can, in practice, act as a barrier to trade.

India allows imports of second-hand capital goods by the end users without requiring an import license, provided the goods have a residual life of five years. Refurbished computer spare parts can only be imported if an Indian chartered engineer certifies that the equipment retains at least 80 percent of its residual life, while refurbished computer parts from domestic sources are not subject to this requirement. India has required import licenses for all remanufactured goods since 2006. India's official Foreign Trade Policy, last issued in October 2011, treats remanufactured goods the same as second-hand products and provides no criteria for different levels of transformation that would distinguish remanufactured, refurbished, reconditioned, and second-hand goods. As with licensing requirements on other products, U.S. industry representatives report that the requirement is onerous as implemented: the license application requires excessive details; quantity limitations are set on specific part numbers; the delay between application and grant of the license is long and creates uncertainty; and in some cases industry representatives report that they have been unable to obtain a license.

Since 2005, India has subjected imported boric acid to stringent requirements, including arbitrary quantity limitations and conditions applicable only to imports used as insecticide. Traders (*i.e.*, wholesalers) of boric acid for non-insecticidal use remain unable to import boric acid for resale because they are not end users of the product and cannot obtain no-objection certificates (NOCs) from the Ministry of Agriculture. NOCs are required before applying for import permits from the Ministry of Agriculture's Central Insecticides Board & Registration Committee. Meanwhile, local refiners continue to be able to produce and sell non-insecticidal boric acid, with a requirement only to maintain records showing they are not selling to insecticidal end users.

Customs Procedures

U.S. exporters have raised concerns regarding India's application of customs valuation criteria to import transactions. India's valuation procedures allow India's customs officials to reject the declared transaction value of an import when a sale is deemed to involve a lower price compared to the ordinary competitive price. U.S. exporters have reported that India's customs valuation methodologies do not reflect actual transaction values and raise the cost of exporting to India beyond applied tariff rates. U.S. companies have also faced extensive investigations related to their use of certain valuation methodologies when importing computer equipment. Companies have reported being subjected to excessive searches and seizures.

Furthermore, as explained above, India does not assess the basic customs duty, additional duty, and special additional duty separately on the customs value of a given imported product. Rather, India assesses each of these duties cumulatively, that is, the additional duty is assessed on the sum of the actual (or transaction) value and the basic customs duty, while the special additional duty is assessed on the sum of the actual (or transaction) value, the basic customs duty, and the additional duty. This can result in importers paying higher duties than they should be liable for on the basis of the actual value of their imported product.

India's customs officials generally require extensive documentation, which inhibits the free flow of trade and leads to frequent and lengthy processing delays. In large part this is a consequence of India's complex tariff structure and multiple exemptions, which may vary according to product, user, or intended use. While difficulties persist, India has shown improvement in this area through the automation of trade procedures and other initiatives.

Motor vehicles may be imported through only three specific ports and only from the country of manufacture.

GOVERNMENT PROCUREMENT

India applies sector-specific procurement policies in certain areas, such as defense procurement. India's defense "offsets" program requires companies to invest 30 percent or more of the value of contracts above Rs 300 crores ($67 million) in Indian produced parts, equipment, or services. Recently, offsets were expanded to include civil aviation. Offset requirements are often so onerous that they dissuade foreign companies from bidding. In addition, it is not uncommon for the Defense Ministry to request significant changes to previously accepted offset proposals. India has indicated that it is considering broadening the areas of acceptable offsets, but a new policy has not been announced.

India's government procurement practices and procedures are often not transparent. Foreign firms also rarely win Indian government contracts due to the preference afforded to Indian state-owned enterprises and the prevalence of such enterprises. Similarly, the 2006 Micro, Small and Medium Enterprise (MSME) Act authorizes the government to provide procurement preferences to MSMEs. India requires purchase of certain items from MSMEs, but this list has been gradually reduced to 21 specific goods and services (*e.g.*, pickles/chutneys, bread, wood furniture, wax candles, safety matches, and fireworks). India provides similar preferences to government-registered "small scale industry units" for certain products.

India is not a signatory to the WTO Agreement on Government Procurement (GPA), but became an observer to the WTO Committee on Government Procurement in February 2010. In response to domestic pressure to increase procurement transparency, the government of India released two draft public procurement bills for public comment in September 2011, one prepared by the Ministry of Finance and the other prepared by the Planning Commission. Through these draft bills, India is seeking to harmonize its various procurement instructions, guidelines, and recommendations into one law. The United States submitted comments on both drafts, which included concerns that certain provisions appeared to deviate from the best practices set out in the revision of the GPA approved in December 2011. In February 2012, the Group of Ministers on corruption approved a second draft based on the Ministry of Finance bill incorporating some comments received but still containing provisions of concern to the United States. The revised draft public procurement law may be considered during the 2012 "Budget Session" of Parliament.

EXPORT SUBSIDIES

India's tax exemption for profits from export earnings has been completely phased out, but tax holidays continue for certain export-oriented enterprises and exporters in Special Economic Zones. In addition to these programs, India continues to maintain several other export subsidy programs, including duty drawback programs that appear to allow for drawback in excess of duties levied on imported inputs. India also provides pre-shipment and post-shipment financing to exporters at a preferential rate. India's textile industry enjoys subsidies through various modernization schemes, such as the Technology Upgradation Fund Scheme and the Scheme for Integrated Textile Parks. In 2011, India reinstated the previously suspended Duty Exemption Passbook Scheme for cotton and yarn; this program enables exporters to earn credits that they can sell to importers, who can apply for duty-free import status for certain products. Numerous other sectors, including paper, rubber, toys, leather goods, and wood products receive subsidies tied to export performance. After several consecutive years of not submitting a subsidies notification, India recently submitted two notifications to the WTO Committee on Subsidies and Countervailing Measures (SCM Committee), both of which notify only one central government program of preferential tax incentives related to Free Trade Zones, Special Economic Zones, and Export Processing Zones covering the 2003-2009 time period. These notifications were substantially incomplete, as they failed to notify several well-known subsidies, including export subsidy programs maintained by India. Because of India's failure to notify its subsidy programs in a timely manner, USTR "counter-notified" 50 Indian subsidy programs to the WTO Subsidies Committee in October 2011 under Article 25.10 of the SCM Agreement.

The United States submitted a formal request to the SCM Committee in February 2010 requesting a calculation of the export competitiveness of Indian textile and apparel products. The resulting calculation, published in March 2010, indicated that, with respect to textile and apparel products, India had met the definition of "export competitiveness" set out in Article 27.6 of the SCM Agreement. As a result, India must phase out export subsidies for those products over a period of eight years, in accordance with the SCM Agreement. Since the calculation, India has announced some reductions in duty drawback rates for textile products and the intention to eliminate certain subsidy programs. However, India not only continues to offer subsidies to the textiles and apparel sector designed to promote exports; it has also extended or expanded such programs, and even implemented new export subsidy programs that benefit the textiles and apparel sector.

There is a special initiative for agricultural exports in India's Foreign Trade Policy 2009-2014, including a scheme called *Vishesh Krishi Gram Upaj Yojana* (VKGUY – "Special Agriculture Produce Scheme"), aimed at boosting exports of fruits, vegetables, flowers, some forest products, and related value-added products. Under the plan, exports of these items qualify for a duty-free credit that is equivalent to five percent of their free-on-board export value. The credit is freely transferable and can be used to import a variety of inputs and capital goods. To mitigate the impact of the global economic slowdown on exports, the government has made several additional agricultural products eligible under VKGUY, such as soybean meal, marine products, and tea.

INTELLECTUAL PROPERTY RIGHTS PROTECTION

India remains on the Priority Watch List in the 2011 Special 301 Report because of concerns regarding weak protection and enforcement of intellectual property rights (IPR). Although India continues to make incremental progress towards establishing a more comprehensive and stable legal framework for the recognition and protection of IPR, India needs to improve its IPR regime by providing stronger protection for copyrights, trademarks, and patents. India also needs to provide effective protection against unfair commercial use of undisclosed test and other data generated to obtain marketing approval for pharmaceutical and agrochemical products.

While amendments have been introduced in the Indian Parliament to modernize India's copyright regime, such legislation was not enacted in 2011. The United States has raised a number of concerns with the draft copyright legislation, including inadequate protection against unlawful circumvention of technological protection measures connected to Indian and foreign rights holders' copyrighted works. Large-scale copyright piracy, especially in the software, optical media, and publishing industries, continues to be a major problem. In addition, India's criminal IPR enforcement regime remains weak. More police action against those engaged in manufacturing, distributing, or selling pirated and counterfeited goods as well as expeditious judicial dispositions for criminal IPR infringement actions and imposition of deterrent-level sentences, is needed. The United States also encourages India to consider legislative options to combat more effectively hard goods and digital piracy.

SERVICES BARRIERS

The Indian government has a strong ownership presence in major services industries such as banking and insurance, while private firms play a preponderant to exclusive role in some of the fastest growing areas of the services sector, such as information technology and business consulting. Key sectors such as telecommunications, financial services, and legal services remain either closed to foreign investment or are subject to restrictions on foreign participation.

Insurance

Foreign equity in the insurance sector is currently limited to 26 percent of paid-up capital. India introduced legislation in late 2008 to allow foreign equity participation of up to 49 percent and also allow entry of foreign re-insurers. In 2009, the Insurance Laws (Amendment) Bill went to the Standing Committee on Finance for evaluation; the Committee did not release its report on the bill until December 2011, recommending against increasing the 26 percent foreign equity cap. As lawmakers continue to consider increasing foreign investment in the sector, many existing investors are approaching 10 years of doing business in India. Under current regulations, at the 10 year mark, any partner in an insurance enterprise is required to divest its equity stake down to 26 percent. Given the 26 percent equity cap, this requirement effectively applies only to Indian partners, as a result of which many existing joint ventures may be required to locate new Indian partners or otherwise modify their ownership structure. While the Insurance Regulatory and Development Authority said it plans to publish a clarification of these regulations, foreign investors continue to operate in an environment of extreme uncertainty.

Banking

Although India allows privately held banks to operate in the country, the banking system is dominated by government-owned banks and direct investment by foreign banks is subject to restrictions. State-owned banks account for roughly 72 percent of the assets and 86 percent of all bank branches in the banking system. As of September 2011, there were 38 foreign banks with 321 branch offices operating in India under approval from the Reserve Bank of India (RBI), including four U.S. banks with a total of 52 branches. Under India's branch authorization policy, foreign banks are required to submit their internal branch expansion plans on an annual basis, but their ability to expand is severely limited by nontransparent quotas on branch office expansion. No licenses to open additional bank branches have been issued to U.S. banks since March 2009, despite several banks having applied.

In the past, foreign banks have not opened wholly-owned subsidiaries because of RBI-imposed caps on ownership. Foreign banks are not authorized to own more than five percent of on-balance sheet assets of an Indian private bank without approval by the RBI, while individual investors, including foreign investors, cannot own more than 10 percent of any private bank. Total foreign ownership from all sources (FDI, foreign institutional investors, and non-resident Indians) cannot exceed 74 percent. In addition, voting rights are capped at 10 percent.

In January 2011, the RBI issued an update to its Road Map for Foreign Bank Entry. After receiving feedback to this paper, the RBI in August 2011 issued guidelines for setting up new private sector banks, including foreign banks. According to these guidelines, foreign direct investment in private sector banks would be limited to 49 percent for the first five years of investment, after which it could be raised to 74 percent, but with individual shareholding limited to five percent. The new guidelines also propose that shareholding of five percent or more in a bank be subject to prior RBI approval. These guidelines cannot enter into force, however, until the passage of certain amendments to the Banking Regulation Act. The amendments are expected to be presented in the Parliament in 2012.

Audiovisual Services

Although India has removed most barriers to the importation of motion pictures, U.S. companies continue to experience difficulty importing film and video publicity materials and are unable to license merchandise in connection with movies due to royalty remittance restrictions. The industry had also been experiencing difficulty importing digital masters of films loaded on an electronic medium as opposed to those imported on cinematographic film, owing to a different customs duty structure. Beginning with its fiscal year 2010-2011 annual budget, India started charging a customs duty only on the value of the carrier medium for films, as well as for music and gaming software imported for distribution. In all such cases, the value representing the transfer of intellectual property rights is also subject to a service tax.

U.S. companies continue to face difficulties with India's "Downlink Policy." Under this policy, international content providers that down-link programming from a satellite into India, must establish a registered office in India or designate a local agent. U.S. companies have reported that this policy is overly burdensome and can result in having a taxable presence in India. India also requires that foreign investors have a net worth of $1 million (up from the previous amount of $300,000) in order to be allowed to downlink an initial content channel, and an additional $500,000 (up from the previous amount of $200,000) of net worth for downlinking each additional channel.

Accounting

Foreign accounting firms encounter several hurdles to entering the Indian accounting services sector. Before an accountant can practice in India, the accountant must become a member of the Institute of Chartered Accountants of India (ICAI), which requires taking ICAI courses, undergoing practical training at an ICAI accredited organization, and passing an examination. Foreign accounting firms may only practice in India if their home country provides reciprocity to Indian firms. Only firms established as a partnership may provide financial auditing services, and foreign-licensed accountants may not be equity partners in an Indian accounting firm.

Foreign accounting firms are also concerned with proposed amendments to the Indian Companies Act in the Companies Bill 2011. The Companies Bill 2011, which has been cleared by the Indian Cabinet, will replace a half-century old law, and is expected to be brought before Parliament in 2012. The proposed amendments include provisions that would require clients to rotate audit firms every five years and increase third party liability. Foreign firms are concerned that these changes will disrupt business continuity and represent a departure from the practices employed by most G20 countries.

Legal Services

The Bar Council of India (BCI) is the governing body for the legal profession in India. Membership in the BCI is mandatory to practice law in India, but is limited to Indian citizens. Foreign law firms are not allowed to open offices in India.

Indian lawyers have filed suit in the Bombay and Madras High Courts against a group of foreign law firms, challenging the ability of foreign attorneys to provide any type of legal services in India, including advising on matters of foreign (*i.e.*, non-Indian) or international law under ambiguous provisions of the 1961 Advocates Act. The Bombay High Court issued a judgment in December 2009, finding that non-litigation advisory services provided by foreign lawyers fell within the purview of the current Advocates Act, and were therefore restricted to Indian lawyers. However, the judgment also noted that the issue of foreign firms being able to practice law in India was under consideration by the government, and directed the government to "take [an] appropriate decision on this issue as expeditiously as possible." In the separate case before the Madras High Court, the court ruled on February 21, 2012 that the Advocates Act did not prevent foreign lawyers from advising clients on foreign (non-Indian) law and international legal issues (*e.g.*, in connection with international arbitrations) on a "temporary" basis. An adverse ruling would have barred foreign lawyers from advising clients in India and had a serious impact on cross-border trade and investment.

Telecommunications and Broadcasting

Foreign investment in wireless and fixed telecommunications in India is limited to 74 percent, and U.S. companies have noted that India's initial licensing fee (approximately $500,000 per service) for telecommunications providers serves as a barrier to market entry for smaller market players. Foreign investment in cable networks and "direct-to-home" (DTH) broadcasting is limited to 49 percent. TV channels, irrespective of ownership or management control, are required to transmit from ground stations (*i.e.,* up-link) located in India; while 100 percent foreign ownership is permitted for entertainment and general interest channels, foreign investment in news and current affairs channels up-linking from India is limited to 26 percent. In August 2009, the Telecommunications Regulatory Authority of India (TRAI) recommended to the Department of Telecommunications (DoT) that the foreign direct investment cap for cable networks and DTH be increased from 49 percent to 74 percent. This recommendation has not yet been implemented.

India issued a series of new requirements for telecommunications service providers and equipment vendors in December 2009, March 2010, and July 2010, explaining that these were adopted to maintain the security of its commercial telecommunications networks. The requirements apply to the purchase of imported products and do not apply to products manufactured or developed in India by Indian-owned or -controlled manufacturers. Issued in the form of amendments to telecommunications service licenses, the new regulations imposed an inflexible and unworkable security approval process, mandating the forced transfer of technology to Indian companies, the escrowing of source code, and assurances against malware and spyware during the entire use of relevant equipment. These measures effectively halted billions of dollars worth of trade in telecommunications equipment and seemed unlikely to advance India's stated security objectives.

India issued a new telecommunications security policy in May 2011, which eliminated many of the most trade-distorting conditions of the previous telecommunications security policy that did not address the security issues cited by India. Concerns remain, however, regarding certain provisions in the May 2011 policy, including: (1) the requirement for telecommunications equipment vendors to test all imported information and communications technology (ICT) equipment in labs in India; (2) the requirement to allow the telecommunications service provider and government agencies to inspect a vendor's manufacturing facilities and supply chain, and to perform security checks for the duration of the contract to supply the equipment; and (3) the imposition of strict liability and possible "blacklisting" of a vendor for taking "inadequate" precautionary security measures, without the right to appeal and other due process guarantees.

The government of India continues to hold equity in three telecommunications firms: a 26 percent interest in the international carrier, VSNL; a 56 percent stake in MTNL, which primarily serves Delhi and Mumbai; and 100 percent ownership of BSNL, which provides domestic services throughout the rest of India. These ownership stakes have caused private carriers to express concern about the fairness of India's general telecommunications policies. For example, valuable wireless spectrum has been allocated and set aside for MTNL and BSNL instead of being allocated by competitive bidding. Although BSNL and MTNL paid a price that was equal to the final bid price paid by the winners of the 3G auction, they received their spectrum well ahead of private players.

India does not allow companies to provide Internet telephony over networks connected to the publicly switched telecommunications network unless they obtain a telecommunications license. In August 2008, TRAI forwarded recommendations to the DoT, suggesting that the barriers to the provision of Internet telephony be eliminated entirely. In December 2010, the DoT rejected TRAI's recommendations.

U.S. satellite operators have long raised concerns about the closed and protected satellite services market in India. Even though current Indian regulations do not preclude the use of foreign satellites, foreign satellite capacity must in practice be provided through the Indian Space Research Organization (ISRO), effectively requiring foreign operators to sell capacity to a direct competitor. U.S. companies have noted that this requirement creates additional costs, allows ISRO to negotiate contract terms with the goal of moving the service to one of its satellites once capacity is available, and puts ISRO in a position of being able to determine the market growth rate. Although TRAI has in the past recommended that India adopt an "open skies" policy and allow competition in the satellite services market, no measures have been adopted to date to implement TRAI's recommendations for further liberalization.

Distribution Services

While 100 percent foreign ownership is permitted in wholesale cash and carry services, the retail sector in India is largely closed to foreign investment. Foreign investment in single-brand retailing is limited to 51 percent, while foreign investment in multi-brand retailing is prohibited outright. In January 2012, India issued a circular allowing foreign investors to invest in single-brand retail in excess of 51 percent (and up to 100 percent), but subject to a condition that 30 percent of the value of products sold by the retailer be sourced from small industries in India with plant and machinery capital of less than $1,000,000. This requirement is likely to be prohibitive for retailers in technology industries, and those operating with globally-integrated supply chains. A November 2011 effort by the government of India to open India's multi-brand retail market for the first time to foreign investment (subject to a 51 percent equity cap and conditions on minimum capitalization, state licensing, minimum back-end investment, and sourcing conditions) remains stalled due to political opposition.

India has periodically interpreted the activities of direct selling companies as violating the Prize Chits and Money Circulation Schemes (Banning) Act of 1978, creating uncertainty for companies operating in this market. Raids and seizures of property were undertaken in 2006 against a U.S. direct selling company operating in India with Foreign Investment Promotion Board approval. The case remains with the courts and could go to trial at any time. Industry groups have asked that the Department of Industrial Policy and Promotion issue a press note establishing a definition of direct selling and clarifying ambiguities, including ambiguity related to commissions earned in connection with the sale of products.

Postal and Express Delivery

In 2011, the Department of Posts announced a proposed bill to replace the 1898 Post Office Act. Although the Department of Posts has not yet publicly released the text of the bill or otherwise made it available for comment, it has identified certain features of the bill in response to a question from Parliament. This response indicates that the bill would establish a monopoly on express delivery of items weighing up to 50 grams, and require that private operators charge twice the Express Mail Service rate in order to provide services falling within the monopoly. The bill would also establish a new licensing and registration scheme, potentially granting India Post regulatory authority over its private sector competitors. U.S. companies have expressed concern both with elements of the bill disclosed thus far, and with the possibility that the bill may move ahead for Parliamentary approval without an opportunity for stakeholder input on the final text of the bill.

Education

Foreign providers of higher education services interested in establishing in India face a number of market access barriers, including a requirement that representatives of Indian states sit on university governing boards; quotas limiting enrollment; caps on tuition and fees; policies that create the potential for double-taxation; and difficulties repatriating salaries and income from research. A draft Foreign Education Providers Bill, which is expected to be introduced in the Parliament in 2012, may address some of these issues.

INVESTMENT BARRIERS

Equity Restrictions

India continues to prohibit or severely restrict foreign investment in certain sectors, such as agriculture, multi-brand retail trade, railways, and real estate. Foreign direct investment (FDI) is permitted without the need for prior approval in many sectors, including bulk manufacturing activities, whereas prior government approval is required for investment in others. The Department of Industrial Policy and Promotion (DIPP), within the Ministry of Commerce and Industry, began issuing consolidated FDI policy circulars in April 2010, with circular revisions contemplated every six months. The last revision was released in October 2011 (http://dipp.nic.in/English/Policies/Policy.aspx).

In its October 2011 "Consolidated FDI Policy," the Ministry of Commerce and Industry sought to clarify ongoing confusion about FDI rules applicable to existing investors in India. The Consolidated FDI Policy circular provides that if a company with foreign investment is majority-owned and controlled by resident Indians, the "downstream" investments of that company do not count towards FDI caps in the receiving entity or sector. By contrast, downstream investment by a foreign majority-owned or foreign controlled entity counts towards FDI caps. Thus, foreign shareholding is counted as domestic shareholding, so long as the investment is transacted via a company "controlled" by Indian residents and is less than 50 percent foreign-owned. The government no longer differentiates between portfolio and direct investment in calculating foreign ownership. As a result, several large firms, particularly banks with high foreign portfolio holdings may be in potential breach of foreign ownership limits. India's two largest banks, ICICI Bank and HDFC Bank, may soon become "foreign" banks in light of the Consolidated FDI Policy Circular. Foreign investors hold 77 percent equity in ICICI and 64 percent in HDFC.

India has allowed 100 percent FDI in the pharmaceutical sector for several years with no requirement of government approval. In October 2011, India appeared to have moved away from this openness, adopting a requirement that foreign acquisition of pharmaceutical firms ("brownfield investments") be approved by the Competition Commission of India (CCI). FDI will still be permitted up to 100 percent, but such investment will no longer be automatic in this sector. Instead, the CCI is charged with "balancing" the public health concerns with the need to attract FDI when deciding whether to approve a particular acquisition. This "balancing" requirement erroneously presumes that FDI in the pharmaceutical sector is in tension with the government's public health objectives, and places the evaluation of such objectives in the hands of the CCI, which appears to be neither competent nor statutorily authorized to perform such analysis. The CCI has been tasked with developing regulations within six months to govern these brownfield decisions, during which time the Foreign Investment Promotion Board will determine approvals for acquisition of pharmaceutical firms by foreign companies.

India's stringent and nontransparent regulations and procedures governing local shareholding inhibit inbound investment and increase risk to new entrants. Attempts by non-Indians to acquire 100 percent ownership of locally traded companies often face regulatory hurdles that may render ownership unobtainable under current practice, even though such acquisitions are legally permissible. Price control regulations in some sectors, such as the pharmaceutical sector, have further undermined incentives for foreign investors to increase their equity holdings in India.

Investment Disputes

India's poor track record in honoring and enforcing agreements with U.S. investors in the energy sector has improved in recent years. The central government, which has limited jurisdiction over commercial disputes involving matters under state jurisdiction, has sought to have India's states engage with investors in an effort to settle commercial disputes. A secure legal and regulatory framework for the private sector and institutionalized dispute resolution mechanisms to expedite resolution of commercial issues are important features of an attractive investment climate. India's backlog of over 20 million legal cases throughout the country (according to a 2008 UN Development Program report) reflects the frequent delay of legal proceedings in India.

ANTICOMPETITIVE PRACTICES

Historically, Indian firms faced few, if any, disincentives to engage in anticompetitive business practices. However, in 2002, the Indian government enacted the Competition Act, which created the CCI. The CCI began taking on cases in 2009, after delays caused by litigation and legislative amendments. The final provisions of the Act, governing mergers and acquisitions, came into force on June 1, 2011. The CCI is in the process of becoming fully staffed, and officials with the Federal Trade Commission and U.S. Justice Department have conducted multiple trainings with these new employees to discuss international best practices with the CCI.

OTHER BARRIERS

India has an unwritten policy that favors countertrade (a form of trade in which imports and exports are linked in individual transactions). The Indian Minerals and Metals Trading Corporation is the major countertrade body, although the State Trading Corporation also handles a small amount of countertrade. Private companies also are encouraged to use countertrade. Global tenders usually include a clause stating that, all other factors being equal, preference will be given to companies willing to agree to countertrade.

India issued new guidelines in July 2010 as part of the Jawaharlal Nehru National Solar Mission (JNNSM), requiring that eligible solar project developers source certain materials from domestic manufacturers in order to receive preferential power rates. In the first part of Phase I of the JNNSM, all projects based on solar photovoltaic (PV) technology were required to source crystalline silicon modules from manufacturers in India, while solar thermal projects were required to meet a 30 percent local content threshold. These local content requirements were expanded significantly in August 2011, such that PV cells as well as modules used in JNNSM projects must be manufactured in India. These restrictions have effectively blocked imports of U.S. equipment based on crystalline silicon technology for use in JNNSM projects, affecting a large segment of U.S. solar manufacturers.

India issued a number of policy proposals in 2011 aimed at encouraging domestic manufacturing in the telecommunications equipment, electronic products, and information technology areas. These proposals include certain recommendations by the TRAI; procurement preference guidelines for electronic products, adopted by the Cabinet and awaiting final approval by the Ministry of Communications and Information Technology (MCIT); and Draft National Policies on Electronics, Information Technology, and Telecommunications also proposed by MCIT. Certain aspects of these proposals, if implemented, would impose significant barriers to trade in the ICT sector. Moreover, such approaches, as well other proposals such as increased conformity assessment procedures and domestic preferences in government procurement, will likely do little to foster domestic manufacturing, but instead produce perverse consequences of discouraging investment, weakening ICT infrastructure, and increasing costs to Indian consumers and firms seeking to do business in India.

Potential challenges to making defense sales include the lack of a signed Communication Interoperability and Security Memorandum of Agreement (CISMOA) and a Basic Exchange and Cooperation Agreement

(BECA) between the United States and India. A signed CISMOA would provide the framework necessary to ensure that sensitive communication encryption capabilities are adequately protected, and would act as the first step toward making some of the most advanced U.S. communication and jam resistant navigation technologies available to India. A signed BECA would provide a structure for exchange of geospatial data used in sophisticated navigation and cockpit display systems.

India has steadily increased export duties on iron ore and its derivatives. In June 2008, India enacted export tariffs of 15 percent on all grades of iron ore and its concentrates, but revised the tax to five percent in December 2008. In December 2009, India raised this export tax rate to 10 percent, leaving the export duty on iron ore fines at 5 percent. India then increased the export tax on iron ore lumps to 15 percent in April 2010. In February 2011, India increased the export duty on both iron ore lumps and fines to 20 percent, and increased that export duty to 30 percent in January 2012. In July 2010, the Indian state of Karnataka banned the export of iron ore from the state. Exporters have challenged this ban, and in June 2011, the Supreme Court lifted the ban temporarily. Officials from the state of Orissa indicated in January 2011that they intend to adopt an iron ore export ban as well. Such restrictions affect international markets for raw materials used in steel production. India also requires that exports of high grade iron ore (greater than 64 percent iron content) pass through state trading enterprises, with the state-owned Minerals and Metals Trading Company acting as a clearinghouse. In 2010 India became the world's sixth largest steel producing economy, and it appears the Indian government is using these measures to improve supply and lower prices of inputs used by India's rapidly growing steel industry.

India implemented export restrictions and bans on cotton and yarn during 2010 and 2011. These restrictions contributed to significant volatility on world cotton markets and appear to have provided India's textile and apparel producers with more affordable cotton during a period of record high world cotton prices. Following intensive U.S. engagement and changing conditions in the world cotton market, India now permits the export of cotton and yarn subject only to registration with the government.

In the agriculture sector, India has established tariff-rate quotas for corn and dairy products. Access to the tariff-rate quotas is complicated by end-user requirements that often lead to low fill rates.

INDONESIA

TRADE SUMMARY

The U.S. goods trade deficit with Indonesia was $11.7 billion in 2011, up $2.2 billion from 2010. U.S. goods exports in 2011 were $7.4 billion, up 6.7 percent from the previous year. Corresponding U.S. imports from Indonesia were $19.1 billion, up 16.0 percent. Indonesia is currently the 35th largest export market for U.S. goods.

U.S. exports of private commercial services (*i.e.*, excluding military and government) to Indonesia were $1.6 billion in 2010 (latest data available), and U.S. imports were $413 million. Sales of services in Indonesia by majority U.S.-owned affiliates were $3.2 billion in 2009 (latest data available), while sales of services in the United States by majority Indonesia-owned firms were $76 million.

The stock of U.S. foreign direct investment (FDI) in Indonesia was $15.5 billion in 2010 (latest data available), down from $15.6 billion in 2009. U.S. FDI in Indonesia is primarily concentrated in the nonbank holding companies and mining sectors.

IMPORT POLICIES

In recent years, Indonesia has introduced numerous new regulations affecting imports, significantly increasing the complexity of accessing the Indonesian market. In addition to tariffs, import requirements include import licensing and permit requirements, product labeling requirements, pre-shipment inspection requirements, local content and domestic manufacturing requirements, and quantitative import restrictions. Numerous other measures are being considered in the context of draft legislation, including deliberations over a new trade law, as the Indonesian government pursues self-sufficiency objectives and seeks to offset the reduction in tariff protection during the implementation of preferential trade agreements with China, Australia, Japan, South Korea, New Zealand, India, and other bilateral and regional partners. The United States will continue to press Indonesia to resolve U.S. concerns regarding these new measures and to encourage Indonesia to maintain an open and transparent trade regime.

Tariffs

In 2011, Indonesia's average most favored nation applied tariff was seven percent. Indonesia periodically changes its applied rates. In December 2011, the Ministry of Finance increased applied import duties for designated grain and oilseed products from zero percent to five percent. This change will be applied to wheat and soybean imports. In 2010 and 2009, similar increases in applied rates were implemented for a range of goods that compete with locally manufactured products, including chemicals, electronic products, electrical and non-electrical milling machines, cosmetics, medicines, iron wire and wire nails, and a range of agricultural products including milk products, animal or vegetable oils, fruit juices, coffee, and tea.

Indonesia's simple average bound tariff of 37 percent is much higher than its average applied tariff. Most Indonesian tariffs are bound at 40 percent, although bound tariff levels exceed 40 percent or remain "unbound" on automobiles, iron, steel, and some chemical products. In the agricultural sector, tariffs on more than 1,300 products have bindings at or above 40 percent. Tariffs on fresh potatoes, for instance, are bound at 50 percent, with the applied rate at 20 percent. The large gap between bound and applied rates, combined with seemingly arbitrary changes in applied rates, creates uncertainty for foreign companies seeking to enter the Indonesian market.

U.S. exporters report that a reduction in Indonesia's tariffs could increase market access opportunities in agricultural and manufactured goods. For companies operating in the restaurant sector, the reduction or elimination of tariffs on a wide range of products including beef pepperoni, mozzarella cheese, cooking appliances, cookware, and beverage systems could result in increased U.S. exports. U.S. motorcycle exports remain severely restricted by the combined effect of a 60 percent tariff, a luxury tax of 75 percent, a 10 percent value-added tax, and the prohibition of motorcycle traffic on Indonesia's highways.

In 2010, Indonesia converted its applied tariff on imported distilled spirits from 150 percent *ad valorem* to 125,000 rupiah ($15) per liter.

Indonesia has extensive preferential trade relationships with other countries. Under the ASEAN Free Trade Agreement, duties on imports from ASEAN countries generally range from zero percent to five percent, except for products specified on exclusion lists. Indonesia also provides preferential market access to Australia, China, Japan, Korea, India, and New Zealand (under regional ASEAN agreements) and to Japan (under a bilateral agreement). Indonesia is currently negotiating bilateral agreements with Iran, India, Pakistan, Australia, and European Free Trade Association countries, and undertaking joint studies on potential FTAs with Chile, Turkey, South Korea, Tunisia, and Egypt.

Indonesia imposes an export tax of 5 percent on cocoa exports and an export tax of 15 percent on palm oil exports. The Indonesian government is considering the imposition of export taxes on other products, including base metals and coal.

Import Licensing

Exporters to Indonesia must comply with numerous and overlapping import licensing requirements that create confusion for traders. In 2009, the Indonesian government implemented a sweeping regulation imposing non-automatic import licensing procedures on a broad range of products, including electronics, household appliances, textiles and footwear, toys, and food and beverage products. The measure, known as Decree 56, was extended by Ministry of Trade Regulation 57/M-DAG/PER/12/2010 in December 2010, and it will remain in effect until December 31, 2012. The extended decree includes additional products under the scope of the licensing restrictions, including cosmetics, while retaining a requirement for pre-shipment verification by designated surveyors at importers' expense and a restriction that limits entry of imports to a limited number of designated ports and airports. The Indonesian government was considering extending these licensing provisions to additional products; however, for the time being, it has informally limited application of the decree to "final consumer goods." The Indonesian government also appears to be exempting select registered importers from certain requirements of this decree. Still, the approval process to qualify as a registered importer is opaque, ill-defined, and potentially discriminatory. The United States continues to seek its withdrawal.

Ministry of Trade Regulation No. 45/M-DAG/PER/9/2009, as amended and clarified by Regulation No.17/M-DAG/PER/3/2010, introduced a requirement that companies can only import goods for further distribution or for their own manufacturing, but not for both. Under these regulations, companies are permitted only one kind of license, and those that need both kinds of licenses need to separate into manufacturing and trading businesses. Effective January 1, 2011 in Regulation No. 39/M-DAG/PER/10/2010, Indonesia introduced a new kind of importer license, called a PI License, which permits companies to import certain finished products not used in the production process provided such imports support the development of the company's business in Indonesia. The rationale for this policy is unclear, though importers have expressed concern that it is intended to restrict imports and make them more expensive. Under these regulations, companies must submit import realization reports to the Ministry of Trade on a quarterly basis; if they do not, or if the information is found to be incorrect or inconsistent with the licenses granted, the import license may be revoked.

Since 2002, Indonesia has continued to maintain other additional non-automatic licensing requirements on textiles, clothing, and other "made-up goods" such as curtains and blankets, which limit market access for a wide range of products. Only approved local producers are authorized to import products covered by this regulation, and these products are permitted for use only as inputs in domestic production, not for resale or transfer. Approval must be obtained for both the quantity and timing of imports. The United States continues to press Indonesia to eliminate these requirements.

Additional burdensome product-specific import licensing and registration requirements apply to agricultural products, including beef, sugar, and dairy.

Pharmaceutical Market Access

The United States continues to have serious concerns about barriers to Indonesia's market for pharmaceutical products. Ministry of Health Decree No. 1010/MENKES/PER/XI/2008 requires foreign pharmaceutical companies to manufacture locally or entrust a company already registered as a manufacturer in Indonesia, a potential competitor, to obtain drug approvals for them. Under this policy, foreign companies can be barred from the Indonesian market even if they are market leaders in globally recognized good manufacturing and distribution practices and provide high quality pharmaceutical products to Indonesian patients. Among its requirements, Decree 1010 requires local manufacturing in Indonesia of all pharmaceutical products that are five years past patent expiration. It also contains a technology transfer requirement. A subsequent regulation, Regulation 1799, provided additional information about the application of the local manufacturing requirement, but the regulatory environment remains opaque and uncertain. The Indonesian government had pledged to issue, before the end of 2011, a questions and answers document to further clarify the remaining questions of pharmaceutical companies about the trade and investment restrictions affecting pharmaceutical products, but has not yet done so.

A bill on *halal* certification, currently under discussion in Indonesian Parliament, may require mandatory *halal* certification of pharmaceuticals as well as other products. Such a policy could have significant adverse consequences on U.S. and other foreign companies as well as Indonesian patients.

Quantitative Restrictions

Indonesia maintains quantitative restrictions, particularly on imports of agricultural products such as beef, where annual import quantities are determined by Indonesian agencies in nontransparent processes. The U.S. Government has raised strong concerns over these issues and will continue to seek to address these issues with the Indonesian government.

For animal-based products, a new import permit process is being introduced. The Ministry of Trade issues permits for the import and export of animals and animal products after receiving a recommendation approval from the Directorate General of Livestock and Animal Health Service of the Ministry of Agriculture per Ministry of Trade regulation No. 24/M-DAG/PER/9/2011 and Ministry of Agriculture regulation No. 50/PERMENTAN/OT.140/ 9/2011 dated September 7, 2011. The Ministry of the Economy also plays a key role in the process, particularly in setting national and importer specific allocations. Both regulations were put into effect on October 1, 2011. These regulations now effectively ban imports of any chicken product, including whole birds and mechanically deboned meat. U.S. industry estimates the annual trade impact of this restriction to be between $75 million and $100 million.

A draft regulation has been prepared that would introduce an import quota system on imports of fresh and processed fruits and vegetables, a category of commodities which exceeded $200 million last year.

Indonesia bans salt imports during the harvest season. It requires salt importers to be registered and to purchase domestic supplies as well as imports. Indonesia also maintains a seasonal ban on imports of sugar, in addition to limiting the annual quantity of sugar imports based on domestic production and consumption forecasts.

Indonesia applies quantitative limits to imported wines and distilled spirits. Companies can now apply to be designated as registered importers authorized to import alcoholic beverages with an annual quota set by the Ministry of Trade.

Mining firms operating in Indonesia may not export unprocessed ore. Under the mining law, companies are required to process ore locally before shipping it abroad. The policy is intended to support the expansion of value-added activities, including the smelting industry.

In late 2011, Indonesia banned exports of raw and semi-processed rattan.

Product Registration

Beginning in late 2008 and continuing through 2011, Indonesia's food and drug agency (BPOM) slowed its process of reviewing applications for the registration of food, beverages, and other products, including health supplements. Combined with announced plans to implement an onerous Indonesian language labeling requirement, the process for registering products has become increasingly burdensome, opaque, and costly to U.S. exporters. Some companies have discontinued or reduced sales to Indonesia as a result of the manner in which BPOM is implementing this requirement.

Customs Barriers

U.S. firms continue to report that Indonesian Customs relies on a schedule of reference prices to assess duties on some imports, rather than using actual transaction prices. Customs makes a valuation assessment based on the perceived risk status of the importer and the average price of a same or similar product imported during the previous 90 days.

In late 2010, Indonesian Customs changed its methodology for assessing import duties on motion pictures, from import duties "per meter" to a calculation based on royalties, vastly increasing duties payable. Following a disruption in trade and bilateral consultations between the U.S. and Indonesian governments, the Ministry of Finance adopted a new specific tariff based on a "per minute" calculation rather than royalties. The Finance Ministry also changed the application of its value-added tax on movie imports. Overall, the incidence of duties and taxes under the current system is higher than it was in 2010, though trade has resumed.

The Ministry of Agriculture has announced that, in order to comply with priorities set by the Ministry of Trade, the port of Jakarta and several other major ports will be closed to horticulture exports to Indonesia, beginning in March 2012. More than 90 percent of Indonesian imports of U.S. fresh fruits and vegetables (more than $200 million annually) move through the Jakarta port, Tanjung Priok, destined for the Jakarta market. The U.S. and other foreign governments continue to press Indonesia to suspend this measure.

Luxury Taxes

Luxury goods (defined as goods not considered necessities), imported or locally produced, may be subject to a luxury tax of up to 200 percent although the current range is 10 percent to 75 percent for goods listed in the implementing regulations as subject to the luxury tax. The luxury tax on 4,000cc sedans and 4x4 Jeeps or vans is 75 percent, compared with the luxury tax on automobiles with engine capacities of

1500cc or less, which ranges from 10 percent to 30 percent. Passenger cars with engine displacement less than 1500cc comprise 40 percent of the market, including a large group of vehicles predominantly produced in Indonesia that are taxed at a rate of 10 percent. The luxury tax on motorcycles with the cylinder capacity of 250cc up to 500cc is 60 percent.

State Trading

In April 2008, the Indonesian government announced that the National Logistics Agency would have exclusive authority to import rice. In doing so, Indonesia cited food security and price management considerations. Imports are not permitted before, during, and immediately after the main harvest period, effectively the first quarter of the year. Private firms can import rice for special purposes only, such as for processing and specialty rice, but they must obtain a special importer identification number issued by the Ministry of Agriculture.

GOVERNMENT PROCUREMENT

Indonesia grants special preferences to encourage domestic sourcing and to maximize the use of local content in government procurement. It also instructs government departments, institutes, and corporations to utilize domestic goods and services to the maximum extent feasible. Presidential Regulation 54/2010 requires procuring entities to seek to maximize local content in procurement, use foreign components only when necessary, and designate foreign contractors as sub-contractors to local companies. Presidential Regulation 2/2009 stipulates that all state administrations should "optimize" the use of domestic goods and services and give price preferences for domestic goods and providers. Ministry of Industry Decree 15/2011 provides for the creation of an Accelerated Use of Local Product National Team to optimize local product use in goods or services procurement. Foreign firms bidding on high-value government-sponsored projects report that they have been asked to purchase and export the equivalent value of selected Indonesian products if they are awarded the contract.

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

INTELLECTUAL PROPERTY RIGHTS PROTECTION

Indonesia remained on the Priority Watch List in the 2011 Special 301 Report. Key issues include continuing widespread copyright piracy and trademark counterfeiting, an inadequate number of criminal prosecutions, and non-deterrent penalties for those who are convicted. U.S. industry reports that one of its most significant frustrations remains the nontransparent and non-deterrent court system, shielding rights holders from information about cases directly affecting their interests. Rates of physical counterfeiting and piracy and piracy over the Internet are extremely high (an estimated 87 percent of business software was unlicensed in 2010) while piracy rates at malls and in the retail sector are even higher. Enforcement efforts were insufficient to keep pace with broad-based piracy and counterfeiting in Indonesia, including with respect to counterfeit pharmaceutical products.

SERVICES BARRIERS

Indonesia maintains significant and far-reaching trade and investment barriers in many key services sectors. The United States will continue to press Indonesia to address its concerns on these issues.

Legal Services

Only Indonesian citizens may be licensed as lawyers in Indonesia. Foreign lawyers may only work in Indonesia as "legal consultants" upon approval of the Ministry of Justice and Human Rights. A foreign law firm seeking to enter the market must establish a partnership with a local firm.

Express Delivery and Logistics Services

In September 2009, the Indonesian legislature introduced a new law with restrictions on the provision of postal services, broadly defined to include courier, express delivery, and other logistics services. The law requires that postal service providers be majority-owned by Indonesians and that foreign providers limit their activities to provincial capitals with international airports and seaports. The Ministry of Communication and Informatics has said that joint ventures will be able to service cities with international airports and seaports, as well as supporting economic areas of provincial capitals with international airports and seaports. However, there are no legal instruments providing such treatment. The United States will continue to press Indonesia on this issue.

Health Services

Changes to the negative list of foreign investment restrictions in 2010 allow for 67 percent foreign ownership of private specialist hospitals in all regions of Indonesia, in contrast to the previous regulation which limited foreign investors to the cities of Medan and Surabaya.

Under Doctors' Practice Law No. 29/2004 and Regulation of Minister of Health No. 512/2007, foreign doctors should be permitted to practice in Indonesia, but the situation is unclear because a 2004 technical note from Indonesia's Investment Coordinating Board (BKPM) bans foreign doctors from practicing in Indonesia. In practice, it is nearly impossible to obtain a license due to strong opposition from the Indonesian Doctors' Association. Most foreign healthcare professionals act only as consultants and trainers for Indonesian healthcare professionals.

Financial Services

Financial service providers may not establish as a branch. In the insurance sector, the 2007 Investment Law limits foreign equity to 80 percent for new investors.

Energy Services

In 2011, Indonesia's upstream oil and gas regulator, BP MIGAS, increased local content requirements from 35 percent to 51 percent, even though it is unclear whether Indonesia has the capacity to supply the level of domestic content required by the regulation. Foreign energy and energy services companies, while supportive of the concept of building capacity within the domestic oil and gas industry, state that their operations already support thousands of local businesses, and are concerned that these local preference policies severely undermine their ability to make successful bids on contracts and to make decisions about sourcing and personnel that would allow them to function efficiently and profitably in the Indonesian market. BP MIGAS is under pressure from the Indonesian Parliament to maintain or increase the local content requirements and is considering further revisions.

Cabotage

Indonesia's 2010 shipping law requires all vessels operating in Indonesia's waters to be flagged domestically and manned by Indonesian crews, and cabotage regulations would have applied that law to all offshore activities beginning May 2011. Implementation of such a requirement would be a particular problem for foreign investors in Indonesia's energy sector, which will no longer be permitted to bring in the sophisticated rigs and specialized equipment needed to develop large upstream projects. As a result of widespread expressions of concern, the Ministry of Transportation issued Regulation No. 22/2011 allowing certain classes of non-transportation vessels to be eligible for a three-month renewable waiver from the domestic flagged vessel requirements when there is no suitable Indonesian-flagged vessel available. Exceptions included drill rigs, seismic vessels, and other vessels unique to the oil and gas industry, as well as cable-laying ships. These exceptions delay implementation of a broad-based local content effort, but are time limited and scheduled to phase out over the next few years.

Audit and Accounting Services

Foreign public accounting firms must be affiliated with a local public accounting firm to conduct business in Indonesia. Foreign accounting firms must use the name of its local affiliate in addition to the foreign firm's name in presentation and disclosure. Indonesia allows a maximum of 10 percent foreign national staff for each level of management in the affiliated local accounting firm. Foreign accountants can operate in the country if they have a license from the Ministry of Finance and are a member of Indonesia Institute of Certified Public Accountant. In affiliated accounting firms, the ratio of foreign audit signing partners to local signing partners cannot exceed one to four.

Film

A September 2009 law includes a 60 percent local content requirement for local exhibitors, unspecified import restrictions to achieve that quota, prohibitions against the dubbing of foreign films, and prohibitions against foreign companies distributing or exhibiting films. The law also restricts vertical integration across segments of the film industry, which could have unintended consequences in reducing business efficiency and in making the market a less attractive destination for foreign investment.

In January 2010, following concerns raised by the United States, the Minister of Culture and Tourism issued a two year postponement of a 2008 regulation requiring all local and imported movies, both theatrical prints and home video copies, to be replicated locally, with penalties on exhibitors for failing to do so. A subsequent deferral, until December 31, 2012, was signed by Minister Pangestu in early 2012. The United States continues to advocate for the permanent suspension of this regulation.

Construction, Architecture and Engineering

Foreign construction firms are only allowed to be subcontractors or advisors to local firms in areas where the Indonesian government believes that a local firm is unable to do the work. For government-financed projects, foreign companies must form joint ventures with local firms.

Education

Indonesia's Law on Education Legal Entities does not allow foreign investment in higher education in the form of a limited liability company, in conflict with provisions of the existing Investment Law. In addition, in order for foreign nationals to provide educational services they must be authorized by the Ministry of Education and the Ministry of Manpower. Authorization is granted on a case-by-case basis and only when there are no Indonesian instructors capable of filling the position.

INVESTMENT BARRIERS

Indonesia maintains significant and far-reaching foreign investment restrictions. Its investment climate continues to be characterized by legal uncertainty, economic nationalism, and disproportionate influence of local business interests seeking control and ownership of both existing enterprises and new market opportunities. Foreign companies are compelled to do business with local partners and to purchase goods and services locally.

In an attempt to improve its investment climate, Indonesia in 2007 introduced a new Investment Law intended to improve transparency and provide a range of improved protections for foreign investors including non-discriminatory treatment, protection against expropriation, and recourse to international arbitration in the event of a dispute with the government. At the same time, however, the new law significantly increased the number of sectors in which foreign investment is restricted and increased foreign equity limitations in sectors of interest to U.S. investors. These sectors include telecommunications, pharmaceuticals, film and creative industries, and construction. An ongoing process of decentralization, which is intended to reduce burdensome bureaucratic procedures by moving investment-related decisions to provincial and district level governments, has led to some improvements but has also resulted in new restrictive measures that conflict with national laws.

Indonesia continues to review the 2007 Investment Law and its negative list of restricted sectors.

Presidential Regulation 36/2010, signed by President Yudhoyono on May 25, 2010, issued long-awaited changes to the negative list providing legal clarifications in conjunction with limited liberalization. The clarifications include issues relating to retroactive implementation of the list, and promise a continuous review of closed sectors for increased market access. The revisions include modest changes to investment limits in individual sectors, such as construction, health care, film technical services, and electricity generation. The revisions also increase restrictions in some sectors, however, such as postal services and the telecommunications tower sector, which is now closed to foreign investment.

In 2010, the Indonesian legislature introduced a new horticulture law, which reduced permissible foreign equity in horticulture-related business activities from 95 percent to 30 percent.

Energy and Mining

Over the past several years, sweeping regulatory changes have been introduced to increase government control in the energy and mining sectors and to generate higher royalties for the government. The changes increase the cost of doing business and reduce the attractiveness of foreign investment in Indonesia's energy sector. They also raise questions about the sanctity of contracts signed with the Indonesian government.

Mandatory changes in contract terms remain a serious concern in the oil and gas sector. Government Regulation 79, signed in December 2010, changes the terms of existing production sharing contracts and alters the fiscal climate for new investment. It removes certain expenses from tax deductibility, changes the terms and criteria for cost recovery, and places limits on allowable costs for goods, services, and salaries.

Indonesia's 2009 Mining Law replaced the "contract of work" system with a licensing system. The law and its implementing regulations impose onerous requirements on companies doing business in this sector, including local content requirements, domestic demand requirements, a requirement to process raw materials in Indonesia prior to export, and a requirement that foreign license holders divest a 20 percent stake to Indonesian investors after five years of production. The law also reduces the maximum mine work area, diminishing a mining company's ability to fully recover any resource it discovers. Many companies operating in the sector are being called to renegotiate existing contracts, including provisions related to the validity or duration of the contract period, the size of the concession area, and the amount of royalty paid to the Indonesian government.

Telecommunications

Telecommunications providers face myriad investment restrictions. Foreign ownership of up to 65 percent is generally permitted for suppliers of value-added and mobile telecommunications services and up to 49 percent for suppliers of fixed networks. Foreign ownership of up 95 percent is allowed for suppliers of certain data communication system services, and foreign firms have obtained licenses in this sector. While these ownership limitations are higher than Indonesia's current GATS commitments require, the ownership limitation on suppliers of fixed services represents a step backward from past practice, which allowed up to 95 percent ownership.

A Ministry of Communications and Informatics decree issued in 2008 closed the construction, management, and ownership of cell towers to foreign investment. Some foreign firms were forced to exit the market. The Ministry is currently drafting regulations that will require telecommunications companies operating in Indonesia to build data and disaster recovery centers inside the country. If implemented, that requirement would create a significant hurdle to companies seeking to do business in Indonesia.

The Ministry of Communications and Informatics issued two decrees in 2009 requiring telecommunications operators to source significant percentages of their capital and operating expenditures from domestic suppliers.

OTHER BARRIERS

Other barriers to trade and investment include corruption, poor coordination across government ministries, the slow rate of land acquisition for infrastructure development projects, poor enforcement of contracts, an uncertain regulatory and legal framework, and lack of transparency in the development of laws and regulations. While the Indonesian government and the Corruption Eradication Commission continue to investigate and prosecute high-profile corruption cases, corrupt business practices are endemic and considered by many investors to be an inherent cost of doing business in Indonesia. Corruption can influence the development of regulations as well as government awards of contracts and concessions, while weak rule-of-law institutions, including the judiciary, often mean that U.S. companies seeking legal relief in contract disputes are forced to litigate spurious counterclaims. Regulatory uncertainty, amplified by decentralization and its concomitant multiple layers of bureaucracy, is driven primarily by contradictory laws and regulations, as well as overlapping jurisdictions across government agencies and ministries.

ISRAEL

TRADE SUMMARY

The U.S. goods trade deficit with Israel was $9.1 billion in 2011, down $617 million from 2010. U.S. goods exports in 2011 were $14.0 billion, up 23.6 percent from the previous year. Corresponding U.S. imports from Israel were $23.0 billion, up 9.7 percent. Israel is currently the 24th largest export market for U.S. goods.

U.S. exports of private commercial services (*i.e.*, excluding military and government) to Israel were $3.5 billion in 2010 (latest data available), and U.S. imports were $4.0 billion. Sales of services in Israel by majority U.S.-owned affiliates were $2.6 billion in 2009 (latest data available), while sales of services in the United States by majority Israel-owned firms were $1.9 billion.

The stock of U.S. foreign direct investment (FDI) in Israel was $9.7 billion in 2010 (latest data available), up from $9.3 billion in 2009. U.S. FDI in Israel is primarily concentrated in the manufacturing sector.

The United States-Israel Free Trade Area Agreement

Under the United States-Israel Free Trade Area Agreement (FTA), signed in 1985, the United States and Israel agreed to implement phased tariff reductions culminating in the complete elimination of duties on all products by January 1, 1995. While non-agricultural tariffs between the United States and Israel have been eliminated as agreed, tariff and nontariff barriers continue to affect a significant number of key U.S. agricultural product exports.

To address the differing views between the two countries over how the FTA applies to trade in agricultural products, in 1996 the United States and Israel signed an Agreement on Trade in Agricultural Products (ATAP), establishing a program of gradual and steady market access liberalization for food and agricultural products effective through December 31, 2001. Negotiation and implementation of a successor ATAP was successfully completed in 2004. This agreement was effective through December 31, 2008, and granted improved access for select U.S. agricultural products. The ATAP agreement has been extended four times, most recently through December 31, 2012, to allow time for the negotiation of a successor agreement. The ATAP provides U.S. food and agricultural products access to the Israeli market under one of three different categories: unlimited duty-free access, duty-free tariff-rate quotas (TRQs), or preferential tariffs, which are set at least 10 percent below Israel's most favored nation rates.

IMPORT POLICIES

Agriculture

U.S agricultural exports that do not enter duty free under WTO, FTA, and ATAP provisions face restrictions such as a complicated TRQ system and high tariffs. These products include higher value goods that are sensitive for the Israeli agricultural sector, such as dairy products, fresh fruits, fresh vegetables, almonds, wine, and some processed foods. According to industry estimates, elimination of levies on processed foods, including a broad range of dairy products, could result in increased sales by U.S. companies in the range of $28 million to $55 million. Removal of quotas and levies on dried fruits could result in increases in sales by U.S. exporters of up to $12 million. U.S. growers of apples, pears, cherries, and stone fruits estimate that elimination of Israeli trade barriers would lead to an increase of $7 million to $26 million in export sales of these products. Industry estimates that free trade in agriculture could result in U.S. almond exports increasing by as much as $12 million. Removing these levies on food product inputs used in U.S.-based restaurant chains operating in Israel could save these chains millions of dollars annually and allow for their expansion.

Further, the ability of U.S. exporters to use available TRQ in-quota quantities can be hampered by problems with transparency and other issues with the administration of Israel's TRQs. These issues include a lack of data on quota fill-rates and license allocation issues, such as allocation of small non-commercially viable quota quantities, and administrative difficulties in obtaining licenses for in-quota imports. Under the current ATAP, Israel committed to take steps to improve the administration of TRQs, including engaging in regular bilateral consultations. In 2011, Israel made some improvements, but did not resolve fully problems related to TRQ administration during its mid-year reallocation of unused quotas. The negotiations for a successor ATAP will seek to address the outstanding issues with respect to Israel's administration of TRQs.

Customs Procedures

Some U.S. exporters have reported difficulty in claiming preferences for U.S. goods entering Israel under the FTA, specifically related to the presentation of certificates of origin to Israeli customs authorities. In 2010, the U.S. Government engaged in discussions with Israel to clarify and resolve the situation surrounding the difficulty in claiming preferences under the FTA.

GOVERNMENT PROCUREMENT

U.S. firms encounter difficulties in accessing the Israeli government procurement market. Government-owned corporations make extensive use of selective tendering procedures. In addition, the lack of transparency in the public procurement process discourages U.S. companies from participating in major projects and disadvantages those companies when they choose to compete. A proposed regulation not yet passed in the Knesset could impair transparency and access further by allowing an internal committee within each Israeli government ministry to exempt up to four million shekels (approximately $1 million) of procurement from public tenders. Enforcement of public procurement laws and regulations in Israel is not consistent.

Israel also has offset requirements that it implements through international cooperation (IC) agreements. Under IC agreements, foreign companies are required to offset government contracts by agreeing to invest in local industry, co-develop or co-produce with local companies, subcontract to local companies, or purchase from Israeli industry. As of January 1, 2009, the IC offset percentage for procurements covered by Israel's GPA obligations is 20 percent of the value of the contract; for procurements excluded from GPA coverage, including most military procurements, the offset is 35 percent.

U.S. suppliers suspect that the size and nature of their IC proposals can be a decisive factor in close tender competitions, despite an Israeli court decision that prohibits the use of offset proposals in determining the award of a contract. Because small and medium sized U.S. exporters are often reluctant to commit to make purchases in Israel in order to comply with the IC requirements, their participation in Israeli tenders is limited. In the recently approved revision of the GPA, Israel committed to phase out its offsets on procurement covered by the GPA.

In addition, the inclusion of unlimited liability clauses in many government tenders discourages U.S. firms from competing. When faced with the possibility of significant legal costs for unforeseeable problems resulting from a government contract, most U.S. firms are forced to insure against the risk, which raises their overall bid price and reduces their competitiveness.

The United States-Israel Reciprocal Defense Procurement Memorandum of Understanding (MOU), extended in 1997, is intended to facilitate defense cooperation in part by allowing companies from both countries to compete on defense procurements in both countries on as equal a basis as possible, consistent with national laws and regulations. However, U.S. suppliers have expressed concern about the lack of transparency and apparent lack of justification for excluding U.S. suppliers from various Ministry of Defense (MOD) tendering opportunities. The MOU, which has benefited Israeli defense industries by opening up the U.S. procurement market to Israeli products, has not significantly opened the market for U.S. suppliers interested in competing for MOD procurements funded by Israel.

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

INTELLECTUAL PROPERTY RIGHTS PROTECTION

The United States and Israel reached an understanding on February 18, 2010 which concerns several longstanding issues regarding Israel's intellectual property rights (IPR) regime for pharmaceutical products. These issues include improving data protection, the terms of patents for pharmaceutical products, and provisions on the publication of patent applications in Israel. The United States is currently working with the Israeli government to complete implementation of the understanding.

Separate from the understanding, Israel has signaled a new willingness to make progress on other IPR matters, such as implementing the core requirements of World Intellectual Property Organization (WIPO) Internet Treaties. The United States welcomes that willingness, and encourages Israel to proceed with full accession to, and implementation of, the WIPO Internet Treaties.

SERVICES BARRIERS

Audiovisual and Communications Services

Only selected private Israeli broadcast television channels are allowed to carry advertising. These channels received broadcast licenses and the advertising privilege in exchange for certain local investment commitments. Israeli law largely prohibits other broadcast channels, both public and private, from carrying advertisements. Foreign channels that air through the country's cable and satellite networks are permitted to carry a limited amount of advertising aimed at the domestic Israeli audience. Currently, the regulations allow foreign channels no more than 25 percent of their total advertising time to target the Israeli market.

Israel does not have an independent regulator for the communications sector; it is regulated by the Ministry of Communications.

INVESTMENT BARRIERS

Investments in regulated sectors, including electronic commerce, banking, insurance, and defense industries, require prior government approval in Israel.

ELECTRONIC COMMERCE

Israel's Electronic Signature Bill regulates signatures on electronic media. Loopholes in the law allow the consumer to decline to pay for any merchandise for which he or she did not physically sign, which serves as a disincentive to the establishment of online businesses. The Ministry of Justice maintains a register of entities authorized to issue electronic certificates attesting to the signature of the sender of an electronic message. The Registrar of Databases, which falls under the authority of the Ministry, requires that any firm or individual holding a client database secure a license to do so.

JAPAN

TRADE SUMMARY

The U.S. goods trade deficit with Japan was $62.6 billion in 2011, up $2.6 billion from 2010. U.S. goods exports in 2011 were $66.2 billion, up 9.4 percent from the previous year. Corresponding U.S. imports from Japan were $128.8 billion, up 6.9 percent. Japan is currently the 4th largest export market for U.S. goods.

U.S. exports of private commercial services (*i.e.*, excluding military and government) to Japan were $44.8 billion in 2010 (latest data available), and U.S. imports were $23.5 billion. Sales of services in Japan by majority U.S.-owned affiliates were $65.6 billion in 2009 (latest data available), while sales of services in the United States by majority Japan-owned firms were $87.1 billion.

The stock of U.S. foreign direct investment (FDI) in Japan was $113.3 billion in 2010 (latest data available), up from $96.0 billion in 2009. U.S. FDI in Japan is mostly in the finance/insurance, manufacturing, nonbank holding companies, and wholesale sectors.

OVERVIEW

The U.S. Government continues close engagement with the Japanese government to urge the removal of a range of trade barriers. This engagement takes place through several means, including the United States-Japan Economic Harmonization Initiative and the United States-Japan Trade Forum. The U.S. Government will continue to address trade and trade-related concerns through these as well as other fora.

IMPORT POLICIES

Beef Import System

Japan continues to restrict access for U.S. beef and beef products by limiting imports to beef and beef products from animals aged 20 months or younger. Reopening Japan's beef market consistent with science and international standards as well as in a commercially viable manner is an important priority. This issue is discussed in detail in USTR's 2012 Report on Sanitary and Phytosanitary Measures.

Rice Import System

Japan's highly regulated and nontransparent importation and distribution system for imported rice limits meaningful access to Japanese consumers. In 1999, Japan established a tariff-rate quota (TRQ) of approximately 682,000 metric tons (milled basis) for imported rice. The Staple Food Department of the Ministry of Agriculture, Forestry and Fisheries (MAFF) manages imports of rice within the TRQ through periodic ordinary minimum access (OMA) tenders and through simultaneous buy-sell tenders. Imports of U.S. rice under the OMA tenders are destined almost exclusively for government stocks. MAFF releases these stocks exclusively for non-table rice users in the industrial food processing or feed sector and for re-export as food aid. In calendar year 2011, U.S. rice exports to Japan were valued at $293 million, representing approximately 363,000 metric tons of rice. Only a small fraction of this rice reaches Japanese consumers identified as U.S. rice, despite industry research showing Japanese consumers would buy U.S. high quality rice if it were more readily available. The United States looks to Japan to continue meeting its WTO import volume commitments.

Wheat Import System

Japan requires wheat to be imported through MAFF's Food Department, which then resells the wheat to Japanese flour millers at prices substantially above import prices. These high prices discourage wheat consumption by increasing the cost of wheat-based foods in Japan. In 2007, MAFF revised the wheat import regime to allow more frequent adjustment to the resale price so that prices more closely reflect international price movements. The U.S. Government, however, remains concerned by Japan's operation of a state trading entity for wheat and its potential to distort trade.

Pork Import Regime

Japan is the largest export market for U.S. pork on both a volume and a value basis, importing 478,000 metric tons in 2011, worth $1.94 billion. The import tariff for pork is established by a gate price system that applies a 4.3 percent *ad valorem* tariff when the import value is greater than or equal to the administratively established reference price. Imports whose value falls below the reference price pay an additional duty equal to the difference between the import value and the reference price.

Beef Safeguard

Japan negotiated a beef safeguard during the Uruguay Round of multilateral trade negotiations to protect domestic producers in the event of an import surge. The safeguard is triggered when the import volume of beef increases by more than 17 percent from the level of the previous Japanese fiscal year on a cumulative quarterly basis. When triggered, beef tariffs would rise to 50 percent from 38.5 percent for the rest of the Japanese fiscal year.

Fish and Seafood Products

U.S. fish and seafood exports to Japan were valued at $796 million in 2011, ranking Japan as the third largest export destination with 15 percent of U.S. fish and seafood exports.

While Japan's tariffs on seafood imports are generally low, tariffs on several products remain an impediment to U.S. exports. Other market access issues also remain. For example, Japan maintains import quotas on Alaska pollock, Pacific cod, Pacific whiting, mackerel, sardines, squid, and herring as well as specific products such as pollock and cod roe and surimi. Although Japan cut tariffs as a result of the Uruguay Round, it did not change its import quotas at that time. Administration of the quota system has improved considerably since then. Japan has eased administrative burdens, and is expected to continue to reduce obstacles to U.S. exports of fish and seafood.

High Tariffs on Beef, Citrus, Dairy, Processed Food, and Other Agricultural Products

Japan maintains high tariffs on a number of food products that are important exports for the United States, including red meat, citrus, wine, dairy, and a variety of processed foods. Examples of double digit import tariffs include 38.5 percent on beef, 32 percent on oranges during winter months (16 percent in the summer), 40 percent on processed cheese, 29.8 percent on natural cheese, 22.4 percent on shredded mozzarella cheese, 20 percent on dehydrated potato flakes, 17 percent on apples, 10.5 percent on frozen sweet corn, 20.4 percent on cookies, up to 17 percent on table grapes depending on the season of the year, and 15 percent to 57.7 percent on wine depending on the Harmonized Tariff System classification. These high tariffs generally apply to food products where Japan has domestic production. Tariff reductions on these and other products continue to be a high priority for the U.S. Government.

Wood Products and Building Materials

Japan continues to restrict imports of certain manufactured wood products through tariff escalation (*i.e.*, progressively higher tariffs based on the level of processing of the wood product). The elimination of tariffs on wood products remains a long-standing U.S. Government objective.

Leather/Footwear

Japan continues to apply a TRQ on leather footwear that substantially limits imports into Japan's market, and it sets these quotas in a nontransparent manner. The U.S. Government continues to seek elimination of these quotas.

SERVICES BARRIERS

Japan Post

The U.S. Government remains neutral as to whether Japan Post should be privatized. However, as modifications to the postal financial institutions and network subsidiary could have serious ramifications for competition in Japan's financial market, the U.S. Government continues to monitor carefully the Japanese government's postal reform efforts and to call on the Japanese government to ensure that all necessary measures are taken to achieve a level playing field between the Japan Post companies and private sector participants in Japan's banking, insurance, and express delivery markets.

In the area of express carrier services, the U.S. Government remains concerned by unequal conditions of competition between Japan Post Service and international express delivery providers. The U.S. Government urges Japan to enhance fair competition, including by ensuring that Japan Post Service is subject to customs clearance procedures and costs for competitive services similar to those of other international express delivery service suppliers, and by preventing subsidization of Japan Post Service's international express service with revenue from monopoly postal services. (*For discussion of Japan Post and postal insurance, see "Insurance" under the Services Barriers section*.)

The U.S. Government also continues to emphasize the importance of transparency and disclosure as Japan considers reforms to Japan Post. As a result, the U.S. Government has continued to urge the Japanese government to ensure that the postal reform process is fully transparent, including by providing full and meaningful use of public comment procedures and opportunities for interested parties to express views to government officials and advisory bodies before decisions are made. Timely and accurate disclosure of financial statements and related notes is a key element in the postal reform process, as is the continued public release of meeting agendas, meeting minutes, and other relevant documents.

Insurance

Japan's private insurance market is the second largest in the world, after that of the United States, with direct net premiums of approximately 35,348 billion yen ($425.3 billion) in Japanese fiscal year 2010. In addition to the offerings of Japanese and foreign private insurers, insurance cooperatives (*kyosai*) and the Japan Post Insurance, a wholly government-owned entity of the Japan Post Group, also provide substantial amounts of insurance to Japanese consumers. Given the size and importance of Japan's private insurance market as well as the scope of the obstacles that remain, the U.S. Government continues to place a high priority on ensuring that the Japanese government's regulatory framework fosters an open and competitive insurance market.

Postal Insurance: Japan's postal life insurance system remains a dominant force in Japan's insurance market. At the end of Japanese fiscal year 2010, there were approximately 47.2 million postal life and postal annuity insurance policies in force. In comparison, 134 million life and annuity policies were in force with all other life insurance companies combined. The U.S. Government has long standing concerns about the postal insurance company's negative impact on competition in Japan's insurance market and continues to monitor the implementation of reforms closely. A critical objective, from the U.S. Government perspective, is to establish equivalent conditions of competition between the Japan Post companies and the private sector, consistent with Japan's international obligations. It is also important for Japan to ensure full transparency in implementation of laws and regulations related to Japan Post.

The U.S. Government continues to urge Japan to take a number of steps to address these concerns. For example, Japan should ensure equal supervisory treatment between Japan Post's financial institutions and private sector companies. Also, Japan Post Network, the company established to manage Japan's post offices, should provide private companies access to its network comparable to that given to Japan Post entities, and select and distribute financial products of private providers through its network transparently and without discrimination. In addition, Japan should implement measures to prevent cross-subsidization among the Japan Post businesses and related entities, such as ensuring the Japan Post companies' strict compliance with the Insurance Business Law's arm's length rule and requiring adequate financial disclosures to demonstrate that cross-subsidization is in fact not occurring.

The U.S. Government continues to urge Japan not to allow Japan Post to expand the scope of operations for its financial services companies before a level playing field is established. The current restraints on the scope of these operations, including the cap on the amount of insurance coverage and limits to the types of financial activities and products Japan Post could pursue, have helped to limit the extent to which the uneven playing field harms private insurance companies. The U.S. Government is concerned about a March 2010 Japanese cabinet proposal that would weaken these restraints by agreeing to pursue a nearly doubling of the per-person caps on Japan Post Insurance coverage from 13 million yen to 25 million yen. In addition, before final decisions are made, it is vital that Japan's process for approving new products be transparent and open to all parties, including active solicitation and consideration of private sector views, and include careful analysis and full consideration of actual competitive conditions in the market.

The U.S. Government continues to monitor legislative developments that would roll back certain aspects of Japan's postal reforms that went into effect in 2007 and has expressed concern regarding draft legislation that would give additional competitive advantages to the Japan Post group companies, such as preferential regulatory and tax treatment. The U.S. Government has urged the Japanese government as it proceeds with its legislative process fully to address long-standing level playing field concerns, consistent with Japan's WTO obligations, and to ensure full transparency in the policymaking process, including by providing meaningful opportunities for comments from U.S. companies.

Kyosai: Insurance businesses run by cooperatives, or *kyosai*, hold a substantial share of insurance business in Japan. Some *kyosai* are regulated by their respective agencies of jurisdiction (the Ministry of Agriculture, Forestry and Fisheries or the Ministry of Health, Labor and Welfare, for example) instead of by the Financial Services Agency (FSA), which regulates all private sector insurance companies. These separate regulatory schemes create a nontransparent regulatory environment and afford *kyosai* critical business, regulatory, and tax advantages over their private sector competitors. The U.S. Government urges that *kyosai* must be subject to the same regulatory standards and oversight as their private sector counterparts, including being brought under the supervision of the FSA, to ensure a level playing field.

The U.S. Government also remains concerned about the reversal of progress toward giving FSA supervisory authority over *kyosai* that have insurance operations that are neither regulated by the FSA nor any other government agency. The 2005 Insurance Business Law revisions would have achieved this by requiring these unregulated *kyosai* to come under FSA supervision, either by becoming full-fledged insurance companies or opting to fall under the Small Amount Short Term Insurance Providers system, which would limit their product range and size. However, in November 2010, the Japanese government passed legislation to allow certain existing types of public interest corporations to continue operating *kyosai* businesses for the time being under a new category called "authorized specified insurance providers," under which the ministry or agency that currently supervises the parent public interest corporations, rather than the FSA, would regulate these *kyosai*. In addition, the Japanese government passed legislation in May 2010 that provided an exemption for certain unregulated *kyosai*, such as the Parent and Teacher Association *kyosai*, to remain outside the jurisdiction of the FSA.

Policyholder Protection Corporations: The Life and Non-life Policyholder Protection Corporations (PPCs) are mandatory policyholder protection systems created to provide capital and management support to insolvent insurers. The current system relies on pre-funding of the PPC by its members and a government "fiscal commitment" in the event that industry funding is insufficient, instead of adopting a system where an insolvency would result in members contributing funds to the PPC as needed (post-funding). The Japanese government introduced legislation to extend government funding of the PPC for an additional five years, until March 2017, keeping the current system. The U.S. Government continues to urge Japan to consider more fundamental changes in the PPC systems, including through full and meaningful deliberations with interested parties, before renewing these measures again.

Bank Sales: In December 2007, the Japanese government fully liberalized the range of insurance products eligible for sale through banks. As a follow-up, the U.S. Government asked Japan to review market conduct rules, including the limits on sales of first and third sector products and treatment of customer data, to ensure they do not limit the effectiveness of bank sales of insurance or impede consumer convenience and choice. FSA committed to conduct a review of market conduct rules three years after liberalizing the bank sales channel and published a report in July 2011 announcing minor revisions to the market conduct rules along with the results of the monitoring process. The revisions, effective April 2012, were relatively limited in their commercial impact, as the easing of the restrictions on the sale of insurance products was narrow in its scope. Although the Japanese government has not committed to another review by a certain date, the U.S. Government continues to call for Japan to conduct a fact-based and transparent review of the bank sales channel in the near term with meaningful opportunities for input from interested stakeholders and taking into account global best practices to further enhance policyholder protection and improve consumer choice.

Domestication of Foreign Insurance Operations: The U.S. Government has recommended that Japan take steps to improve the process for foreign incorporated companies operating branches in Japan that seek to transfer business operations to a Japan-incorporated entity in a seamless manner that protects policyholders and creditors while ensuring business continuity. The U.S. Government continues to urge that the portfolio and transfer provisions of the IBL be revised accordingly. Currently, the IBL limits foreign insurance companies' ability to use certain forms of corporate transactions, while allowing domestic insurance companies to choose from a wider range of procedures that are often less complicated and costly.

Financial Services

While improvements have been made in Japan's financial services sector, such as the Financial Services Agency's continued commitment to its Better Markets Initiative, the U.S. Government continues to urge reforms in the areas of online financial services, defined contribution pensions, credit bureaus, and sharing of customer information. In addition, more improvement in this sector is needed, particularly with respect to transparent practices such as enhancing the effectiveness of the no-action letter and related systems, providing written interpretations of Japan's financial laws, and soliciting input from all interested parties on concerns and potential improvements related to the inspection process.

Distribution Services

The U.S. Government continues to urge Japan to take a variety of steps to improve customs processing and to facilitate other faster and lower-cost solutions in the distribution sector. In this regard, the U.S. Government welcomes Japan's work to formulate an Authorized Economic Operator (AEO) system, which allows exporters with good compliance records to process goods more expeditiously through customs. Exempting AEO exporters from paying the five percent consumption tax for cleared cargo would help facilitate more efficient cargo flows. Currently, Japan customs refunds this tax, but an exemption would reduce the administrative burden of filing for a refund. The U.S. Government also has encouraged Japan to raise the Customs Law *de minimis* ceiling from 10,000 yen to a higher level. The customs clearance process and clearance times could also be further facilitated by, for example, allowing all users of Nippon Automated Cargo and Port Consolidated System to select the Customs Office for declaration, and by allowing customs officials to be co-located at the bonded premises of private companies handling shipments. Strengthening Japan's system for advanced rulings would also improve transparency and predictability for U.S. exporters.

Telecommunications

The U.S. Government continues to urge Japan to ensure fair market opportunities for emerging technologies and business models; ensure a regulatory framework appropriate for addressing converged and Internet-enabled services; and strengthen competitive safeguards on dominant carriers. The U.S. Government also continues to urge Japan to improve transparency in rulemaking and ensure the impartiality of its regulatory decision making. In January 2012, Japan agreed with the United States on a set of common trade principles for information and communications technology (ICT) services, a positive step toward addressing many of these issues.

Fixed-line Interconnection: In March 2011, Japan's Ministry of Internal Affairs and Communications (MIC) approved both Nippon Telegraph and Telephone (NTT) East and NTT West's interconnection rates based on the Long Run Incremental Cost Method through Japanese fiscal year 2012. In June 2010, MIC also authorized Japanese fiscal year 2010 connection fees for the Ethernet data transmission of the "Next Generation Network" (NGN) operated by NTT East and NTT West, but interconnecting operators have sought further rate reductions.

Dominant Carrier Regulation: NTT continues to dominate Japan's fixed line market through its control over almost all "last-mile" connections. As Japan's broadband users transition from digital subscriber line (DSL) (where competition, ensured through regulation, was vibrant) to optical fiber, competitors have raised concerns that the more lightly-regulated fiber-based services will allow NTT to expand its dominant position through control of the fiber-to-the-home (FTTH) market, where it holds a market share of about 75 percent as of September 2011. NTT's ability to bundle its fixed-line services with NTT DOCOMO's mobile service is another cause of concern, as it appears to undermine the rationale for structurally separating the companies. While NTT asserts that there is adequate competition in FTTH service and that consequently unbundling rules should be relaxed, NTT's share of that market has steadily increased over the past few years. The U.S. Government has urged Japan to remain committed to ensuring competition in the telecommunications market, in light of Japan's ongoing review of the overall legal structure of NTT, which affects all players participating in markets for converged services.

Universal Service Program: Current cross-subsidization of NTT West by NTT East using interconnection revenue (ostensibly to address NTT West's higher network costs resulting from the higher number of rural subscribers) appears redundant given the existence of the universal service fund. The U.S. Government has urged the abolition of this cross-subsidy. A Ministry of Internal Affairs and Communications (MIC) panel reviewed the universal service system as part of MIC's New Broadband Superhighway plan. Under the present universal service system, NTT East and NTT West are required to maintain subscribers' copper lines. Nonetheless, the panel recognized a need to avoid letting this requirement become an impediment to development of fiber optic lines. In December 2011, the panel recommended that the universal service system allow fiber optic Internet Protocol telephony, which is equivalent in voice quality, reliability, and other factors, to subscribers' existing wireline telephony.

Mobile Termination: Like most countries, Japan uses the "Calling Party Pays" system, imposing the entire cost of termination on the calling party (enabling mobile subscribers to benefit from free incoming calls). Mobile interconnection rates still remain high by international standards and particularly compared to fixed-line rates in Japan. However, following new guidelines from MIC on calculating interconnection rates, NTT DOCOMO, the dominant incumbent mobile carrier, announced in February 2010, that it would lower its termination rates by over 10 percent, continuing incremental rate reductions implemented over the past 10 years. In January 2011, NTT DOCOMO announced a decision to cut connection fees for calls to other wireless service operators by up to 35.6 percent retroactive to April 2010. MIC is encouraging all wireless carriers to follow the new guidelines. In contrast to NTT DOCOMO, though, other mobile operators' termination rates remain high, and mediation efforts to reduce these rates have not borne fruit. With new entrants now in the mobile sector, the U.S. Government has continued to monitor actions and to urge MIC to consider the advantages of moving to a "bill-and-keep" system that is more economically efficient and where interconnection payments are not exchanged between carriers.

New Mobile Wireless Licenses: Starting in 2005, MIC began opening the market to new mobile providers beyond the three main incumbents by assigning blocks of spectrum to a limited number of new wireless entrants. In September 2010, MIC awarded only one license for mobile multimedia broadcasting services, even though the subject spectrum band was able to support two operators. The complexity of the factors MIC used to determine how to evaluate applications raised questions about whether it achieved its stated goal of awarding these licenses based on objective criteria. Given the scarcity of spectrum and high demand for new technologies, the U.S. Government continues to urge MIC to consider alternative mechanisms, including auctions, that assign commercial spectrum in a timely, transparent, objective, and nondiscriminatory manner that adheres to principles of technology neutrality, particularly for spectrum that became available as a result of broadcasters' switch to digital television in July 2011. In December 2011, MIC announced that it plans to introduce a system by 2015 that allows for auctions as an option to assign commercial spectrum, a positive development that the U.S Government will monitor.

Information Technologies

The Japanese government took a positive step by agreeing with the U.S. Government on a set of common trade principles for information and communications technology services in January 2012 that cover a range of topics including regulatory transparency, open access to networks and applications, free flow of information across borders, non-discriminatory treatment of digital products, and foreign investment in ICT services. However, the U.S. Government continues to urge the Japanese government to address concerns related to cloud computing, health information technology (IT), privacy, and IT and electronic commerce policymaking.

Cloud Computing: Cloud computing has the potential to increase efficiency and reduce costs in the public and private sectors. Cloud computing and the Internet economy can flourish only if governments permit the free flow of data across borders. The U.S. Government, therefore, has urged Japan to adopt the principle of nondiscrimination between data services offered inside and outside of Japan. The U.S.

Government also has urged the Japanese government to ensure full transparency and consult foreign and domestic industry as rules on data centers and cloud computing are formulated and implemented.

Health IT: Government policies that fail to encourage interoperability, technology neutrality, and international harmonization, in addition to providing insufficient reimbursement incentives, inhibit the expansion of Japan's health IT services sector, an important market for U.S. companies. The U.S. Government has urged Japan to improve the quality and efficiency of healthcare by rapidly implementing health IT that is based on international standards, promotes technology neutrality and interoperability, and allows patients greater access to their own health records.

Privacy: Separate and inconsistent privacy guidelines among Japanese ministries have created an unnecessarily burdensome regulatory environment with regard to the storage and general treatment of personally identifiable information in Japan. The U.S. Government has urged Japan to introduce greater uniformity in the enforcement of the Privacy Act across the central government through policy standardization and consistent implementation of guidelines. The U.S. Government also has urged the Japanese government to reexamine the provisions and application of the Privacy Act, so as to foster appropriate sharing of data, and to ensure full transparency and consult widely as privacy guidelines for online advertising are developed.

IT and Electronic Commerce Policymaking: Insufficient transparency in Japan's policymaking process for IT and electronic commerce has stifled innovation and competitiveness in Japan and constrained U.S. company access. The U.S. Government has urged Japan to improve its policymaking process by seeking and considering industry input at all stages of policymaking. This will help foster development of programs that promote technology neutrality, facilitate private sector participation in government-appointed advisory groups, and provide companies with adequate time to offer public comments and adjust to rule changes.

Legal Services

Japan imposes restrictions on the ability of foreign lawyers to provide international legal services in Japan in an efficient manner. The U.S. Government continues to urge Japan to liberalize the legal services market further. Legislation was submitted to the Diet in March 2012 that would allow foreign lawyers to form Japanese professional corporations that are permitted to establish branch offices within Japan. Another important step would be to allow foreign lawyers to establish multiple branch offices in Japan, whether or not they have established a professional corporation. The U.S. Government continues to urge Japan to take other important measures, including ensuring that no legal or Bar Association impediments exist to Japanese lawyers becoming members of international legal partnerships, and accelerating the registration process for new foreign legal consultants.

Educational Services

The U.S. Government continues to urge the Japanese government to work with foreign universities to find a nationwide solution that grants tax benefits comparable to Japanese schools and allows them to continue to provide their unique contributions to Japan's educational environment.

INTELLECTUAL PROPERTY RIGHTS PROTECTION AND ENFORCEMENT

Japan generally provides strong intellectual property rights (IPR) protection and enforcement. However, the U.S. Government continues to urge Japan to improve IPR protection and enforcement in specific areas through bilateral consultations and cooperation, as well as in multilateral and regional fora.

Japan's signing of the Anti-Counterfeiting Trade Agreement (ACTA) in October 2011 was a positive step. The ACTA establishes 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 U.S. Government also has urged Japan to continue to reduce piracy rates, including adopting methods to protect against piracy in the digital environment. Police and prosecutors lack *ex officio* authority to prosecute IPR crimes on their own initiative, without a rights holder's complaint. In addition, the U.S. Government has pressed for improvements to Japan's Internet Service Provider liability law to provide adequate protection for rights holder's works on the Internet. In addition, while Japan took steps to revise its Customs Law and Unfair Competition Law in 2011, it should continue to strengthen its laws to provide effective criminal and civil remedies against unauthorized circumvention of technological protection measures used by rights holders to protect their works, trafficking in tools used to circumvent them, and providing circumvention services.

In other areas, although Japan provides a 70 year term of protection for cinematographic works, it only provides a 50 year term for all other works protected by copyright and related rights. The U.S. Government continues to urge Japan to extend the term of protection for all subject matter of copyright and related rights in line with emerging international trends. In addition, amendments to the Copyright Law came into effect in 2010 which, among other things, clarified that the statutory private use exception does not apply in cases where a downloaded musical work or a motion picture is knowingly obtained from an infringing source. The U.S. Government continues to urge the Japanese government to expand this limitation on the private use exception to cover all works protected by copyright and related rights.

In addition, the U.S. Government continues to monitor developments related to Japan's announcement in October 2011 of plans to introduce a *sui generis* system for the protection of geographical indications within five years.

GOVERNMENT PROCUREMENT

Japan is a signatory to the WTO Agreement on Government Procurement (GPA). For procurement of construction services by sub-central entities and government enterprises covered under the GPA, Japan applies a threshold of 15 million SDRs ($23.7 million), which is 3 times the threshold applied by the United States.

Construction, Architecture, and Engineering

U.S. companies annually obtain far less than one percent of projects awarded in Japan's massive public works market, estimated at $189 billion in 2011. Two bilateral public works agreements are in effect: the 1988 United States-Japan Major Projects Arrangements (MPA) (updated in 1991) and the 1994 United States-Japan Public Works Agreement, which includes the Action Plan on Reform of the Bidding and Contracting Procedures for Public Works (Action Plan). The MPA includes a list of 42 projects in which international participation is encouraged. Under the Action Plan, Japan must use open and competitive procedures for procurements valued at or above the thresholds established in the GPA. The U.S. Government raises public works issues in the Expert-Level Meetings on Public Works under the United States-Japan Trade Forum.

Problematic practices continue to limit the participation of U.S. design/consulting and construction firms in Japan's public works sector, including bid rigging (*dango*), under which companies consult and prearrange a bid winner. (*For more, see "Broadening Measures to Combat Bid Rigging" under the*

Anticompetitive Practices section.) The U.S. Government continues to press Japan to take more effective action to address this pervasive problem. The U.S. Government continues to monitor Japan's public works sector.

Specifically, the U.S. Government is paying special attention to certain major projects covered by the public works agreements that are of particular interest to U.S. companies. These include major expressway projects; major public buildings, railroad procurements, urban development and redevelopment projects; planned port facilities expansion projects; major Private Finance Initiative (PFI) projects; and the MPA projects still to be undertaken or completed. The U.S. Government is also monitoring developments related to "green" building, design, and procurement.

Procurement of Information Technology

Lack of transparency, excessive reliance on sole-source contracting, and restrictions on intellectual property ownership, among other factors, hinder the participation of U.S. companies in Japanese government IT procurement. The U.S. Government therefore has urged Japan to introduce greater competition, transparency, and fairness in government procurement of IT through steps such as implementation of national government-wide policies that reflect international technology trends and standards and that follow principles of technology neutrality and interoperability. The U.S. Government is urging that Japanese government procurement of cloud computing services be neutral with respect to the technology used by cloud service providers.

INVESTMENT BARRIERS

Despite being the world's third largest economy, Japan continues to have the lowest inward foreign direct investment (FDI) as a proportion of total output of any major OECD country. Inward foreign merger and acquisition (M&A) activity, which accounts for up to 80 percent of FDI in other OECD countries, also lags in Japan.

While the Japanese government has previously recognized the importance of FDI to revitalizing the country's economy, its performance in implementing domestic regulatory reforms to encourage a sustained increase in FDI has been uneven. In September 2006, the Japanese government set a goal of doubling the stock of FDI in Japan by 2010 to the equivalent of five percent of Gross Domestic Product (GDP). During the period Japan's stock of FDI remained below four percent. Since 2009, Japan has ceased to use FDI stock to set policy targets or measure progress toward them, or to explicitly encourage inward investment through mergers and acquisitions (M&A) as a policy priority. Even before the financial crisis of 2008 and 2009, questions existed regarding the adequacy of measures taken to promote a level of cross border M&A necessary to achieve the government's target. A variety of factors make cross border M&A difficult in Japan. These include attitudes toward outside investors; inadequate corporate governance mechanisms that protect entrenched management over the interest of shareholders; aspects of Japan's commercial law regime (*see section titled "Commercial Law"*); and a relative lack of financial transparency and disclosure. Japan's Foreign Exchange and Foreign Trade Act governs investment in sectors deemed to have national sovereignty or national security implications.

ANTICOMPETITIVE PRACTICES

Japan has taken significant positive steps in recent years to bolster its competition regime, including increasing fines and penalties, extending the statute of limitations, and strengthening aspects of the Japan Fair Trade Commission's (JFTC) enforcement mechanisms and tools. At the same time, particular concern persists regarding whether the present system for enforcing the Antimonopoly Act (AMA) affords sufficient due process protections. Additional measures to combat anticompetitive behavior and provide for basic due process protections would improve the business environment and ensure that enforcement procedures are fair and transparent.

Improving Anti-Monopoly Compliance and Deterrence

The AMA provides for both administrative and criminal sanctions against cartels. Criminal prosecutions, which should have the strongest deterrent effect against anticompetitive behavior, have been few, and penalties against convicted company officials have been weak. The U.S. Government has continually urged Japan to take steps to maximize the effectiveness of enforcement against hard-core violations of the AMA. The Japanese government has taken certain steps to address these concerns, particularly through AMA amendments enacted in June 2009 that, for the most part, came into effect in January 2010. These amendments increased administrative penalty (surcharge) rates for enterprises that played a leading role in cartel activities by 50 percent, extended the statute of limitations to five years, increased maximum prison sentences for criminal cartel and bid-rigging violations to five years, and improved the leniency program to encourage reporting of unlawful cartels. The 2009 AMA amendments also provide for mandatory surcharges on enterprises that engage in exclusionary private monopolization, abuse of superior bargaining position, and repeat violations of certain "unfair trade practices." The JFTC issued guidelines on exclusionary private monopolization on October 28, 2009, after considering public comments. The JFTC's ability to enforce the AMA effectively continues to be hindered by an insufficient number of employees with post-graduate economics training, a factor that undermines JFTC ability to engage in the careful economic analysis necessary to properly evaluate non-cartel behavior. The U.S. Government continues to urge the JFTC to improve its economic analysis capabilities.

Improving Fairness and Transparency of JFTC Procedures

Japan introduced a system in January 2006 that empowered the JFTC to make determinations of AMA violations without a prior formal administrative hearing. Respondents are only afforded the right to seek administrative review of the JFTC decision after the decision is put into place. Although the JFTC allows companies subject to a proposed cease-and-desist or surcharge payment order to review the evidence relied upon by JFTC staff and to submit evidence and make arguments in their defense prior to issuance of a final order, questions have arisen as to whether the current system provides sufficient due process protections. In December 2009, the Japanese government announced its intention to eliminate the *ex post* hearing system and to allow appeals of JFTC orders directly to the Tokyo District Court. Although legislation for those purposes was submitted to the Diet, it has not yet been enacted. The U.S. Government continues to raise concerns about certain procedural fairness questions related to the JFTC's investigative, pre-decisional, and appeals processes.

Broadening Measures to Combat Bid Rigging

Japanese officials have implemented a series of measures to address the problem of bid rigging. In recent years, the Ministry of Land, Infrastructure, Transport, and Tourism (MLIT) has strengthened administrative sanctions against companies found by JFTC to have engaged in unlawful bid rigging. Administrative leniency programs have also been introduced to encourage companies and individuals to report illegal acts. As of April 2009, MLIT and 13 other central government entities are administering an administrative leniency program to complement the JFTC leniency program, which is designed to help encourage individuals and companies to report anticompetitive acts. In addition, Japan has put in place a series of measures aimed at ensuring a competitive bidding process for project contracts tendered at the central and local government levels. The U.S. Government continues to raise concerns that further measures are needed to prevent conflicts of interest in government procurement, improve efforts to eliminate involvement in bid rigging by government officials, and expand administrative leniency programs.

OTHER SECTORAL AND CROSS-SECTORAL BARRIERS

Transparency

Transparency issues remain a top concern of U.S. companies operating in Japan's market. The U.S. Government has strongly urged Japan to adopt new measures to achieve a higher degree of transparency in governmental regulatory and policy-making processes.

Advisory Groups: Although advisory councils and other government-commissioned study groups are accorded a significant role in the development of regulations and policies in Japan, the process of forming these groups can be opaque and nonmembers are too often not uniformly offered meaningful opportunities to provide input into these groups' deliberations. The U.S. Government continues to urge Japan to ensure the transparency of advisory councils and other groups convened by the government by adopting new requirements to ensure ample and meaningful opportunities are provided for all interested parties, as appropriate, to participate in, and directly provide input to, these councils and groups.

Public Comment Procedure (*PCP*): Many U.S. companies remain concerned by inadequate implementation of the PCP by Japanese ministries and agencies. Examples include cases where comment periods appear unnecessarily short, as well as cases suggesting comments are not adequately considered given the brief time between the end of the comment period and the issuance of a final rule or policy. The U.S. Government has stressed the need for Japan to ensure its existing PCP is being fully implemented and to make additional revisions to further improve the system, such as doubling the public comment period for rulemaking to 60 days in principle.

Transparency in Regulation and Regulatory Enforcement: To ensure the private sector has sufficient information about regulations and official interpretations of those regulations that require compliance, the U.S. Government is urging Japan specifically to require its ministries and agencies to make public their regulations and any statements of policy of generally applicable interpretation of those regulations.

Commercial Law

A 2006 reform of Japan's commercial law permitted the use of certain modern merger techniques, including domestic and cross-border (forward) triangular mergers (*i.e.*, mergers structured so that a Japanese company is acquired by a Japanese subsidiary of a foreign parent company, with the shareholders of the target company receiving shares in the foreign parent company as compensation). These new provisions did not prove as effective as had been hoped in facilitating foreign investment into Japan, which has been constrained by the limited range of tax-advantaged merger tools available for inward-bound investment to Japan and by corporate governance systems that do not adequately reflect the interests of shareholders, among other possible issues.

The U.S. Government continues to urge Japan to identify and eliminate impediments to cross-border mergers and acquisitions, including the availability of reasonable and clear incentives for many such transactions, and to take measures to ensure that shareholder interests are adequately protected when Japanese companies adopt anti-takeover measures or engage in cross-shareholding arrangements. The U.S. Government has also continued to urge Japan to improve further its commercial law and corporate governance systems to promote efficient business practices and management accountability to shareholders in accordance with international best practices, such as by facilitating and encouraging active and appropriate proxy voting, ensuring the independence of outside directors and augmenting their role on corporate boards, strengthening protection of minority shareholders by clarifying fiduciary duties of directors and controlling shareholders, and encouraging the stock exchanges to adopt listing rules and guidelines that will improve the corporate governance of listed companies and ensure that the interests of minority shareholders are protected. While the Japanese government has convened study groups to examine some of these matters, necessary reforms in this area have not yet been adopted.

Automotive

A variety of nontariff barriers have traditionally impeded access to Japan's automotive market. Overall sales of U.S. made vehicles and automotive parts in Japan remain low, which is a serious concern.

The U.S. Government has expressed concern with the overall lack of access to Japan's automotive market for U.S. automotive companies. For example, U.S. automakers seeking to introduce, for testing and demonstration purposes, automobiles using new technology (*i.e.*, fuel cell vehicles) have faced a lack of transparency and other barriers to certifying these new products in a timely and efficient manner. Beyond emerging issues related to new types of vehicles, additional issues include, but are not limited to, standards and certification issues, lack of sufficient opportunities for stakeholder input in the development of standards and regulations, as well as barriers that hinder the development of distribution and service networks. The U.S. Government urges Japan to address the full range of barriers in Japan's automotive market.

Medical Devices and Pharmaceuticals

Japan's market for medical devices and pharmaceuticals continues to be one of the most important for U.S. medical device and pharmaceutical exports. In 2010, the Japanese market for medical devices and materials was just over $26.4 billion. Japan's total imports of U.S. medical devices exceeded $6.1 billion in 2010, a 23 percent market share. The pharmaceuticals market in Japan was valued at $101.9 billion in 2010, and U.S. pharmaceutical firms have achieved a market share approaching 20 percent, or total sales worth $20 billion.

Despite the size of these markets, many globally available pharmaceuticals and medical devices have not yet been introduced in Japan. One issue is the average lag time of about two years between the introduction of pharmaceuticals in the United States and their introduction in Japan. Similarly, only about half of all European and American medical devices are available in Japan. Recognizing the need to address this drug and device "lag," which prevents timely patient access to innovative and life-saving technologies, Japan has taken various measures such as improving the clinical trials environment and accelerating the review process. Also, Japan has set specific goals to improve access to innovative pharmaceuticals and medical devices such as reducing total review times for new products to 12 months for new drugs by April 1, 2012, and to 14 months, for new medical devices by April 1, 2014. The Pharmaceutical and Medical Device Agency reported that it exceeded its goals of reducing review times for new drugs and new medical devices in Japanese fiscal year 2010, although target review times have not been met for me-too devices and improved devices that do not require clinical data. The U.S. Government continues to urge Japan to meet the goals in the future and take additional steps as the Japanese government moves forward with changes to the Pharmaceutical Affairs Law.

Japan's reimbursement policies for medical devices also hinder the introduction of innovative medical technology to the market. Of specific concern has been Japan's application of and changes to the Foreign Average Price rule. The U.S. Government continues to urge Japan to implement predictable and stable reimbursement policies that reward innovation and provide incentives for companies to invest in the research and development of advanced healthcare products.

With regard to pharmaceuticals, the U.S. Government welcomes Japan's decision to implement, on a trial basis, a new premium system that minimizes downward price revisions on new drugs for which there are no corresponding generics. The new premium system has considerably promoted the development of both drugs and indications with unmet needs that had not previously been approved in Japan. In the biennial price revision of April 1, 2012, the Japanese government decided to continue the new premium system trial for an additional two years starting from April 1, 2012. Making this new system permanent would help increase the predictability and attractiveness of the Japanese market, reduce the drug lag, and promote investment in Japanese life sciences discovery over the long term. The U.S. Government continues to urge Japan to make the new premium system permanent and to refrain from implementing other aspects of reimbursement policies that hinder the development and introduction of innovative pharmaceuticals such as re-pricing based on market expansion.

The level of transparency in Japan's drug and medical device reimbursement decision-making processes, including potential additional systemic changes, remains an issue. The U.S. Government is urging Japan to build further on recent improvements in this area to foster a more open and predictable market.

Nutritional Supplements

Japan has taken steps to streamline import procedures and to open its 1,150 billion yen, or $14.4 billion, nutritional supplements market, although many significant market access barriers remain. Burdensome restrictions on health claims are a major concern. Only those products approved as Foods for Specified Health Uses (FOSHU) or Foods with Nutrient Function Claims (FNFC) are allowed to have health or structure/function claims. Producers of most nutritional supplements, however, are unable to obtain FOSHU or FNFC approval due to FOSHU's costly and time-consuming approval process and due to the limited range of vitamins and minerals that qualify for FNFC. These processes apply to both imported and domestic products. Other concerns include long lead times for food additive applications; inability to use food ingredients and food additives, including organic solvents for processing ingredients to be used in nutritional supplements; high import duties for nutritional supplements compared to duties on pharmaceuticals containing the same ingredient(s); lack of transparency in new ingredient classifications; and lack of transparency in the development of health-food regulations. The U.S. Government continues to discuss these issues with the Japanese government.

Cosmetics and Quasi-Drugs

Japan is the world's second largest market for cosmetics and quasi-drugs after the United States. In 2011, U.S. exports of cosmetics and personal care products to Japan were estimated at $373 million, second only to France. Despite this market presence by U.S. products, regulatory barriers continue to limit timely consumer access to safe and innovative products without unnecessary costs. Unlike the over-the-counter drug monograph system in the United States, Japan requires premarket approval for certain products, such as a category called "medicated cosmetics" that are classified as quasi-drugs under the Pharmaceutical Affairs Law. The approval process of the quasi drugs includes requirements that are burdensome, lack transparency, and do not appear to enhance product safety, quality, or efficacy. In addition, restrictions on advertising claims for cosmetics and quasi-drugs prevent companies from informing customers of product benefits so consumers can make an informed choice. Enhanced communication between both the U.S. and Japanese governments and industries has led to some improvements in the Japanese regulatory system. For example, in the fall of 2009, the Japanese government agreed to reduce the amount of paperwork required to import cosmetic products. In the summer of 2011, the Japanese government agreed to allow a new advertising claim for "the appearance of reduced fine lines" for cosmetics. The U.S. Government continues to urge Japan to address pending issues of concern.

Proprietary Ingredient Disclosure Requirement for Food and Dietary Supplements

As part of its product classification process for new-to-market food and dietary supplement products, Japan mandates that all ingredients and food additives be listed by name, along with content percentages, and include a description of the manufacturing process. In addition to being burdensome, this process risks the release of proprietary information to competitors.

Aerospace

Japan is among the largest foreign markets for U.S. civil aerospace products. The civil aerospace market in Japan is generally open to foreign firms, and some Japanese firms have entered into long-term relationships with U.S. aerospace firms. The U.S. Government continues to monitor Japan's development of indigenous aircraft.

Military procurement by the Ministry of Defense (MOD) accounts for approximately half of the domestic production of aircraft and aircraft parts and continues to offer the largest source of demand in the aircraft industry. Although U.S. firms have frequently won contracts to supply defense equipment to Japan (over 90 percent of the annual foreign defense procurement is from the United States), the MOD has a general preference for domestic production or the licensing of U.S. technology for production in Japan to support the domestic defense industry.

Although Japan has considered its main space launch vehicle programs as indigenous for many years, U.S. firms continue to participate actively in those space systems. Japan is also developing a Global Positioning System (GPS) navigation satellite constellation known as the "quasi-zenith" system. At the conclusion of the June 21, 2011, United States-Japan Consultative Committee meeting, the governments of the United States and Japan released a joint statement in which our two nations recognized recent progress to deepen our bilateral space security partnership through the United States-Japan Space Security Dialogue, and possible future cooperation in areas such as space situational awareness, a satellite navigation system, space-based maritime domain awareness, and the utilization of dual use sensors. In line with this statement, the U.S. Government is working to ensure U.S. companies have full opportunities to participate in Japan's satellite market.

Business Aviation

The U.S. Government has continued to urge the Japan Civil Aviation Bureau (JCAB) of the MLIT to reexamine the application of civil aviation regulations specific to commercial airlines to business aviation and to develop appropriate regulations specific to the business aviation industry that are consistent with the treatment of business aviation in North America, Europe, and other developed economies. The issues identified include severely restricted hours for landings and take-offs at Haneda Airport in Tokyo (the top preferred business destination for overseas business jets) and the lack of services for private business aircraft at both Narita and Haneda. These conditions continue to significantly limit travel by business aircraft to, from, and within Japan.

In October 2010, the JCAB executed important liberalization of the rules regarding the use of business aviation at Haneda Airport. Following committee discussions under the JCAB on promoting the business jet industry, some important steps were taken (focusing on Narita Airport) that include the creation of a business jet terminal with Customs, Immigration, and Quarantine functions by the end of Japanese fiscal year 2011; abolition of the ceiling on the number of landing/take-off slots for business jets; and an increase in parking spots for business jets. Availability of these landing/take-off slots and parking spots can be monitored on the Narita Airport webpage. Although these are important steps forward, the U.S.

Government will continue to work with the JCAB to promote greater liberalization in the business aviation sector.

Civil Aviation

Japan is the United States' largest aviation partner in the Asia-Pacific region. Consistent with its longstanding policy to promote competition and market access in civil aviation, the U.S. Government signed an Open Skies Memorandum of Understanding with Japan on October 25, 2010.

The U.S. Government welcomed the Japanese government's willingness to negotiate an Open Skies agreement and the planned expansion of landing and take-off slots at Tokyo's Narita and Haneda airports. The agreement provides assured opportunities for growth of U.S. airline operations at Narita airport and ensures fair competition for U.S. airlines at Tokyo's Haneda airport, which opened to limited scheduled international air service in October 2010. The U.S. Government has begun working with the Japanese government to allow for more non-stop flights with fewer time restrictions between Haneda airport and the United States. The U.S. Government is urging Japan to continue to take further steps to increase capacity and reduce overall congestion at these airports.

Transport and Ports

The U.S. Government has had longstanding concerns about barriers to entry to, and the lack of competitiveness in, Japanese ports. Long-term relationships, a lack of transparency, licensing requirements, and other practices and requirements have had the effect of greatly limiting the ability of foreign shipping companies to do business in Japan. On January 26, 2011, the Federal Maritime Commission (FMC) issued an Order terminating a proceeding that it had opened in 1995 to investigate these practices. In its 2011 Order, the FMC stated that concerns about practices and requirements in Japan had not been completely eliminated, and that it will remain watchful for unfavorable conditions in the U.S.-foreign ocean-born trade.

JORDAN

TRADE SUMMARY

The U.S. goods trade surplus with Jordan was $394 million in 2011, up $194 million from 2010. U.S. goods exports in 2011 were $1.5 billion, up 23.9 percent from the previous year. Corresponding U.S. imports from Jordan were $1.1 billion, up 8.9 percent. Jordan is currently the 71st largest export market for U.S. goods.

The stock of U.S. foreign direct investment (FDI) in Jordan was $211 million in 2010 (latest data available), up from $172 million in 2009.

THE UNITED STATES-JORDAN FREE TRADE AGREEMENT

Under the terms of the United States-Jordan Free Trade Area Agreement (FTA), which entered into force on December 17, 2001, the United States and Jordan completed the final phase of tariff reductions on January 1, 2010. There are now zero duties on nearly all products, except for alcoholic beverages and mature subject materials.

IMPORT POLICIES

Tariffs and Other Charges

Jordan is a member of the WTO and is in the process of reducing its tariffs as called for by its WTO accession commitments. Currently, Jordan's simple average applied tariff is 9.15 percent, with a maximum rate of 30 percent on certain products. Most raw materials and intermediate goods used in industry face zero duties.

Jordan's General Sales Tax law allows the government to impose a "Special Tax" at the time of importation or local production. For example, the government currently imposes a 17.5 percent tax on automobiles and trucks.

Agriculture

Import licenses, or advance approvals to import goods, are required for specific food and agricultural goods. The authorities granting such licenses and approvals are the Ministry of Agriculture and the Ministry of Health.

Import Licenses

In addition to the special requirements for certain agricultural products, Jordan requires that importers of commercial goods be registered traders or commercial entities. The Ministry of Industry and Trade occasionally issues directives requiring import licenses for certain goods or categories of goods and products in newly emerging or protected sectors. On October 6, 2010, the government of Jordan issued directives requiring a special import license prior to the importation of telecommunications and security equipment.

GOVERNMENT PROCUREMENT

Jordan is an observer to the WTO Committee on Government Procurement. In 2002, it commenced the process of acceding to the WTO Agreement on Government Procurement (GPA), with the submission of its initial entry offer. Subsequently, it has submitted several revised offers, in response to requests by the United States and other GPA Parties for improvements. Negotiations on Jordan's accession continued in 2011.

EXPORT SUBSIDIES

Net profits generated from most export revenue will remain fully exempt from income tax except for net profits from exports in the mining sector, exports governed by specific trade protocols, and foreign debt repayment schemes, which are subject to income tax. Under WTO rules, the tax exemption was initially set to expire on January 1, 2008. At the request of Jordan, WTO Members extended the waiver through December 2015, subject to an annual review.

In addition, 98 percent of foreign inputs used in the production of exports are exempt from customs duties; all additional import fees are assessed on a reimbursable basis.

INTELLECTUAL PROPERTY RIGHTS PROTECTION

The Jordanian government continues to take steps to provide more comprehensive protection of intellectual property rights (IPR). It recently appointed a special prosecutor for IPR and is working to enforce existing laws more effectively. The government also promulgated new regulations, based on existing laws, to improve enforcement and to strengthen penalties. However, enforcement in certain areas (especially digital media) remains weak. Jordanian agencies responsible for IPR enforcement lack resources and capacity. Prosecution efforts should be strengthened, particularly with respect to utilizing *ex officio* authority to bring charges in criminal cases.

INVESTMENT BARRIERS

Jordanian laws set limitations on foreign ownership in certain sectors, subject to exceptions where the government deems appropriate. This exceptions policy is viewed as too selective by some potential U.S. investors.

ELECTRONIC COMMERCE

Jordan has adopted some legislation to direct electronic commerce, although there is no composite body of regulations and tax laws covering electronic commerce transactions. Specifically, there is an immediate need for regulations on electronic signatures. No tariffs are collected on electronic transactions.

KAZAKHSTAN

TRADE SUMMARY

The U.S. goods trade deficit with Kazakhstan was $855 million in 2011, down $287 million from 2010. U.S. goods exports in 2011 were $826 million, up 13.0 percent from the previous year. Corresponding U.S. imports from Kazakhstan were $1.7 billion, down 10.2 percent. Kazakhstan is currently the 84th largest export market for U.S. goods.

The stock of U.S. foreign direct investment (FDI) in Kazakhstan was $9.6 billion in 2010 (latest data available), up from $7.7 billion in 2009.

WTO ACCESSION

Kazakhstan's announcement in June 2009 of its intent to enter the Belarus-Russia-Kazakhstan Customs Union (CU) slowed the WTO accession process that year, but work resumed in mid-2010. WTO Members examined Kazakhstan's updated information on agricultural domestic supports and export subsidies, and Kazakhstan intensified its efforts to complete its bilateral market access negotiations, signing a number of goods and services bilateral agreements in 2010 and 2011. The United States and Kazakhstan signed a WTO bilateral agreement on market access for goods on November 22, 2010, and a market access agreement on services on September 21, 2011. Kazakhstan still needs to conclude WTO bilateral market access agreements with a few WTO Members, and has signaled it intends to turn to multilateral issues and complete work on its accession package during 2012.

The accession package consists of a Working Party report and Protocol of Accession recording how Kazakhstan will implement WTO provisions; schedules of goods and services market access commitments, consolidated from the bilateral negotiations; and commitments on domestic agricultural support and export subsidies.

Kazakhstan's Working Party, which has not met since July 2008, will meet in mid-April 2012, and will focus on reviewing an updated and revised draft Working Party report that should reflect the new elements of Kazakhstan's trade regime resulting from CU agreements and legal acts. Kazakhstan must also submit new and revised legislation and CU legal acts intended to implement WTO agreements in many key areas affected by Kazakhstan's participation in the CU, *e.g.*, customs practices, sanitary and phytosanitary measures, technical barriers to trade, and import licensing.

IMPORT POLICIES

Belarus, Russia, and Kazakhstan officially established a CU on July 1, 2010, and adopted a harmonized customs code, which is implemented through national customs laws. Kazakhstan implemented a common external tariff (CET) with Belarus and Russia beginning on January 1, 2010. As a result of its membership in the CU, Kazakhstan increased the tariff rate on some 5,400 tariff lines, and its average import tariff in 2010 increased from 6.7 percent to 9.2 percent.

Like the other CU Parties, Kazakhstan has zero tariffs on over 900 individual tariff lines, including light aircraft with fewer than 50 passenger seats, high-speed railway locomotives, spare parts for certain types of vehicles, agricultural equipment, food products such as tropical fruits, children's food, coffee, cacao beans, and certain types of metals.

According to CU regulations, Kazakhstan is allowed to apply tariffs that differ from the CET on 88 tariff lines (down from 409 prior to July 2011), although all tariff lines must be harmonized by 2015. The 88 tariff lines cover pharmaceuticals, medical equipment, aluminum foil, rail wagons, and prefabricated buildings. In addition, a CU Party can increase tariffs for up to six months on selected goods without the consent of the other CU Parties.

Kazakhstan continues to maintain tariff-rate quotas (TRQs) on imports of poultry, beef, and pork, as part of its obligations within the CU. U.S. exporters are concerned about the possible trade limiting effects of these TRQs, as well as the way TRQs are calculated and distributed. In December 2011, the CU announced that in-quota quantities for beef and pork would increase for Kazakhstan by 37 percent and 27 percent, respectively.

Kazakhstan increased the number of goods subject to import or export licensing after joining the CU. Precious metals and stones, encrypted technologies, documents from national archives, and items of cultural value are among the products now subject to export licensing. Kazakhstan will remove the requirement on import licensing for alcoholic beverages when one of the CU's members joins the WTO.

As of November 2011, Kazakhstan has a ban on the export of light distillates, kerosene, and gasoline.

Kazakhstan signed a Free Trade Zone treaty with Commonwealth of Independent States countries in October 2011. This Free Trade Zone was not in effect as of February 2012.

The Law on Investments provides customs duty exemptions for imported equipment and spare parts, but only if Kazakhstani produced stocks are unavailable or not up to international standards. In addition, imported equipment and spare parts designated for priority investment projects under the government's industrialization program are exempted from customs duties.

Although Kazakhstani officials have attempted to reform customs agencies, industry asserts that customs administration and procedural implementation remains a significant barrier to trade. In 2010, Kazakhstan ratified the 1990 Istanbul Convention on temporary admission, which will help bring its procedures for temporary admission of goods into conformity with international standards.

Other reforms allow foreign citizens to import and declare goods at a port of entry without utilizing domestic customs brokers. Previously, foreign citizens that wished to import goods into Kazakhstan were required to have a Kazakhstani partner. Notwithstanding this reform, foreign citizens may still be required to have domestic customs brokers in order to file electronic customs declarations, unless they have software compatible with the new CU computer system. New laws also modified provisions regarding *ex officio* rights for customs officers and standardized practices for the valuation of goods, making the valuation process more consistent. These amendments were approved on December 9, 2009, and entered into force on January 1, 2010.

Establishment of the CU also introduced new customs control procedures for importers from non-CU countries. The cost of importing has gone up due to an increase in import duties and fees for registration, as well as new licensing requirements for numerous goods.

GOVERNMENT PROCUREMENT

The lack of transparency and efficiency in government procurement remains a major challenge for local and foreign companies. The government recognizes this, and is taking steps to streamline its procurement process and move to an electronic procurement system.

The government's strong support for increased local content is another trend in procurement that impacts U.S. suppliers. In 2009 and 2010, Kazakhstan amended its Law on Government Procurement to increase the percentage of local content required in government procurement, which is applied to both domestic and foreign suppliers. The proportion of local goods and services is calculated according to a formula approved by the Foreign Investors Council.

According to new government procurement requirements, tenders that include a significant percentage of locally produced goods and services will receive preferential treatment. To qualify for preferential treatment, a supplier must receive a certificate from the Ministry of Industry and New Technologies that confirms the extent of its local content.

INTELLECTUAL PROPERTY RIGHTS PROTECTION

To facilitate its WTO accession and attract foreign investment, Kazakhstan is modernizing its legal regime for protecting intellectual property rights (IPR). In 2009-2010, Kazakhstan adopted several amendments to its IPR law, including the legal recognition of vendors who have the rights to print and digital media. This amendment allows licensed vendors to seek damages from unauthorized dealers selling pirated merchandise. Kazakhstan also amended its patent law to clearly define types of patent infringements and establish accountability for patent infringers, as well as to define the relationship between an employer and an employee with respect to an employee's invention.

Kazakhstan has taken steps towards implementing international IPR standards. For example, the government introduced amendments to its trademark legislation with a view to complying with the WTO TRIPS Agreement. Kazakhstan has also ratified 16 of the 24 treaties endorsed by the World Intellectual Property Organization (WIPO). In 2010, Kazakhstan joined the Madrid Agreement on the Repression of False or Deceptive Indications of Source on Goods and the Agreement Concerning the International Registration of Trademarks. It also ratified the Nairobi Treaty on the Protection of the Olympic Symbol. In 2011, Kazakhstan ratified WIPO Patent Law Treaty. In June 2011, Kazakhstan ratified the Agreement of Common Economic Space on unified principles of regulation in the area of IPR protection. As follow-up steps within the framework of this agreement, Kazakhstan intends to join the Singapore Treaty on the Law of Trademarks and the Rome Convention for the Protection of Performers, Producers of Phonograms, and Broadcasting Organizations.

Kazakhstan continues to improve its IPR legislation. Kazakhstan's Senate is considering new amendments to IPR laws that would strengthen provisions against copyright piracy over the Internet and would simplify procedures for trademarks registration.

Pursuant to statutes enacted in November 2005 that authorize stronger penalties, authorities have conducted numerous raids against distributors of pirated products. The government's efforts have helped to expand the Kazakhstani market for licensed, non-infringing products.

Customs controls need to be applied more effectively against imported IPR-infringing goods. Further progress is also needed with regard to civil enforcement in Kazakhstan. Although civil courts have been used effectively to stem IPR infringement, judges often lack technical expertise in the area of IPR, which is a significant obstacle to further improvement in Kazakhstan's IPR enforcement.

SERVICES BARRIERS

Kazakhstani law restricts foreign ownership in telecommunications companies to 49 percent and in mass media companies, including news agencies, to 20 percent. In connection with its WTO accession negotiations, Kazakhstan has agreed that after a two and a half year transition period, it will remove the foreign ownership limit for telecommunications operators serving long distance and international phone calls, except for the country's main carrier KazakhTeleCom JSC. However, the 20 percent limit for foreign participation in mass media companies will remain in force after Kazakhstan joins the WTO.

Foreign banks and insurance companies are allowed to operate only through joint ventures with Kazakhstani companies. Professional services, including auditing, architectural, urban planning, engineering, integrated engineering, and veterinary services, may be provided only by a legal entity resident in Kazakhstan.

The law "On Communication" and Decree 1499 together require placing and registering Network Control Centers for very small aperture antennas within the borders of Kazakhstan. The U.S. satellite industry has expressed concerns regarding restrictions on the transport of video programming through foreign satellites, and restrictions barring foreign firms from providing these services to the government.

INVESTMENT BARRIERS

Kazakhstan's 2003 Law on Investments provides the legal basis for foreign investment in Kazakhstan. Some U.S. investors have expressed concern about certain aspects of the law, including its investment contract stability provision, the lack of clear provisions for access to international arbitration, and the narrow definition of an investment dispute.

Approximately 70 percent of foreign direct investment in Kazakhstan is in the oil and gas sector. The government remains eager to generate foreign investment in this sector, but local content requirements have created a more challenging environment for subsoil operations. The methodology used to calculate local content is not well defined, Kazakhstani goods do not always fully comply with international standards, and Kazakhstani service suppliers are not always able to provide the technically complex services necessary to support projects in oil and gas sector. Companies have thus found it difficult to comply with the government's local content requirement, and have reported that local administrators have taken an increasingly inflexible approach to these regulations.

On June 25, 2010, the government established the National Agency for Local Content Development to increase local content alternatives, monitor subsoil procurement procedures, and assist local companies to provide competitive goods and services. The June 2010 Law on Subsoil and Subsoil Use established strict local content requirements and harsh penalties for companies that fail to meet them, including the potential cancellation of contracts. Additionally, the Subsoil Law included a preemption clause that guarantees Kazakhstan the right of first refusal when a party seeks to sell any part of its stake in a subsoil project. The law fully incorporates an October 2007 amendment to the previous subsoil law that allowed the government to amend or terminate existing subsoil contracts deemed to be of "strategic significance," or where the economic interests in Kazakhstan are deemed to create a "national security risk."

In accordance with the October 2007 amendment, the government issued a decree in August 2009 that deemed 100 oil and gas fields as having "strategic significance," and that also authorized the government to amend contracts if it determines that the actions of a subsoil user could lead to a substantial change in Kazakhstan's economic interests or could threaten Kazakhstan's national security. The Decree provides no guidance on how the government will determine whether there is a substantial change in economic interests or whether there is a threat to national security.

No contract has been annulled on the grounds of a substantial change in economic interests or a threat to national security. However, the Ministry of Oil and Gas (MOG) can and does annul contracts when subsoil users fail to meet their contractual obligations (*e.g.*, no well drilled during exploration stage, violation of local content requirements). In 2010, the MOG annulled 28 subsoil contracts for failure to meet contractual obligations. In 2011, the MOG sent subsoil users a total of 169 notifications on violation of contractual obligations, which do not necessarily result in cancellation of contracts.

In 2010, the government reintroduced a duty on the export of crude oil that triggered a $1 billion dispute with the consortium of international oil companies operating the Karachaganak condensate field. The Prime Minister stated in September 2011 that the export duty will not apply to Production Sharing Agreements, which have tax stability clauses.

Kazakhstan's lower house of Parliament adopted a draft Law on Natural Gas and Gas Supply on November 2, 2011. The bill is awaiting approval in the Senate. The Parliament has not published the draft law, but claims that it is designed to ensure energy and environmental security, to increase the proportion of electricity produced by gas-fired plants, and to create conditions for effective use of such gas. Kazakhstan reportedly will regulate transportation, distribution, and pricing by creating a single operator to purchase natural gas. Oil and gas market participants are concerned that the draft legislation would inhibit the development of a domestic gas market in Kazakhstan. They view the bill as part of an overall trend toward greater state control and involvement in the management and marketing of the country's natural resources.

In February 2011, the government of Kazakhstan made changes to a government resolution relating to measures aimed at implementing the Employment of Populace Law. Expatriates should not make up more than 50 percent of the total number of senior managers, or 30 percent of mid-level employees. These quotas may impact foreign investment in, for example, large industrial or highly technical sectors for which Kazakhstan cannot supply skilled workers in sufficient numbers.

Requirements for use of local workforce personnel on government procurement prospects are governed by three laws: the Employment Law, the Subsoil Use Law, and the Expatriate Workforce Quota and Work Permit Rules. For all subsoil projects, one percent of the project budget should be earmarked for training programs and workforce development, including overseas assignments with the lead operator. Qualified Kazakhstani specialists will be listed in a database on the Ministry's website, which an international oil company is expected to use if it needs a certain specialist. The February 2011 Amendments to the Expatriate Workforce Quota and Work Permit Rules carried serious and negative implications for many foreign subsoil users that rely on foreign personnel. From January 1, 2012, only 30 percent of company executives and 10 percent of engineering and technical personnel may be foreign nationals. In October 2011, the government of Kazakhstan passed a decree exempting Kazakhstan's three largest hydrocarbon projects (Tengiz, Karachaganak, and Kashagan) from these workforce quota and work permit requirements. Other businesses will find it difficult to meet the onerous demands required to obtain an expatriate work permit.

OTHER BARRIERS

There are structural barriers to investment and trade in Kazakhstan, including a weak system of business law, a lack of an effective system for resolving breach of contract, and an unwieldy government bureaucracy. In addition, there is a burdensome tax monitoring system for all companies operating in Kazakhstan. Many companies report the need to maintain excessively large staffs to deal with the cumbersome tax system and frequent inspections. The actions of tax and various regulatory authorities, as well as actions to enforce environmental regulations, can be unpredictable.

Widespread corruption at all levels of government is also seen as a barrier to trade and investment in Kazakhstan. It reportedly affects nearly all aspects of doing business in Kazakhstan, including customs clearance, registration, employment of locals and foreigners, payment of taxes, and the judicial system.

Kazakhstan's largest national companies, such as Kazakhstan TemirZholy (national railway), KazMunaiGas (national oil and gas company), KEGOC (electricity transmission company), and their subsidiaries, are subject to the local content requirements, but are exempted from the Law on Government Procurement.

KENYA

TRADE SUMMARY

The U.S. goods trade surplus with Kenya was $83 million in 2011, up $19 million from 2010. U.S. goods exports in 2011 were $464 million, up 23.7 percent from the previous year. Corresponding U.S. imports from Kenya were $382 million, up 22.6 percent. Kenya is currently the 98th largest export market for U.S. goods.

The stock of U.S. foreign direct investment (FDI) in Kenya was $263 million in 2010 (latest data available), up from $257 million in 2009.

IMPORT POLICIES

Tariffs

According to the WTO, Kenya's average applied tariff rate for all products was 12.5 percent in 2011. Kenya's average applied rate for agricultural goods was 19.7 percent and 11.4 percent for industrial goods. Kenya has bound rates (*i.e.*, the rates that under WTO rules generally cannot be exceeded) on less than 15 percent of its tariff lines, and these bound rates are generally high.

Kenya is a member of the WTO, the Common Market for Eastern and Southern Africa (COMESA), and the East African Community (EAC) and applies the EAC Customs Union's Common External Tariff (CET) on most tariff lines.

Within the context of EAC and COMESA Memberships, the government of Kenya has undertaken substantial trade liberalization, including some the reductions of most favored nation tariffs, removal of quantitative restrictions, improvement of the business environment, and trade facilitation.

However, the high CET *ad valorem* import tariffs and value-added taxes (VAT) inhibit non-EAC/COMESA trade, especially in "sensitive" agricultural sector commodities. The Kenyan government sometimes reduces and/or abates these tariffs in cases of domestic shortages. Even so, the government oftentimes restricts imports to millers. Currently, Kenya's government applies a reduction in the wheat duty from 35 percent to 10 percent through June 2012 (accessible only to Kenyan millers at specified tonnages) and a reduction in the rice *ad valorem* tariff from 75 percent to 35 percent through June 2012.

"Sensitive" products/commodities, comprising 58 tariff lines, have applied *ad valorem* rates above 25 percent. This includes, except when abated or reduced through EAC-approved requests, minimum rates of 25 percent for milk and milk products, 50 percent for corn and popcorn, 75 percent for rice, and 35 percent for wheat and wheat flour. The Kenyan government also requires import permits/licenses for many of these "sensitive" products. For some products/commodities, the tariffs, at times, may vary across the five EAC member states.

For "non-sensitive" tariff lines, the CET calls for zero duty for raw materials and inputs; 10 percent for processed or manufactured inputs; and 25 percent for finished products.

Nontariff Measures

The Finance Ministry's Business Regulatory Reform Unit plays an important role in reducing regulatory risks and removing nontariff measures, including those that affect U.S. imports. Kenya justifies its existing import controls as necessary to address health, environmental, and security concerns. All importers pay an import declaration fee set at 2.25 percent of the customs value of imports, and are required to furnish the following documents: Pre-export Verification of Conformity; a Certificate of Conformity; Import Standardization Mark; valid *pro forma* invoices from the exporting firm; and specific labels for products containing agriculture biotechnology.

Kenyan law stipulates that all licensed importers of petroleum products participate in a crude processing program. Under this system, the Kenya Petroleum Refinery Ltd, a parastatal entity, receives 1.6 million tons of crude oil for refining each year, the majority of which is imported from the United Arab Emirates. This represents approximately half of the total petroleum demand in Kenya. Of the remaining demand, a tendering system accounts for 35 percent, and the remaining 15 percent comes outside of tendering requirements.

Customs Procedures

Numerous bureaucratic procedures at the Port of Mombasa increase the cost of imported goods significantly. Multiple agencies, including customs, police, ports authority, and standards inspection agencies, subject importers to excessive and inefficient inspection and clearance procedures. These procedures can create opportunities for graft and unnecessary delays. For every 24 hour delay, trucking companies lose an estimated $400, and shippers lose roughly $25,000.

The Kenya Revenue Authority's (KRA) online customs clearance system was implemented in 2005 and has contributed to improvements in overall efficiency and transparency. However, according to the World Bank's Doing Business 2011 report, it still takes an average of 24 days and costs $2,190 to complete import procedures for a standardized container of cargo. It takes 26 days and costs $2,055 to complete export procedures for a similar container.

In April 2011, the KRA introduced new rules that require cargo owners to file additional documents to clear goods at the port. The change requires importers to provide the KRA with cargo manifests and a bay plan from the port of origin to ensure full and accurate collection of required duties. Previously, shippers presented the KRA with cargo manifests only, while the bay plan was provided to port authorities. KRA officials said the change was meant to prevent customs revenue leakages and the importation of illicit goods, including narcotics and weapons. Shippers complain that the new rules add to inefficiency at the port and raise overall costs.

EXPORT SUBSIDIES AND OTHER EXPORT PROMOTION PROGRAMS

Kenya's "Manufacturing Under Bond" (MUB) program is meant to encourage manufacturing for export by exempting participating enterprises from import duties and VAT on imported plant, machinery, equipment, raw materials, and other imported inputs. The program also provides a 100 percent investment allowance on plant, machinery, equipment, and buildings. If goods produced under the MUB system are not exported, the goods are subject to a surcharge of 2.5 percent, and imported inputs used in their production are subject to all applicable tariffs and import charges. The program is open to both local and foreign investors.

Firms operating in Export Processing Zones (EPZ) are provided a 10 year corporate tax holiday and 25 percent tax rate thereafter (the statutory corporate tax rate is 30 percent, but the overall tax rate is 49.6

percent); a 10 year withholding tax holiday on dividend remittance; duty and VAT exemption on all inputs except motor vehicles; 100 percent investment deduction on capital expenditures for 20 years; stamp duty exemption; exemption from various other laws; exemption from pre-shipment inspection; availability of on-site customs inspection; and work permits for senior expatriate staff. Kenya's EPZ law allows manufacturers and service providers to sell up to 20 percent of their output in the domestic market. Manufacturers are liable for all taxes on products sold domestically, however, plus a 2.5 percent surcharge.

The government of Kenya aims to revive EPZs that have suffered declines in competitiveness due to the rising cost of doing business. The strategy includes converting some existing EPZs into Special Economic Zones. A Special Economic Zones Bill, which would authorize this action, is awaiting enactment in Parliament. Products manufactured in EPZs account for over 10 percent of Kenya's total exports, and EPZs employ approximately 40,000 people.

GOVERNMENT PROCUREMENT

U.S. firms have experienced little success in bidding on government projects in Kenya, despite technical proficiency and reasonably priced bids. Foreign firms, some without track records, that have won government contracts have typically partnered with well-connected Kenyan firms. Reportedly, corruption often influences the outcome of public tenders.

In 2007, Kenya established a Public Procurement Oversight Authority (PPOA) to ensure compliance with rules and regulations surrounding government procurement. The PPOA's nine members are selected by the Minister of Finance, subject to Parliamentary approval. The total value of public procurement within Kenya's central government is estimated at 10 percent of GDP.

The government designed the Public Procurement and Disposal Act (the "Act") to make procurement more transparent and accountable, and established penalties for violations of its provisions. The Act permits procurement agencies to establish a list of pre-qualified firms annually. It also reserves exclusive preferences for Kenyan citizens where the funding is 100 percent from the government or a state-related entity, and where the amounts are below Ksh50 million (approximately $540,000) for goods or services and Ksh200 million (approximately $2.1 million) for public works. It also sets a 15 percent margin of preference for goods manufactured, mined, extracted, or grown in Kenya. For citizen contractors who are bidding for contracts paid for out of two earmark funds known as the "Constituency Development Fund" and the "Local Authority Transfer Fund," there is a preference of 6 percent in cases where locals have below 20 percent of shareholdings, 8 percent in cases where locals have shareholdings between 20 percent to 50 percent, and 10 percent where locals have shareholding of 51 percent or greater.

Additionally, the Act allows for restricted tendering under certain conditions such as when the complex or specialized nature of the goods or services requires the pre-qualification of contractors. The Act may impose restrictions if the time and costs required to examine and evaluate a large number of tenders would be disproportionate to the value of the tender.

With the support of the World Bank and in collaboration with the Kenya Information and Communication Technology Board, the PPOA is developing a web-based Market Price Index and an Electronic Procurement system. Additional measures underway at the PPOA include implementation of an internal procurement performance monitoring tool, improvements to the process for reviewing tendering complaints, and development of general and sector-specific procurement manuals.

Parliament enacted the Supplies Management and Practitioners Act in 2007. This law required that a procurement professional be responsible for all procurement within any public entity. However, implementation of the Supplies Management and Practitioners Act has been inconsistent.

Kenya is neither a party nor observer to the WTO Agreement on Government Procurement.

INTELLECTUAL PROPERTY RIGHTS PROTECTION

Kenya's lax enforcement of intellectual property rights (IPR) continues to be a serious challenge for U.S. firms. Pirated and counterfeit products in Kenya, mostly imported from Asia, present a major impediment to U.S. business interests in the country. Imported pharmaceutical drugs, shoes, textile products, office supplies, tubes and tires, batteries, shoe polish, soaps, and detergents are the most commonly counterfeited items.

According to a survey released by the Kenya Association of Manufacturers (KAM) in 2008, piracy and counterfeiting of business software, music, consumer goods, and pharmaceuticals in Kenya cost firms about $715 million in lost sales annually. Consequently, KAM estimated that the government of Kenya loses over $270 million in potential tax revenues per annum.

The Pharmaceutical Society of Kenya contends that over 50 percent of anti-malaria drugs sold in Kenya are counterfeit. A survey conducted by the National Quality Control Laboratories and the Pharmacy and Poisons Board concluded that 30 percent of all drugs in Kenya are counterfeit.

Kenya's EPZs have served as a conduit for counterfeit and sub-standard goods. These products enter the EPZ ostensibly as sub-assembly or raw materials, but are actually finished products. These counterfeit and sub-standard goods also end up in the Kenyan marketplace without paying the necessary taxes. Counterfeiting of batteries have been particularly problematic.

Transit shipments destined for neighboring countries are also a significant source of counterfeit goods. Intellectual property authorities are limited in their ability to seize transit goods, and authorities suspect that some of these goods find their way back into Kenya.

The Kenya Copyright Board (KCB) has the authority to inspect, seize, and detain suspect articles and to prosecute offenses. The KCB is severely understaffed, with only three prosecutors and two police officers detailed to the organization. The KCB continues to work jointly with U.S. rights holders in conducting raids.

Parliament passed the Anti-Counterfeit Act in 2008. Long sought by the business community, the law provided for the creation of an Anti-Counterfeit Agency (ACA), and strengthens the ability of law enforcement agencies to investigate and prosecute manufacturers and distributors of counterfeit and pirated goods. The ACA became operational in June 2010; however, it is poorly funded, receiving only half of its budget request for 2010. Implementing regulations meant to clarify and expand on the provisions of the Anti-Counterfeit Act have yet to be adopted.

Kenyan artists have formed organizations to raise IPR awareness and to lobby the government for better enforcement. Two of the most active groups are the Music Copyright Society of Kenya and Kopiken. In 2008, the Music Copyright Society claimed that 90 percent of its potential earnings are lost to piracy, and urged the KRA to require authentication stickers on musicians' releases. IPR enforcement against pirated Kenyan and foreign works remains weak.

KAM continues its strenuous efforts to increase government focus on the counterfeit and piracy issues that impact virtually every legitimate manufacturer in Kenya. Working with U.S. rights holders, local authorities have seized thousands of counterfeit products in recent years.

INVESTMENT BARRIERS

A law passed in 2007 reduced the limit on foreign ownership (personal or corporate) of firms listed on the Nairobi Stock Exchange from 75 percent to 60 percent. A grandfather clause allows foreign investors with shares in excess of these limits to maintain or reduce their existing shareholdings. The Capital Market Authority allows foreign investors to increase their investment with prior written approval if the shares reserved for local investors are not fully subscribed.

Foreign ownership of telecommunications firms is limited to a maximum of 70 percent.

Foreign brokerages and fund management firms must operate via locally registered companies, with Kenyan ownership of at least 30 percent and 51 percent, respectively. Additionally, foreign ownership of insurance companies is restricted to 66.7 percent. Foreign ownership of companies engaged in fishing activities is restricted to 49 percent of voting shares, as stipulated by the Fisheries Act of 1991.

The constitution prohibits foreigners from holding a freehold land title anywhere in the country, but does allow leasehold titles of up to 99 years. The cumbersome and opaque process required to purchase land in Kenya raises concerns about security of title, particularly given past abuses relating to the distribution and redistribution of public land.

Kenya has been slow to open public infrastructure to competition because the government considers state-owned companies that control infrastructure as "strategic" enterprises. The reform and partial privatization of the telecommunications, power, and rail sectors are proceeding but have fallen behind schedule. A Public-Private Partnership (PPP) law is being considered by Parliament. Meanwhile, the Finance Ministry is developing rules and regulations for PPPs and is in the process of setting up a Secretariat to help review and oversee proposed partnerships.

The use of fees and security bonds operates to discourage the employment of foreign labor. New foreign investors with expatriate staff are required to submit plans for the gradual phasing out of non-Kenyan employees.

In recent years Kenya has made progress in eliminating or reducing business license requirements. The Business Regulation Act of 2007 established a Business Regulatory Reform Unit within the Ministry of Finance to continue the deregulation process. In 2009, Kenya launched a national electronic registry to ease business license processing and help improve transparency.

OTHER BARRIERS

The 2010-2011 Global Competitiveness Index published by the World Economic Forum cited corruption, access to financing, and inadequate infrastructure as the three most problematic factors for doing business in Kenya. Bureaucratic complexity and a high overall cost of doing business also contribute to Kenya's poor business environment. For example, it costs businesses in Kenya over 47 percent of the cost of a claim to enforce a contract; 22 percent of the estate to close a business; and 4.2 percent of a property's value to have it registered. Registering a business in Kenya is an 11 step process that takes an average of 33 days and costs the equivalent of roughly 38.3 percent of average per capita income. In addition to these burdens, Kenya's overall corporate tax rate is nearly 50 percent.

Corruption

Corruption remains a substantial trade barrier in Kenya. U.S. firms find it difficult to succeed against competitors who are willing to ignore or engage in corruption. A number of U.S. firms have exited Kenya at least in part due to corruption issues. The 2008 Business Climate Index published by the East African Business Council revealed a deteriorating business environment in the region, with over $10 million paid in bribes to police and customs officials every year.

According to the 2011 East Africa Bribery Index published by Transparency International-Kenya, 84 percent of respondents rated Kenya as being corrupt or extremely corrupt, while only 13 percent regarded Kenya as slightly corrupt. The report also indicated that Kenyans still consider the police force to be the most corrupt government institution. According to the International Finance Corporation's most recent Assessment of the Investment Climate in Kenya, 75 percent of firms surveyed said they have made informal payments to "get things done."

Judiciary

The Kenyan judicial system is working to improve its efficiency and timeliness. A backlog of cases, including those that are investment-related, burdens the system. Corruption, both perceived and real, reduces the system's credibility. Companies cite these deficiencies as obstacles to investment, especially since these issues make some financial institutions reluctant to supply loans, or charge higher interest rates when they do agree to provide financing. The case backlog is a result of understaffing, but the government has embarked on a major judiciary recruitment drive. Following the promulgation of the new constitution in August 2010, the government of Kenya appointed a new Chief Justice and Deputy Chief Justice, both of whom pledged to reform the judicial sector and restore public confidence. Since 2010, the number of judges on Kenya's Commercial Court has increased from three to eight judges, which has improved access to justice and reduced the commercial case backlog. The Commercial Court took several important actions to ease congestion, including (1) requiring advocates to submit electronic copies of pleading and submissions; (2) limiting direct examination of witnesses in court; and (3) creating a committee of advocates and judges to address administrative issues.

KOREA

TRADE SUMMARY

The U.S. goods trade deficit with Korea was $13.1 billion in 2011, up $3.1 billion from 2010. U.S. goods exports in 2011 were $43.5 billion, up 12.0 percent from the previous year. Corresponding U.S. imports from Korea were $56.6 billion, up 15.9 percent. Korea is currently the 7th largest export market for U.S. goods.

U.S. exports of private commercial services (*i.e.*, excluding military and government) to Korea were $15.1 billion in 2010 (latest data available), and U.S. imports were $7.8 billion. Sales of services in Korea by majority U.S.-owned affiliates were $10.2 billion in 2009 (latest data available), while sales of services in the United States by majority Korea-owned firms were $6.8 billion.

The stock of U.S. foreign direct investment (FDI) in Korea was $30.2 billion in 2010 (latest data available), up from $26.8 billion in 2009. U.S. FDI in Korea is led by the manufacturing and banking sectors.

UNITED STATES-KOREA TRADE AGREEMENT

In 2011, following an agreement in December 2010 that resolved outstanding issues related to automobiles and other matters, the Administration continued to build on extensive consultations with Members of Congress and other stakeholders to produce strong bipartisan support for the United States-Korea trade agreement (KORUS). On October 12, 2011, Congress passed, and on October 21, 2011, President Obama signed into law, legislation approving KORUS. Shortly thereafter, on November 22, 2011, Korea's National Assembly also approved the agreement. On March 15, 2012, KORUS entered into force, providing preferential access for U.S. businesses, farmers, ranchers, services providers, and workers to what is now the United States' seventh largest export market, while helping to solidify the two countries' long-standing alliance, and underscore the U.S. commitment to and engagement in the Asia-Pacific region. KORUS will strengthen and expand ties with an important strategic partner in Asia, and is expected to increase annual exports of American goods by up to $11 billion, supporting 70,000 jobs from goods exports alone.

The agreement provides for the elimination of tariffs on over 95 percent of U.S. exports of industrial and consumer goods within 5 years and on nearly two-thirds of U.S. agricultural exports immediately, and will level the playing field and enhance market access for U.S. exporters, including those in the automotive sector. KORUS will provide meaningful market access commitments across virtually all major service sectors, including improved access for telecommunications and express delivery services, and the opening up of the Korean market for foreign legal consulting services. The agreement will increase access to the Korean market and ensure greater transparency and fair treatment for U.S. suppliers of insurance and other financial services. KORUS will also address nontariff barriers in a wide range of sectors and includes strong provisions on intellectual property rights, competition policy, labor, environment, and regulatory transparency.

In December 2011, the United States and Korea began to review each country's respective laws and regulations to ensure their consistency with the provisions of the agreement. This review process has successfully concluded and the agreement entered into force on March 15, 2012. USTR will monitor Korea's compliance with its obligations.

IMPORT POLICIES

Tariffs and Taxes

Korea's average most favored nation applied tariff rate in 2010 was 12.1 percent for all products (48.5 percent for agricultural products and 6.6 percent for non-agricultural products) and Korea has bound 94.6 percent of its tariff lines.

Korea maintains particularly high tariffs on a number of high value agricultural and fishery products. Korea imposes tariff rates of up to 30 percent on nuts and 35 percent and higher on most dairy products. Pears, table grapes, juices, starches, and peanut butter are subject to tariffs ranging from 45 percent to 54 percent. Tea and peanuts, with some exceptions, are subject to some of the highest tariffs, ranging from 754 percent and 513 percent, respectively, for red ginseng tea and green tea to 230 percent for peanuts. Korea also imposes high tariffs on other products of interest to U.S. industry, despite having little or no domestic production, including cherries, certain distilled spirits, frozen corn, frozen french fries, pepperoni, and prepared or mashed potatoes.

Korea has established tariff-rate quotas (TRQs) intended to provide at least a minimum level of access to previously closed markets or to maintain pre-Uruguay Round access. In-quota tariff rates may be very low or zero. To help offset the increasing cost of food, in 2011 Korea announced emergency duty-free TRQs on a wide range of agricultural commodities including pineapples, malting barley, pork, frozen chicken, some frozen fish (including mackerel and Alaskan Pollack), powdered milk, frozen cream, processed milk and cream, butter, cheese and curd, egg powder, wheat, vegetable oils, some sugars, potato, soybeans, corn for feed and processing, frozen pork and pork belly. Nevertheless, the over-quota tariff rates are often prohibitive. For example, natural and artificial honey are subject to an over-quota tariff rate of 243 percent; skim and whole milk powder (176 percent); barley (324 percent); malting barley (513 percent); potatoes and potato preparations (more than 300 percent); and popcorn (630 percent). In addition, for some agricultural products, such as corn grits, popcorn, and soy flakes, Korea aggregates raw and value-added products under the same TRQ. Korean domestic industry groups, which administer the quotas, frequently allocate the more favorable in-quota tariff rate to their larger members that import raw ingredients.

Korea uses "adjustment tariffs" on some agricultural, fishery, and plywood products, which increase the applied tariff rates. Most of the adjustment tariffs are imposed on agricultural and seafood products, including frozen croaker, which are products of interest to U.S. exporters. Korea has eliminated tariffs on most or all products in the following sectors: paper; toys; steel; furniture; agricultural equipment; construction equipment; and information technology products (those included in the WTO Information Technology Agreement). Korea has harmonized its chemical tariffs to rates of zero percent, 5.5 percent, or 6.5 percent, depending on the product. Bound tariffs, *i.e.,* the level that generally cannot be exceeded under WTO rules, on textile and apparel products remain relatively high: 30 percent on several man-made fibers and yarns; 30 percent on many fabrics and most made-up and miscellaneous goods (*e.g.*, pillow cases and floor coverings); and 35 percent on most apparel items. KORUS will eliminate tariffs, including adjustment tariffs, on over 95 percent of originating industrial and consumer goods within five years. Almost two thirds of U.S. agricultural products became duty free on entry into force and virtually all tariffs on agricultural goods will be eliminated when KORUS is fully implemented.

Beef

Following a 2008 U.S.-Korean agreement to fully re-open Korea's market to U.S. beef and beef products, Korean beef importers and U.S. exporters have operated according to a voluntary, commercial understanding that limits imports to beef and beef products from animals less than 30 months of age, as a transitional measure, until Korean consumer confidence improves. Reopening fully Korea's beef market consistent with science and international standards as well as in a commercially viable manner remains an important priority. This issue is discussed in greater detail in USTR's 2012 Report on Sanitary and Phytosanitary Measures.

Rice

In the Uruguay Round, Korea negotiated a 10 year exception to "tariffication" of rice imports in return for establishing a Minimum Market Access (MMA) quota that was set to expire at the end of 2004. Korea subsequently negotiated a 10 year extension of the MMA arrangement in April 2005. The extension called for Korea to increase its total rice imports over the succeeding 10 years, from 225,575 metric tons in 2005 to 408,700 metric tons in 2014. Along with the country specific quota commitments to purchase minimum amounts of imports from China, Thailand, and Australia, Korea also agreed to purchase at least 50,076 metric tons annually from the United States until 2014.

Access to the Korean rice market for U.S. exports has improved significantly under this agreement. Under the 2011 MMA, the U.S. rice industry obtained 29 percent of Korea's total MMA imports by winning tenders for 101,490 metric tons of (milled) rice, valued at $87 million. In addition, the quality of access has improved as rice marketed to consumers as table rice was for the first time included as a portion of the MMA quota. In addition, nearly 32,062 of the 101,490 metric tons will be sold as table rice.

GOVERNMENT PROCUREMENT

Korea is a signatory to the WTO Agreement on Government Procurement (GPA). For procurement of construction services by sub-central and government enterprises covered under the GPA, Korea applies a threshold of over $23 million, which is three times the threshold applied by the United States. Under the KORUS, U.S. suppliers will have rights to bid on the procurements of more than 50 Korean central government entities, nine more than are covered under the GPA. The agreement also expands procurements to which U.S. suppliers will have access by reducing by nearly one-half the threshold applied under the GPA, from $203,000 to $100,000.

In December 2010, the Ministry of Knowledge and Economy (MKE) issued a notification establishing new procurement procedures for public entities related to MKE. U.S. industry raised concerns over evaluation criteria that appeared to give a preference to Korean small businesses. U.S. officials discussed this issue with Korean officials and conveyed the importance of ensuring that Korea complies with its commitments under the GPA. Following U.S. engagement on this issue, MKE issued guidelines to its related agencies reiterating that preferences should not be given to domestic businesses in procurement subject to the GPA.

Encryption Technology for Public Procurement of VoIP Equipment

In July 2009, Korea implemented a new regulation stipulating that encrypted network equipment must be certified by Korea's National Intelligence Service (NIS) in order to be procured by public sector agencies, while NIS will only certify encryption modules based on the Korean ARIA and SEED encryption algorithms, not the AES algorithm that is in widespread use worldwide. Some U.S. suppliers have been unable to sell virtual private network and firewall systems to Korean public sector agencies due to this restriction. We will continue to urge Korea to ensure that equipment based on widely used international standards has full access to Korea's public sector market.

INDUSTRIAL SUBSIDY POLICY

Historically, the Korea Development Bank (KDB), which as a government-owned entity is not necessarily bound by the same constraints as commercial institutions, has been one of the government's main sources of policy-directed lending to favored industries. The Lee Myung-bak Administration plans to privatize a wide range of state-owned enterprises, including the KDB. As a first step, Korea adopted a holding company system in October 2009 and divided the Korean Development Bank (KDB) into two new companies: (1) KDB; and (2) the Korea Finance Corporation (KFC). While still government-owned, the KDB is to operate as a commercial bank under this restructuring plan, and the KFC is to operate as a policy lending bank. The Korean government plans to list the KDB on the Seoul stock exchange and overseas stock markets in 2012. The U.S. Government will continue to monitor the lending policies of the KDB and other government-owned or affiliated financial institutions.

INTELLECTUAL PROPERTY RIGHTS PROTECTION

Korea generally provides strong intellectual property rights (IPR) protection and enforcement. The United States recognizes the importance the Korean government places on IPR protection, a development that has accompanied Korea's shift to becoming a significant creator of intellectual property. The 2009 amendments to Korea's Copyright Law include measures to deter copyright infringement via file-sharing platforms on the Internet. In 2010, the Korean government imposed sanctions against serial infringers under the "three strikes" law, and in 2011 it passed a law requiring online high-volume storage lockers ("webhards") to register with the Korea Communications Commission to address technical challenges related to online copyright enforcement. However, concerns remain over new forms of online piracy, corporate end-user software piracy, book piracy in universities, and counterfeiting of consumer products.

On December 2, 2011, Korea's National Assembly passed an amendment to the Copyright Act closing a sound recording protection gap for works produced between July 1987 and June 1994. This change expanded copyright protection for these works from 20 to 50 years, the same level of protection afforded for all other works.

Korea is also a signatory to the Anti-Counterfeiting Trade Agreement, which establishes an international framework to more effectively combat the infringement of IPR, in particular the proliferation of counterfeiting and piracy, which undermines legitimate trade and the sustainable development of the world economy.

In addition, KORUS contains state-of-the-art protections for all types of intellectual property, requirements to join key multilateral IPR agreements, and strong enforcement provisions.

SERVICES BARRIERS

Screen and Broadcast Quotas

Korea maintains a screen quota for films requiring that any movie screen show domestic films at least 73 days per year. Overall, foreign programs may not exceed 20 percent of terrestrial television or radio broadcast time or 50 percent of cable or satellite broadcast time on a semi-annual basis. Within those overall quotas, Korea maintains annual quotas that further limit broadcast time for foreign films to 75 percent of all films for terrestrial, cable, and satellite broadcasts; foreign animation to 55 percent of all animation content for terrestrial broadcast and 65 percent of all animation content for cable and satellite broadcasts; and popular music to 40 percent of all music content. Another quota, on a quarterly basis, limits content from any one country to 60 percent of the quota available to foreign films, animation, or music. KORUS will protect against increases in the amount of domestic content required and ensure that new platforms, such as online video, are not subject to these legacy restrictions.

Restrictions on Voiceovers and Local Advertisements

The Korean Broadcasting Commission's guidelines for implementation of the Broadcasting Act contain restrictions on voiceovers (dubbing) and local advertising for foreign retransmission channels. These prohibitions continue to be of concern to U.S. industry, as they limit the profitability of such channels in the Korean market.

Legal Services

The Foreign Legal Consultant Act of 2009 (FLCA) created a partial opening of domestic legal services. Under the FLCA, law firms from countries that have a free trade agreement with South Korea are able to start consultancy businesses in Korea. The law allows foreign attorneys with a minimum of three years of work experience to provide consulting services on the law of the jurisdiction in which they are licensed. Before the FLCA, only Korean-licensed lawyers could provide any form of legal advice in Korea, including advice on foreign law. In April 2011, the National Assembly amended the FLCA to allow a foreign legal consultant office to partner with Korean firms on cases with both foreign and domestic legal issues.

The Korean government plans to open its legal services market in several stages. The first step created a legal status for foreign legal consultants and allowed foreign law firms to open offices in Korea. The second stage allows cooperative agreements between foreign and domestic firms. Subsequent liberalization stages would address the ability of foreign-licensed lawyers and firms to establish joint ventures and hire Korean-licensed lawyers.

Over time, KORUS will permit free association of foreign legal consultants with Korean lawyers and allow U.S. law firms to offer a broader range of services.

Insurance and Banking

Korea is the second largest insurance market in Asia and the seventh largest in the world. Korea's laws and regulations permit foreign financial service providers to establish subsidiaries or branches in Korea.

Insurance suppliers remain concerned that Korea Post, the National Agricultural Cooperative Federation (NACF), and the National Federation of Fisheries Cooperative are not regulated by the Korean Financial Services Commission and therefore operate under different rules that may advantage these entities. The NACF Act, revised in March 2011, creates two holding companies: Nonghyup Economic Holding Company and Nonghyup Financial Holding Company. The Nonghyup Finanical Holding Company will include two new insurance subsidiaries, Nonghyup Life Insurance and Nonghyup Non-Life Insurance, which will be subject to the Insurance Business Act. USTR will closely monitor the implementation of the NACF Act to ensure that Korea complies with KORUS financial services provisions.

Lack of transparency in the adoption of financial regulations continues to adversely affect financial services suppliers. However, effective implementation of improvements in notice and comment periods and with respect to "administrative guidance" required under KORUS should enable financial services suppliers to play a greater role in the regulatory process.

Korea's strict data privacy rules require financial services providers to locate their servers physically in Korea, thus hampering foreign suppliers' ability to take advantage of economies of scale in the region to perform data processing in their daily business activity. Korea's implementation of commitments in KORUS will help address this concern.

Telecommunications

Korea currently prohibits foreign satellite service providers from selling services (*e.g.*, transmission capacity) directly to end users without going through a company established in Korea. Given the current investment restrictions in place (see below) and the fact that establishing a local presence may not be economically justified, this prohibition significantly restricts the ability of foreign satellite service suppliers to compete in the Korean market.

The National Assembly passed legislation in December 2007 to regulate the convergence technology Internet Protocol television (IPTV). In 2008, the newly formed Korea Communications Commission (KCC) began issuing implementing regulations and established the Framework Act on Broadcasting and Communications Development in 2010. The U.S. Government is closely monitoring this process with regard to transparency and due process. U.S. companies view some of the licensing requirements under discussion as market restricting (*e.g.*, applying content quotas to real time IPTV).

INVESTMENT BARRIERS

Capital market reforms have eliminated or raised ceilings on aggregate foreign equity ownership, individual foreign ownership, and foreign investment in the government, corporate, and special bond markets. These reforms have also liberalized foreign purchases of short-term financial instruments issued by corporate and financial institutions. Some U.S. investors have raised concerns, however, about a lack of transparency in investment-related regulatory decisions, including by tax authorities, highlighting concerns about possible discrimination.

Korea maintains a 49 percent limit on foreign shareholdings of facilities-based telecommunications operators. Foreign investment is not permitted in terrestrial broadcast television operations, and the Korean government also restricts foreign ownership of cable television-related system operators, network operators, and program providers to 49 percent. In March 2011, restrictions on previously closed areas were relaxed to 20 percent for program providers of channels that carry a range of programs and 10 percent for specialized news channels. For satellite broadcasts, foreign participation is limited to 33 percent. Foreign satellite retransmission channels are limited to 20 percent of the total number of operating channels. For Internet multimedia or news-focused broadcasting and retransmission cable networks, foreign investment is limited to 20 percent. Under KORUS, within two years from entry into force Korea will permit U.S. companies to own up to 100 percent of a telecommunications operator in Korea.

In addition to the investment restrictions in telecommunications and key services sectors described above, Korea maintains other important restrictions on foreign investment. Specifically, Korea prohibits foreign investment in rice and barley farming and imposes a 50 percent foreign equity limitation on meat wholesaling. Moreover, Korea limits foreign investment in electric power generation, distribution, and sales to 50 percent. It also restricts foreign investment in the areas of news agency services and publishing and printing, where it has foreign equity limitations of 30 percent for enterprises publishing newspapers and 50 percent for enterprises publishing other types of periodicals.

In July 2009, the Finance Ministry announced plans to sell a number of state-owned companies, including Korea Real Estate (KOREIT), Grand Korea Leisure Corporation, Farmland Improvement & Modernization, Korea Asset Investment Trust Co. Ltd., Korea District Heating Corp., and Korea Power Engineering Co. Since then, the Korea Stock Exchange listed the Korea District Heating Corporation in

January 2010 while other privatizations are still in process. The government continues to postpone its separate plans to privatize Woori and KDB financial holding companies due to global financial conditions. (*See the Industrial Subsidies section for detail on developments related to the Korea Development Bank.)*

The Korean government also operates several Free Economic Zones (FEZs) and has provided a range of investment incentives including tax breaks, tariff-free importation, relaxed labor rules (primarily exemptions from workforce quotas for disabled and older workers, and mandatory paid leave), and improved living conditions for expatriates in areas such as housing, education, and medical services. The Korean government has promoted these zones as an important step in making Korea's business environment more open, liberal, and responsive to economic needs.

ANTICOMPETITIVE PRACTICES

The Korea Fair Trade Commission (KFTC) has played an increasingly active role in enforcing Korea's competition law and in advocating for regulatory reform and corporate restructuring. In addition to its authority to conduct investigations and to impose penalties, including broad authority over corporate and financial restructuring, the KFTC can levy heavy administrative fines for violations or for failure to cooperate with investigations.

A number of U.S. companies have expressed concerns that respondents in KFTC investigations have not been afforded a sufficient opportunity to review and respond to the evidence against them, including an opportunity to cross examine those who testify in KFTC investigatory hearings. Concerns have also been raised that procedural rules for KFTC hearings have not been sufficiently transparent and that the KFTC lacked authority to enter into settlement agreements with respondents by mutual agreement.

The KFTC has taken some steps to address these concerns. In September 2011, procedural rules were modified to extend from two weeks to three weeks the deadline by which respondents can submit a formal rebuttal to the KFTC staff's report recommending enforcement action. Additionally, new procedures and criteria for closed hearings and decision-making were added. Under an amendment to the Monopoly Regulation and Fair Trade Act passed in December 2012 to implement provisions of the KORUS FTA, the KFTC has been given authority to enter into settlement agreements with respondents, as of March 15, 2012 when KORUS entered into force. In an attempt to curb illegal abuse of investigative power on the ground, the KFTC also introduced an Ombudsman to respond to problems experienced by businesses during investigations. In March 2009, the KFTC amended its regulations to expand the rights of respondents by allowing respondents to request a resumption of hearings to submit new evidentiary material or if the complexity of the case warrants additional hearings. Furthermore, the examiner's recommended sanction (including details of the surcharge calculation) is now provided in most cases to the respondent along with the examiner's report. The KFTC also amended regulations to increase its operational transparency, requiring examiners to inform claimants promptly of its conclusions and the grounds for those conclusions.

OTHER BARRIERS

Regulatory Reform and Transparency

Korea has improved its rulemaking and regulatory system in recent years. However, inconsistent implementation and a lack of transparency cut across various issues affecting U.S. firms in many different sectors. This continues to be one of the principal problems cited by U.S. businesses seeking to compete in the Korean market.

Korea's Administrative Procedures Act (APA) stipulates that the public comment period for draft regulations subject to the APA shall be no less than 20 days. However, in many cases, the 20 day minimum is insufficient. In addition, in many instances the final versions of regulations do not reflect the comments provided and often offer no explanation for why they were rejected. Under KORUS, the minimum comment period will be increased to 40 days, and other transparency-related obligations will take effect, including the obligation to address significant, substantive comments received and to explain substantive revisions made in any final regulation.

Motor Vehicles

Increased access to Korea's automotive market for U.S. automakers remains a key priority for the U.S. Government. Korea maintains an eight percent tariff and a range of nontariff barriers, such as taxes based on engine size, unique standards, inadequate regulatory transparency, and an inadequate ability of stakeholders to provide input at an early stage into the development of regulations and standards. KORUS, together with a February 10, 2011 Exchange of Letters between the United States and Korea, contains provisions designed to address many of these nontariff barriers and will contribute greatly to leveling the playing field for U.S. automobiles in the Korean market.

Korea enacted regulations for motor vehicle average fuel economy standards and greenhouse gas emission standards in June 2011. These regulations contain small-volume manufacture provisions that permit standards 19 percent more lenient than the regular standard from 2012 to 2015 for manufacturers with sales of no more than 4,500 units in 2009. Korea also allows emissions credit sharing between passenger cars and SUVs, credit carryover, and offset purchases.

Motorcycles

Although progress has been made over the past several years to resolve U.S. concerns over Korea's noise standard on motorcycles, several market access issues remain including a highway ban on motorcycles, high tariff and tax levels, and the inability of motorcycle owners to obtain ownership titles and financing for a motorcycle purchase that uses the motorcycle as collateral. A 2011 study on the safety of motorcycles on highways commissioned by the Korean National Police highlighted inadequacies in Korea's regulatory and safety practices surrounding the licensing of motorcycle drivers and the proliferation of young, untrained motorcycle riders driving dangerously on city streets. The U.S. Government maintains that heavy motorcycles riding on highways do not pose the same safety concerns as do riders of smaller, lighter motorcycles, and continues to urge Korea to eliminate the ban on riding large motorcycles on highways.

Pharmaceuticals

Cost containment measures under the Drug Expenditure Rationalization Plan (DERP), enacted in December 2006, continue to subject pharmaceutical products to downward price revisions. This affects not only drugs that have entered the market since DERP was adopted, but also products that were approved for reimbursement prior to DERP's adoption. The U.S. Government continues to urge Korea to refrain from implementing reimbursement policies that discourage companies from efficiently introducing advanced medical products to the Korean market and that serve as a disincentive to investment in research and development.

In November 2011, Korea's Ministry of Health and Welfare (MOHW) announced a new drug pricing reduction plan, which will impose significant price cuts on off-patented and generic drugs. U.S. industry expressed its concerns with this policy. The U.S. Government has urged Korea to seriously consider stakeholders' concerns and ensure that pharmaceutical pricing is conducted in a fair, transparent, and nondiscriminatory manner, and MOHW has shown willingness to consider some stakeholder comments. The U.S. Government will continue to monitor the situation closely in 2012.

Under KORUS, any new Korean regulations related to pricing and reimbursement of pharmaceuticals will be published in advance for notice and comment, and the Korean government will be required to respond to public comments in writing and explain any substantial changes it makes when the regulation becomes final.

Medical Devices

U.S. companies have continued to express concern that the lack of full transparency in the regulation of pricing and reimbursements has impeded efficient introduction of medical devices to the Korean market.

In February 2011, MOHW published a pricing plan for medical devices based on import price (for imported products) or manufacturing cost (for domestic products) and began phasing in its implementation in May. U.S. industry has raised concerns regarding this new pricing plan, in particular the concern that an import price is not an accurate reflection of the value of a product. The U.S. Government has also expressed its concern that the pricing of medical devices should be determined in a fair, non-discriminatory, and transparent manner and urged MOHW to engage directly with concerned stakeholders to address their concerns.

KORUS includes, among other things, provisions to ensure that Korea's pricing and reimbursement decisions for pharmaceutical products and medical devices appropriately recognize the value of innovation. The agreement's provisions call for that the processes for making these decisions to be conducted in a transparent manner and include sufficient notice and comment periods for legal and regulatory changes.

KUWAIT

TRADE SUMMARY

The U.S. goods trade deficit with Kuwait was $5.1 billion in 2011, up $2.5 billion from 2010. U.S. goods exports in 2011 were $2.7 billion, down 1.7 percent from the previous year. Corresponding U.S. imports from Kuwait were $7.8 billion, up 45.1 percent. Kuwait is currently the 57th largest export market for U.S. goods.

The stock of U.S. foreign direct investment in Kuwait was $1.5 billion in 2010 (latest data available), up from $1.4 billion in 2009.

IMPORT POLICIES

Tariffs

As a member of the Gulf Cooperation Council (GCC), Kuwait applies the GCC common external tariff of five percent for most products. Tobacco products are subject to a 100 percent tariff.

Import Prohibitions and Licensing

Kuwait prohibits the importation of alcohol and pork products, and requires a special import license for firearms. Used medical equipment and used automobiles over five years old generally cannot be imported. The import of books, periodicals, or movies that insult religion and public morals, and all materials that promote political ideology is prohibited.

All imported beef and poultry products must have a health certificate issued by the country of export and a *halal* food certificate issued by an approved Islamic center in that country. Kuwait plans to adopt a new law requiring for the Halal Food Certificate, which was ratified by the GCC Standardization Organization (GSO) in its meeting in August 2010. The new certificate requires detailed information on the imported *halal* products, including the name and identification number of the accreditation body, country of origin, sample details, health certificate number, *halal* certificate number, and producing plant. Kuwait will begin enforcing the new requirements after the new law has been ratified by Parliament. A workshop for importers to discuss implementation of the new certification was held in November 2011, but no updates have been released.

Acting on outdated information, in 2004, Kuwaiti Customs prohibited all types of live fowl, one day old layer and broiler chicks, and hatching eggs, from Missouri and Minnesota, based on a recommendation from the Public Authority for Agriculture and Fish Resources. In 2007, Kuwait lifted the import ban on pet birds only. In September 2011, the ban on live poultry and derivatives from Missouri was lifted. In December 2011, Kuwait published the decree lifting the ban on live birds, hatching eggs, and day old chicks from Minnesota.

In June 2011, Kuwait placed a ban on all frozen and chilled poultry from the United States in response to the incidence of low pathogenic Avian Influenza in certain regions of the United States. On January 10, 2012, the official decree lifting the ban on frozen or chilled poultry was published.

Since 2003, Kuwaiti Customs banned imports of ruminant animals, including domestic cattle, bison, buffaloes, camels, llamas, giraffes, deer, pronghorns, antelopes, sheep, and goats. Specifically, live cattle from Alabama have been banned since 2006.

Customs

The import clearance process in Kuwait has historically been time-consuming, requiring extensive paperwork and involving numerous redundancies. In 2010, the Ministry of Commerce and Industry formed a separate committee to focus on trade facilitation and streamlining required paperwork. In September 2011, this committee submitted a proposal to the Kuwaiti Cabinet Council to establish a one-stop shop that would facilitate the issuance of commercial licenses and streamline required documentation. The proposal is pending review by the council and no timeline has been established for its completion.

GOVERNMENT PROCUREMENT

Kuwait's government procurement policies require the purchase of local products, where available, and prescribe a 10 percent price advantage for local firms in government procurement.

Procurement by the Kuwaiti government and its agencies is regulated by Law No. 37 of 1964 concerning Public Tenders, in which any procurement made by the Kuwait government with a value in excess of KD5,000 (approximately $18,000) must be conducted through the Central Tenders Committee.

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

INTELLECTUAL PROPERTY RIGHTS PROTECTION

Kuwait was listed on the Watch List in the 2011 Special 301 Report. The United States welcomes continued progress on enforcement against copyright piracy and trademark counterfeiting. However, there are areas of intellectual property rights (IPR) protection and enforcement that continue to represent barriers to U.S. exports and investment. Key issues cited in the report include the lack of deterrent criminal penalties and excessive delays in the enactment of key pieces of IPR-related legislation, which have been pending for years. The draft law is currently under review. The United States provided comments on the most recent version of the draft law in September 2011 and continues to encourage Kuwait to pass the necessary IPR-related legislation and improve its enforcement efforts.

The six Member States of the GCC are working to harmonize their IP regimes. In connection with that effort, the GCC recently approved a common trademark law. Each Member State is expected to adopt that law. The United States has established a dialogue with GCC technical experts to discuss this law and other Customs Union efforts regarding IPR.

SERVICES BARRIERS

Banking

Foreign banks are restricted to opening only one branch, offering investment banking services only, and are prohibited from competing in the retail banking sector. Furthermore, foreign banks are subject to a maximum credit concentration equivalent of less than half the limit of the largest local bank and are expressly prohibited from directing clients to borrow from external branches of their bank or taking any other measures to facilitate such borrowing.

INVESTMENT BARRIERS

Major barriers to foreign investment in Kuwait include regulations that limit the foreign participation in the petroleum and real estate sectors; long bureaucratic delays associated with starting new enterprises; and obstacles created by a business culture heavily influenced by clan and family relationships.

OTHER BARRIERS

Corporate Tax Policies

Arbitrary tax assessments are a continuing complaint of foreign companies operating in Kuwait. In 2005, a number of foreign corporations with local distributors received income tax bills from Kuwaiti tax authorities, even though these companies had no direct commercial presence in Kuwait. Some of these companies have challenged the tax bills in court, and others are working with the U.S. and Kuwaiti governments to seek a legislative or regulatory solution.

LAOS

TRADE SUMMARY

The U.S. goods trade deficit with Laos was $33 million in 2011, down $14 million from 2010. U.S. goods exports in 2011 were $26 million, up 117.5 percent from the previous year. Corresponding U.S. imports from Laos were $59 million, down 0.4 percent. Laos is currently the 184th largest export market for U.S. goods.

Laos applied for WTO membership in 1997 and is in the accession process.

IMPORT POLICIES

Tariffs

Under the terms of the United States-Laos Bilateral Trade Agreement (BTA), which entered into force on February 4, 2005, the United States granted Normal Trade Relations treatment to products of Laos, and Laos committed to provide U.S. exports with preferential tariff rates on a range of products and to apply most favored nation (MFN) treatment to the remainder of imports from the United States. The United States continues to monitor the application of the BTA and MFN tariff rates to U.S. products.

Nontariff Barriers

Import Restrictions and Licensing Requirements: All imports are subject to licensing requirements, and most licenses are non-automatic. Among the wide range of products subject to non-automatic licenses are food and animal feeds, fuels and lubricants, steel bars for construction, print and audiovisual material, cement, and motor vehicles. Only firms licensed as import companies are permitted to import goods into Laos.

Customs: Nearly every container that enters Laos at a formal border checkpoint is inspected, and foreign businesses regularly complain of irregularities and corruption in the clearance process. A large proportion of goods enter Laos informally due to weak border control. Customs procedures in Laos have improved since the introduction of the ASEAN Harmonized Tariff Nomenclature, but a large number of approvals and informal payments are often still required to get through the process. Laos was unable to fully implement transaction value processes by the end of 2011, although administrative pricing is being phased out. As part of its WTO accession process, Laos has committed to full implementation by mid-2012.

Taxes: In 2010, Laos introduced a Value Added Tax (VAT), which is still in transition from the former turnover tax. Under the VAT regime, a VAT of 10 percent is charged on most goods and services when they are supplied in Laos by registered VAT taxpayers. The same VAT rate applies to most imports of goods and services, though some goods and services are exempt. Lao-based businesses with an annual turnover of at least 400 million kip (approximately $50,000) are obliged to register for, and comply with, the VAT. The same requirement applies to businesses not based in Laos that supply goods or services in the country, regardless of their annual turnover.

INTELLECTUAL PROPERTY RIGHTS PROTECTION

Laos is working to modernize its intellectual property rights (IPR) regime, but currently provides inadequate levels of IPR protection. Its weak IPR enforcement, which results from a lack of government coordination, insufficient resources, and an absence of implementing measures, continues to discourage U.S. trade and investment. As of December 2011, Laos was undertaking a revision of the Intellectual Property Law with the goal of passing comprehensive intellectual property legislation. Laos has received significant assistance from the U.S. Government in reforming the Intellectual Property Law in order to implement fully its obligations under the BTA and eventually the WTO Agreement on Trade-Related Aspects of Intellectual Property Rights. Among other things, Laos must establish a system of civil litigation and criminal enforcement in order to fully implement its commitments under these agreements.

SERVICES BARRIERS

Education

The Lao government prohibits foreign entities from providing education services in Laos. The Ministry of Education closely monitors the ideological content of curricula.

INVESTMENT BARRIERS

Laos has a challenging investment climate due to a weak rule of law, opaque regulations, and inefficient infrastructure and services, particularly financial services. The documentation required by the Lao government for foreign businesses remains burdensome and effectively separates business activity into foreign and domestic categories. Laos still requires a feasibility study for investment by foreign businesses.

The Lao government requires an annual renewal of a Lao business license, which is contingent on certification that all taxes have been paid. However, taxes are often assessed in an inconsistent and nontransparent manner. U.S. companies have been denied necessary local business licenses, despite possessing valid national long-term investment permits. The U.S. Government continues to urge the Lao government to address these issues.

OTHER BARRIERS

Corruption remains a significant concern in Laos. Informal payments to low level officials to expedite time-sensitive applications, such as business licenses or importation of perishable items, are common. The National Assembly has attempted to address endemic corruption, but progress has been minimal. It passed implementing regulations for an anticorruption law in 2005, for example, but they have yet to be issued. Additionally, publicly available information on commercial law is lacking. The Lao government expects to address this deficiency with a “Law on Laws” during 2012.

MALAYSIA

TRADE SUMMARY

The U.S. goods trade deficit with Malaysia was $11.6 billion in 2011, down $267 million from 2010. U.S. goods exports in 2011 were $14.2 billion, up 1.0 percent from the previous year. Corresponding U.S. imports from Malaysia were $25.8 billion, down 0.5 percent. Malaysia is currently the 23rd largest export market for U.S. goods.

U.S. exports of private commercial services (*i.e.*, excluding military and government) to Malaysia were $2.1 billion in 2010 (latest data available), and U.S. imports were $1.2 billion. Sales of services in Malaysia by majority U.S.-owned affiliates were $4.3 billion in 2009 (latest data available), while sales of services in the United States by majority Malaysia-owned firms were $294 million.

The stock of U.S. foreign direct investment (FDI) in Malaysia was $16.0 billion in 2010 (latest data available), up from $13.2 billion in 2009. U.S. FDI in Malaysia is led by the manufacturing and banking sectors.

In December 2009, the United States announced its intention to enter into an Asia-Pacific trade agreement called the Trans-Pacific Partnership (TPP), with the objective of shaping a high standard, broad-based regional agreement. This agreement will create a potential platform for economic integration across the Asia-Pacific region, a means to advance U.S. economic interests with the fastest-growing economies in the world, and a tool to expand U.S. exports, which are critical to U.S. economic recovery and the creation and retention of high-paying, high-quality jobs in the United States. In addition to Malaysia, the TPP negotiating partners currently include Australia, Brunei, Chile, New Zealand, Peru, Singapore, and Vietnam. Japan, Canada, and Mexico also have expressed interest in joining the negotiations.

IMPORT POLICIES

Tariffs and Import Licensing Requirements

Almost all of Malaysia's tariffs are imposed on an *ad valorem* basis, with a simple average applied tariff rate of 7.4 percent. Duties for tariff lines where there is significant local production are often higher. In general, the level of tariffs is lower on raw materials than for value-added goods. U.S. companies believe that tariff reductions on such products as frozen french fried potatoes, restaurant equipment, and food and confectionary products would allow them to increase their exports significantly.

On roughly 80 products, most of which are agricultural goods, Malaysia charges specific duties that represent extremely high effective tariff rates. The simple average *ad valorem* equivalent across all products with a specific tariff is 392 percent. Distilled spirits and wine are subject to an effective tariff of up to 500 percent when import duties and excise taxes are combined. In addition, adjustments to excise taxes made each year as part of the budget process can raise costs sharply and make it difficult for U.S. companies to negotiate long-term supply contracts in the beverage, alcohol, and wine sector.

A large number of Malaysian tariff lines related to import-sensitive or strategic industries (principally in the construction equipment, agricultural, mineral, and motor vehicle sectors) are subject to non-automatic import licensing. Malaysia also maintains performance requirements that must be met to receive a customs waiver for operations in Foreign Trade Zones.

Tariff-Rate Quotas on Selected Agricultural Products

The Malaysian government maintains tariff-rate quota systems for 17 tariff lines, including live poultry, poultry meat, milk and cream, pork, and round cabbage. These products incur in-quota duties between 10 percent and 25 percent and out-of-quota duties between 40 percent and 168 percent.

Biotechnology Labeling

In July 2007, Malaysia's Parliament passed biosafety legislation that includes potentially trade restrictive language for biotechnology-derived commodities and processed products, including mandatory labeling and a strict liability and redress enforcement regime. On July 8, 2010, the Malaysian Ministry of Health posted amendments to the Food Regulations1985 [P.U. (A) 437/1985] that require strict mandatory labeling of food and food ingredients obtained through modern biotechnology. The amendments also include a requirement that no person shall import, prepare or advertise for sale, or sell any food or food ingredients obtained through modern biotechnology without the prior written approval of the Director of the Ministry of Health. The labeling regulation is scheduled to enter into force in July 2012. Use of the labels "GMO Free" or "Non-GMO" is not permitted. The labeling requirements only apply to foods and food ingredients obtained through modern biotechnology but not to food produced with GMO feed.

Import Restrictions on Motor Vehicles

Malaysia applies high tariffs in the automobile sector, and its National Automotive Policy (NAP) includes nontariff measures that significantly raise the cost of imported vehicles, including a nontransparent import permit and gazette pricing system, excise duties that disproportionately affect imported vehicles, and special tax reductions for vehicles with Malaysian-manufactured components.

The Malaysian National Automotive Policy maintains a system of "approved permits" (APs), which confer the right to import cars and motorcycles and distribute them in Malaysia. The AP system is administered in a nontransparent manner and in fact operates as a *de facto* import quota by restricting the total number of imported vehicles in a given year. Currently, the cap on imported vehicles is set at 10 percent of the domestic market. Although the previous NAP called for the phase out of the AP policy in 2010, the NAP was revised in 2010 so as to extend the policy through 2020. In 2011, the Malaysian government began another review of the NAP, but has provided no details on the scope and timing of the review process.

In addition to the cap on imported automobiles imposed through the AP system, other policies further limit the competitiveness of U.S. automobiles. The Malaysian government establishes the value of imported automobiles by an official gazette price, which then serves as the basis for substantial import duties and excise taxes. In contrast, through the use of the Industrial Adjustment Fund, the Malaysian government provides credits for the domestic content in locally assembled vehicles, which substantially lowers the tax burden on domestic products. The combined effect of these policies is to ensure that the number of imported vehicles is small, and the price of imported vehicles is substantially higher than that of domestically produced automobiles.

Pork Import Licensing

Malaysia's Department of Veterinary Services (DVS) requires a permit for all pork imports. In 2011, Malaysian officials instituted a series of measures that further seriously restricted imports of U.S. pork. In June 2011, DVS declared that all establishments seeking to export pork to Malaysia must complete an extensive and burdensome application form and submit to an individual plant audit by DVS. Companies seeking to export to Malaysia are required to pay a fee for each plant audited. Malaysia also expects industry or the government in the exporting country to pay all associated expenses for the Malaysian inspectors. Plant approvals may be valid for up to two years, after which time Malaysia would require a new application and audit. In May 2011, DVS also prohibited the importation of pork bellies and pork spare ribs into Malaysia. The ban would have decreased the already limited number of pork products that may be imported to Malaysia from 10 to 8. Since that time, Malaysia has stated that it will impose a new quota system for pork bellies and spare ribs, but that until such time as individual plants are inspected and approved, these products cannot be imported.

EXPORT TAXES

Malaysia is the second largest producer and exporter of palm oil and products made from palm oil. Malaysia's palm oil production accounts for approximately 15 percent of world production and its exports account for 30 percent of world trade in vegetable oils. Malaysia uses export taxes of 10 percent to 30 percent *ad valorem* to discourage the export of crude palm oil and to encourage development of the local refinery sector. Refined palm oil and products are not subject to export taxes. The Malaysian government waives export taxes on exports of crude palm oil to Malaysia-invested foreign vegetable oil refineries, giving Malaysia-invested plants an advantage in foreign markets, including the United States.

GOVERNMENT PROCUREMENT

Malaysia has traditionally used procurement to support national public policy objectives. These objectives include encouraging greater participation of *bumiputera* (native Malays) in the economy, transferring technology to local industries, reducing the outflow of foreign exchange, creating opportunities for local companies in the services sector, and enhancing Malaysia's export capabilities. International tenders generally are invited only where domestic goods and services are not available. In domestic tenders, preferences are provided for *bumiputera* suppliers and other domestic suppliers. In most procurements, foreign companies are required to take on a local partner before their tenders will be considered. Many state-owned enterprises in Malaysia also apply procurement policies that favor *bumiputera* suppliers. The U.S. Government continues to raise concerns about the nontransparent nature of the procurement process in Malaysia.

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

EXPORT SUBSIDIES

Malaysia maintains several programs that appear to provide subsidies for exports. The revised National Automotive Policy (NAP) increases the income tax exemption for high value-added exports of motor vehicles and parts. The income tax exemption is based on the percentage increase in value-added of exports. In 2006, the United States submitted questions to Malaysia, pursuant to Article 25.8 of the WTO Agreement on Subsidies and Countervailing Measures, requesting that Malaysia provide further information regarding several programs, some of which appeared to be prohibited export subsidies. These include NAP, Single or Double Deduction for the Promotion of Exports, Tax Exemption on the Value of Increased Exports, Market Development Grants, Tax Exemption for Malaysia International Trading Company and Free Industrial Zones. Malaysia provided answers to the U.S. questions in September 2010, but numerous issues remain. Moreover, under the Central Bank's export credit refinancing scheme, commercial banks and other lenders provide pre-shipment and post-shipment financing to all exporters at a preferential rate.

INTELLECTUAL PROPERTY RIGHTS PROTECTION

Malaysia continues to demonstrate a commitment to protecting and enforcing intellectual property rights (IPR) and to pursuing needed legislative and regulatory improvements, and has made important progress with respect to the protection and enforcement of IPR in the past few years. In December 2011, the Malaysian Parliament passed amendments to the copyright law designed, among other things, to implement the WIPO Internet Treaties and prohibit unauthorized camcording of motion pictures in theaters. In addition, the Ministry of Domestic Trade, Cooperatives, and Consumerism (MDTCC) took steps to enhance Malaysia's enforcement regime, including through active cooperation with rights holders on matters pertaining to IPR enforcement, ongoing training of prosecutors for specialized IPR courts, and the reestablishment of a Special Anti-Piracy Taskforce. In recent years, the MDTCC has also instructed its enforcement division to begin to take *ex officio* action, resulting in significant seizures of pirated products. In 2011, MDTCC launched its "Basket of Brands" initiative, a voluntary program where participating trademark holders receive more proactive protection efforts in exchange for a commitment to testify in any resulting prosecutions.

Still, IPR concerns remain, and Malaysia remained on the Special 301 Watch List in 2011. The Special 301 report included reports of continued availability of pirated and counterfeit products in Malaysia. U.S. companies also report continued high rates of piracy over the Internet, although in June 2011 the Malaysian government took action to block access to several pirate websites. Book piracy also remains a problem. The United States has encouraged Malaysia to accede to the WIPO Internet Treaties and the Budapest Treaty. In addition, the United States has urged Malaysia to provide effective protection against unfair commercial use, as well as unauthorized disclosure, of undisclosed test or other data generated to obtain marketing approval for pharmaceutical products, and to provide an effective system to address patent issues expeditiously in connection with applications to market pharmaceutical products.

SERVICES BARRIERS

The services sector constitutes 45 percent of the national economy and has been a key driver of economic and job growth in Malaysia in recent years. In an effort to establish a knowledge-based services economy, Malaysia aims to increase the services sector to around 60 percent of GDP by 2020. In 2009, the Malaysian government announced a limited set of liberalization measures covering 27 service subsectors. In 2011, it announced plans to further liberalize 17 services subsectors in phases during 2012. These include private hospital services; medical and dental specialist services; architecture, engineering, accounting, taxation, and legal services; courier services; education and training services; as well as telecommunications services. Under this plan, Malaysia will allow up to 100 percent foreign equity participation in selected subsectors, although specific limits and other details have not yet been announced.

Telecommunications

Malaysia made limited GATS commitments on most basic telecommunications services and partially adopted the WTO reference paper on regulatory commitments. As reflected in Malaysia's GATS commitments, foreign companies are allowed to acquire only up to a 30 percent equity stake in existing licensed public telecommunications operators and foreign participation is limited to facilities-based suppliers. In certain instances Malaysia has allowed greater than 30 percent equity participation in the telecommunications sector, but the manner in which such exceptions are administered is nontransparent and is perceived by foreign suppliers as arbitrary. In some cases, firms permitted to invest up to a certain equity limit have subsequently been asked to divest to lower foreign equity levels. However, Malaysia has announced that in April 2012 foreign companies will be permitted to receive licenses as an applications service, network facilities or network service provider, at equity levels generally above what Malaysia committed to in the WTO.

Distribution Services, including Direct Selling

Guidelines governing certain distribution services include requirements for the sale of locally produced products. Under revised guidelines issued in 2010, department stores, supermarkets, and hypermarkets are required to reserve at least 30 percent of total stock-keeping units and 30 percent of shelf space in their premises for goods and products manufactured by *bumiputera*-owned small and medium size industries. Malaysia also requires that foreign-owned large retailers ("hypermarkets") and locally incorporated direct selling companies must have 30 percent *bumiputera* equity. In addition, the Malaysian government issues "recommendations" for local content targets, which are in reality mandatory. Domestic companies that seek direct selling licenses require paid-in capital of RM1.5 million (approximately $397,000), while companies with foreign shareholders must have paid-in capital of RM5 million (approximately $1.3 million).

Legal Services

Foreign lawyers may not practice Malaysian law, nor may they affiliate with local firms or use the name of an international firm. Foreign law firms may not operate in Malaysia except as minority partners with local law firms and their stake in any partnership is limited to 30 percent. The Attorney General of Malaysia has authority to grant limited exceptions on a case-by-case basis to non-Malaysian citizens or permanent residents who have apprenticed with a Malaysian lawyer, are competent in *Bahasa* Malay (the official language), and have a local law degree or are accredited British Barristers at Law, provided the applicant has seven years of legal experience. Malaysian law does not allow for foreign legal consultancy except on a limited basis in the Labuan International Offshore Financial Center *(see section on "Financial Services" below)*.

However, liberalization in the legal services sector is expected to begin in 2012 with the passage of pending amendments to the relevant laws governing the legal profession. These amendments are expected to permit the establishment of international joint ventures for certain areas of practice. This liberalization initiative, however, will only be applicable to Peninsular Malaysia.

Architectural Services

Foreign architectural firms currently may operate in Malaysia only as a joint venture participant in a specific project with the approval of the Board of Architects. Malaysian architectural firms may not have foreign architectural firms as registered partners. Foreign architects may not be licensed in Malaysia, but are allowed to be managers, shareholders, or employees of Malaysian firms. When liberalization is implemented in 2012, 100 percent foreign equity in architectural firms will be allowed.

Engineering Services

The engineering sector is scheduled to be liberalized in 2012, once pending amendments to relevant Acts have been passed. Until then, foreign engineers may be licensed by the Board of Engineers only for specific projects and must be sponsored by the Malaysian company carrying out the project. In general, a foreign engineer must be registered as a professional engineer in his or her home country, have a minimum of 10 years of experience, and have a physical presence in Malaysia of at least 180 days in each calendar year. To obtain temporary licensing for a foreign engineer, a Malaysian company often must demonstrate to the Board that they cannot find a Malaysian engineer for the job. Foreign engineers are not allowed to operate independently of Malaysian partners or serve as directors or shareholders of an engineering consulting company. A foreign engineering firm may establish a non-temporary commercial presence if all directors and shareholders are Malaysian. Foreign engineering companies may collaborate with a Malaysian firm, but only the Malaysian company may submit the plans for domestic approval.

Accounting and Taxation Services

All accountants seeking to provide auditing and taxation services in Malaysia must register with the Malaysian Institute of Accountants (MIA) before they may apply for a license from the Ministry of Finance. Citizenship or permanent residency is required for registration with the MIA. According to the most recent liberalization plan, foreign accountants and auditors were to be allowed to wholly own a practice in Malaysia beginning in January 2012, but to date this aspect of the plan has not been implemented.

Financial Services

In 2009, the Malaysian government announced a liberalization package for the conventional and Islamic financial sectors, but equity limits continue to broadly apply in many areas. Bank Negara Malaysia (BNM) sets controls on both foreign and local financial products. Interest rates on consumer savings accounts and fixed deposits are mandated and significantly higher than in other Asian countries. Fees on transactions are determined by the Association of Banks, but they are not permitted to change these fees without BNM approval. Credit card interest rates are capped at 18 percent *per annum*. Foreign banks are not allowed to open Ringgit Correspondent Bank Accounts with local banks. Consequently, local banks are hesitant to partner with foreign banks to provide seamless services to U.S. multinationals.

As part of the 2009 liberalization, foreign equity limits were increased from 49 percent to 70 percent for domestic Islamic banks, investment banks, insurance companies, and Islamic insurance operators. However, no new licenses are being granted for insurance companies. Foreign equity above 70 percent is considered on a case-by-case basis for insurance companies if the investment is determined to facilitate the consolidation and rationalization of the insurance industry. Foreign equity of 70 percent is allowed for unit trust management companies providing retail services and for stock broking companies. Foreign equity of 100 percent is allowed for fund management companies providing wholesale services. Currently, mutual fund providers are restricted from being able to enter Malaysia and market or sell their products. International fund managers have to go through a local fund provider, which then establishes a "feeder" arrangement. Reinsurance companies are required to do more than 50 percent of their reinsurance activities in Malaysia and have 5 percent cession and local retention. Foreign companies are required to obtain a separate license in order to be able to offer "*Takaful*" (Islamic insurance products). In 2005, BNM made available five licenses for foreign stockbrokers and other asset managers. Only one license has been issued so far. The central bank currently allows foreign banks to open four additional branches throughout Malaysia, subject to restrictions, which include designating how the branches can be set up (*i.e.*, in market centers, semi-urban areas and non-urban areas). The policies do not allow foreign banks to set up new branches within 1.5 kilometers of an existing local bank.

Audiovisual and Broadcasting

The Malaysian government maintains broadcast content quotas on both radio and television programming. Eighty percent of television programming must originate from local production companies owned by ethnic Malays, and 60 percent of radio programming must be of local origin. Foreign investment in terrestrial broadcast networks is prohibited and is limited to a 20 percent equity share in cable and satellite operations. As a condition for obtaining a license to operate, video rental establishments are required to have 30 percent local content in their inventories.

INVESTMENT BARRIERS

Foreign investment in key sectors, including telecommunications, financial services, professional services, petroleum and gas, and mining, is subject to extensive restrictions, including in some cases prohibitions or limitations of foreign equity (generally capped at 30 percent) and requirements that foreign firms enter into joint ventures with local partners. The Ministerial Functions Act grants relevant ministries broad discretionary powers over the approval of specific investment projects. While investors in industries targeted for foreign investment by the government often can negotiate favorable terms with ministries or other regulatory bodies (including case-by-case waivers of certain regulations), investors in non-targeted industries face a complex web of regulations and policies, navigation of which can be an obstacle to investment.

Malaysia's complex network of preferences to promote the acquisition of economic assets by ethnic Malays and other indigenous groups are another obstacle to investment. The details of implementation are largely left to individual ministries, and policies and practices vary greatly. Some practices are explicit and contained in law or regulation while others are informal, leaving much ambiguity for potential investors. One of the Malaysian government's preference policies has been a requirement that foreign non-manufacturing and all domestic firms take on *bumiputra* partners. Prior to 2009, if a company sought public listing on the Bursa Malaysia (formerly Kuala Lumpur Stock Exchange), it was required to reserve at least 30 percent of its initial public offering for purchase by *bumiputra*. In 2009, the Malaysian government eased foreign ownership limits for 27 services subsectors, reducing *bumiputra* ownership requirements for new listings from 30 percent to 12.5 percent. However, *bumiputra* equity remains a consideration when companies apply for an array of required permits and licenses, many of which must be renewed either annually or biennially.

The Malaysian Industrial Development Authority screens all proposals for manufacturing and related projects in Malaysia, both foreign and domestic, to determine the extent to which they contribute to the government's goals and objectives, as outlined in the Third Industrial Master Plan (2006 to 2020), and related regional initiatives. Numerous other factors inform project approval, including the size of an investment, the export-orientation of production, the capital/labor ratio, the potential for technological diffusion into the local economy, and the ability of existing and planned infrastructure to support the effort. If both local and foreign firms propose similar projects, the local firm will be given preference. Applications for investment in sectors other than manufacturing are handled by the relevant ministries and sometimes require multiple approvals.

Investment regulations are specified in the Promotion of Investments Act of 1986 (PIA) and the Industrial Coordination Act of 1975. The PIA does not address services investment. The Malaysian government pledged in 2004 to replace the PIA with a more concise law covering investments in both manufacturing and services, but has yet to do so.

OTHER BARRIERS

Transparency

The lack of transparency in government decision-making and procedures continues to frustrate U.S. companies doing business in Malaysia. No systematic process exists for publishing draft regulations for comment, and draft legislation is rarely available to the public before it is formally introduced in Parliament.

Fighting corruption has been identified as a high a priority in Malaysia's Government Transformation Program. The Malaysian Anti-Corruption Commission, which is part of the Office of the Prime Minister, is authorized to conduct investigations and prosecute cases with the approval of the Attorney General. Malaysia's anticorruption legislation makes bribery of both domestic and foreign public officials a criminal offense.

MEXICO

TRADE SUMMARY

The U.S. goods trade deficit with Mexico was $65.6 billion in 2011, down $873 million from 2010. U.S. goods exports in 2011 were $197.5 billion, up 20.8 percent from the previous year. Corresponding U.S. imports from Mexico were $263.1 billion, up 14.4 percent. Mexico is currently the second largest export market for U.S. goods.

U.S. exports of private commercial services (*i.e.*, excluding military and government) to Mexico were $24.1 billion in 2010 (latest data available), and U.S. imports were $13.7 billion. Sales of services in Mexico by majority U.S.-owned affiliates were $30.5 billion in 2009 (latest data available), while sales of services in the United States by majority Mexico-owned firms were $3.1 billion.

The stock of U.S. foreign direct investment (FDI) in Mexico was $90.3 billion in 2010 (latest data available), up from $89.4 billion in 2009. U.S. FDI in Mexico is primarily concentrated in the manufacturing, nonbank holding companies, and finance/insurance sectors.

NORTH AMERICAN FREE TRADE AGREEMENT

The North American Free Trade Agreement (NAFTA), signed by the United States, Canada, and Mexico, entered into force on January 1, 1994. Under this free trade agreement, NAFTA countries progressively eliminated tariffs and nontariff barriers to trade in goods among them, provided improved access for services, established strong rules on investment, and strengthened protection of intellectual property rights. After signing the NAFTA, the United States, Canada, and Mexico concluded supplemental agreements on labor and environment. Under these agreements, the parties are, among other things, obligated to effectively enforce their environmental and labor laws. The agreements also provide frameworks for cooperation among the parties on a wide variety of labor and environmental issues.

IMPORT POLICIES

Tariffs and Market Access

Pursuant to the terms of the NAFTA, on January 1, 2003, Mexico eliminated tariffs on all remaining industrial and most agricultural products imported from the United States. On January 1, 2008, Mexico eliminated remaining tariffs and tariff-rate quotas on all U.S. agricultural exports. *(See the section on agriculture below for additional details on specific farm products.)*

On March 18, 2009, in response to the U.S. cancellation of the United States-Mexico Cross Border Trucking Demonstration Project, Mexico imposed retaliatory tariffs on 89 types of U.S. goods totaling about $2.4 billion in exports from 40 U.S. states. On August 19, 2010, Mexico added some new products to the list of products subject to tariffs and removed others. The revised list included 99 types of products. Approximately 1.5 percent of U.S. exports to Mexico were affected by these tariffs. Retaliatory tariffs ranged from 5 percent on a few goods, including hams and toilet paper, to 25 percent on some cheeses. On March 3, 2011, President Obama and Mexican President Calderón announced that Mexico and the United States had found a path to resolving the cross-border long-haul trucking dispute. On June 10, 2011 USTR concluded an agreement with Mexico's Secretariat of Economy (SECON) regarding the suspension of the retaliatory duties. The U.S. Department of Transportation and Mexico's Secretariat of Communications and Transportation signed an agreement on July 6, 2011, that established a reciprocal, phased-in program, built on the highest safety standards that will authorize both Mexican and United States long-haul carriers to engage in cross-border operations. On July 8, pursuant to the USTR-SECON agreement, Mexico reduced the rate of retaliatory duties by half. On October 14, the first Mexican carrier received authorization to operate in the United States under the new program, and Mexico suspended completely the remaining retaliatory duties one week later.

Mexico imposes a value-added tax (VAT) on sales of goods and services. Certain food products are exempt from the VAT. U.S. producers have complained that, while Mexico imposes the VAT on imports of U.S. nutritional supplements, it does not collect the VAT on sales of similar domestic products.

Agricultural Products

The United States exported $18.4 billion in agricultural products to Mexico in 2011, compared to $14.6 billion in 2010. Mexico is the United States' third largest agricultural export market.

Historically, antidumping duties have hampered U.S. meat exports, with Mexican policies in this area having reduced the number of U.S. suppliers and altered product trading patterns, and it has been difficult for U.S. producers to regain market share once duties are lifted. Industry representatives assert that significant revenue was lost each year when antidumping duties were imposed on the beef sector from April 24, 2006 to when they were finally eliminated on August 11, 2010. On February 8, 2011, SECON announced an antidumping investigation on U.S. fresh, chilled, or frozen chicken leg quarters (CLQ). On January 19, 2012, SECON announced its preliminary determination in the antidumping investigation of U.S. CLQs. As this point, SECON has not imposed any compensatory duties on U.S. CLQs exported to Mexico. The U.S. government continues to monitor the situation while the U.S. poultry industry works with its counterparts in Mexico to resolve the matter prior to the imposition of any possible duties.

Administrative Procedures and Customs Practices

U.S. exporters continue to express concerns about Mexican customs' administrative procedures, including: insufficient prior notification of procedural changes; inconsistent interpretation of regulatory requirements at different border posts; alleged under-invoicing of agricultural products; and uneven enforcement of Mexican standards and labeling rules.

Numerous U.S. companies have reported in 2011 that the *Servicio de Administración Tributaria* (SAT), Mexico's tax authority, is verifying NAFTA origin for the entry of products dating back to 2007. While such verifications are permitted under NAFTA, the breadth of these audits and the extent of information being requested are reportedly overly burdensome and require the submission of business confidential information with no assurance that it will be protected from disclosure. In some cases, SAT has reportedly denied the exporter's claim of NAFTA preference even after the submission of documentation demonstrating that the products meet the agreement's rules of origin. The fines and penalties in such cases can be very high (in excess of $10 million), and there are substantial costs associated with complying with the audit and even greater legal costs for appealing the rulings.

Agricultural exporters note that Mexican inspection and clearance procedures for some agricultural goods are long, burdensome, and nontransparent. Customs procedures for express packages continue to be burdensome, although Mexico has raised the *de minimis* level (below which shipments are exempt from customs duties) from $1 to $50. Mexican regulations still hold the courier 100 percent liable for the contents of shipments. U.S. exporters have highlighted the benefits of harmonizing the hours of customs operation on the U.S. and Mexican sides of the border, but they cite delays stemming from the lack of pre-clearance procedures, which the Mexican government claims are not permitted under current law.

In May 2008, without prior notification of procedural changes, the Mexican government implemented a new requirement to test all chemical samples and shipments being sent to Mexico in gas, liquid, or powder form. While such samples previously could be sent by express delivery service companies, this is prohibited under the 2008 procedures, necessitating the additional cost of using a customs broker. Some chemical exporters report customs broker fees of $500. This barrier is having a detrimental effect on the competitiveness of U.S. exports of these products. The United States is working with Mexico and the Chemical Industry Association of Mexico to offer alternatives to this burdensome and expensive process. In 2009, to reduce delays and lower export costs, Mexico deployed devices at all 49 ports of entry along the United States-Mexico border in order to test chemical samples. Mexican customs is also considering the use of an importer registry for samples difficult to identify.

GOVERNMENT PROCUREMENT

The Mexican government uses several "electronic government" Internet sites to increase the transparency of government processes and to provide guidelines for the conduct of government officials. One such site, Compranet, provides an online interface for conducting government procurement at the federal level. Procurement transparency standards still need to be harmonized at the state level, however, to avoid corruption and to foster competition. There is a need for further regulatory and technological improvements throughout the Mexican government, and to provide authorities with more power to respond effectively to corruption and collusion.

In March 2011, the Mexican Senate approved President Calderón's Federal Anti-Corruption in Government Contracting initiative, which would impose penalties against national or foreign individuals and legal entities for irregular conduct (including bribes) during their direct or indirect participation in federal government procurement. The proposed fines range from $5,000 to $10,000,000 or 30 percent to 35 percent of the amount of the government contract. The Mexican Chamber of Deputies has not yet passed the legislation.

INTELLECTUAL PROPERTY RIGHTS PROTECTION

Mexico was listed on the Watch List in the 2011 Special 301 report. The report noted Mexico's improved enforcement efforts, but noted that overall piracy and counterfeiting rates remain high. Cooperation among enforcement issues has continued to improve, but coordination at the sub-federal level remains weak. Concerns also remained over enforcement procedures and the inconsistent issuance of deterrent penalties. The United States welcomed Mexico's passage of legislation in 2009 that would provide the Mexican Attorney General's office and certain Mexican enforcement officials with *ex officio* authority to prosecute intellectual property rights (IPR) infringement. Nevertheless, Mexico's judicial authority is still seeking to maximize the benefits of this legislation. *Ex officio* authority to customs officers has not been passed. The United States welcomed signs that Mexico may be prepared to move forward with additional legislation to strengthen its IPR regime, including an anti-camcording law and the implementation of the WIPO Internet Treaties. The United States encouraged Mexico to provide effective protection against unfair commercial use as well as unauthorized disclosure of undisclosed test or other data generated to obtain marketing approval for pharmaceutical products. The United States has encouraged Mexican authorities to improve Mexico's system to address patent issues in connection with applications to market pharmaceutical products, as the existing system has generated considerable litigation and uncertainty. The United States continues to work with Mexico to resolve IPR concerns through bilateral, regional, and other means of engagement.

Mexico was also an active participant in the Anti-Counterfeiting Trade Agreement (ACTA) negotiations, which were concluded in November 2010, but Mexico has not yet signed the agreement. The ACTA establishes an international framework that will assist parties in their efforts to effectively combat the infringement of IPR, in particular the proliferation of counterfeiting and piracy, which undermines legitimate trade and the sustainable development of the world economy.

SERVICES BARRIERS

Telecommunications

OECD surveys of Mexico have recommended improving mandatory access to the local loop, formally regulating fixed-to-mobile termination charges (which have been significantly reduced with the threat of regulation), and introducing mandatory roaming to enable smaller mobile companies to use Telcel's (Mexico's largest mobile phone company) network at a regulated price. The OECD also suggests that industry regulator Cofetel (the Federal Telecommunications Commission) needs greater independence both from leading companies in the sector and its parent ministry, the Secretariat of Communications and Transportation (SCT).

The Calderón Administration and the PRI, Mexico's opposition party, agree that increasing competition in Mexico's telecommunications sector is a priority, but implementing policies to this end continue to be a challenge. The Mexican company America Movil dominates both the fixed and mobile segments of the Mexican telecommunications market. A combination of weak regulatory oversight and an inefficient court process has meant that disputes involving this carrier, affecting terms of competition in the market, have lingered on for years. A recent Supreme Court decision making it more difficult to stay regulatory decisions on interconnection was a major step forward, however, and should result in smoother implementation of such orders in the future.

Although Cofetel has attempted on numerous occasions to set lower long distance and mobile termination rates, existing suppliers have used judicial proceedings to frustrate these efforts. SCT and Cofetel have attempted to avoid these difficulties by withholding approval for new services that Telmex seeks to supply until Telmex consents to enhanced competition for existing services. Cofeco, the Federal Competition Commission, has also sought to introduce greater competition. It concluded a formal investigation into Telmex and Telcel market dominance in 2010 by finding that these companies indeed have market dominance. This finding will give it authority to impose more stringent requirements on the companies.

A Mexican company with U.S. shareholders complained that as a result of an interconnection dispute, Telmex (America Movil's wireline subsidiary) unilaterally inserted a message into calls to the company's customers indicating that future calls might not be completed because of the dispute. Last year Telmex did remove the recording and recently implemented a commercial solution to pending interconnection disputes, which is an encouraging sign.

Although there have been several recent legislative attempts to open the Mexican fixed line telecommunications sector to increased foreign investment, which could increase opportunities for competitive providers, prospects for legislation are unclear. Currently, the Foreign Investment Law limits foreign ownership in the wireline segment to 49 percent. The restriction deprives new entrants of capital that a foreign entity could provide and hinders the development of the Mexican telecommunications network.

Under Mexican law, foreign companies must form joint ventures with Mexican partners to obtain authorizations (called "concessions" under Mexican law) to provide satellite-based services in Mexico. Mexico requires mobile satellite service operators to construct gateway earth stations in Mexico, ostensibly to satisfy security policies. This requirement serves as a barrier to market entry for new competitors, since such a requirement may make many services economically infeasible.

INVESTMENT BARRIERS

Mexico's oil and gas sector remains largely closed to private investment, with the exception of the liquefied natural gas sector, natural gas distribution, and the marketing of petroleum products. Only Mexican nationals may own gas stations.

The Mexican constitution mandates state ownership of hydrocarbons. Mexico's 2008 energy reform law gave Pemex more independence and allowed the company to tender incentive-based contracts for hydrocarbon exploration and production. Pemex awarded three such contracts in 2011 and has announced its intention to conduct further public tenders. Production-sharing or profit-sharing concessions are still prohibited.

Other laws limit participation in certain sectors or activities (*e.g.*, forestry) to Mexican nationals. Investment restrictions prohibit foreign ownership of residential real estate within 50 kilometers of the nation's coasts and 100 kilometers of its land borders (although foreigners may acquire use of residential property in these zones through trusts administered by Mexican banks). An interagency National Foreign Investment Commission reviews foreign investment in Mexico's restricted sectors, as well as investments in unrestricted sectors in which foreign equity exceeds 49 percent and which have a value greater than $165 million (adjusted annually based on Mexico's nominal Gross Domestic Product).

ANTICOMPETITIVE PRACTICES

Mexico revised its competition law in June 2006 to give Cofeco additional authority to regulate market concentration and anticompetitive behavior in both the private and public sectors. Cofeco has administrative enforcement powers, but no criminal enforcement powers. The head of Cofeco and key members of the Calderón administration have called for the opening up of sectors of the Mexican economy currently dominated by monopolies or duopolies, and some progress has been made *(see previous section on services barriers).* In April 2011, the Mexican Congress passed a law that grants Cofeco more authority to fight monopolies through stronger sanctions, surprise inspection visits, and temporary suspension of monopolistic practices.

MOROCCO

TRADE SUMMARY

The U.S. goods trade surplus with Morocco was $1.9 billion in 2011, an increase of $606 million from 2010. U.S. goods exports in 2011 were $2.9 billion, up 47.0 percent from the previous year. Corresponding U.S. imports from Morocco were $995 million, up 45.2 percent. Morocco is currently the 55th largest export market for U.S. goods.

The stock of U.S. foreign direct investment (FDI) in Morocco was $329 million in 2010 (latest data available), up from $317 million in 2009.

FREE TRADE AGREEMENT

The United States-Morocco Free Trade Agreement (FTA) entered into force on January 1, 2006. Duties on 95 percent of bilateral trade in industrial and consumer goods were eliminated upon entry into force, with duties on other such goods phased out in stages over the subsequent 10 years, *i.e.*, by January 1, 2016. Some sensitive agricultural products will have longer periods for duty elimination or are subject to other provisions, such as tariff-rate quotas (TRQs). In addition to provisions which granted key U.S. export sectors immediate duty-free access to the Moroccan market, the FTA includes commitments for increased regulatory transparency and the protection of intellectual property rights. Through foreign assistance programs, the United States continues to provide Morocco targeted technical assistance supporting FTA compliance and Moroccan regulatory reform.

IMPORT POLICIES

Morocco has undertaken liberalizing reforms as a member of the WTO and a party to several bilateral free trade agreements. Under the United States-Morocco FTA, goods of key U.S. sectors, such as information technology, machinery, construction equipment, chemicals, wheat, and textiles, enjoy either duty-free or preferential duty treatment when entering Morocco.

Agriculture

The FTA allows preferential access to Morocco for U.S. durum and common wheat exports through two tariff-rate quotas (TRQs). The Moroccan government's administration of these wheat TRQs, however, has led to difficulties for U.S. producers attempting to benefit from the preferential access provided under the FTA. The U.S. Government is continuing its efforts to improve access for U.S. wheat producers.

GOVERNMENT PROCUREMENT

The FTA requires the use of fair and transparent procurement procedures, including advance notice of purchases and timely and effective bid review procedures for covered procurement. Under the FTA, U.S. suppliers are permitted to bid on procurements for most Moroccan central government entities, as well as the vast majority of Moroccan regional and municipal governments, on the same basis as Moroccan suppliers. However, the 45 day and 90 day timeframes given to foreign companies to respond to government tenders are often too short, guidance for bidders issued by procuring entities is often vague, and channels for distributing information are limited to local newspapers and circulars sent to foreign embassies.

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

SERVICE BARRIERS

Although U.S. companies in principle enjoy the same treatment in the insurance market as their Moroccan counterparts, the policies and practices of Morocco's insurance regulatory body have effectively prevented U.S. insurance companies from introducing competing products. In practice, only applications that bring new products or "added value" to the sector are likely to be approved. Applications must first be reviewed by a Consultative Committee composed principally of other companies active in the sector. While this committee's recommendations are not binding, the Ministry of Economy and Finance generally has followed its advice when considering applications.

INTELLECTUAL PROPERTY RIGHTS PROTECTION

Morocco has enacted legislation to enhance protection for trademarks, copyrights, patents, and undisclosed pharmaceutical and agricultural chemical test data. This legislation includes provisions concerning disputes regarding Internet domain names, strong anti-circumvention provisions to prohibit tampering with technologies designed to protect copyrighted content, and specific protections for temporary copies, which are critical in the digital environment. The Moroccan Copyright Office has reported that Morocco's capacity to detect and address Internet-based intellectual property rights (IPR) violations is insufficient. The Moroccan government has been taking steps to enhance its capacity to address copyright infringement. In 2011, Morocco took the significant step of completing its accession to the Budapest treaty on patents and to the WIPO treaties on Copyright and Phonograms.

Morocco is also a signatory to the Anti-Counterfeiting Trade Agreement (ACTA). The ACTA establishes an international framework that will assist parties in their efforts to effectively combat the infringement of IPR, in particular the proliferation of counterfeiting and piracy, which undermines legitimate trade and the sustainable development of the world economy.

OTHER BARRIERS

The greatest obstacles to trade in Morocco are irregularities in government procedures, lack of transparency in the operation of governmental and judicial bureaucracies, inefficient transport systems, and corruption among junior-level officials. Morocco lags particularly in areas relating to its cumbersome tax and employment regimes, property registration, and investor protections. Although the government is working to liberalize the business environment and improve the efficiency of government operations related to business, foreign corporations still complain that these factors can limit their access to the Moroccan market.

NEW ZEALAND

TRADE SUMMARY

The U.S. goods trade surplus with New Zealand was $411 million in 2011, an increase of $355 million from 2010. U.S. goods exports in 2011 were $3.6 billion, up 26.7 percent from the previous year. Corresponding U.S. imports from New Zealand were $3.2 billion, up 14.4 percent. New Zealand is currently the 47th largest export market for U.S. goods.

U.S. exports of private commercial services (*i.e.*, excluding military and government) to New Zealand were $1.6 billion in 2010 (latest data available), and U.S. imports were $1.8 billion. Sales of services in New Zealand by majority U.S.-owned affiliates were $2.7 billion in 2009, while sales of services in the United States by majority New Zealand-owned firms were $268 million.

The stock of U.S. foreign direct investment (FDI) in New Zealand was $6.9 billion in 2010 (latest data available), up from $6.3 billion in 2009. U.S. FDI in New Zealand is mostly in the finance/insurance and manufacturing sectors.

In December 2009, the United States announced its intention to enter into an Asia-Pacific trade agreement called the Trans-Pacific Partnership (TPP), with the objective of shaping a high standard, broad-based regional agreement. This agreement will create a potential platform for economic integration across the Asia-Pacific region, a means to advance U.S. economic interests with the fastest-growing economies in the world, and a tool to expand U.S. exports, which are critical to U.S. economic recovery and the creation and retention of high-paying, high-quality jobs in the United States. In addition to New Zealand, the TPP negotiating partners currently include Australia, Brunei, Chile, Malaysia, Peru, Singapore, and Vietnam. Japan, Canada, and Mexico also have expressed interest in joining the negotiations.

IMPORT POLICIES

Tariff rates in New Zealand are generally low as a result of several rounds of unilateral tariff cuts that began in the mid-1980s. At 2.1 percent, New Zealand has one of the lowest average most favored nation (MFN) applied tariff rates among industrialized countries. The average applied MFN tariff rate was 1.5 percent for agricultural products in 2009 and 2.2 percent for industrial goods. In 2010, approximately 95 percent of all imports to New Zealand (by value) entered duty free. Approximately 47.5 percent of New Zealand's MFN tariff lines are bound at zero duty rates, and 63.1 percent of lines are applied at zero. The New Zealand government has stated that import tariffs will not be reviewed until 2013 and will remain at their current levels until at least 2015.

GOVERNMENT PROCUREMENT

New Zealand is an observer to the WTO Committee on Government Procurement. It is not a signatory to the WTO Agreement on Government Procurement.

INTELLECTUAL PROPERTY RIGHTS PROTECTION

New Zealand generally provides for strong intellectual property rights (IPR) protection and enforcement. Recent developments include the introduction of the Patents Bill (to replace the Patents Act 1953). Although the draft bill will significantly help improve New Zealand's patent system, the United States has concerns over certain elements, including a clause providing that computer programs are excluded from patent eligibility. This clause departs from patent eligibility standards in other developed economies.

In addition, the proposed bill does not include other provisions that would bring New Zealand's patent law into line with international best practices. For instance, the bill does not include provisions allowing for patent term restoration, which would enable rights holders to recoup the effective patent term lost due to delays in the marketing approval process. The absence of such a provision makes it more difficult for innovators to recoup their investments in developing products, such as medical products, that must complete a marketing approval process before they can be sold.

On April 14, 2011, the New Zealand Parliament passed the Copyright (Infringing File Sharing) Amendment Bill, which established a mechanism for New Zealand to fight online piracy. The legislation created a framework for a new regime designed to deter illegal file sharing. Although many rights holders were initially optimistic over the legislation, they have since expressed concerns that subsequent implementing regulations issued by the Ministry of Economic Development, which permit Internet service providers to charge up to NZ$25 ($21) per issuance of an infringement notice. The cost has deterred some rights holders from using the system.

The United States continues to encourage the New Zealand government to accede to and implement the World Intellectual Property Organization (WIPO) Performance and Phonograms Treaty and the WIPO Copyright Treaty. New Zealand was an active participant in the Anti-Counterfeiting Trade Agreement (ACTA) negotiations, and signed the ACTA in October 2011. The ACTA establishes 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.

SERVICES BARRIERS

Telecommunications

Mobile termination rates (MTRs), a charge mobile network suppliers levy on other operators for completing calls to the mobile network's subscribers, have long been unregulated in New Zealand. New Zealand's dominant telecommunications companies, Vodafone and Telecom, have historically maintained termination rates among the highest of all industrialized countries, and the incumbents appear to have used these rates to put new, smaller mobile entrants at a competitive disadvantage. On a national basis, Vodafone and Telecom control 51 percent and 46 percent of the market, respectively.

In June 2009, following an inquiry, the New Zealand Commerce Commission issued a draft determination that cost-based MTR regulation was warranted. Telecom and Vodafone subsequently offered to lower MTRs over the following four years in exchange for the New Zealand government foregoing regulation, which the government was poised to do. When Vodafone announced a new product combining heavily discounted on-net retail prices set below its proposed wholesale MTRs, and off-net prices up to 15 times higher, the New Zealand government concluded that the voluntary rates were unreasonably above cost and competition would be stifled if the proposals were accepted. On August 4, 2010 New Zealand's Minister for Communications formally accepted the Commerce Commission's recommendation to regulate termination rates, adding mobile termination access services to Schedule 1 of the Telecommunications Act. The Commerce Commission went through a process in late 2010 and early 2011 to set wholesale access prices and determined other pro-competitive conditions, potentially regarding on-net/off-net retail price discrimination, with which mobile carriers must comply. On May 5, 2011, the Commerce Commission released its decision on MTRs, which will result in increased competitive pressure and reductions in the wholesale termination rates for mobile calls and text messages.

According to the decision, termination rates for calls will be reduced to less than NZ$0.04 by April 1, 2012 and additional reductions by 2014. Termination rates for text messages were reduced to NZ$0.06 from May 6, 2011.

INVESTMENT BARRIERS

Investment Screening

New Zealand screens any foreign investment that would result in the acquisition of 25 percent or more of ownership in, or of a controlling interest in, "significant business assets" (defined as assets valued at more than NZ$100 million ($84 million)). In addition, it screens foreign investors or entities that acquire 25 percent or more of a fishing quota, either directly or through the acquisition of a company that already possesses a quota, as well as acquisitions of land defined as "sensitive" by the Overseas Investment Act (OIA) 2005.

On September 27, 2010, the New Zealand government announced new implementing rules under the OIA 2005, which provide New Zealand government ministers increased power to consider a wider range of issues when assessing overseas investment applications involving sensitive land (such as farmland greater than five hectares, land adjoining the foreshore, or conservation land). Under the rules, two additional factors are assessed under a benefit test: an "economic interests" factor that allows ministers to consider whether New Zealand's economic interests are "safeguarded," and a "mitigating" factor that enables ministers to consider whether an overseas investment provides adequate opportunities for New Zealand oversight or involvement.

OTHER BARRIERS

Pharmaceuticals

The Pharmaceutical Management Agency (PHARMAC), created in 1993, determines which medicines to fund, negotiates prices with pharmaceutical companies, and sets the subsidy levels and conditions. U.S. stakeholders have expressed strong concerns about PHARMAC's regulatory process, including the lack of transparency, timeliness, and predictability in the funding process and for unreasonable delays in reimbursing new products. These longstanding concerns have been exacerbated as PHARMAC expands into areas of funding that were previously unregulated. PHARMAC is reportedly working to improve transparency and increase stakeholder involvement in its processes.

NICARAGUA

TRADE SUMMARY

The U.S. goods trade deficit with Nicaragua was $1.6 billion in 2011, up $525 million from 2010. U.S. goods exports in 2011 were $1.1 billion, up 7.3 percent from the previous year. Corresponding U.S. imports from Nicaragua were $2.6 billion, up 29.7 percent. Nicaragua is currently the 82nd largest export market for U.S. goods.

The stock of U.S. foreign direct investment (FDI) in Nicaragua was $300 million in 2010 (latest data available), down from $301 million in 2009.

IMPORT POLICIES

Free Trade Agreement

On August 5, 2004, the United States signed the Dominican Republic-Central America-United States Free Trade Agreement (CAFTA-DR or Agreement) with five Central American countries (Costa Rica, El Salvador, Guatemala, Honduras, and Nicaragua) and the Dominican Republic (the Parties). Under the Agreement, the Parties are significantly liberalizing trade in goods and services. The CAFTA-DR also includes important disciplines relating to customs administration and trade facilitation; technical barriers to trade; government procurement; investment; telecommunications; electronic commerce; intellectual property rights; transparency; and labor and environmental protection.

The Agreement entered into force for the United States, El Salvador, Guatemala, Honduras, and Nicaragua in 2006 and for the Dominican Republic in 2007. The CAFTA-DR entered into force for Costa Rica on January 1, 2009.

In 2008, the Parties implemented amendments to several textile-related provisions of the CAFTA-DR, including, in particular, changing the rules of origin to require the use of U.S. or regional pocket bag fabric in originating apparel. The Parties also implemented a reciprocal textile inputs sourcing rule with Mexico. Under this rule, Mexico provides duty-free treatment on certain apparel goods produced in a Central American country or the Dominican Republic with U.S. inputs, and the United States provides reciprocal duty-free treatment under the CAFTA-DR on certain apparel goods produced in a Central American country or the Dominican Republic with Mexican inputs. These changes further strengthen and integrate regional textile and apparel manufacturing and create new economic opportunities in the United States and the region.

In February 2011, the CAFTA-DR Free Trade Commission (FTC), the central oversight body for the Agreement, met for the first time in San Salvador, El Salvador. The FTC reviewed the implementation of the Agreement and its trade and economic impact on the region and agreed to certain changes to strengthen the Agreement's operation. The FTC discussed a broad range of ways to enhance competitiveness in the region and endorsed several initiatives to generate new opportunities for all of the countries to realize the benefits of the CAFTA-DR Agreement, with a heightened focus on small and medium sized businesses.

The United States hosted an FTC meeting on January 23, 2012 in Miami at which CAFTA-DR countries recognized continued growth in trade and integration, and acted to further strengthen CAFTA-DR institutions and initiatives.

Tariffs

As a member of the Central American Common Market, Nicaragua applies a harmonized external tariff on most items at a maximum of 15 percent with some exceptions.

Approximately 95 percent of tariff lines are harmonized at this rate or lower. In response to rising prices, in 2007, Nicaragua issued a series of decrees to unilaterally eliminate or reduce to five percent tariffs on many basic foodstuffs and consumer goods. These decrees have been extended every six months and are currently in effect through June 30, 2012.

Under the CAFTA-DR, however, 100 percent of U.S. industrial trade will enter Nicaragua duty free by 2015. Nearly all textile and apparel goods that meet the Agreement's rules of origin now enter Nicaragua duty free and quota free, promoting new opportunities for U.S. and regional fiber, yarn, fabric, and apparel manufacturing companies.

Under the CAFTA-DR, more than half of U.S. agricultural exports now enter Nicaragua duty free. Nicaragua will eliminate its remaining tariffs on nearly all agricultural goods by 2025, including those on pork and yellow corn by 2020; rice and chicken leg quarters by 2023; and dairy products by 2025. For certain products, tariff-rate quotas (TRQs) will permit duty-free access for specified quantities during the tariff phase out period, with the duty-free amount expanding during that period. Nicaragua will liberalize trade in white corn through expansion of a TRQ rather than by tariff reductions.

Nontariff Measures

Under the CAFTA-DR, Nicaragua committed to improve transparency and efficiency in administering customs procedures, including the CAFTA-DR's rules of origin. The Nicaraguan government levies a "selective consumption tax" on some luxury items of 15 percent or less, with a few exceptions. The tax is not applied exclusively to imports; however, domestic goods are taxed on the manufacturer's price, while imports are taxed on the cost, insurance, and freight value. Alcoholic beverages and tobacco products are taxed on the price billed to the retailer.

U.S. companies report that difficulties with the Nicaraguan Customs Administration are a significant impediment to trade. Complaints about the institution concern bureaucratic delays, arbitrary valuation, technical difficulties, corruption, and politicization. Investors also complain that customs authorities wrongly classify goods to boost tariff revenue, and the Embassy has received numerous complaints from investors and non-governmental organizations about goods and donations being held up in customs without legal justification.

GOVERNMENT PROCUREMENT

The CAFTA-DR requires that procuring entities use fair and transparent procurement procedures, including advance notice of purchases and timely and effective bid review procedures, for procurement covered by the Agreement. Under the CAFTA-DR, U.S. suppliers are permitted to bid on procurements of most Nicaraguan government entities, including key ministries and state-owned enterprises, on the same basis as Nicaraguan suppliers. The anticorruption provisions in the Agreement require each government to ensure under its domestic law that bribery in matters affecting trade and investment, including in government procurement, is treated as a criminal offense or is subject to comparable penalties.

Procurement by government entities not covered by the CAFTA-DR, such as the National Electricity Company, the National Assembly, the National Basic Foods Company, the Ministry of Tourism, the

Supreme Court, the Ministry of Energy and Mines, and some public universities, have historically been subject to highly nontransparent and irregular practices, especially the abuse of procedures for emergency tenders that allow the suspension of competitive bidding. In 2010, the Nicaraguan National Assembly amended the 1999 Government Procurement Law, also known as Law 323, in order to close certain loopholes. The amendment eliminated exclusions to the established bidding process that had allowed favoritism and unfair competition.

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

EXPORT SUBSIDIES

ALBANISA, the state-owned company that imports and distributes Venezuelan petroleum, provides preferential financing to those who agree to export their products to Venezuela.

All exporters receive tax benefit certificates equivalent to 1.5 percent of the free-on-board value of the exported goods. Under the CAFTA-DR, Nicaragua may not adopt new duty waivers or expand existing duty waivers that are conditioned on the fulfillment of a performance requirement (*e.g.*, the export of a given level or percentage of goods). However, Nicaragua may maintain such duty waiver measures for such time as it is an Annex VII country for the purposes of the WTO Agreement on Subsidies and Countervailing Measures. The U.S. Government is working with the Nicaraguan government in an effort to ensure compliance with its CAFTA-DR obligations.

INTELLECTUAL PROPERTY RIGHTS PROTECTION

To implement its CAFTA-DR intellectual property rights (IPR) obligations, Nicaragua undertook legislative reforms providing for stronger IPR protection and enforcement. Despite Nicaragua's efforts, the United States continues to be concerned about the piracy of optical media and trademark violations in Nicaragua. The United States has expressed concern to the Nicaraguan government about inadequate IPR enforcement.

The United States will continue to monitor Nicaragua's implementation of its IPR obligations under the CAFTA-DR.

SERVICES BARRIERS

Under the CAFTA-DR, Nicaragua granted U.S. services suppliers substantial access to its services market, including financial services.

Under the CAFTA-DR, Nicaragua committed to opening its telecommunications sector to U.S. investors and services suppliers. The executive branch has proposed legislation that would strengthen the enforcement capacity of the telecommunications regulator (TELCOR) and improve competitive conditions in Nicaragua's telecommunications market. The United States will monitor this process, as well as TELCOR's efforts to implement new telecommunications regulations.

INVESTMENT BARRIERS

During the 1980s, the Nicaraguan government confiscated some 28,000 properties. Since 1990, thousands of individuals have filed claims for the return of their property or to receive compensation. Where granted, compensation is most commonly provided via low interest bonds issued by the government.

Since taking office in January 2007, the administration of President Ortega has resolved 223 claims, including 3 during the current waiver year. Since that time, the Nicaraguan government has also dismissed claims based on the application of Decrees 3 and 38 from 1979.

A total of 419 U.S. claims registered with the U.S. Embassy remain outstanding. The United States continues to press the Nicaraguan government to resolve these outstanding claims. The U.S. Government has been working with U.S. citizens to press the Nicaraguan government to protect the right to due process for the lawful owners of property in Nicaragua. The ongoing occurrence of disputes involving the government of Nicaragua suggests a systemic concern that negatively impacts the investment climate.

OTHER BARRIERS

Some U.S. firms and citizens have found corruption in government, including in the judiciary, to be a significant concern and a constraint to successful investment in Nicaragua. Administrative and judicial decision-making appear at times to be inconsistent, nontransparent, and very time-consuming. Courts have frequently granted orders (called "*amparos*") that enjoin official investigatory and enforcement actions indefinitely. Such delays appear to protect individuals suspected of white collar crime.

With monetary support from Venezuela, the government has increased its role in the economy, and independent companies face increasing competition from these state-run corporations. Moreover, despite the legal framework CAFTA-DR provides, property rights and intellectual property rights are especially difficult to defend, and there is no reliable means of resolving disputes. The legal system is regarded as weak, cumbersome, corrupt, and subject to political pressure.

Investors regularly complain that regulatory authorities are arbitrary, negligent, slow to apply existing laws (or likely to apply laws superseded by CAFTA-DR), and often favor one competitor over another. Investors cite arbitrariness in taxation and customs procedures, as well as a lack of delegation of decision-making authority to the appropriate level. Tax audits of foreign investors have increased in frequency and duration, to the point where they may hinder normal business operations.

Law 364

U.S. companies and the U.S. Chamber of Commerce have concerns that Nicaraguan Law 364, enacted in 2000 and implemented in 2001, retroactively imposes liability on foreign companies that manufactured or used the chemical pesticide DBCP in Nicaragua. DBCP was banned in the United States after the Environmental Protection Agency cancelled its certificate for use (with exceptions) in 1979. U.S. companies have expressed concern that Law 364 and its application under Nicaragua's judicial system lack due process, transparency, and fundamental fairness. In particular, Law 364 allows for retroactive application of no-fault liability related to a specific product, waiver of the statute of limitations, irrefutable presumption of causality, truncated judicial proceedings, the imposition of a $100,000 nonrefundable bond per defendant as a condition for firms to mount a defense in court, and escrow requirements of approximately $20 million earmarked for payment of awards and minimum liabilities as liquidated damages (ranging from $25,000 to $100,000). Some plaintiffs seek to lay claim to U.S. company assets in other countries. In 2009 and 2010, courts in California dismissed with prejudice three Nicaraguan DBCP cases, citing plaintiff fraud. In one of those cases a federal district court denied recognition of a $97 million Nicaraguan judgment under Law 364, because the court found that the "case did not arise out of proceedings that comported with the international concept of due process." The court also found "the presumption of causation in Special Law 364 contradicts known scientific fact." The U.S. Government has been working with the affected U.S. companies and the Nicaraguan government to facilitate resolution of this issue.

NIGERIA

TRADE SUMMARY

The U.S. goods trade deficit with Nigeria was $28.9 billion in 2011, up $2.5 billion from 2010. U.S. goods exports in 2011 were $4.8 billion, up 18.4 percent from the previous year. Corresponding U.S. imports from Nigeria were $33.7 billion, up 10.6 percent. Nigeria is currently the 44th largest export market for U.S. goods.

The stock of U.S. foreign direct investment (FDI) in Nigeria was $5.2 billion in 2010 (latest data available), up from $5.0 billion in 2009. U.S. FDI in Nigeria is concentrated in the mining sector.

IMPORT POLICIES

Nigeria plans to review its trade policy. A Committee was established in September 2011 to develop suggestions and recommendations for a new trade policy regime. However, there is resistance within the Nigerian government and the private sector to enacting and implementing any further trade policy reforms.

Tariffs

Nigeria's most recent tariff review occurred in September 2008, when the Nigerian government issued the 2008-2012 Common External Tariff (CET) Book that harmonizes its tariffs with the Economic Community of West African States (ECOWAS) CET. Nigeria had partially implemented the ECOWAS CET since 2005. The 2008-2012 CET has five tariff bands. The 5 tariff bands include zero duty on capital goods, machinery, and essential drugs not produced locally; 5 percent duty on imported raw materials; 10 percent duty on intermediate goods; 20 percent duty on finished goods; and 35 percent duty on goods in certain sectors that the government seeks to protect. At that time, import duties were reduced on a number of items, including rice, cigars, and manufactured tobacco. Adoption of the 2008-2012 CET is part of the Nigerian government's economic reforms aimed at improving Nigeria's trade and investment environment and harmonizing economic policies in the sub-region. According to the WTO, Nigeria's average most favored nation applied tariff rate is 11.2 percent. The average applied tariff for agricultural goods is 15.5 percent and for non-agricultural products is 10.5 percent.

Companies report that high tariffs, nontransparent valuation procedures, frequent policy changes, and unclear interpretations by the Nigerian Customs Service (NCS) make importing difficult and expensive, and often create bottlenecks for commercial activities. Nigeria's dependence on imported raw materials and finished goods aggravates this problem, affecting both foreign and domestic manufacturers. Reportedly, many importers resort to undervaluing and smuggling to avoid paying full tariffs.

Nontariff Measures

Nigeria uses nontariff measures to achieve self-sufficiency in certain commodities under its backward integration program. The government used this strategy in cement production and plans to use it in other identified commodities, such as rice and sugar. President Jonathan mentioned at a September 5, 2011 event that "policies being prepared by the Economic Management Team will have tenure of five years so that investors can plan for the long term. For instance, only those who are in large-scale rice or sugar production will be allowed to import rice or sugar on a quota to be determined by appropriate authorities similar to the current policy in the cement sector."

The government continues to ban certain imports, citing the need to protect local industries. However, in December 2010, the government removed the ban on the importation of textiles, furniture, toothpicks, and other sundry items. Items remaining on the import prohibition list include: bird’s eggs; cocoa butter, powder, and cakes; pork; beef; live birds; frozen poultry; refined vegetable oil and fats; cassava; bottled water; spaghetti; noodles; fruit juice in retail packs; nonalcoholic beverages (excluding energy drinks); and bagged cement.

Customs Administration

Nigerian port practices continue to present major obstacles to trade. Importers report erratic application of customs regulations, lengthy clearance procedures, high berthing and unloading costs, and corruption. These factors can contribute to product deterioration, which may result in significant losses for importers of perishable goods. Disputes between Nigerian government agencies over the interpretation of regulations often cause delays, and frequent changes in customs guidelines slow the movement of goods through Nigerian ports. Nigeria practices a destination inspection policy for imports. Under this policy, all imports are inspected on arrival into Nigeria. Such actions delay the cargo clearing process and increase costs.

The Nigerian government recognizes that port delays significantly increase the cost of doing business in Nigeria. A 48 hour cargo clearance policy at ports was announced in 2010 but has yet to be implemented. In August 2010, the Minister of Finance established a committee on customs and port reforms to provide recommendations on improving port operations in Nigeria. Plans also exist to automate all customs payments and modernize NCS operations. In October 2011, Dr. Ngozi Okonjo-Iweala, the newly appointed Minister of Finance, ordered that eight agencies, including the National Agency for Food and Drug Administration and Control and the Standards Organization of Nigeria, should vacate the ports within two months to facilitate easier and faster clearance of goods. The Minister stated that her aim was to reduce the cost of doing business in the Nigerian ports by reducing the current number of agencies in the ports from fourteen to six.

In addition to issues associated with Nigerian port practices, roads entering and leaving ports are decaying, and overuse results in around-the-clock traffic congestion. Ports lack rail systems to transport freight into and out of ports. As a result, congestion leads to ships queuing up to berth at cargo terminals and containers waiting to be transported out of the ports. The bottlenecks resulting from the lack of infrastructure in and around the ports affect the level of efficiency at which goods can be processed for import.

EXPORT SUBSIDIES AND OTHER EXPORT PROMOTION PROGRAMS

The Nigerian government administers various export promotion programs, such as tax concessions, export development funds, capital asset depreciation allowances, and foreign currency retention programs, in addition to operating free trade zones and export processing zones. According to the 2008-2012 CET Book, authorities have halted most concessions, waivers, or exemptions. However, the Nigerian Export Promotion Council will continue to implement the Export Expansion Grant scheme to improve non-oil export performance.

GOVERNMENT PROCUREMENT

The Nigerian government has made modest progress on its pledge to conduct an open and competitive bidding process for government procurement. The Public Procurement Act of 2007 established the Bureau of Public Procurement (BPP). The public procurement reforms seek to ensure that the procurement process for public projects adheres to international standards for competitive bidding. The

BPP acts as a clearinghouse for government contracts and monitors the implementation of projects to ensure compliance with contract terms and budgetary restrictions. Procurement above 50 million naira (approximately $333,000) remains subject to review by the BPP. The 36 state governments have also agreed to enact the Public Procurement Act in their respective states.

Foreign companies incorporated in Nigeria receive national treatment in government procurement. Government tenders are published in local newspapers, and a "tenders" journal is sold at local newspaper outlets. U.S. companies have won government contracts in several sectors. Unfortunately, some of these companies have had difficulties in getting paid, often as a result of delays in the national budgetary process.

The National Petroleum Investment and Management Services (NAPIMS) agency must approve all procurement in the oil and gas sector with a value above $500,000. Slow approval processes can significantly increase the time and resources required for a given project.

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

INTELLECTUAL PROPERTY RIGHTS PROTECTION

Nigeria is a party to the World Intellectual Property Organization (WIPO) Convention, the Berne Convention for the Protection of Literary and Artistic Works, the Paris Convention for the Protection of Industrial Property, the Patent Cooperation Treaty, and the Patent Law Treaty. Nigeria has also signed the WIPO Copyright Treaty and the WIPO Performances and Phonograms Treaty. Legislation intended to implement WTO obligations under the Agreement on Trade-Related Aspects of Intellectual Property Rights has been pending in the National Assembly for several years.

The Nigerian government's lack of institutional capacity to address intellectual property rights (IPR) issues is a major barrier to enforcement. Relevant Nigerian government institutions suffer from low morale, poor training, and limited resources. Copyright piracy remains a problem despite Nigeria's active participation in the conventions cited above and the growing interest among Nigerians in seeing their intellectual property protected. Counterfeit automotive parts, pharmaceuticals, business and entertainment software, music and video recordings, and other consumer goods are sold openly. Piracy of books and optical disc products is also a problem. Industry reports contend that intellectual property infringers from other countries appear increasingly active in using Nigeria as a base for the production of pirated and counterfeit goods.

Judicial procedures are slow and reportedly compromised by corruption. However, the government has taken steps to improve enforcement. Efforts to combat the sale of counterfeit pharmaceuticals, for example, have yielded some results. The United States has provided training to government IP officials through various training programs offered by the United States Patent and Trademark Office's Global Intellectual Property Academy and the U.S Department of Commerce Commercial Law Development Program under the Trade and Investment Framework Agreement between the United States and Nigeria.

Nigeria's broadcast regulations do not permit rebroadcast or excerpting of foreign programs unless the station has an affiliate relationship with a foreign broadcaster. This regulation is generally complied with, but some cable providers transmit foreign programs illegally. The National Broadcasting Commission monitors the industry and is responsible for punishing infractions.

Widespread pirating of foreign and domestic videotapes discourages the entry of licensed distributors. In 2004, the Nigerian Copyright Commission (NCC) launched an anti-piracy initiative named "Strategy against Piracy." The Nigerian Police Force, working closely with the NCC, has raided enterprises producing and selling various pirated works such as software, books, and videos. Various cases are currently being prosecuted against IPR violators in courts throughout the country.

Discussions continue between the Standards Organization of Nigeria and the Chinese government to combat the influx of sub-standard and counterfeit Chinese products into Nigeria.

SERVICES BARRIERS

Foreign oil and gas services suppliers face a number of barriers in Nigeria, particularly with respect to the movement of personnel and local content requirements. Nigeria imposes quotas on foreign personnel based on the issued capital of firms. Such quotas remain especially strict in the oil and gas sector and may apply to both production and services companies. Oil and gas companies must hire Nigerian workers, unless they can demonstrate that particular positions require expertise not found in the local workforce. Positions in finance and human resources are almost exclusively reserved for Nigerians. Certain geosciences and management positions may be filled by foreign workers with the approval of the NAPIMS agency. Each oil company must negotiate its foreign worker allotment with NAPIMS. Significant delays in this process and in the approval of visas for foreign personnel present serious challenges to the oil and gas industry in acquiring the necessary personnel for their operations.

The Nigerian Oil and Gas Industry Content Development Bill of April 23, 2010 imposes new requirements for the mandatory use of local Nigerian goods and services in the production of oil and gas. The law outlines local content requirements for equipment and materials used in upstream and downstream oil and gas services. The law also requires that at least 80 percent of the employees at oilfield services companies must be Nigerian. According to industry representatives, the local content law adversely affects a diverse range of actors, including industry operators, contractors, subcontractors, and service providers. The law also affects professional services, including legal and financial services.

INVESTMENT BARRIERS

Foreign investors in Nigeria must contend with complex tax administration procedures, confusing land ownership laws, arbitrary application of regulations, corruption, and crime. International monitoring groups routinely rank Nigeria among the most corrupt countries in the world. Nigeria's corruption levels remain high and the Economic and Financial Crimes Commission has faltered recently in its efforts to combat corruption. Companies report that contracts are often breached and that Nigeria's court system for settling commercial disputes is weak and can be biased.

A proposed Petroleum Industry Bill (PIB) would change the way Nigeria's oil and gas sector is regulated. Continued delays in the passage of the PIB have created uncertainty in the investment community. No major investments in the oil and gas sector have been approved since the beginning of 2009. Delays in passage of the PIB have also contributed to delays in the implementation of the Gas Master Plan for gas pipeline infrastructure. The lack of gas pipeline infrastructure makes it difficult to increase power production and expand the industry.

OTHER BARRIERS

Frequent power outages and the related need to rely on expensive diesel and gasoline-fueled private generators serve as a major barrier to economic growth. The privatization and reform efforts of the power sector have been stalled since 2005. The Nigerian government has committed to move the power sector reform to completion and establish a healthy investment climate by mid-2011. The results to-date include removing obstacles to private sector investment; implementing a government strategy for the divestiture of the nationally owned generation and distribution companies; establishing a market-based tariff; and changing the fuel-to-power pricing to market-based pricing.

As noted above, lack of electricity and poor infrastructure, including water, roads, ports, and railways, pose a major challenge to doing business in Nigeria. These factors increase production costs and hinder both exports and competition in regional and international markets. In many cases, the increased production costs also make it difficult to compete with imports.

The Nigerian government has attempted to eliminate financial crimes, such as money laundering and advance fee fraud (also known as "419 fraud," after the relevant section of the Nigerian Criminal Code). In June 2006, the Financial Action Task Force removed Nigeria's name from the list of non-cooperating countries and territories in the fight against money laundering and other financial crimes. In May 2007, Nigeria gained entry into the Egmont Group of Financial Intelligence Units.

NORWAY

TRADE SUMMARY

The U.S. goods trade deficit with Norway was $4.7 billion in 2011, up $831 million from 2010. U.S. goods exports in 2011 were $3.6 billion, up 17.2 percent from the previous year. Corresponding U.S. imports from Norway were $8.3 billion, up 19.6 percent. Norway is currently the 46th largest export market for U.S. goods.

U.S. exports of private commercial services (*i.e.*, excluding military and government) to Norway were $2.7 billion in 2010 (latest data available), and U.S. imports were $1.8 billion. Sales of services in Norway by majority U.S.-owned affiliates were $5.9 billion in 2009 (latest data available), while sales of services in the United States by majority Norway-owned firms were $1.6 billion.

The stock of U.S. foreign direct investment (FDI) in Norway was $33.8 billion in 2010 (latest data available), up from $27.7 billion in 2009. U.S. FDI in Norway is primarily concentrated in the mining and manufacturing sectors.

IMPORT POLICIES

Norway, along with Switzerland, Iceland, and Liechtenstein, is a member of the European Free Trade Association (EFTA). EFTA members, with the exception of Switzerland, participate in the European Union (EU) single market through the European Economic Area (EEA) accord. Norway grants preferential tariff rates to EEA members. As an EEA signatory, Norway assumes most of the rights and obligations of EU member states, except in the agricultural and fishery sectors.

As a general matter, Norway has implemented, or is in the process of implementing, most EU trade policies and regulations. Norway's market, except for agricultural products and processed foods, is generally open. Norway has continued to dismantle import tariffs on industrial products on a unilateral basis. The average most favored nation (MFN) tariff on nonagricultural products has fallen from 2.3 percent in 2000 to less than 1 percent in 2011. More than 95 percent of industrial tariff lines are currently duty free.

Although Norway maintains a liberal trade and investment regime with respect to industrial products, its agricultural sector remains highly protected, and U.S. exporters of agricultural products face trade barriers that are at least as high as those they face in the EU.

Agricultural Products

Although agriculture accounts only for slightly more than one percent of gross domestic product (GDP), support provided by Norway to its agricultural producers as a percentage of total farm receipts is among the highest in the world. Norway emphasizes the importance of "non-trade concerns," which include food security, environmental protection, rural employment, and the maintenance of human settlement in sparsely populated areas as justification for high domestic support levels. One of Norway's concerns in the WTO Doha Development Round has been the preservation of its highly subsidized agricultural sector.

Tariffs

Norway bound its tariffs for agricultural commodities in 1995 as part of its WTO commitments. Tariffication of agricultural nontariff barriers as a result of the Uruguay Round led to the replacement of several quotas with high *ad valorem* or specific tariffs on these products. According to the WTO, Norway's simple average applied tariff in 2010 was 49.4 percent for agricultural goods and 0.5 percent for non-agricultural goods.

Although Norway is only 50 percent self-sufficient in agricultural production, it maintains tariff rates on agricultural products as high as several hundred percent to ensure that domestic producers farmers as well as producers in the food processing industry, have little competition until all domestic production has been consumed. Domestic agricultural shortages and price surges are offset by temporary tariff reductions. However, a lack of predictability in tariff adjustments and insufficient advance notification of these adjustments, generally only two days to five days before implementation, favor nearby European suppliers and make imports from the United States, especially of fruits, vegetables, and other perishable horticultural products, very difficult. For a number of processed food products, tariffs are applied based on product formula, requiring the Norwegian importer to provide a detailed disclosure of product contents. Many exporters to the Norwegian market refuse to give all requested details and, as a result, their products are subject to maximum tariffs.

Tariff-Rate Quotas

Norway has tariff-rate quotas (TRQs) for 64 agricultural and horticultural products, and the Norwegian Agricultural Authority holds online auctions for the allocation of quotas for 54 of these products. Norwegian importers are primarily interested in TRQs for grains or niche products. However, participating in the auctions is inexpensive, and importers that secure a quota are not required to actually import those products. The Agricultural Authority does not have a system to reallocate any unused quotas.

Raw Material Price Compensation

Although the EEA does not generally apply to agricultural products, it includes provisions on raw material price compensation that are meant to increase trade in processed food. Norway has a special agreement with the EU within the EEA framework that applies a preferential duty on EU processed food products. The agreement covers a wide range of products, including bread and baked goods, breakfast cereals, chocolate and sweets, ice cream, pasta, pizza, soups, and sauces. This preferential access for EU suppliers disadvantages U.S. exporters of these processed foods.

Norway also maintains a price reduction regime that includes subsidies for using certain domestically-produced raw materials in processed foods. Products for which such subsidies are paid include chocolate, sweets and ice cream (for milk and glucose), and pizza (for cheese and meat). The purpose of the system is to help compensate the domestic food processing industry for the high costs of domestic raw material.

Wines and Spirits

The wine and spirits retail market in Norway is controlled by the government monopoly Vinmonopolet. Wine and spirits sales through ordinary retail stores are not allowed. Both an approved importer/agent and distributor are required in order to enter the market. Gaining approvals to include wines and other alcoholic beverages on Vinmonopolet's retail list is cumbersome, leading to complaints from U.S. wine exporters about the limited variety of U.S. wines available to Norwegian consumers. Although Vinmonopolet asserts that its processes for selecting and purchasing wines are neutral, its six-month marketing and product plans are so detailed and narrow as to significantly constrain competitive supply. Products chosen for sale through Vinmonopolet must meet annual minimum sales quotas or they are dropped from the basic list inventory. Existing wine suppliers benefit from exposure in the stores, a situation exacerbated by the strict ban on advertising of alcoholic beverages.

After constructive discussions between the United States and Norway on ways to raise awareness and the number of quality U.S. wines sold in Norway, sales of U.S. red wines grew by 56 percent in 2009, 21 percent in 2010, and have continued to grow by 27 percent in 2011. While the overall market share for U.S. red wines has grown to 5.3 percent, the market share for U.S. white wines has dropped to 1 percent. Challenges with Vinmonopolet's subjective tender system, relative lack of opportunities for new market entrants, and as a result, relative low awareness of U.S. wines, remain.

INTELLECTUAL PROPERTY RIGHTS PROTECTION

Norway remained on 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. U.S. industry has expressed concern that the regulatory framework in Norway regarding process patents that were filed prior to 1992 and were pending in 1996 denies adequate patent protection for a number of pharmaceutical products currently on the Norwegian market.

U.S. industry also reports concerns regarding Norway's implementation of the EU's 2001 Copyright Directive that addresses Internet piracy, and regarding private use exceptions under Norway's copyright laws. In 2011, the Norwegian government conducted a public hearing regarding proposed revised legislation that would enhance copyright protection. A draft of that legislation is to be presented to Parliament in 2012.

U.S. and Norwegian authorities held constructive discussions in 2011 regarding several intellectual property rights (IPR) matters, including: pharmaceuticals product patent protection; the need to educate the public about IPR and to promote public awareness of IPR-infringing activity that occurs over the Internet; the role of Internet service providers in combating piracy; and the need to dedicate necessary public resources to combat counterfeiting and piracy and to prosecute offenders.

SERVICES BARRIERS

Financial Services

Norway maintains nationality requirements mandating for certain types of financial institutions that at least half the members of the board and half the members of the corporate assembly be nationals and permanent residents of Norway or another EEA country.

INVESTMENT BARRIERS

Norway generally welcomes foreign investment and grants national treatment to foreign investors, with exceptions in the mining, fisheries, hydropower, maritime, and air transport sectors. Foreign companies wishing to own or use various kinds of real property must seek prior approval from the government. In the petroleum sector, Norway's concession process continues to be operated on a discretionary basis, with the government awarding licenses based on subjective factors other than competitive bidding. Direct foreign ownership of hydropower resources is prohibited.

OMAN

TRADE SUMMARY

The U.S. goods trade deficit with Oman was $775 million in 2011, shifting from a trade surplus of $332 million in 2010. U.S. goods exports in 2010 were $1.4 billion, up 29.8 percent from the previous year. Corresponding U.S. imports from Oman were $2.2 billion, up 185.6 percent. Oman is currently the 72nd largest export market for U.S. goods.

IMPORT POLICIES

Tariffs

Upon entry into force of the United States-Oman Free Trade Agreement (FTA) on January 1, 2009, Oman provided immediate duty-free access on virtually all industrial and consumer products and will phase out tariffs on the remaining handful of products by 2019. In addition, Oman provided immediate duty-free access for U.S. agricultural products in 87 percent of its agricultural tariff lines. Oman also will phase out tariffs on the remaining agricultural products by 2019.

Import Licensing

Companies that import goods into Oman must be registered with the Ministry of Commerce and Industry. Importation of certain classes of goods, such as alcohol, livestock, poultry and their respective products, as well as firearms, narcotics, and explosives, requires a special license. Media imports are subject to review and possible censorship.

Customs

Some firms have reported difficulties in receiving duty-free treatment under the United States-Oman FTA for goods that enter Oman via Dubai.

GOVERNMENT PROCUREMENT

Procuring entities in Oman are required to conduct procurement covered by the FTA in a fair, transparent, and nondiscriminatory manner.

Oman provides a 10 percent price preference to tenders that contain a high content of local goods or services, including direct employment of Omani nationals. However, Oman may not apply such price preferences to tenders offering goods and services from the United States in procurement covered by the FTA. For most major tenders, Oman invites bids from international firms or firms pre-selected by project consultants. Suppliers are requested to be present at the opening of tenders, and interested persons may view the process on the Tender Board's website. The U.S. business community reports that the procurement process is often opaque. Of particular concern is the role that consultants play in the government procurement process. At times, consultants appear to steer a procurement decision toward a particular supplier on grounds other than technical qualifications or price. In addition, the business community reports that tenders' costs can sometimes increase dramatically when award decisions are delayed, sometimes for years, or the tendering is reopened with modified specifications and, typically, short deadlines. In 2011, the Omani government took steps to improve the tender process by shuffling the leadership at the Tender Board, instituting State Audit Institution investigations of previous questionable tenders, and enacting a new decree barring relatives "to the second degree of kinship" from participating in procurements.

Oman's Ministry of Defense may require that companies involved in defense-related transactions participate in its offset program, entitled "Partnership for Development."

Oman is an observer to the WTO Committee on Government Procurement. In accordance with the commitment in its WTO accession, Oman began negotiations to accede to the WTO Agreement on Government Procurement in 2001, but it has not completed the accession process.

INTELLECTUAL PROPERTY RIGHTS PROTECTION

Oman committed to provide strong intellectual property rights (IPR) protection and enforcement in the United States-Oman FTA. Oman revised its IPR laws and regulations to implement its FTA commitments, and it acceded to several international IPR treaties. While IPR laws in Oman are generally enforced, cases of online piracy, which can be difficult to detect, remain common.

The six Member States of the Gulf Cooperation Council (GCC) are working to harmonize their IP regimes. In connection with that effort, the GCC recently approved a common trademark law. Each Member State is expected to adopt that law. The United States has established a dialogue with GCC technical experts to discuss this law and other Customs Union efforts regarding IPR.

SERVICES BARRIERS

Banking

Oman does not permit representative offices or offshore banking.

Legal Services

By a decree from the Ministry of Justice in October 2009, non-Omani attorneys, including U.S. attorneys practicing in Oman, are prohibited from appearing in courts of first instance.

INVESTMENT BARRIERS

Under the FTA, Oman is required to accord national and most favored nation treatment to U.S. investors, who also have the right to make financial transfers freely and without delay. In addition, Oman is required to apply international law standards for compensation in the event of an expropriation, and to submit to international arbitration in the event of an investment dispute. All forms of investment are protected under the FTA, including enterprises, debt, concessions, contracts, and IPR. U.S. investors in almost all circumstances are entitled to establish, acquire, and operate investments in Oman on an equal footing with Omani investors and with investors of third countries. The FTA also prohibits the imposition of certain trade-distorting investment measures, such as requirements to buy Omani rather than U.S. inputs for goods manufactured in Oman.

However, certain concerns remain regarding the ability of U.S. businesses to acquire office space in Oman. Although U.S. investors are permitted to purchase freehold property in designated residential developments, businesses must adhere to more restrictive guidelines when acquiring real estate for commercial purposes. With the exception of certain tourism-related property agreements, only companies or enterprises with at least a 51 percent Omani shareholding are permitted to own real estate for the purpose of establishing an administrative office, staff accommodation, warehouse or show room, or other building with a similar purpose. Other enterprises, including foreign majority-owned businesses, must seek “usufruct” rights that enable them to exploit, develop, and use land granted by a third party.

PAKISTAN

TRADE SUMMARY

The U.S. goods trade deficit with Pakistan was $1.8 billion in 2011, up $219 million from 2010. U.S. goods exports in 2011 were $2.0 billion, up 5.4 percent from the previous year. Corresponding U.S. imports from Pakistan were $3.8 billion, up 9.2 percent. Pakistan is currently the 62nd largest export market for U.S. goods.

The stock of U.S. foreign direct investment (FDI) in Pakistan was $517 million in 2009 (latest data available).

IMPORT POLICIES

Pakistan's overall average applied tariff in 2011 was 14.68 percent. There are 15 different *ad valorem* tariff levels, ranging from zero percent to 150 percent. Specific rates of duty are applied on 45 products.

In fiscal year 2008-2009, the government of Pakistan increased *ad valorem* tariff rates on 397 non-essential and luxury items from the 15 percent to 25 percent range to the 30 percent to 35 percent range. These items include cosmetics, domestic appliances, luxury food items, and cigarettes. The tariff on automobiles with 1800cc to 2500cc engine capacity was increased from 90 percent to 100 percent and from 100 percent to 150 percent on cars with engine capacity from 2500cc to 3000cc. A 50 percent tariff was imposed on imported vehicles with engine capacity less than 850ccs. In Pakistan's Budget 2011-2012, 338 regulatory duties on 388 out of the 397 items were abolished, limiting duties to luxury vehicles, cigarettes, arms and ammunitions, betel nuts, sanitary ware, and tiles.

In an effort to protect its domestic automotive parts manufacturers, Pakistan imposes higher tariff rates (50 percent) on imports of automobile part types that compete with domestically manufactured products than on imports of automotive parts that have no domestic competition (35 percent). The government of Pakistan grants sector-specific duty exemptions, concessions, and other protections through promulgation of Statutory Regulatory Orders (SROs). For example, in 2008, certain substances identified as drugs by Pakistan's 1976 Drug Act were granted tax exemptions, while certain other pharmaceutical products not covered under the SRO remained subject to a 15 percent duty. Pakistan also provides concessionary tariffs for the import of raw materials used as active ingredients in pharmaceutical production. A list of SROs and other trade policy and regulatory documents can be found on the Federal Board of Revenue's website: http://www.cbr.gov.pk.

In January 2000, the Pakistani government implemented a transactional valuation system, in accordance with the WTO's Customs Valuation Agreement. Currently, this system covers roughly 90 percent to 95 percent of imports. A number of traders in the food and consumer products sectors have noted that the system is not uniformly applied. Similarly, a few major U.S. companies in the machinery and materials sector have reported specific concerns that customs officials have erroneously assessed goods based on a set of minimum values rather than the declared transactional value. A U.S. based company encountered such a problem in 2011 when Pakistan custom authorities rejected the transaction value reportedly due to pressure from local manufacturers. The U.S. Government raised this case with Pakistani authorities, and the issue is now referred to Pakistani courts.

On October 5, 2009, Pakistan began to enforce a 2005 regulation requiring that commercial invoices and packing lists be included inside each shipping container. This procedure is difficult to follow, particularly in cases in which the invoice and packing lists do not originate in the same location as the shipments themselves, cases in which the invoices and packing lists are created after the shipment departs, or cases in which several companies are involved. Importers are charged a penalty ranging between $58 and $115 for non-compliance.

GOVERNMENT PROCUREMENT

Pakistan is not a signatory to the WTO Agreement on Government Procurement. The Public Procurement Regulatory Authority (the Authority), established in 2002, is an autonomous body responsible for prescribing and monitoring public sector procurement regulations and procedures. According to a 2004 public procurement framework, international tender notices must be publicly advertised, and sole source contracting tailored to company-specific qualifications is prohibited. There are no official "buy national" policies.

Political influence on procurement awards, charges of official corruption, lack of transparency, and long delays in bureaucratic decision making have become common in government procurement in the past three years. Suppliers have reported instances in which the government used the lowest bid as a basis for further negotiations, rather than accepting the lowest bid as required by regulation. In one example of the government's failure to follow its procurement regulation, Pakistan Railways (PR) purchased over 75 Chinese locomotives that did not meet the PR's technical requirements. The Pakistan Railways Employees Union challenged the procurement in court. Pakistan made an initial payment of 15 percent of the locomotives' value to the Chinese vendor, but has withheld other payments since the case is in the Pakistani courts.

EXPORT POLICIES

Pakistan promotes the export of Pakistani products, such as textiles, surgical products, leather and sports goods, with measures such as tariff concessions on imported inputs, and income and sales tax concessions. Pakistan did not provide any export subsidies in the form of cash grants in the 2011-2012 Budget due to resource constraints.

In 1989, Pakistan established its first Export Processing Zone (EPZ) in Karachi. The EPZ provides special fiscal and institutional incentives specifically targeted to encourage the development of export oriented industries. An export oriented industry is defined as one that exports 80 percent to 100 percent of its production. The government subsequently created EPZs in eight additional locations, including Risalpur in Khyber Pakhtunkhwa Province, Gujranwala and Sialkot in Punjab, and Saindak, Gwadar, Reko Dek, and Duddar in Balochistan. Of these, only Karachi, Risalpur, Sialkot, Saindak, and Dudder are operational.

Principal government incentives for EPZ investors include: exemption from all taxes and duties on equipment, machinery, and materials (including components, spare parts, and packing material); indefinite loss carry-forward; and access to Export Processing Zone Authority One Window services. Foreign investors are eligible to establish businesses in the EPZ and are guaranteed full repatriation of capital and profits. Import and foreign exchange control regulations are not applicable in these zones.

The Export Processing Zone Authority (EPZA) has the exclusive right to collect estimated taxes on exports. Final taxes are one percent of the total profits. EPZA collects a "development surcharge" of 0.5 percent of the total profits. Companies' exports are otherwise exempt from all other federal, provincial, and municipal taxes. There are no minimum or maximum limits for investment. However, despite these incentives, most of the EPZs have failed to attract significant investment.

INTELLECTUAL PROPERTY RIGHTS PROTECTION

Pakistan remains on the Priority Watch List in the 2011 Special 301 report. The report cites weak protection and enforcement of intellectual property rights, particularly with respect to copyrights and pharmaceutical data.

While the government took steps in 2011 to improve copyright enforcement, especially with respect to addressing optical disc piracy, it appears that only a very small proportion of arrests resulted in prosecutions, and the few verdicts that were issued resulted in minor prison sentences. The failure to successfully prosecute a greater proportion of cases undermines the deterrent value of the underlying criminal penalties. Notwithstanding the limited number of prosecutions, it is noteworthy that Pakistan's Federal Investigation Agency continues to conduct large scale raids, and sixteen new cases were filed in 2011. Pakistan is now reportedly being used as a conduit for infringing products from Russia, Malaysia, Singapore, China, Bangladesh, and Sri Lanka, for onward distribution to third countries. Book piracy also continues to present barriers to legitimate trade and investment.

Pakistan has not made progress in providing effective protection against unfair commercial use of undisclosed test and other data generated to obtain marketing approval for pharmaceutical products.

Since 2006, the government of Pakistan and international and local pharmaceutical companies have been involved in negotiations related to draft regulations on data protection. Although draft data protection regulations were finally formulated in 2009, the regulations remain under government review and have not been promulgated. Pakistan also lacks an effective system to prevent the issuance of marketing approvals for unauthorized copies of patented pharmaceutical products.

With respect to patents, the processing of pending patent applications has been hampered due to a 2009, ordinance that removed an 18 month deadline for the processing of patent applications.

SERVICES BARRIERS

Pakistan generally permits foreign investment in services, subject to certain provisions, including a minimum initial capital investment requirement of $150,000 for most sectors, unless specified otherwise. Foreign investors in services and other non-manufacturing sectors are limited in remittance of royalty payments to a maximum of $100,000. Subsequent royalty payments are capped at five percent of net sales for five years.

Telecommunications

In 2003, the government of Pakistan deregulated the telecommunications sector in order to comply with its WTO commitments and encourage growth in the sector. The Pakistan Telecommunication Company Limited (PTCL) lost its monopoly on basic telephone services, and the government issued 14 licenses to long distance telephone companies (13 of which are currently in use), 84 licenses to 37 local loop companies (of which 13 are in use), and 93 licenses to 16 wireless local loop companies (of which nine are in use).

The ability of telecommunications companies to operate in Pakistan also will continue to depend on access to PTCL infrastructure. In 2005-2006, the government combined 15 value-added services including Internet service provision, vehicle tracking systems, and data network operations, into one license, the Class Value Added Services (CVAS) license. Applicants which applied prior to the announcement of this policy were given the option to either continue their old licenses or convert to CVAS licenses. To date, the government has issued 199 new CVAS licenses and converted 78 old licenses to CVAS. At present, the government does not issue licenses specifically for Voice over Internet Protocol (VoIP), but long distance/local loop telephone license holders may also provide VoIP services.

Banking and Insurance

Foreign banks that do not have a global tier-1 paid up capital (*e.g.*, equity and retained earnings of $5 billion or more) or are not from countries that are part of regional groups and associations of which Pakistan is a member (*e.g.*, the Economic Cooperation Organization and the South Asian Association for Regional Cooperation), and that wish to conduct banking business in Pakistan, must incorporate a local company, in which the foreign bank may hold a maximum of 49 percent of the shares.

The parastatal National Insurance Company has the exclusive authority to underwrite and insure public sector firms, assets and properties. The government has discretion to grant exemptions to this requirement pursuant to Section 166 of the Insurance Ordinance 2000. Private sector firms may seek foreign reinsurance facilities to meet up to 65 percent of their re-insurance needs.

INVESTMENT BARRIERS

Foreign investors are generally free to establish and own business enterprises in Pakistan with the exception of five restricted sectors: arms and munitions, high explosives, currency/mint operations, radioactive substances, and new, non-industrial alcohol plants. There is a $150,000 minimum foreign investment requirement in non-financial services (except information technology services), and a minimum investment requirement of $300,000 in agriculture, infrastructure projects, and social services.

OTHER BARRIERS

Businesses operating in Pakistan consistently call for strengthening Pakistan's domestic security. However, they are equally as vocal in expressing concern over corruption, which remains prevalent, and a weak judicial system, as these are substantial disincentives to investment.

Pakistani laws targeting corruption include the 1947 Prevention of Corruption Act, the 1973 Efficiency and Discipline Rules, and the 1999 National Accountability Bureau (NAB) Ordinance. Previously, the NAB, the Federal Investigation Agency, and provincial anticorruption departments shared official responsibility for combating corruption. In October 2002, Pakistan's Cabinet approved the National Anti-Corruption Strategy (NACS), that identified areas of pervasive corruption, and recommended the implementation of reforms to combat corruption. The NACS recognized the NAB as the sole federal anticorruption agency. In mid-2009, the Supreme Court directed that legislation replace the executive ordinance establishing the NAB, but as of December 2011, the National Assembly has yet to pass the related legislation. In October 2011, the Prime Minister appointed a new NAB Chairman, a post that had been vacant since June 2010.

Contract enforcement can be difficult for U.S. and other foreign investors in Pakistan.

In July 2005, Pakistan's Cabinet ratified the 1958 New York Convention on Recognition and Enforcement of Foreign Arbitral Awards (New York Convention) by ordinance. That ordinance expired in August 2010. A law ratifying the New York Convention was enacted by the Parliament on July 15, 2011.

PANAMA

TRADE SUMMARY

The U.S. goods trade surplus with Panama was $7.9 billion in 2011, an increase of $2.2 billion 2010. U.S. goods exports in 2011 were $8.3 billion, up 36.1 percent from the previous year. Corresponding U.S. imports from Panama were $389 million, up 2.2 percent. Panama is currently the 32nd largest export market for U.S. goods.

The stock of U.S. foreign direct investment (FDI) in Panama was $6.0 billion in 2010 (latest data available), down from $6.9 billion in 2009. U.S. FDI in Panama is led by the finance/insurance and wholesale trade sectors.

TRADE PROMOTION AGREEMENT

On June 28, 2007, the United States and Panama signed the United States-Panama Trade Promotion Agreement (TPA). Panama approved the TPA on July 11, 2007. The U.S. Congress enacted legislation approving the agreement on October 12, 2011, and President Obama signed the legislation on October 21, 2011. Presidents Obama and Martinelli have agreed to implement the TPA as quickly as possible.

The TPA is a comprehensive free trade agreement. Under the TPA, there will be significant liberalization of trade in goods and services, including financial services. The TPA also includes important disciplines relating to customs administration and trade facilitation, technical barriers to trade, government procurement, investment, telecommunications, electronic commerce, intellectual property rights, and labor and environmental protection. Under the TPA, U.S. firms will have better access to Panama's services sector than Panama provides to other WTO Members under the General Agreement on Trade in Services. All services sectors are covered under the TPA, except where Panama has made specific exceptions. Moreover, Panama agreed to become a full participant in the WTO Information Technology Agreement (ITA).

The Obama Administration worked with the government of Panama to address concerns regarding Panama's labor regime and its tax transparency rules. As a result, Panama implemented several labor and tax transparency reforms in 2010 and 2011. The United States-Panama Tax Information Exchange Agreement was signed on November 30, 2010, and entered into force on April 18, 2011.

IMPORT POLICIES

Tariffs

Panama's average tariff on U.S. industrial and consumer goods is 7 percent, but tariffs on some of these products are as high as 81 percent. Panama's average tariff on U.S. agricultural goods is 15 percent, but some U.S. agricultural exports face tariffs as high as 260 percent.

Over 87 percent of U.S. exports of consumer and industrial products to Panama will be duty free immediately upon entry into force of the Agreement, with remaining tariffs on these products phased out over 10 years. Within each of the following key industrial sectors, almost all products will gain immediate duty-free access to the Panamanian market: information communications and telecommunications equipment; agricultural and construction equipment; aircraft and parts; medical and scientific equipment; environmental products; pharmaceuticals; fertilizers; and agro-chemicals. This year Panama notified its Information Technology Agreement tariff schedule to the WTO and thus achieved membership in the ITA. As such, Panama has committed to provide most favored nation duty-free treatment on imports of products covered by the ITA.

The TPA provides for immediate duty-free treatment for over half of U.S. agricultural exports to Panama (by value), including high-quality beef, certain pork and poultry products, cotton, wheat, soybeans and soybean meal, most fresh fruits and tree nuts, distilled spirits and wine, and a wide assortment of processed products. Duties on other agricultural goods will be phased out within 5 years to 12 years and on the most sensitive products within 15 years to 20 years. The TPA also provides for expanded market access opportunities through tariff-rate quotas (TRQs) for agricultural products such as pork, chicken leg quarters, dairy products, corn, rice, refined corn oil, dried beans, frozen french fries, and tomato products. These TRQs will permit immediate duty-free access for specified quantities that will increase as over-quota duties are phased out over the course of the implementation period. Apparel products made in Panama will be duty-free under the TPA if they use U.S. or Panamanian fabric and yarn. Strong customs cooperation commitments between the United States and Panama under the TPA will allow for verification of claims of origin or preferential treatment, and denial of preferential treatment or entry if claims cannot be verified.

Nontariff Measures

In addition to tariffs, all goods sold in Panama, except for foods and feeds, are subject to a seven percent ITBMS (value-added tax). In the case of imported goods, the ITBMS is levied both on the cost, insurance, and freight value, as well as on import duties and other handling charges. The value-added tax is higher for cigarettes and alcohol. Pharmaceuticals, foods, school supplies, goods that will be re-exported, and all products related to transactions occurring in any free zone when using endorsable documents are exempt from the transfer tax.

Importing entities are required to hold a commercial or industrial license to operate in Panama in order to import manufactured goods into the country without an import license. The commercial or industrial license may be obtained through Panama's online business registration service. Importing entities holding such a license are not required to have a separate import license for individual shipments, except for imports of certain controlled products such as weapons, medicine, pharmaceutical products, and certain chemicals.

GOVERNMENT PROCUREMENT

Panamanian Law 22 of 2006, as amended by Law 48 of 2011 among others, regulates government procurement and other related issues. Law 22 requires publication of all proposed government purchases, and established PanamaCompra, an Internet-based procurement system (http://www.panamacompra.gob.pa). Panama has an administrative court to handle all public contracting disputes. The rulings of this administrative court are subject to review by Panama's Supreme Court.

Many observers believe political interests are influencing procurement decisions. Panamanian business leaders have requested that sole-source contracting be used only on an exceptional basis, and U.S. firms have expressed concern about how the government of Panama establishes and evaluates the criteria used to select a procurement winner.

From January to September 2011, 65,000 contracts, valued at over $1.7 billion, were awarded by the government of Panama; sole source tendering accounted for $208 million of these contracts. During the period January 1, 2011 to April 15, 2011, the government of Panama procured approximately $32 million in goods and services through approximately 360 sole-source contracts, the majority of which the government justified on grounds of "urgency," unique service or provider, or to benefit local interests.

There have been numerous news articles about alleged corruption involving an Italian company and the donation of six patrol boats to Panama, and the sole source purchase of radar equipment and helicopters for reportedly inflated prices.

Under the TPA, Panama's procuring entities will be required to use fair and transparent procurement procedures, including advance notice of purchases and timely and effective bid review procedures, for procurement covered by the TPA. U.S. suppliers will be permitted to bid on procurement above certain thresholds by most Panamanian government entities, including key ministries and state-owned enterprises, on the same basis as Panamanian suppliers.

The TPA would also help to the strengthen rule of law and fight corruption by requiring Panama to ensure under its domestic law that bribery in matters affecting trade and investment, including in government procurement, is treated as a criminal offense or is subject to non-criminal penalties where criminal responsibility is not applicable. When Panama became a WTO Member, it committed to accede to the WTO Agreement on Government Procurement (GPA). While Panama is an observer to the WTO Committee on Government Procurement, it has not proceeded with accession to the GPA.

EXPORT SUBSIDIES

Any company may import raw materials or semi-processed goods into Panama duty-free for export production, except for sensitive agricultural products, such as rice, dairy, pork, poultry, corn, and tomato products, or at a duty of three percent for domestic consumption or processing (pending certification that there is no national production). Companies are allowed a tax deduction of up to 100 percent of their profits from export operations through 2015, as provided in Law 11 of 2008.

In December 2009, Panama's National Assembly passed Law 82 of 2009, which creates a Certificate of Promotion of Agricultural Exports (CEFA) program. The CEFA gives incentives to agricultural exporters to reduce packing and transportation costs for specified nontraditional agricultural products. From January 2, 2011 to December 1, 2011, the government of Panama issued 1,024 certificates valued at $9.7 million.

A number of export industries, such as tourism, and special economic areas, such as free trade zones, are also exempt from paying certain types of taxes and import duties. The government of Panama established this policy to attract foreign investment, especially in economically depressed regions, such as the city of Colon. (Companies that benefit from these exemptions are not eligible to benefit from the CEFA program for their exports.) The 95 companies operating in Panama's 14 free zones may import inputs duty free, if products assembled in the zones are to be exported.

Under the TPA, Panama may not adopt new duty waivers or expand existing duty waivers conditioned on the fulfillment of a performance requirement (*e.g.,* the export of a given level or percentage of goods or the use of domestic content in the production of goods).

INTELLECTUAL PROPERTY RIGHTS PROTECTION

The government of Panama is making efforts to strengthen the enforcement of intellectual property rights (IPR) in Panama. Since 1997, two district courts and one superior tribunal have been exclusively adjudicating antitrust, patent, trademark, and copyright cases. Since January 2003, a specific prosecutor with national authority over IPR cases has consolidated and simplified the prosecution of those cases. Law 1 of 2004 added crimes against intellectual property as a predicate offense for money laundering, and Law 14 establishes a 5 year to 12 year prison term, plus possible fines. Law 10 of 2011 moved the Copyright Office from the Ministry of Education to the Ministry of Commerce and Industry. A

Committee for Intellectual Property (CIPI), comprising representatives from five government agencies (Colon Free Zone, Offices of Intellectual Property Registry and Copyright under the Ministry of Commerce and Industry, Customs, and the Attorney General), under the leadership of the Ministry of Commerce and Industry, is responsible for development of intellectual property policy in Panama.

The Panamanian government reports that 269 patents were registered in 2011, down from 491 in 2010. Also, 9,266 trademarks were registered, up from 8,225 in 2010. The Panamanian government also reports that the it investigated 901 intellectual property violations in 2011 (up from 765 cases in 2010), of which 409 were crimes against copyrights and related issues, 438 for crimes against industrial property, 33 for crimes against information system security, and 21 for reinstatement. As a result, there were 339 convictions and 26 acquittals for IPR-related violations (up from 260 and 29 respectively in 2010). The Colon Free Zone created a special office for IPR enforcement in 1998; in 2011, this office performed only 24 inspections (up from two in 2010). However, given Panama's importance as a hub for regional and global trade, industry believes enforcement against trans-shipment of pirated and counterfeit goods is and will continue to be crucial. Panama's Attorney General, the U.S. Department of Justice, and the U.S. Embassy sponsored a workshop in August 2011 for Panamanian prosecutors, judges, and investigators to combat the illicit sale, importation, and manufacturing of counterfeit pharmaceuticals.

The TPA provides for improved standards for the protection and enforcement of a broad range of IPR, including protections for patents, trademarks, undisclosed test and other data submitted to obtain marketing approval for pharmaceuticals and agricultural chemicals, and digital copyrighted products such as software, music, text, and videos; and further deterrence of piracy and counterfeiting. Once these improved standards are in place, the importance of enforcement will be all the more essential.

SERVICES BARRIERS

Under the TPA, Panama will accord U.S. services suppliers substantial access to its services market, including financial services. Panama agreed to provide improved access in sectors like express delivery, and to grant new access in certain professional services that previously had been reserved exclusively to Panamanian nationals. Panama also agreed that portfolio managers in the United States would be able to provide portfolio management services to both mutual funds and pension funds in Panama. Under the TPA, U.S. insurance suppliers will be permitted to operate as a branch or a subsidiary.

INVESTMENT BARRIERS

While Panama maintains an open investment regime and is generally receptive to foreign investment, the U.S. Government has received numerous property dispute complaints from U.S. investors and individual property holders. Many of these complaints appear to stem from the general lack of titled land in Panama and inadequate government administration of the property system. Panama enacted a law in 2009 (Law 80) that attempts to address the lack of titled land in certain parts of the country. Decisions taken by the National Land Authority established by this law, however, have reinforced investors concerns regarding government administration, corruption, and the ability of the judicial system to resolve these issues.

There is a low level of confidence in the competency and independence of the judicial system. Additionally, there are public complaints that Panama is not observing public-private agreements from 2003 and 2005 and promises to follow certain procedures for new judicial appointments. The United States continues to stress the need to increase transparency and accountability in land titling, and reinforce the rule of law in Panama.

The United States-Panama Bilateral Investment Treaty (BIT) entered into force in 1991 with additional amendments in 2001. Among other protections, the BIT and the investment chapter of the TPA ensure that, subject to some exceptions, investors of both Parties receive fair, equitable, and nondiscriminatory treatment and have the right to make free transfers, and that both Parties abide by international law standards relating to expropriation. Once in force, the investor protection provisions in the TPA will supplant those in the BIT. For 10 years, investors may invoke dispute settlement under the BIT with respect to investments covered by the Treaty as of the date of entry into force of the TPA.

ELECTRONIC COMMERCE

Law 43 of 2001 gives electronic signatures the legal equivalence of handwritten signatures. Panama issued Executive Decree 40 of 2009, which defines and regulates electronic documents, electronic signatures, technological documents, and storage services while adopting other measures that will allow the development of electronic commerce. These measures should improve the efficiency of the public sector by eliminating the use of paper documents, stamps, and handwritten signatures. Under the TPA, Panama will be obligated to provide nondiscriminatory treatment of digital products transmitted electronically and not to impose customs duties, fees, or other charges on digital products transmitted electronically. Additionally, under the TPA, Panama will have in place procedures for resolving disputes about trademarks used in Internet domain names.

OTHER BARRIERS

Corruption

The Panamanian judicial system continues to pose a problem for investors due to poorly trained personnel, case backlogs, and a perceived lack of independence from political influence. The Martinelli administration campaigned in 2009 on a promise to "eradicate corruption" and continues to assert its commitment to combating corruption as part of its overall agenda of institutional reform, but it has not yet delivered concrete results. Domestic anticorruption mechanisms exist, such as asset forfeiture, protection for witnesses and whistleblowers (that is, people who report corruption), and conflict-of-interest rules. In addition, Panama ratified the United Nations' Convention Against Corruption in 2005 and the Organization of American States' Inter-American Convention Against Corruption in 1998. However, the general perception is that anticorruption laws are not applied rigorously, and that government enforcement bodies and the courts have lacked effectiveness in pursuing and prosecuting those accused of corruption, particularly in high profile cases. There is also a perception that Panama could do more to implement the conventions and respond to official recommendations.

The anticorruption provisions in the TPA will require Panama to ensure that bribery in matters affecting trade or investment is treated as a criminal offense or is subject to comparable penalties under its law. The TPA also will promote transparency and encourage whistleblower protection.

PARAGUAY

TRADE SUMMARY

The U.S. goods trade surplus with Paraguay was $1.9 billion in 2011, an increase of $118 million from 2010. U.S. goods exports in 2011 were $2.0 billion, up 9.2 percent from the previous year. Corresponding U.S. imports from Paraguay were $110 million, up 77.0 percent. Paraguay is currently the 63rd largest export market for U.S. goods.

The stock of U.S. foreign direct investment (FDI) in Paraguay was $193 million in 2010 (latest data available).

IMPORT POLICIES

Tariffs

Paraguay is a member of the MERCOSUR common market, which was formed in 1991 and is comprised of Argentina, Brazil, Paraguay, and Uruguay. MERCOSUR's Common External Tariff (CET) averages 11.5 percent and ranges from zero percent to 35 percent *ad valorem*, with a limited number of country-specific exceptions to the common rates. According to current MERCOSUR procedure, any good introduced into any member country must pay the CET to that country's customs authorities. If the product is re-exported to any other MERCOSUR country, the CET must be paid again to the second country. Thus, for any U.S. good introduced into landlocked Paraguay via any other MERCOSUR country (all of which have ocean ports), the CET is effectively doubled.

During its 39th meeting in August 2010, MERCOSUR's Common Market Council (CMC) advanced toward the establishment of a Customs Union with its approval of a Common Customs Code (CCC) and a decision to implement a plan to eliminate the double application of the CET within MERCOSUR. The plan was to take effect in three stages with the first phase to have been implemented no later than January 1, 2012. That deadline was not met, however, and the CCC still must be ratified by MERCOSUR's member countries.

Paraguay's import tariffs tend to be lower than the CET, ranging from zero percent to 20 percent, with an average applied tariff rate of 10.2 percent. This is because MERCOSUR permitted Paraguay to maintain over 2,600 country-specific exceptions to the CET through December 31, 2011. The continuation of these exceptions is currently being negotiated; however, at a minimum Paraguay will be permitted to maintain a national list of 649 country-specific exceptions until December 31, 2019.

In December 2009, Paraguay, along with the other MERCOSUR members, approved tariff increases for hundreds of products in the CET, including dairy, textiles, bags, backpacks, and suitcases. In many cases, the applied tariffs were increased up to WTO bound levels. In December 2011, the MERCOSUR members agreed to temporarily increase import duty rates to a maximum rate of 35 percent on 100 tariff items per member country. The increased duties went into effect in January 2012 and will remain in effect through the end of 2012, with the possibility of extension through the end of 2015.

Nontariff Barriers

Since March 2009, the government of Paraguay has required non-automatic import licenses on personal hygiene products, cosmetics, perfumes and toiletries, textiles and clothing, insecticides, agrochemicals, and poultry. Obtaining a license requires review by the Ministry of Industry and Commerce and sometimes by the Ministry of Health. The process usually takes 10 days but can take up to 30 days for goods that require a health certification. Once issued, the certificates are valid for 30 days.

With support from the Millennium Challenge Corporation's Threshold II Program, the Paraguayan Customs Office launched a "single window" web-based system for imports (referred to by its Spanish acronym, *VUI – Ventanilla Unica de Importación*) in July 2011. The cost and time required to process import licenses from government institutions has been reduced, improving competitiveness and transparency in customs operations.

Since 2000, Paraguay has prohibited the importation of used clothing and cars over 10 years old.

Customs Procedures

Paraguay requires specific documentation for imports, such as the commercial receipt, certificate of origin and cargo manifest, to be certified by either the Paraguayan consulate in the country of origin or at the Ministry of Foreign Affairs in Paraguay. The latter requires an additional fee.

Paraguay requires all companies operating in the country to contract the services of a customs broker. The customs broker fees are standardized by Paraguayan law.

GOVERNMENT PROCUREMENT

Paraguay is not a signatory to the WTO Agreement on Government Procurement. In September 2011, the government of Paraguay passed a new law that gives preference to a locally produced good in public procurements where the procurement is open to foreign suppliers even if it is up to 20 percent more expensive than the imported good.

INTELLECTUAL PROPERTY RIGHTS PROTECTION

The United States continues to monitor implementation of the Memorandum of Understanding (MOU) between the United States and Paraguay pertaining to intellectual property rights (IPR) protection and enforcement, which was revised in 2009 and will remain in effect through April 30, 2012. The United States is working with Paraguay on its renewal.

Recently, Paraguay has made progress with respect to IPR enforcement, for example, by making its Specialized Technical Unit permanent and proving funds for that unit. Paraguay also enacted legislation to clarify and streamline procedures for administrative IPR litigation, and the National Customs Administration issued resolutions with respect to combating IPR violations. However, concerns remain because of porous borders, ineffective prosecution of IPR violators, and court sentences that are insufficient to deter infringement. The United States has strongly encouraged Paraguay to undertake more effective enforcement efforts in the Tri-Border region, including by increasing cooperation with Argentina and Brazil. Industry has also expressed concerns about inadequate protection against unfair commercial use of undisclosed test or other data generated to obtain marketing approval for pharmaceutical and agricultural chemical products, as well as shortcomings in Paraguay's patent regime.

INVESTMENT BARRIERS

Under Paraguayan Law 194, enacted in 1993, foreign companies must demonstrate "just cause" to terminate, modify, or decide not to renew contracts with Paraguayan distributors. Severe penalties and high fines may result if a court determines that the foreign company ended a relationship with its distributor without first having established that "just cause" exists. This requirement often leads to expensive out-of-court settlements. In a few cases, the courts have upheld the rights of foreign companies to terminate representation agreements after finding the requisite showing of "just cause." However, this law may discourage U.S. investment due to concerns about potential lawsuits and interference with contractual relations.

Tourism Law 2828, enacted in 2005, mandates that air carriers pay a six percent commission to travel agents that sell their air tickets. This law has discouraged U.S. air carriers, which have a different compensation model for their travel agents, from entering the Paraguayan market.

Executive branch ministries, regulatory agencies and the tax agency often lack the resources, expertise, or impartiality necessary to carry out their respective mandates, creating uncertainty for investors. Corruption is also a challenge in Paraguayan government agencies, and industry asserts that the judiciary has not consistently enforced laws in cases involving foreign investment.

Two laws, Article 195 of the Civil Procedural Code and Law 1376/1988, raise a concern for potential investors. These laws appear to create a basis for a plaintiff pursuing a lawsuit to seek reimbursement from the defendant of the damages and legal fees incurred by the plaintiff in pursuing the action, irrespective of the outcome of the underlying suit. Such punitive measures could act as a significant deterrent to U.S. and other foreign companies in considering whether to invest in Paraguay.

PERU

TRADE SUMMARY

The U.S. goods trade deficit with Peru was $2.1 billion in 2011, an increase of $386 million from 2010. U.S. goods exports in 2011 were $8.3 billion, up 23.2 percent from the previous year. Corresponding U.S. imports from Peru were $6.2 billion, up 23.3 percent. Peru is currently the 30th largest export market for U.S. goods.

The stock of U.S. foreign direct investment (FDI) in Peru was $7.9 billion in 2009 (latest data available), up from $5.6 billion in 2009. U.S. FDI in Peru is led by the mining sector.

TRADE PROMOTION AGREEMENT

The United States and Peru signed the United States-Peru Trade Promotion Agreement (PTPA) on April 12, 2006. Peru's Congress ratified the Agreement in June 2006 and a protocol of amendment in June 2007. On December 14, 2007, the PTPA Implementation Act became law, and the PTPA entered into force on February 1, 2009.

The PTPA is a comprehensive free trade agreement that has resulted in significant liberalization of trade in goods and services between the United States and Peru which the Parties will continue in the future. Under the PTPA, Peru immediately eliminated most of its tariffs on U.S. exports, with all remaining tariffs phased out over defined time periods. The PTPA also includes important disciplines relating to: customs administration and trade facilitation; technical barriers to trade; government procurement; services; investment; telecommunications; electronic commerce; intellectual property rights; transparency; and labor and environmental protection.

In December 2009, the United States announced its intention to enter into an Asia-Pacific trade agreement called the Trans-Pacific Partnership (TPP), with the objective of shaping a high standard, broad-based regional agreement. This agreement will create a potential platform for economic integration across the Asia-Pacific region, a means to advance U.S. economic interests with the fastest-growing economies in the world, and a tool to expand U.S. exports, which are critical to U.S. economic recovery and the creation and retention of high-paying, high-quality jobs in the United States. In addition to Peru, the TPP negotiating partners currently include Australia, Brunei, Chile, Malaysia, New Zealand, Singapore, and Vietnam. Japan, Canada, and Mexico also have expressed interest in joining the negotiations.

IMPORT POLICIES

Tariffs

Under the PTPA, more than 80 percent of U.S. exports of consumer and industrial products now enter Peru duty free. All remaining tariffs on these goods will be phased out by 2018. More than two-thirds of current U.S. agricultural exports enter Peru duty free and remaining tariffs on U.S. agricultural exports to Peru will be completely phased out by 2026. As a result of commitments made in the PTPA, Peru has eliminated its price band system on trade with the United States.

Nontariff Measures

The government of Peru already has eliminated many nontariff barriers, and, under the PTPA, is subjecting remaining measures, including subsidies and import licensing requirements, to additional disciplines. Peru currently restricts imports of certain used goods, including used clothing and shoes (except as charitable donations), used tires, cars over five years old, and heavy trucks (weighing three tons or more) over eight years old. The value-added tax does not apply to charitable donations, although this charitable exemption requires prior registration by the importer with APCI (the Peruvian Government's Agency for International Cooperation). A 45 percent excise tax applies to used cars and trucks receiving import permits (compared to 20 percent for a new car). However, if these used cars and trucks undergo refurbishment in an industrial center in the south of the country (located in Ilo, Matarani, or Tacna) after importation, no excise tax applies.

Remanufactured Goods

Under the PTPA, Peru may not adopt or maintain prohibitions or restrictions on trade in certain remanufactured goods, and Peru may not apply to remanufactured goods certain existing prohibitions on trade in used goods. This commitment opens new and significant export opportunities for firms involved in remanufactured products such as engines, automotive parts, mining and construction equipment, transportation machinery, medical equipment, and computers.

In November 2010, Peru enacted a measure that, among other things, requires exporters of remanufactured automotive parts to provide documentation from the original manufacturer consenting to the remanufacture and exportation of the automotive part. The United States has engaged the government of Peru regarding the consistency of this measure with Peru's obligations under the PTPA.

GOVERNMENT PROCUREMENT

The PTPA requires that procuring entities use fair, nondiscriminatory, and transparent procurement procedures, including advance notice of purchases and timely and effective bid review procedures, for procurement covered by the Agreement. Also, under the PTPA, U.S. suppliers can bid on procurements of most Peruvian central government entities on the same basis as Peruvian suppliers. This includes procurements by state-owned enterprises, such as Peru's oil company and Peru's public health insurance agency. The anticorruption provisions in the PTPA require Peru's domestic law to treat bribery related to trade and investment, including in government procurement, as a criminal offense or subject it to non-criminal penalties where criminal responsibility is not applicable.

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

INTELLECTUAL PROPERTY RIGHTS PROTECTION

USTR listed Peru on its 2011 Special 301 Watch List. As a result of the PTPA, Peru enhanced its intellectual property rights (IPR) legal framework and continued to implement its National Strategic Plan to combat counterfeiting and piracy. Among other improvements, Peru continued to strengthen its IPR enforcement efforts, including through significant raids and seizures at ports and well-known markets. Notwithstanding the improvements to Peru's IPR legal regime, piracy and counterfeiting rates remain high. Inadequate resources for law enforcement and the need for improvements at Peru's border and in its judicial system are evident. Piracy over the Internet is a growing problem, especially with respect to music. There is also a continuing need for measures to correct widespread government use of unlicensed software. A further concern is the lack of issuance of deterrent penalties in criminal IPR cases and against businesses found to have engaged in infringing activity. In addition, Peru needs to clarify its system for protecting against the unfair commercial use, as well as unauthorized disclosure, of undisclosed test or other data generated to obtain marketing approval of agricultural chemical products. Peru must also clarify its protections for biotechnologically-derived pharmaceutical products, in accordance with provisions of the PTPA.

SERVICES BARRIERS

Telecommunications

In August 2010, Peru's telecommunications regulator (OSIPTEL) established a "glide path" plan to gradually lower the mobile termination rates for all carriers by October 2013. This created a more favorable competitive environment for smaller carriers. While U.S.-affiliated companies were pleased that the final rate in 2013 will be significantly lower, they remain concerned that this rate is based on a historical cost structure that may not reflect current costs, given the downward trend in per-call network costs. Mobile termination rates affect U.S.-affiliated carriers because these companies have a smaller market share in Peru and therefore terminate more calls on another carrier's network. The United States will continue to monitor the rates and to urge OSIPTEL to consider revising rates to reflect up-to-date costs.

INVESTMENT BARRIERS

The PTPA establishes a secure and predictable legal framework for U.S. investors operating in Peru. Under the PTPA, Peru accords U.S. investors and their investments national and most favored nation treatment, and Peru permits U.S. investors to make financial transfers freely and without delay. The PTPA applies international legal standards for expropriation and compensation, and provides for binding international arbitration for the resolution of investment disputes. In most circumstances, the PTPA guarantees U.S. investors the right to establish, acquire, and operate investments in Peru on an equal footing with domestic investors.

Peruvian law prohibits majority foreign ownership in the broadcast media sector. Peruvian law also restricts foreigners from owning land or investing in natural resources located within 50 kilometers of its border, although the Peruvian government may grant special authorization to operate within those areas. Under current law, foreign employees may not comprise more than 20 percent of the total number of employees of a local company (whether owned by foreign or Peruvian persons) or more than 30 percent of the total company payroll. Under the PTPA, Peru agreed not to apply most of its nationality-based hiring requirements to U.S. professionals and specialty personnel.

Both U.S. and Peruvian firms remain concerned that executive branch ministries, regulatory agencies, the tax agency, and the judiciary often lack the resources, expertise, or impartiality necessary to carry out their respective mandates. U.S. and Peruvian investors have also complained about the reinterpretation of rules and the imposition of disproportionate fines by Peru's tax agency, *Superintendencia Nacional de Administracion Tributaria*.

THE PHILIPPINES

TRADE SUMMARY

The U.S. goods trade deficit with the Philippines was $1.4 billion in 2011, up $831 million from 2010. U.S. goods exports in 2011 were $7.7 billion, up 4.5 percent from the previous year. Corresponding U.S. imports from the Philippines were $9.1 billion, up 14.5 percent. The Philippines is currently the 33rd largest export market for U.S. goods.

U.S. exports of private commercial services (*i.e.*, excluding military and government) to the Philippines were $2.0 billion in 2010 (latest data available), and U.S. imports were $2.6 billion. Sales of services in the Philippines by majority U.S.-owned affiliates were $2.7 billion in 2009 (latest data available), while sales of services in the United States by majority Philippines-owned firms were $35 million.

The stock of U.S. foreign direct investment (FDI) in the Philippines was $6.6 billion in 2010 (latest data available), up from $5.9 billion in 2009. U.S. FDI in the Philippines is mostly in the manufacturing sector.

IMPORT POLICIES

Tariffs

In the Philippines, the simple average most favored nation (MFN) tariff applied to imports is 6.8 percent. Five percent of applied Philippine tariffs are above 15 percent. All agricultural tariffs and just under two-thirds of non-agricultural tariff lines are bound. Bound rates, however, are often much higher than applied rates, and the simple average bound tariff in the Philippines is 25.4 percent. Products with unbound tariffs include certain automobiles, chemicals, plastics, vegetable textile fibers, footwear, headgear, fish, and paper products.

Higher import tariffs, some at 30 percent, are charged on automobiles, motorcycles, certain automotive parts, and many agricultural products. Additionally, agricultural products with tariff-rate quotas (TRQs) have high tariffs, including high in-quota tariffs ranging from 30 percent to 65 percent. Sugar has the highest in-quota tariff at 65 percent, followed by rice at 50 percent. Other products with TRQs include poultry, pork, swine, goats and goat meat, potatoes, corn, coffee, and coffee extracts. The high in-quota tariffs for these TRQs significantly inhibit U.S. exports to the Philippines. On potatoes, for instance, the TRQ of 1,500 metric tons has an in-quota tariff of 40 percent and an over quota tariff of 50 percent. For corn, the in-quota tariff is 30 percent and the out-of-quota tariff is 50 percent. In 2010, as part of an internal Philippine government review of Philippine tariff policy, the U.S. potato industry petitioned for the elimination of Philippine potato tariffs, but no action has been taken in response to this request.

Applied tariffs on fresh citrus fruit including oranges, lemons, and grapefruit are 10 percent, though the bound rate is 40 percent to 45 percent. While the reduced applied rate provides increased export potential, U.S. stakeholders report that frequent Philippine government changes in the applied rate for these products makes it difficult for them to take advantage of the lower applied tariffs.

The reduction of tariffs through preferential trade agreements to below MFN rates for trading partners such as China, Australia, and New Zealand threatens to reduce the competitiveness of U.S. products and erode U.S. market share in the Philippines. U.S. wheat exports, for instance, are subject to a three percent duty, while wheat from Australia enters the Philippine market, a top 10 market for U.S. wheat, duty free.

Meanwhile, as part of ASEAN, the Philippines has eliminated tariffs on approximately 99 percent of all goods for ASEAN trading partners.

Automobile Sector

As noted, the Philippines continues to apply high tariffs on finished automobiles and motorcycles, including a 30 percent tariff on passenger cars; tariffs of 20 percent to 30 percent on vehicles for the transport of goods; and tariffs of 15 percent to 20 percent on vehicles for the transport of persons, depending on vehicle weight. ASEAN countries and Japan enjoy preferential import tariffs on new vehicle imports under the ASEAN Free Trade Agreement and the Japan-Philippines Economic Partnership Agreement, respectively.

An April 2010 executive order revised the eight year old Motor Vehicle Development Program (MVDP) to promote domestic automobile production and spur exports. This program is designed to encourage local assembly through low tariffs on components. A one percent tariff applies to completely knocked-down kits (CKDs) imported by MVDP-registered participants and CKDs of alternative fuel vehicles enter duty free. Japan and ASEAN nations enjoy a zero import tariff on all CKDs. The revised policy continues the prohibition on imports of used motor vehicles.

Safeguards

The Philippine government continues to levy safeguard duties on ceramic floor and wall tiles, glass products, steel angle bars and test-liner boards. The Safeguard Measures Act allows interested parties a short five-day comment period; an amendment to extend this period to 30 days has been pending since 2007.

Excise Tax on Distilled Spirits

The Philippines applies tax rates to distilled spirits that differ depending on the product from which the spirit is distilled. Spirits made from the sap of nipa, coconut, cassava, camote, or buri palm or from the juice, syrup or sugar of the cane, which are typically produced domestically, are taxed at a low rate (*e.g.*, 13.59 pesos per proof liter in 2009). All other spirits are taxed at one of three significantly higher rates, all of which are at least 10 times higher than the rate applied to domestic products. This system has been in place for more than a decade despite numerous industry and government discussions with the Philippines.

In March 2010, the United States requested that the WTO establish a dispute settlement panel regarding the discriminatory taxes applied by the Philippines to imported distilled spirits. The panel met in Geneva in November 2010 and February 2011, and circulated its report in August 2011. The panel found that the Philippine excise taxes on imported distilled spirits are discriminatory and inconsistent with the Philippines' WTO obligations under Article III:2 of the GATT 1994. The Philippines appealed, but the World Trade Organization Appellate Body agreed with the United States and affirmed these findings in December 2011.

Quantitative Restrictions

The Philippine government imposes a TRQ known as the Minimum Access Volume (MAV) system on several agricultural products, including corn, pork, and poultry. Since 2005, the Philippine government has maintained MAV levels below its Uruguay Round commitments despite a continued rise in market demand for MAV products.

Since 2002, the Department of Agriculture has invoked a price-based special safeguard (SSG) on imports of chicken, effectively doubling the effective rate of protection for out-of-quota imports. The imposition of the SSG reportedly resulted from intense political pressure from the domestic poultry industry to keep low-priced imports out.

The National Food Authority (NFA) controls rice imports and provides price support to growers of rice. NFA's objectives are to achieve self-sufficiency and ensure sufficiently high and stable food prices to enhance farm incomes and alleviate rural poverty. According to the WTO, NFA's policies have contributed to the sector's non-competitiveness by reducing incentives for farmers to minimize production costs and improve efficiency.

Customs Barriers

Reports of corruption and other irregularities in customs processing persist, including undue and costly delays, irregularities in the valuation process (*e.g.*, use of reference prices rather than declared transaction values, 100 percent inspection and testing of some products, and customs officials seeking the payment of unrecorded facilitation fees). Some exporters report, for instance, that Philippine Customs does not recognize their established prices and instead applies a higher dutiable value based on information from unspecified sources. The United States continues to seek to address these issues with the Philippine government.

In November 2011, the United States and the Philippines signed a Customs Administration and Trade Facilitation Protocol to the Trade and Investment Framework Agreement that aims to promote increased bilateral trade through simplified customs procedures and transparency of customs administration. The protocol includes commitments on: publication of customs regulations; implementation of an advance rulings system; and increasing the *de minimis* level for express shipments. The United States and the Philippines will continue to work together to ensure the effective implementation of the commitments in this protocol.

GOVERNMENT PROCUREMENT

Government procurement laws and regulations favor Philippine-controlled companies and locally-produced materials and supplies. The Government Procurement Reform Act of 2003 aimed to consolidate procurement laws, simplify prequalification procedures, introduce objective and nondiscretionary criteria in the selection process, and establish an electronic single portal for government procurement activities. However, implementation remains inconsistent. U.S. companies have expressed concern about delayed procurement decisions, delayed payment, and different interpretations of the procurement law among Philippine government agencies.

Since 1993, the Philippine government has maintained a countertrade requirement of 50 percent of the price of imports for procurement by government agencies and government-controlled corporations, with penalties for nonperformance of countertrade obligations.

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

SUBSIDIES

The Philippines offers a wide array of fiscal incentives for export-oriented investment through export processing zones, free port zones, and other special industrial estates registered with the Philippine Economic Zone Authority.

The Philippine government also offers incentives for investment in less developed economic areas. Companies may qualify for fiscal incentives for their activities in preferred sectors and geographic areas, as outlined in the Board of Investment's Investment Priorities Plan (IPP). Such incentives include: income tax holidays; tax deductions for wages and some major infrastructure investments; tax and duty exemptions for imported breeding stock and genetic materials; and tax credits on local purchases of breeding stock and materials. An enterprise with less than 60 percent Philippine equity may also enjoy incentives if its projects are classified as “pioneer” under the IPP or if it opts to be an export-oriented firm with export requirement of at least 70 percent of actual production.

The 2005 WTO trade policy review of the Philippines noted that the Philippines provided tax incentives based on local content requirements under the IPP. Publicly available information regarding the operation of the IPP program indicates that these incentives are still provided.

INTELLECTUAL PROPERTY RIGHTS PROTECTION

The Philippines remains on the Special 301 Watch List. The widespread availability of pirated and counterfeit goods in the Philippines, and the ineffectiveness of the judicial system in enforcing against intellectual property rights (IPR) crimes, continue to represent barriers to U.S. exports and investment. Other key concerns of U.S. rights holders include an increase in Internet-based piracy, rampant cable signal piracy, and amendments to the patent law that preclude the issuance of patents on certain chemical forms unless the applicant demonstrates increased efficacy. The United States continue to encourage the Philippines to continue to improve the coordination and effectiveness of its enforcement efforts and to enact legislative reforms to strengthen the copyright law, provide new enforcement authorities to the Intellectual Property Organization, and implement the WIPO Internet Treaties. Legislation to implement the WIPO Treaties has been pending for more than a decade, but is currently before the Philippine House and Senate. In late 2011, the Philippine government took steps to address longstanding concerns about its judicial system, announcing new rules for the handling of IPR cases that are intended to expedite and improve the handling of IP-related cases in the Philippine court system.

SERVICES BARRIERS

Basic Telecommunications

Philippine law defines telecommunications services as a public utility, which limits foreign investment to 40 percent. Foreigners may not serve as executives or managers of telecommunications companies, and the number of foreign directors allowed is tied to the proportion of foreign investment in the company. The United States has urged the Philippines to reclassify telecommunications outside of the utility definition, as it has done for electricity generation. The applicability of the public utility designation to value-added services is particularly burdensome and inconsistent with international practice. The recent acquisition by Philippine Long Distance Telephone, the largest telecommunications provider, of the third largest provider, Digitel, raises additional questions about competition in the telecommunications market and underscores the benefit of attracting additional foreign suppliers to increase consumer choice.

Foreign equity in private radio communications is limited to 20 percent, and foreign ownership of cable television and all other forms of broadcasting and media is prohibited.

Insurance

At this time, the Philippines permits up to 100 percent foreign ownership in the insurance sector; however, its GATS commitment caps foreign ownership at 51 percent.

Generally, only the state-owned Government Service Insurance System (GSIS) may provide insurance for government-funded projects. A 1994 order requires sponsors of build-operate-transfer projects and privatized government corporations to secure their insurance and bonding from the GSIS at least to the extent of the government's interest. All reinsurance companies operating in the Philippines must cede to the industry-controlled National Reinsurance Corporation of the Philippines at least 10 percent of outward reinsurance placements.

Banking

The Philippines applies restrictions on foreign participation in the banking sector in two tiers. Those foreign banks that meet specific requirements, such as diversified ownership, public listing in the country of origin, and global or national rankings, are limited to owning 60 percent of the equity in a locally-incorporated banking subsidiary. However, those banks that do not meet the criteria, as well as non-bank investors, are subject to a 40 percent ownership ceiling.

Under a 1994 law and its implementing regulations, majority Philippine-owned domestic banks must control at least 70 percent of the resources or total assets in the banking system. This requirement acts as a secondary limit on foreign participation in the banking system.

Since 1999, foreign investments are limited to existing banks due to a central bank moratorium on the issuance of new bank licenses. Furthermore, foreign banks allowed into the Philippines market under the 1994 Foreign Bank Liberalization Act cannot open more than six branches. Four foreign banks, those who operated in the Philippines prior to 1948, may operate up to six additional branches each.

In June 2011, the Philippine Central Bank announced a phased lifting of branching restrictions for locally-incorporated commercial and thrift banks in eight key Metro Manila cities. Before branching restrictions in the key cities are fully lifted starting July 2014, priority will be given to banks with fewer than 200 branches in the previously-restricted areas. The liberalization will benefit foreign banks with commercial and thrift banking subsidiaries in the Philippines.

Financial institutions must set aside loans for certain preferred sectors. The Agri-Agra Law requires banks to earmark at least 25 percent of their loan portfolios for agricultural credit, with at least 10 percent dedicated to agrarian reform program beneficiaries. Although amendments to the Agri-Agra Law in 2010 widened the scope of eligible credits and investments, the new law also scrapped previously allowed, alternative modes of compliance (*i.e.*, financing of educational institutions, hospitals and other medical services, low cost housing, and cooperatives). In addition, the Magna Carta for Micro, Small, and Medium Enterprises (MSMEs) requires banks to set aside at least 10 percent of their loan portfolios for MSME borrowers. These mandatory lending provisions are more burdensome on foreign banks for a number of reasons, including constrained branch networks and foreign land ownership restrictions that impede their ability to enforce rights over land accepted as collateral.

Securities

With respect to mutual funds, all members of the board of directors must be Philippine citizens, although no foreign ownership restrictions apply. The 2007 Lending Company Regulation Act requires majority Philippine ownership for those few classes of credit enterprises not clearly under the scope of other laws.

Advertising

The Philippine Constitution limits foreign ownership of advertising agencies to 30 percent. All executive and managing officers must be Philippine citizens.

Public Utilities

The Philippine Constitution limits foreign investment in the operation and management of public utilities to 40 percent. Philippine law defines public utility to include a range of sectors including water and sewage treatment, electricity transmission and distribution (although not electricity generation), telecommunications, and transport. All executive and managing officers of public utility companies must be Philippine citizens, and foreign investors may serve on governing bodies only in proportion to their equity.

Professional Services

The Philippine Constitution limits licensing for the practice of professions to Philippine citizens. Under Philippine law, the practice of professions is defined broadly to include law, medicine, nursing, accountancy, engineering, architecture, and customs brokerage.

Express Delivery Services

Foreign equity participation in the domestic express delivery services sector is limited to 40 percent.

Retail Trade

Philippine law restricts foreign investment in small retail ventures to Philippine nationals. Foreigners may own larger retail ventures subject to several requirements, including paid-up capital of $2.5 million or more, an $830,000 minimum investment per store, and parent company net worth of over $200 million. In addition, the retailer must either own at least five retail stores elsewhere or have at least one outlet with capitalization of $25 million or more. For retailers of high-end or luxury products, the minimum investment in each retail store is $250,000 and the net worth of the parent company must exceed $50 million.

Foreign retailers are prohibited from engaging in trade outside their accredited stores, such as through the use of carts, sales representatives, or door-to-door selling. Retail enterprises with foreign ownership exceeding 80 percent of equity must offer at least 30 percent of their shares to local investors within eight years of the start of operations through public offering of stock.

Civil Aviation

The Philippine government imposes the Common Carrier Tax and Gross Philippine Billing Tax on foreign airlines operating in the Philippines. The International Air Transportation Association continues to assert that these taxes are discriminatory, inconsistent with International Civil Aviation Organization resolutions, and have contributed to the departure of some foreign carriers from the Philippine market. Foreign airlines have argued that these taxes affect the promotion of tourism and trade in the Philippines and that the Philippine government should view the short-term losses in tax revenue as a long-term investment in the economy. In October 2011, the Philippine Department of Finance reiterated the Philippine government's position that the taxes are lawfully imposed, adding that any changes in tax law would require Congressional approval.

INVESTMENT BARRIERS

Significant restrictions apply to foreign investment in the Philippines. The Foreign Investment Negative List enumerates foreign investment restrictions in two parts: restrictions mandated by the Constitution, and specific laws (List A) and restrictions mandated for reasons of national security, defense, public health, safety, and morals (List B). The list is regularly updated every two years, most recently in 2010.

The lists set out sectors in which foreign investment is prohibited (*e.g.*, mass media, practice of professions, small-scale mining) or limited (*e.g.*, natural resource extraction). Foreign ownership also is limited to 40 percent in small and medium sized enterprises (SMEs) with less than $200,000 in capital. If the SME activity involves advanced technology, or the company employs at least 50 direct employees, the 40 percent ownership restriction applies only to enterprises with $100,000 capitalization or less.

U.S. stakeholders report that a lack of transparency in regulations and laws also hinders foreign investment in the Philippines. For example, businesses state that their efforts to comply with taxation laws and regulations are frustrated by the lack of clarity and accessibility of tax information. U.S. stakeholders also have cited weak enforcement of anti-smuggling laws and regulations as an obstacle to investment.

The 1987 Philippine Constitution prohibits foreigners from owning land in the Philippines, but allows for the leasing of land for 50 years with one 25 year renewal. Establishing clear ownership to lease land is complicated by an ambiguous deed and property system and inefficient judiciary, such that unresolved land disputes can extend for indefinitely. Some U.S. investors report that unresolved land disputes are a particularly significant barrier to investment in the mineral exploration and processing sector.

Trade Related Investment Measures

The Board of Investments imposes a higher export performance requirement for foreign-owned enterprises (70 percent of production) than for Philippine-owned companies (50 percent). Some U.S. stakeholders claim that the Philippine government maintains unwritten “trade balancing” requirements for firms applying for approval of ventures under the ASEAN Industrial Cooperation scheme.

OTHER BARRIERS

Corruption is a pervasive and longstanding problem in the Philippines, and reports of corruption are common, and some high-profile cases, such as one involving the Chinese supplier Zhongxing Telecommunication Equipment Corporation, demonstrate how such practices can put U.S. suppliers at a disadvantage. Foreign and domestic investors express concern over the propensity of Philippine courts and regulators to stray beyond matters of legal interpretation into policymaking and about the lack of transparency in these processes. There also are reports of courts being influenced by bribery and improperly issuing temporary restraining orders to impede legitimate commerce. President Benigno Aquino III has publicly disclosed several high-profile corruption cases in his 18 months in office and has vowed to prosecute and convict liable public officials within his Presidential term.

QATAR

TRADE SUMMARY

The U.S. goods trade surplus with Qatar was $1.6 billion in 2011, a decrease of $1.1 billion 2010. U.S. goods exports in 2011 were $2.8 billion, down 11.5 percent from the previous year. Corresponding U.S. imports from Qatar were $1.2 billion, up 164.5 percent. Qatar is currently the 56th largest export market for U.S. goods.

The stock of U.S. foreign direct investment (FDI) in Qatar was $10.0 billion in 2010 (latest data available).

IMPORT POLICIES

Tariffs

As a member of the Gulf Cooperation Council (GCC), Qatar applies the GCC common external tariff of five percent for most products, with a limited number of exceptions. These exceptions include basic food products such as wheat, flour, rice, feed grains, and powdered milk. The tariff on alcoholic beverages is 100 percent, and on tobacco products it is 150 percent. According to the WTO, Qatar's simple average applied tariff is 8 percent for agricultural goods and 4.6 percent for non-agricultural goods.

Import Licensing

Qatar requires importers to have a license for most products, and only issues import licenses to Qatari nationals. Only authorized local agents are allowed to import goods produced by the foreign firms they represent in the local market. However, this requirement may be waived if the local agent fails to provide the necessary spare parts and backup services for the product. Imports of pork and pork derivatives are generally prohibited.

The government has on occasion established special import procedures via government-owned companies to help ease demand pressures. For example, in 2006, the government established the Qatar Raw Materials Company to import construction materials and sell them to companies in Qatar at a marginal markup (to cover operating expenses).

Documentation Requirements

To clear goods from customs zones at ports or land borders in Qatar, importers must submit a variety of documents, including a bill of lading, certificate of origin, invoice, and where applicable, import license. The Qatari embassy, consulate, or chamber of commerce in the United States must authenticate all shipping documents, including the certificate of origin. Commercial consignments lacking a certificate of origin may be imported provided the appropriate documentation is submitted within 90 days of entry. In addition, foreign ratification fees are collected by customs officials. All imported beef and poultry products require a health certificate from the United States and a *halal* slaughter certificate issued by an approved Islamic center in the United States.

In 2008, the Ministry of Business and Trade established a "one-stop shop" to handle all services and relevant documentation for foreign investors and importers present in Qatar. This office assigns a case manager to each businessperson seeking to reside in Qatar to review, sign, and process the required materials for health and labor regulations, residency permits, and other documents.

Qatari customs authorities have prepared a list of importers and exporters who have good records of compliance with customs regulations and gives them priority in consignment clearance procedures.

In mid-2011, Qatar launched its Customs Clearance Single Window. The new electronic service allows authorized users to complete customs procedures electronically for goods entering and exiting Qatar ports, streamlining the process of customs clearance.

GOVERNMENT PROCUREMENT

Qatar gives preferential treatment to suppliers who use local content in tenders for government procurement. When competing for government procurement, tenders for goods with Qatari content are discounted by 10 percent and goods from other GCC countries receive a 5 percent discount.

As a rule, participation in tenders with a value of one million Qatari Riyal ($275,000) or less is confined to local contractors, suppliers, and merchants registered by the Qatar Chamber of Commerce.

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

INTELLECTUAL PROPERTY RIGHTS PROTECTION

The six Member States of the GCC are working to harmonize their intellectual property regimes. In connection with that effort, the GCC recently approved a common trademark law. Each Member State is expected to adopt that law. The United States has established a dialogue with GCC technical experts to discuss this law and other Customs Union efforts regarding intellectual property rights.

SERVICES BARRIERS

Agent and Distributor Rules

Only Qatari nationals are allowed to serve as local agents, distributors, or sponsors. However, there are exceptions granted for 100 percent foreign-owned firms in the agriculture, industry, tourism, education and health sectors, and some Qatari ministries waive the local agent requirement for foreign companies that have contracts directly with the government of Qatar. The Qatar Distribution Company has the exclusive right to import and distribute alcohol.

Banking

Foreign banks are permitted to open branches and authorized to conduct all types of business in the Qatar Financial Center (QFC), including provision of Islamic banking services, but are informally “advised” not to offer services related to retail banking business. Laws and regulations applied to foreign banks registered in the QFC are different from the ones adopted by the Central Bank, and more closely resemble international standards. The QFC tribunal is completely independent of the existing Qatari legal system and has jurisdiction for any dispute involving a registered QFC business.

INVESTMENT BARRIERS

The Organization of Foreign Capital Investment Law allows foreign investors to own up to 100 percent of projects in the agriculture, industry, health, education, tourism, development and exploitation of natural resources, energy, and mining sectors with prior government approval. In all other sectors, foreign equity is limited to 49 percent. Qatar amended this law in 2004 to allow 100 percent foreign investment in the insurance and banking sectors if the investment is approved by a decree from the Cabinet of Ministers.

In October 2009, the Council of Ministers agreed to further amendments to the law that permit 100 percent foreign ownership in consulting services, the information and technology sector, and distribution services. Although a decree has been issued, detailed regulations to implement the amendments have yet to be finalized.

The investment law permits foreign investors to lease land for up to 99 years, though renewal requires government approval. Foreign ownership of residential property is limited to select real estate projects. Foreigners can be issued residency permits without a local sponsor if they own residential or business property, but only if the property is in a designated "investment area."

RUSSIA

TRADE SUMMARY

The U.S. goods trade deficit with Russia was $26.3 billion in 2011, up $6.6 billion from 2010. U.S. goods exports in 2011 were $8.3 billion, up 37.8 percent from the previous year. Corresponding U.S. imports from Russia were $34.6 billion, up 34.6 percent. Russia is currently the 31st largest export market for U.S. goods.

The stock of U.S. foreign direct investment (FDI) in Russia was $9.9 billion in 2010 (latest data available), down from $19.9 billion in 2009. U.S. FDI in Russia is led by the manufacturing, banking, and mining sectors.

WTO Accession

On December 16, 2011, at the Eighth Ministerial Conference of the WTO, Trade Ministers adopted the terms and conditions of Russia's WTO accession and extended an invitation to Russia to join the organization. Thirty days after Russia notifies the WTO that it has accepted the terms for accession, Russia will become a WTO Member. Before then, both houses of Russia's legislature must ratify the terms of accession through the enactment of a law and Russia's President must sign the law.

Russia's WTO accession is expected to improve market access for U.S. exports of goods and services. If, however, by the time that Russia becomes a WTO Member, the United States has not terminated the application of the Jackson-Vanik Amendment and extended permanent normal trade relations to Russia, U.S. businesses will not be able to enjoy the full benefits of Russia's accession and the United States will not be able to use WTO dispute settlement procedures to deal with issues that may arise with Russia's implementation of its WTO obligations.

IMPORT POLICIES

On January 1, 2010, the Russia-Kazakhstan-Belarus Customs Union (the Customs Union or CU) adopted a common external tariff (CET) with the majority of the tariff rates established at the level that Russia applied at that time. On July 1, 2010, a common CU Customs Code entered into effect. On July 1, 2011, the CU Parties abolished all customs posts on their internal borders, allowing for the free flow of most goods between the CU countries. As a consequence, Russia's import tariff levels, trade in transit rules, nontariff import measures (*e.g.*, tariff-rate quotas, import licensing, and trade remedy procedures) and customs policies (*e.g.*, customs valuation, customs fees, and country of origin determinations) are based on CU legal instruments. On these and other issues involving goods, CU Agreements and CU Commission Decisions establish the basic principles that are implemented at the national level through domestic laws, regulations, and other measures. CU Agreements and CU Commission Decisions also cover issues such as border enforcement of intellectual property rights, trade remedy determinations, establishment and administration of special economic and industrial zones, and the development of technical regulations and sanitary and phytosanitary measures.

Since September 2010, the three CU Parties have consolidated customs duties into a single account, dividing the money among Russia (receiving 87.97 percent of the funds), Kazakhstan (7.33 percent), and Belarus (4.7 percent). On May 19, 2011, Kazakhstan and Belarus adopted Russia's nine antidumping and safeguard measures. While the CU Commission will issue any future antidumping orders, during a transition period, the administering authorities of each CU Party will actually conduct the investigations.

Russia continues to maintain a number of import restrictions, such as customs charges and fees that exceed the cost of the service provided, and valuation procedures that result in artificially high total tariff charges. Compliance with licensing, registration, and certification regimes is burdensome. As part of its WTO accession package, Russia agreed to cut its maximum customs fee by about two-thirds, establish lower fixed fees for the customs clearance of goods using electronic format or other simplified filing methods, and implement the WTO Agreement on Customs Valuation. The United States will monitor Russia's customs procedures to ensure compliance with its WTO commitments.

Tariff-Rate Quotas

Since 2010, the CU Commission has assumed responsibility for determining the overall tariff-rate quota (TRQ) volume for a product and its allocation among the three CU Parties. Each CU Party then decides whether to make country-specific allocations of the TRQ volume and issues the import licenses used to administer the TRQ. In 2012, the CU Commission is maintaining access under the TRQ for beef for Russia at the same volume levels as in 2011, while substantially lowering the TRQ volumes for both pork and poultry. In January 2012, Russia removed all country-specific allocations for pork, and instituted a global TRQ. Also in 2012, the United States is receiving increased country-specific frozen beef access. Once Russia becomes a WTO Member, the United States will have access to Russia's high quality beef market through a U.S. country-specific definition. High quality beef imports are not covered under the TRQ and will be subject to a 15 percent tariff. In addition, the total poultry and fresh/chilled beef TRQ volumes will be increased over currently prescribed 2012 levels, the in-quota pork duty will be eliminated, and over-quota duties on pork and poultry will be marginally lowered while the duties on beef will be marginally increased. Additionally, for 2012, Russia has divided the single global poultry TRQ into three separate TRQs, two of which remain global and a third which provides country-specific allocations to the European Union and "other countries." Finally, a new TRQ will be established for select whey products, with in-quota and out-of-quota rates of 10 percent and 15 percent, respectively.

Import and Activity Licenses

Import licenses and/or activity licenses to engage in wholesale and manufacturing activities are necessary for the importation of certain products, including alcoholic beverages, pharmaceuticals, products with encryption technology, explosive substances, narcotics, nuclear substances, equipment to be used at nuclear installations and corresponding services, hazardous wastes (including radioactive waste), and some food products (*e.g.*, unprocessed products of animal origin).

As of December 2011, in order to obtain a license to import alcohol or alcoholic products into the Russian Federation, an importer must also obtain an activity/wholesale license to warehouse and distribute alcohol and alcoholic products even though those activities are not related to importation. In early 2011 many importers of alcohol products had to renew their five year activity/wholesale import licenses. This activity license was required in order to obtain an import license from the Ministry of Industry and Trade, which in turn was required to acquire excise stamps from the Federal Customs Service and secure a bank guarantee. Initially the Federal Service for Regulation of the Alcohol Market (FSR) would consider renewal applications only during the 18 days prior to expiration of the current license, raising concerns among industry participants that their licenses would expire. The direct and repeated intervention of the United States and EU during 2011 averted the expiration of any licenses, and the FSR has extended the period in which license holders can file for renewal. Nevertheless, delays in the process have forced some companies to draw down inventory; for others it has caused a disruption in imports. Furthermore, pursuant to the new CU licensing regime, importers must obtain an import license for each type of alcoholic product (a requirement previously applied only to imports of vodka, tequila, grappa, and pure ethyl alcohol) under what the industry asserts is a burdensome and time-consuming process. Cumulatively, U.S. industry estimates that Russia's regulations on importation of alcoholic products have resulted in lost sales of up to $60 million annually on U.S. exports. However, upon accession to the WTO, Russia will remove the requirement for an import license to import alcoholic beverages.

In a November 2006 bilateral agreement, the Russian government agreed to establish a streamlined import licensing system for the importation of goods containing encryption technology (encryption products) through the implementation of transparent, nondiscriminatory procedures. Among other elements, the Russian government agreed to allow the importation of many commercially-traded electronic goods containing encryption technology after a one-time notification, including, specifically, "mass market" goods, or in some cases, with the application of no licensing or notification requirements. While the new import licensing regime for encryption products introduced by the CU Commission on January 1, 2010 has somewhat eased the import process, leading U.S. technology companies assert that problems remain. The current system, they contend, impedes imports, delays the creation of an innovative and knowledge-based economy in Russia, and hampers the further development of research and development centers in Russia. The United States continues to work actively with the Russian government on its import licensing requirements for goods containing encryption technology in order to ensure the full implementation of the terms of the bilateral agreement. For example, in 2011, U.S. Government officials worked with Russia's Federal Security Service to include the definition of "mass market goods" in the CU regulations' list of products subject to a one-time notification. The United States will monitor implementation of the CU regulations closely.

Customs Issues, Taxes, and Tariffs

As noted above, on January 1, 2010, Russia, Kazakhstan, and Belarus adopted a CET. According to the WTO, in 2010, Russia's simple average applied tariff rate was 9.5 percent. More specifically, agricultural exports to Russia faced an average applied tariff of 13.5 percent, while industrial and consumer goods exports to Russia faced an average applied rate of 8.9 percent. Import tariffs on automobiles and agricultural and construction equipment continued to present particular obstacles to U.S. exports to Russia in 2011. Tariffs on many of these items will decrease to five percent upon full implementation of Russia's WTO commitments and when the other CU Parties adopt Russia's bound tariff levels as the CET.

With the adoption of the CET, Russia can no longer unilaterally change tariff rates, but rather must submit proposed import tariff changes to the CU Commission for approval. In 2011, the CU Commission authorized increased import tariffs on 124 types of products. Products subject to tariff increases included continuous-action elevators and conveyors specially designed for underground use (from zero percent to 5 percent); liquid-filled radiators (from the *ad valorem* rate of 10 percent to a new specific tariff rate of €5 per piece); some drilling machines (from zero percent to the combined rate of 10 percent, but not less than €2.5 per kilogram); disc harrows, ordinary seeding machines and balers (from zero percent to 5 percent); sprayers and powder distributors designed to be mounted on or drawn by tractors, beet-topping machines and beet harvesters and other harvesting machinery (from zero percent to 5 percent); and other products.

Russia imposes excise taxes on a number of "luxury" goods, such as liquor and cigarettes, as well as passenger automobiles, motor fuel, and lubricants. Excise tax rates on cars are assessed by horsepower, with higher taxes for more powerful engines (above 150 horsepower). The excise tax rate for motor fuel depends on its ecological class. Excise tax rates for alcoholic beverages have increased significantly: in 2011, excise tax rates rose 10 percent on spirits of more than 9 percent ethyl alcohol. In 2012, the Russian government will change its excise tax for alcohol and set those excise tax rates on a half-yearly basis. As of January 1, 2012, excise tax rates on spirits of more than 9 percent ethyl alcohol will increase by an additional 10 percent. For spirits of 9 percent and less ethyl alcohol, excise tax rates increased 20.2 percent in 2011. They increased another 21 percent on January 1, 2012, and will increase again on July 1, 2012 by an additional 17.4 percent. The excise tax rates in 2011 for table wine, sparkling wine, and beer rose 42.8 percent, 28.6 percent, and 11.1 percent, respectively, from 2010 levels. In 2012, those rates are set to rise further by 20 percent, 22.2 percent, and 20 percent, respectively, from 2011 levels. The rate on filter cigarettes will increase by 64 percent in 2013 compared to the 2011 level.

Customs authorities in Russia continue to assess duties on the royalty amounts for the domestic use of imported audiovisual materials, such as television master tapes. U.S. industry has complained that this practice represents a form of double taxation, since royalties are also subject to withholding, income, value-added, and remittance taxes. U.S. consumer goods companies have also reported that Russian Customs calculates customs duties based on a value that includes royalty payments made by the companies' Russian subsidiaries to their overseas parent companies for the use of parent company-owned product trademarks. U.S. companies contend this methodology leads to incorrect assessments.

Russian importers continue to report that Russian customs officials challenge declared import values. In these instances, customs officials cite reference prices contradicting the invoice valuation, and this practice results in the application of higher import values, and hence higher duty payments. U.S. Government officials have raised concerns about valuation practices with Russian Customs, and will monitor Russia's implementation of the WTO Agreement on Customs Valuation after Russia becomes a WTO Member.

U.S. industry also reports that Russia does not publish all regulations, judicial decisions, and administrative rulings of general application to customs matters. In addition, U.S. exporters report that customs enforcement varies by region and port of entry, and that frequent changes in regulations are unpredictable, adding to costs and delays at the border. In its WTO commitments, Russia has committed to publish all trade-related measures and implement notification, public comment, and other transparency requirements for a broad range of trade-related measures.

U.S. companies continue to face a wide array of other nontariff trade barriers when exporting to Russia. Russian nontariff barriers have been a topic of detailed discussions in Russia's WTO accession negotiations as well as in bilateral United States-Russia discussions.

Pharmaceuticals

Foreign pharmaceutical firms have concerns regarding implementation of data protection regulations that are being developed in connection with Russia's accession to the WTO and government calls to support development of a domestic pharmaceutical industry. In 2010, Russia passed amendments to the Law on the Circulation of Medicines that provide six years of regulatory data protection, but that protection will not come into effect until Russia becomes a WTO Member. Russian government officials have called for more local production of pharmaceuticals, including with foreign active ingredients and formulations. The government's long-term pharmaceutical industry development plan calls for Russian manufacturers to account for at least 50 percent of total sales (based on value) by 2020. A new federal law on the Fundamentals of Health Protection took effect on January 1, 2012. Although the law initially included a proposal to restrict communications between pharmaceutical and medical equipment companies with medical practitioners that would have disadvantaged new entrants into the Russian market, following a joint effort by industry and the U.S. Government, the draft legislation was amended to allow for a more balanced approach, permitting contact for informational and educational purposes.

Alcohol

In addition to the burdensome import licensing regime described above, importers of alcohol face a variety of other regulatory measures in the Russian Federation. A long-standing challenge faced by importers is the requirement that all customs duties, excise taxes, and value-added taxes on alcohol be paid in advance using a bank guarantee and deposit. Because the actual amount of the duties and fees may not be known when the guarantees are obtained, the government of Russia has established fixed guarantee amounts. On occasion, these amounts exceed the final actual amounts due, especially for lower value products. In addition, industry has reported that refunds of these guarantees are sometimes delayed for as long as seven months. The advance payment requirement for duties and taxes, and the length of time the bank guarantee refund is held open, may limit trade volumes due to the amount of money that must be dedicated to these guarantees. In addition, in 2010 Russia adopted technical conditions governing warehousing of alcoholic products. U.S. industry representatives have voiced concerns that enforcement of these new regulations has resulted in inconsistencies and a lack of transparency in the review of applications, causing delays and the need for multiple re-applications for activity licenses, and in some cases threatened entire operations. The U.S. Government will continue to work with industry and the FSR in an effort to ensure that the regulations are applied in a transparent and predictable manner.

EXPORT POLICIES

Although Russia has eliminated export duties on a few products, it maintains export duties on 240 types of products for both revenue and policy purposes. For example, a variety of agricultural products are subject to export tariffs, such as certain fish products, oilseeds, fertilizers, and wood products. Russia has indicated that it intends to eliminate gradually most of these duties, except for products deemed as strategic, such as hydrocarbons and scrap metals.

In April 2011, the Russian government introduced a progressive scale of export duties on nickel that is linked to the London Metal Exchange nickel price. This floating rate replaced a flat 10 percent export duty. Russia has also announced plans to peg its export tariff for copper, currently fixed at 10 percent of the customs value of the metal, to London Metal Exchange prices. As part of its WTO accession, however, Russia agreed to eliminate export duties on nickel, copper and aluminum within four years of joining the WTO. During the transition period, Russia will establish export duties of 5 percent on nickel and 10 percent on copper, while reserving the right to introduce a 5 percent export duty on aluminum. Russia will cut export duties on ferrous waste and scrap from the lower of 15 percent or €15 per ton in the year of accession to 5 percent or €5 per ton over 5 years.

Historically, Russia’s government has established high export duties on crude oil to encourage domestic refining. However, priority fields in Eastern Siberia and the Caspian Sea enjoy a significant discount on the crude oil export duty. In October 2011, the Russian government announced a new system of duties on oil exports that lowered export duties of crude oil from 65 percent to 60 percent and increased the export tax rate for heavy fuel oil and other refined products. Separately, the government maintains a 90 percent export duty on gasoline. These changes are intended to spur production by making it more profitable for oil exploration and extraction, to ensure adequate gasoline supplies to the Russian market, and to encourage the development of domestic refining capacity by raising the cost of exporting heavy fuel.

At the end of 2010, following intense negotiations with the EU, Russia agreed to postpone through 2011 a planned increase in export duties on raw timber from the current rate of 25 percent to 80 percent. Initially, the primary objective of the measure was to stimulate the development of a domestic wood processing industry and to encourage the export of sawn lumber and value-added wood products. The government has indicated that it will continue its moratorium on increasing export tariffs on coniferous logs and round wood in 2012. Upon accession to the WTO, Russia is expected to decrease export duties on timber to levels between 5 percent and 15 percent.

Severe drought and wild fires led to extensive crop damage in 2010, and on August 15, 2010, the government instituted a ban on all grain and flour exports. This ban was removed on July 1, 2011.

Russia also has burdensome procedures for obtaining export certificates for some items, including samples collected during research expeditions and raw data. Additionally, Russia has strict licenses to control the export of cultural goods, as well as precious stones and metals.

INTELLECTUAL PROPERTY RIGHTS PROTECTION

Russia remained on the Priority Watch List in the 2011 Special 301 Report. Key concerns cited included piracy on the Internet, the absence of Internet service provider (ISP) liability legislation, and enforcement generally. With respect to piracy over the Internet, significant gaps exist in Russian law enforcement efforts. This failure to protect intellectual property rights (IPR) creates obstacles to Russia's ability to keep pace with evolving technology.

In 2010, Russia implemented the legislative commitments of the November 2006 Agreement between the Government of the United States of America and the Government of the Russian Federation on Protection and Enforcement of Intellectual Property Rights (the 2006 IPR Agreement) by passing amendments to Russia's IP law, Part IV of the Civil Code, required to implement the TRIPS Agreement. These legislative changes included granting *ex officio* authority to Russian customs officials to enforce IPRs at the border in the new Law on Customs Regulation, and amending the Law on Circulation of Medicines to provide six years of regulatory data protection, which will become effective when Russia becomes a WTO Member. In the context of the Customs Union, Russia signed a CU agreement authorizing the creation of a Unified Customs Union IPR Register. The agreement establishes a procedure for registering trademarks as well as a framework for the customs authorities of each of the CU Parties to cooperate with each other, and with rights holders, on border enforcement.

Notwithstanding this progress, concerns remain over lack of action regarding the enforcement-related commitments in the 2006 IPR Agreement, in particular, the need for such actions as the imposition of criminal penalties to deter piracy and counterfeiting, and increased Internet-related IPR enforcement. While Russia met its 2006 IPR Agreement commitment to establish an accredited royalty collecting society for the Performers and Phonogram Producers category in 2008, U.S. industry has raised concerns regarding the transparency of how royalties are collected and distributed. The U.S. and Russian governments have an ongoing dialogue to obtain the full implementation of this agreement and to help ensure that Russia's legislation is consistent with international norms, as wells as to generally promote strong IPR protection and enforcement in Russia.

In recent years, Russia's optical disc production capacity continued to exceed domestic demand, raising concerns regarding optical disc piracy. U.S. copyright industries estimate that approximately 65 percent of sound recordings on the Russian market are pirated, resulting in reported losses of nearly $2 billion in 2009. However, legitimate DVD sales are on the rise, in part due to increased law enforcement action against pirates, including a 2008 ban on camcording in movie theaters, and a growing preference for high quality products. Within the copyright industry, the software sector has enjoyed the benefits of increased enforcement. The Business Software Alliance (BSA) estimated that from 2004 to 2010 the software piracy rate decreased in Russia from 87 percent to 65 percent, the steepest drop in that time period for any country in the world. According to BSA's Eighth Annual Global Software Piracy Study (published May 2011), the average piracy rate in Russia was 65 percent, just about the average rate for Eastern Europe.

Piracy over the Internet remains a serious and growing concern. Authorities have begun criminal investigations against operators of Russia-based websites. Notably, some progress has been made on the Interfilm Case. In 2009, Russia opened a criminal case against the administrators of interfilm.ru, a website offering pirated copies of movies before or immediately after they open in Russian theaters. Government investigators involved in the case estimate that the site had caused approximately 38.7 billion rubles ($1.25 billion) in damages. In October 2011, charges were finally brought against the administrators of the infringing file-sharing website and the criminal case was sent to the Office of Prosecutor General. The charges, following a lengthy investigation, mark Russia's first major Internet anti-piracy case focused on films. Western and Russian recording companies have won several civil suits against Internet pirates, although resulting damage awards have been minimal by U.S. standards. Gaps remain in Russian legal and enforcement efforts to address Internet piracy, particularly with respect to sound recordings and movies.

U.S. and multinational companies continue to report counterfeiting of trademarked goods, especially of consumer goods, distilled spirits, agricultural chemicals and biotechnology, and pharmaceuticals. In the past U.S. firms complained about "trademark squatting" by Russian enterprises attempting to appropriate well-known trademarks not active or registered in Russia. The number of such complaints has been declining, as some rights holders have been successful in countering trademark squatting schemes through the Russian court system or the Russian Federal Service for Intellectual Property (Rospatent). Nevertheless, some examples of trademark squatting are still present. Some of these cases arise when U.S. companies fail to duly register their trademarks in Russia in accordance with Russian legislation prior to entering the market and/or doing business in the country.

Enforcement

Weak enforcement of IPR in the Russian Federation is a continuing problem. In the November 2006 IPR Agreement, Russia agreed to improve IPR enforcement while the United States agreed to step up IPR training programs and technical assistance for Russian customs and law enforcement officials. In 2011, the U.S. Patent and Trademark Office conducted several IPR training programs for Russian police, investigators, prosecutors, judges, and customs officials, and trained approximately 180 Russian law enforcement officials. These training and capacity building programs were primarily focused on copyright enforcement in the digital environment and Internet piracy. Additional training programs are planned for 2012.

In 2011, Russian law enforcement agencies continued to carry out raids on optical disc production facilities suspected of engaging in pirate activities, including major raids in Moscow and surrounding regions. However, many surprise raids are not fully effective as the details of pending raids are often leaked to the optical disc plant in advance. Russian police continue to carry out end-user raids against businesses using pirated products. However, non-governmental organizations report that police have used IPR enforcement as a bullying tactic to elicit bribes or harass them. For the copyright industry, key enforcement goals include the introduction and enforcement of ISP liability legislation in Russia, improved oversight and transparency of collecting societies, a crackdown on illegal websites, such as allofmp3.com clones, and enhanced measures against online social networks, such as vKontakte and Odnoklassniki, that facilitate Internet piracy.

As part of the presidential initiative to liberalize Russian criminal law and decriminalize some "white-collar" crimes, the Russian government proposed an increase in criminal copyright infringement thresholds in June 2011. In essence, the relevant amendment to Russia's Criminal Code proposed a five-fold increase (from 50,000 rubles to 250,000 rubles) to the threshold for initiating criminal actions against copyright infringement. This amendment raised serious concerns among copyright intensive industries about a likely decrease in overall criminal enforcement in Russia. However, after hearing industry concerns, the relevant State Duma committee revised the threshold constituting a "large scale crime" to just 100,000 rubles (approximately $3,400). On December 7, 2011, the bill introducing the amendment with the 100,000 ruble threshold level was signed into law.

The Supreme Arbitration Court addressed the issue of civil IPR enforcement by submitting to the Duma in 2010 a draft law that would create a specialized intellectual property rights court. In November 2011, the bill passed the final reading in the Duma and was approved by the Federation Council. Once it is signed into law, Russia's first-ever specialized IPR court could begin its work as early as 2013. The creation of a specialized IPR court would have a positive impact on civil IPR enforcement in Russia. The court's judges would come from within the arbitration court system and have expertise in intellectual property rights cases. In an effort to address this proposed initiative, the U.S. Patent and Trademark Office organized and conducted a "study tour" in the United States for Russia's Judiciary in November 2011, during which a cadre of judges engaged in a series of high-level consultations with select judges in the United States. The program focused on the practical challenges in adjudicating IP cases and included discussions on the role of specialized IP courts. It also provided an opportunity to exchange views and share best practices in adjudicating IP disputes.

Domain Names

In September 2011, the Russian Coordination Center of the National Internet Domain (the Coordination Center) issued an updated version of the "Regulations for Domain Names Registration in .RU and .РФ domains," effective November 11, 2011. This step was taken in an effort to harmonize the procedure for national domain registration in both .RU and .РФ domains. Having entered into force, these regulations have lifted a number of restrictions imposed in the previous versions, such as the former restriction on non-Russian residents from registering domain names in the .РФ domain. Currently, not only Russian citizens and businesses registered in the country (as was the case with the second stage of the registration for Cyrillic domain names, November 11, 2010, to November 10, 2011), but also non-Russian residents are able to purchase .РФ domain names.

The new Regulations provide that the domain name registrar has no right independently to make decisions regarding third party claims related to domain names (including those involving trademarks, brand names, etc.), and suggest rights holders file a claim with the administrator of the domain, or file a corresponding legal statement in court. The Regulations do not give any further clarification on the possible settlement of IPR-related disputes within this field, or provide for any procedure to be undertaken in case of an IPR violation. However, in order to prevent possible infringement of intellectual property rights, the registrant is recommended to ensure prior to filing a registration application that the domain name submitted for registration is not similar to any existing trademark or other object of intellectual property.

To date, the Coordination Center has registered over 930,000 domain names in the .РФ domain, which constitutes nearly a five-fold increase since the second stage of the registration for Cyrillic domain names began.

SERVICES BARRIERS

Russia's services market is relatively open to U.S. services suppliers, including in areas such as financial services, education, legal services, and distribution, although specific problems remain in particular areas. The ability to provide services to public utilities and certain energy-related services remains limited (*see the discussion on energy in the section on Investment Barriers*). The process for an individual or a company to obtain a license to provide a service remains difficult, and limitations on the form of commercial establishment affect some sectors.

Financial Services and Insurance

The 1996 federal law "On Banks and Banking Activity" permits foreign banks to establish subsidiaries in Russia. However, foreign banks are not allowed to establish branches in Russia. There is no cap on foreign charter capital in the banking sector.

In the insurance sector, Russia allows foreign firms to establish subsidiaries but not branches. Insurance firms are individually subject to a cap of 49 percent foreign capital. Additionally, there is a 25 percent quota on the aggregate share of foreign capital in the insurance sector. The sector reached this maximum for a short period early in 2011, but near the end of 2011 foreign capital fell back to under 25 percent.

Russia's membership in the WTO will provide increased market access to foreign insurance companies, including 100 percent foreign ownership of non-life insurance companies upon accession. Limits on the number of life insurance licenses granted to foreign insurance firms, as well as foreign participation in a small number of mandatory insurance lines will be phased out five years from the date of accession. Russia will allow foreign insurance companies to open direct branches for life and non-life insurance, reinsurance, and services auxiliary to insurance nine years from the date of its accession.

Telecommunications

Many in the telecommunications industry criticize the lack of transparency in the licensing process in Russia, as well as the five year to ten year license validity period, which they argue does not allow sufficient time to recoup investments. The scarcity of civilian frequencies has led to competition among Russian mobile operators and impeded the development of new wireless networks in Russia, such as 4G and WiMAX. (Reportedly, only about 20 percent of Russia's assigned communication frequencies are used for civilian purposes, while 80 percent are reserved for military use.) The government of Russia's efforts to free up and allocate spectrum in order to spur the development of advanced telecommunications are in their initial stages and proceeding slowly. Although Rostelecom, a state-owned telecommunications operator, initially won 39 of the 40 licenses for frequencies at 2.3 gigahertz (GHz) to 2.4 GHz in February and March 2010, according to press reports, in November 2011, Rostelecom received all the required approvals from the Ministry of Defense for these frequencies. In September 2011, the State Commission on Radio Frequencies decided to license 4G networks using Long Term Evolution (LTE) technology. According to the draft resolution, the first stage of 4G LTE networks will be developed in the frequency bands of 791 megahertz (MHz) to 862MHz and 2.5 GHz to 2.7GHz. Originally scheduled to take place in the first quarter of 2012, the nationwide frequency tenders for 4G LTE networks have reportedly been postponed and will most likely be held no earlier than the second quarter of 2012, following the Russian presidential elections in March 2012. Reportedly, Yota, and Osnova Telecom, associated with the Ministry of Defense, were authorized to launch 4G LTE networks in Russia without competition. Yota was awarded LTE-compatible frequencies in 2010, but not allowed to use them until September of this year. In December, Yota launched the first 4G LTE network in Novosibirsk though it is still in testing stages. While there have been a number of back and forth actions during the course of 2011, the terms and conditions for allocation of 4G mobile spectrum in Russia remain unclear, hampering investment in the sector.

In May 2010, Russia issued Directive No. 858 tasking Russia's Ministry of Industry and Trade with developing parameters for telecommunications equipment to ensure that all telecommunications equipment sold in the Russian market was manufactured within the territory of Russia. Such mandates are consistent with Russia's broad industrial policy of requiring companies to localize their production and use local suppliers. Currently, the amount of Russian-produced telecommunication equipment is quite limited, and many sectors and consumers continue to rely on imported products.

In August 2011, the Ministry of Economic Development and the Ministry of Industry and Trade set the parameters determining what constitutes domestic telecommunications equipment. The level of production localization in Russia was set as the main parameter. The localization level depends on the scope of the research activities and technological operations carried out in Russia. For different types of equipment, the localization level varies from 60 percent to 70 percent. Moreover, a company manufacturing telecommunications equipment needs to be a Russian resident with no less than 50 percent owned by the Russian party. Also, the manufacturer needs to have legal rights for technologies and software, possess its own production base, manufacture printing boards, and carry out final assembly of the telecommunications equipment in Russia. Relaxing Russia's often stringent localization requirements in select sectors of the Russian economy was a key point of discussion in its WTO accession negotiations.

Companies in the satellite industry state that there is a lack of transparency in the licensing process for obtaining access to a foreign satellite and that the process itself is overly burdensome. Further, they claim that some of the legal requirements and administrative responsibilities associated with the provision of satellite services appear to be discriminatory, with the Russian government granting a preference for Russian satellite communications systems.

In order to promote GLONASS, the Russian satellite navigation system, the government of Russia has been considering a 25 percent import tariff on equipment that does not have the capability to receive signals from the Russian GLONASS system, while imported dual or multi-system receivers would enter with no tariff. However, no official decision has yet been made whether to impose such a tariff (as noted above, a tariff increase would have to be approved by the CU, not just Russia). Exporters of satellite navigation systems to Russia may also face market restrictions as a result of government regulations requiring the installation of GLONASS-compatible systems in certain vehicles. The U.S. government will monitor Russia's actions to support GLONASS to ensure compliance with its WTO commitments under the Technical Barriers to Trade Agreement.

INVESTMENT BARRIERS

Russia's foreign investment regulations and notification requirements can be confusing and contradictory, which has an adverse effect on foreign investment. The Russian government has made improving Russia's investment climate a priority, but U.S. investors and others continue to cite corruption in commercial and bureaucratic transactions as a barrier to investment. An Anti-Corruption Council was created in the summer of 2008 and significant anticorruption legislation was passed in May 2011. However, little progress has been made on implementation.

Telecommunications and media services companies report specific investment restrictions. Article 19 of the Mass Media Law (last amended on November 10, 2011) limits foreign investment in the broadcast business by foreign entities, Russian entities that are more than 50 percent foreign-owned, and Russian citizens holding dual citizenship. The Law also prevents foreigners, stateless citizens, and Russian legal entities that are more than 50 percent foreign-owned from establishing television companies and owning shares in television broadcasting companies that broadcast to more than half of Russia's regions or have a potential audience of over half the nation's population. Even tighter investment restrictions have recently been imposed on security firms. As of January 1, 2010, the Law on Private Detective and Security Activities in the Russian Federation prohibits the participation of any foreign capital in a private security operation. The U.S. Government will monitor Russia's investment restrictions to ensure compliance with its WTO commitments to open its services market.

Further obstacles to investment in Russia include inadequate dispute resolution mechanisms, weak protection of minority stockholder rights, the absence of requirements for all companies and banks to adhere to accounting standards consistent with international norms, and the absence of sufficient government incentives to adopt and adhere to business codes of conduct. Initiatives to address these shortcomings, through regulation, administrative reform, or government-sponsored voluntary codes of conduct, have made little progress. In July 2010, Russia passed the Law on Consolidated Financial Accounting which requires that, as of 2011, credit, insurance organizations, and other publicly traded companies prepare their consolidated financial accounting in accordance with international financial reporting standards. In 2011, Russia took a number of technical steps towards ensuring effective implementation and enforcement of the law. Inadequate transparency in the implementation of customs, taxation, licensing, and other administrative regulations also discourages investment.

National Treatment

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The 1999 Investment Law is, in many ways, consistent with the principles of national treatment for foreign investors. Accordingly, the law provides foreign investors the right to purchase securities, transfer property rights, pursue rights in Russian courts, repatriate funds abroad after payment of duties and taxes, and receive compensation for nationalizations or illegal acts of Russian government bodies. However, the law also states that federal law may provide for a number of exceptions, including, where necessary, "the protection of the constitution, public morals and health, and the rights and lawful interest of other persons and the defense of the state." These broadly defined exceptions give the Russian government considerable discretion in prohibiting or inhibiting foreign investment in a discriminatory fashion. The Investment Law includes a "grandfather clause" that stipulates that existing (as of 1999) "priority" foreign investment projects with foreign participation of over 25 percent be protected from unforeseeable changes in the tax regime or new limitations on foreign investment. The law defines "priority" projects as those with a foreign charter capital of more than $4.1 million and with a total investment of more than $41 million. However, the lack of corresponding tax and customs regulations means that any protection afforded investors by this clause is, at most, very limited.

The government enacted the Strategic Sectors Law (SSL) in May 2008. The SSL introduces a list of 42 "strategic" sectors in which purchases of "controlling interests" by foreign investors must be preapproved by Russia's Commission on Control of Foreign Investment. Many observers have criticized the SSL for being overly broad in the number of sectors it covers, and raised concerns regarding the approval process. During 2010, Russian government officials, including Prime Minister Putin, called for further liberalization and streamlining of the law. On November 1, 2011, the State Duma approved amendments to the SSL that simplify the review process, exclude some activities from the list of strategic operations and eliminate certain administrative barriers for foreign investors in the food industry and the "strategic" natural resources sector. The amendments also exempt from government review investment deals where international organizations, such as European Bank for Reconstruction and Development and the International Finance Corporation, are the investor. Additionally, the SSL will no longer be applied to transactions between organizations under the control of Russian citizens who are also Russian tax residents (except for Russia's citizens who have dual citizenship).

According to Russian officials, the Government Commission on Control of Foreign Investment has approved 128 of 136 applications for foreign investment since its creation in 2008. However, the majority of the approved transactions actually involved Russian investors using foreign offshore holding companies. Public information was available on the following foreign companies that received approval under the SSL: French Alstom (manufacturing); Canada's Kupol Ventures (mining); Cyprus' Omirico (port facilities); France's TOTAL (liquid natural gas); and France's Atos (services for the 2014 Olympics and 2018 World Cup).

Privatization

The Russian government is pursuing steps to privatize state assets, both to increase market forces in the economy and to raise revenue for the federal budget. Separate from the SSL, the government maintains a list of state companies that cannot be privatized due to their national significance. Over the last two years, the list of such companies has been reduced from 438 to 196, allowing for the privatization of hundreds of previously restricted enterprises. On August 3, 2011, an expanded privatization plan was approved through 2017 that the Ministry of Economic Development expects will lead to the sale of roughly $10 billion in shares per year. The government of Russia will retain controlling stakes in major Russian companies such as Rosneft, Transneft, the Federal Grid Company, Russia Railways, and banking giants Sberbank and VTB. Moreover, in some of the companies to be fully privatized, the state will keep what is referred to as a "golden share," a nominal holding that allows the state to retain certain veto powers.

Privatization efforts have stalled, however, due to internal resistance, concerns over market valuation, and high oil prices, which have reduced the government's need to raise additional revenue. The government's previous privatization plan is behind schedule; only 10 percent of the companies scheduled to be privatized in 2010 were actually sold.

Taxes

Companies report that VAT refunds to Russia-based exporters, which should be provided within three months of a claim's submission, often do not occur on time, with customs and tax authorities applying a number of burdensome additional requirements. In addition, leasing companies find that VAT assessed on inputs to exported final products is often not refunded at all, for a number of reasons. In some cases, local tax inspectorates have initiated audits and attempted to seize bank accounts of the leasing companies, thus forcing exporters to seek very expensive and time-consuming court enforcement. In fact, anecdotal reports from a variety of Russian and U.S. companies indicate that in many cases, companies have to resort to court action to receive their VAT reimbursements. VAT refunds on exports are also the source of significant fraud, making it even more difficult for legitimate exporters to obtain refunds.

U.S. companies have also raised concerns about Russian tax authorities' scrutiny of payments that cross Russia's border, but remain within the structure of the same legal entity. This tax issue has arisen chiefly in two contexts: (1) when a multinational company transfers an employee temporarily to the company's Russian office from another office outside Russia; and (2) in intra-company payments for the use of intellectual property. Under internationally accepted accounting standards, these normal business practices are handled as an intra-firm payment from one office to the other, or to the headquarters in the case of royalty payments. However, tax inspectors have in the past disputed such expenses as "economically unjustified" and, consequently, not permissible under the Russian Tax Code. In consultation with foreign firms, Russia developed and adopted a new Law on Transfer Pricing that took effect on January 1, 2012. While certain provisions of the new law show promise, having been drafted in accordance with OECD principles, some experts warn that other provisions may lead to additional disputes with tax authorities. Ultimately, the new law's impact will depend on its implementation.

Energy Sector

The Strategic Sectors Law and Russian subsoil legislation require government approval for foreign investment in excess of 10 percent in companies operating subsoil plots of "federal significance," as well as for foreign investment in excess of five percent if the target company is state-owned. "Federal significance" is defined as oil fields with 510 million barrels or more of reserves and natural gas fields with 1.8 trillion cubic feet or more. An amendment that takes effect starting in 2012 will raise the foreign investment threshold for non-state companies from 10 percent to 25 percent.

In addition, subsoil legislation limits the licensing of strategic fields located on the continental shelf to Russian legal entities at least 50 percent controlled by the Russian government and with at least five years of experience in the development of fields on the continental shelf. Foreign companies may participate in shelf projects as a minority partner.

Automotive Sector

Russia has maintained an investment incentive regime in the automotive sector since 2005 with domestic content requirements and production targets. In 2011, Russia added a second program that imposes conditions that are more stringent and required much higher domestic production volumes (300,000/350,000 units as compared with 25,000 units) under the original program for each manufacturer. The second program, however, alters the approach to the domestic content requirement. Under the regime that went into effect in 2011, automobile producers in Russia that manufacture motor vehicles whose ex-factory value results from a specified percentage of domestic inputs, *e.g.*, labor, overhead expenses, domestic components, and meet certain annual production levels, may import certain automotive parts duty free. As part of its WTO accession, Russia agreed to limit the WTO-inconsistent elements of these programs (the requirements to use domestically produced goods) and to end the WTO-inconsistent elements of both programs by July 1, 2018.

ELECTRONIC COMMERCE

Electronic commerce is growing rapidly in Russia, and was estimated at $20 billion in 2010. The volume of online commerce is expected to exceed $25 billion by 2012. The tax aspects of electronic commerce are virtually unexplored, and this area of the law is still developing.

The new Law on Electronic Signatures came into force on April 8, 2011, and has the potential to transform electronic commerce and information management in Russia. The law should considerably widen the sphere of application of electronic signatures, and envisages that foreign electronic signatures will also be valid. The law states that electronic documents signed by electronic signatures will have the same legal effect as paper documents signed by hand, provided that in case of simple electronic signatures and advanced signatures the parties have explicitly agreed to it or the use of electronic signatures is provided for by Russian law.

SAUDI ARABIA

TRADE SUMMARY

The U.S. goods trade deficit with Saudi Arabia was $33.7 billion in 2011, up $13.8 billion from 2010. U.S. goods exports in 2011 were $13.8 billion, up 19.6 percent from the previous year. Corresponding U.S. imports from Saudi Arabia were $47.5 billion, up 51.1 percent. Saudi Arabia is currently the 25th largest export market for U.S. goods.

U.S. exports of private commercial services (*i.e.*, excluding military and government) to Saudi Arabia were $4.5 billion in 2010 (latest data available), and U.S. imports were $504 million. Sales of services in Saudi Arabia by majority U.S.-owned affiliates were $2.2 billion in 2009, while sales of services in the United States by majority Saudi Arabia-owned firms were not available in 2009 ($2.8 billion in 2007, latest data available).

The stock of U.S. foreign direct investment (FDI) in Saudi Arabia was $8.0 billion in 2010 (latest data available), roughly the same as in 2009. U.S. FDI in Saudi Arabia is concentrated mostly in the nonbank holding companies sector.

IMPORT POLICIES

Tariffs

As a member of the Gulf Cooperation Council (GCC), Saudi Arabia applies the GCC common external tariff of five percent for most products, with a limited number of exceptions. These exceptions include 666 products that may be imported duty free, including aircraft and most livestock. Saudi Arabia applies a 12 percent tariff on 294 products, in some cases to protect local industries. Certain textile imports are among the products to which the 12 percent rate applies. Higher rates are applied to a smaller group of products: 15 percent for items including tents, aluminum bars and rods and furniture; and 20 percent on plastic bags and matches, among others.

The vast majority of food products are subject to a five percent import duty. However, higher import duties are applied to certain types of processed food products. Saudi Arabia ties the level of import duties to the level of local production of similar products. As a general rule, a maximum import tariff rate of 40 percent is applied when local production of a food or agricultural product exceeds a self-sufficiency level. Currently, a 40 percent import duty rate applies to fresh, dried, and processed dates. Confectionary products with cocoa and other bulk cocoa products are subject to a 15 percent tariff. Nine types of fresh or chilled vegetables (tomatoes, onions, carrots, cucumbers, marrow, okra, watermelons, melons, and potatoes) are subject to a 25 percent tariff on a seasonal basis. Saudi Arabia also imposes a 100 percent tariff on cigarette and other tobacco imports.

According to the WTO, Saudi Arabia's simple average applied tariff is 5.6 percent for agricultural goods and 4.7 percent for non-agricultural goods as of 2009.

Import Prohibitions and Licensing

In Saudi Arabia, the importation of certain articles is either prohibited or requires special approval from the appropriate authorities. Importation is prohibited for alcohol, firearms, pork products, used clothing, and automobiles and automotive parts over five years old. Imports of certain products require special approval, including horses and other live animals, agriculture seeds, books, periodicals, audio or visual media, religious materials that do not adhere to the state-sanctioned version of Islam or that relate to a religion other than Islam, chemicals and harmful materials, pharmaceutical products, wireless equipment, radio-controlled model airplanes, products containing alcohol, natural asphalt, and archaeological artifacts. Importation of some media products is subject to censorship.

Documentation Requirements

Some products, most notably agricultural biotechnology products, require a certificate authenticated by the local chamber of commerce in the country of origin attesting to the product's fitness for human consumption and to its sale in the country of origin.

GOVERNMENT PROCUREMENT

Several royal decrees apply to Saudi Arabia's government procurement. Under a 1983 decree, contractors must subcontract 30 percent of the value of any government contract, including support services, to firms that are majority-owned by Saudi nationals. An exemption is granted when no Saudi-owned company can provide the goods or services necessary to fulfill the procurement requirement. Procurement regulations require preferential treatment for products of Saudi origin that satisfy the requirements of a procurement. In addition, Saudi Arabia gives up to a 10 percent price preference for GCC products over non-GCC products in all government procurements in which foreign suppliers participate. Most Saudi defense procurement is not subject to the general procurement decrees and regulations; instead, they are negotiated on a case-by-case basis.

Foreign suppliers that participate in government procurement are required to establish a training program for Saudi nationals. In addition, the government may favor joint venture companies with a Saudi partner and give preference to companies that use Saudi goods and services. For large military projects, there is frequently an offset requirement that is determined on a project-by-project basis.

Foreign companies can provide services to the Saudi government directly without a local agent and can market their services to other public entities through an office that has been granted temporary registration. Foreign suppliers working only for the government, if not already registered to do business in Saudi Arabia, are required to obtain a temporary registration from the Ministry of Commerce and Industry within 30 days of signing a contract.

In 2003, the Saudi Council of Ministers increased the transparency of government procurement. It required procurement information, including the names of the parties, financial value, a brief description, duration, place of execution, and a point of contact, to be made public.

In its accession to the WTO, Saudi Arabia committed to initiate negotiations for accession to the WTO Agreement on Government Procurement (GPA) once it became a WTO Member. Although Saudi Arabia became an observer to the WTO Committee on Government Procurement in December 2007, it has not begun GPA accession negotiations, stating that it would begin accession when agreement had been reached on a revision of the GPA. Given that agreement was reached in December 2011 on the revision of the GPA text, it is expected that Saudi Arabia will begin its GPA accession negotiations early in 2012.

INTELLECTUAL PROPERTY RIGHTS PROTECTION

In February 2010, the United States removed Saudi Arabia from the Special 301 Watch List in recognition of the significant progress that Saudi Arabia had made in the protection and enforcement of IPR. The United States will carefully monitor Saudi Arabia's progress in continuing to improve its intellectual property rights (IPR) regime.

The six Member States of the GCC are working to harmonize their IP regimes. In connection with that effort, the GCC recently approved a common trademark law. Each Member State is expected to adopt that law. The United States has established a dialogue with GCC technical experts to discuss this law and other Customs Union efforts regarding IPR.

SERVICES BARRIERS

Insurance

In October 2003, the government enacted the Control Law for Co-Operative Insurance Companies, which requires all insurance companies operating in Saudi Arabia to be locally incorporated joint-stock companies (foreign equity is limited to 60 percent, and the remaining 40 percent must be sold in the Saudi stock market) and to operate on a cooperative or mutual basis (*i.e.*, requiring that the profits be distributed between policyholders and the insurance company).

Banking

Saudi Arabia limits foreign ownership in commercial banks to 40 percent of any individual bank operation. In the last few years, Saudi Arabia has taken steps to open up investment banking by granting operating licenses to foreign banks. The Saudi Arabian Monetary Agency (SAMA) granted 10 foreign bank licenses to operate in Saudi Arabia in December 2005. The 2004 Saudi Capital Markets Law provides for the creation of investment banks and brokerages in Saudi Arabia, with foreign participation in these ventures capped at 60 percent. Saudi Arabia passed a regulation in August 2008 allowing nonresidents to invest in swap agreements in the Saudi Stock Exchange, while local brokers and bankers retain legal title to traded shares. Since 2010, nonresidents have also been able to access the market through exchange-traded funds, and many experts believe the market will open to foreign qualified institutional buyers in early 2012.

INVESTMENT BARRIERS

All foreign investment into Saudi Arabia requires a license from the Saudi Arabian General Investment Authority (SAGIA), which must be renewed annually or biannually, depending on the sector. While SAGIA is required to grant or refuse an investment license within 30 days of receiving a complete application, bureaucratic impediments arising in other ministries sometimes delay the process. Companies can also experience bureaucratic delays after receiving licenses from SAGIA, for example in obtaining a commercial registry or in purchasing property. SAGIA is developing an automated system that it intends to launch in 2012 to streamline the process and reduce delays. Foreign investment is currently prohibited in 16 manufacturing and service sectors and subsectors, including oil exploration, drilling and production; and manufacturing and services related to military activity.

Direct foreign participation in the Saudi stock market is prohibited, except that citizens of other GCC countries are treated as nationals. Foreign investors are permitted to purchase shares in bank-operated investment funds, though total foreign participation in these funds is limited to 10 percent of the total value of the fund. Equity held by foreign partners in a joint venture business is limited to 60 percent.

SINGAPORE

TRADE SUMMARY

The U.S. goods trade surplus with Singapore was $12.3 billion in 2011, an increase of $692 million from 2010. U.S. goods exports in 2011 were $31.4 billion, up 8.2 percent from the previous year. Corresponding U.S. imports from Singapore were $19.1 billion, up 9.7 percent. Singapore is currently the 11th largest export market for U.S. goods.

U.S. exports of private commercial services (*i.e.*, excluding military and government) to Singapore were $9.7 billion in 2010 (latest data available), and U.S. imports were $3.8 billion. Sales of services in Singapore by majority U.S.-owned affiliates were $34.4 billion in 2009 (latest data available), while sales of services in the United States by majority Singapore-owned firms were not available in 2009 ($2.7 billion in 2007, latest data available).

The stock of U.S. foreign direct investment (FDI) in Singapore was $106.0 billion in 2010 (latest data available), up from $88.9 billion in 2009. U.S. FDI in Singapore is primarily concentrated in nonbank holding companies and the manufacturing sectors.

In December 2009, the United States announced its intention to enter into an Asia-Pacific trade agreement called the Trans-Pacific Partnership (TPP), with the objective of shaping a high standard, broad-based regional agreement. This agreement will create a potential platform for economic integration across the Asia-Pacific region, a means to advance U.S. economic interests with the fastest-growing economies in the world, and a tool to expand U.S. exports, which are critical to U.S. economic recovery and the creation and retention of high-paying, high-quality jobs in the United States. In addition to Singapore, the TPP negotiating partners currently include Australia, Brunei, Chile, Malaysia, New Zealand, Peru, and Vietnam. Japan, Canada, and Mexico also have expressed interest in joining the negotiations.

FREE TRADE AGREEMENT

The United States and Singapore signed a Free Trade Agreement (FTA) on May 6, 2003, which entered into force on January 1, 2004. Exports from the United States increased 90 percent between 2003 and 2011, with steady growth in exports of medical devices, machinery, and electronics components. The United States and Singapore meet annually to review the implementation of the FTA and resolve outstanding trade issues.

IMPORT POLICIES

Import Licenses/Internal Taxes

Singapore maintains some restrictions on imports that affect U.S. exports. It maintains a tiered motorcycle operator licensing system based on engine displacement, which, along with a road tax based on engine size, places U.S. exports of large motorcycles at a competitive disadvantage. Singapore also restricts the import and sale of non-medicinal chewing gum. For social and/or environmental reasons, it levies high excise taxes on distilled spirits and wine, tobacco products, and motor vehicles.

INTELLECTUAL PROPERTY RIGHTS PROTECTION

In connection with its FTA commitments and obligations under international treaties and conventions, Singapore has developed a generally strong intellectual property rights (IPR) regime. Nevertheless, the

United States continues to have concerns regarding the government's IPR enforcement efforts. These concerns include the trans-shipment of infringing goods through Singapore, insufficient deterrent penalties for end-user software piracy, and the effectiveness of enforcement against online infringers.

Singapore is a signatory to the Anti-Counterfeiting Trade Agreement (ACTA), concluded in November 2010. The ACTA establishes 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.

SERVICES BARRIERS

Pay Television

In March 2010, the Ministry of Information, Communications, and the Arts, through its sub-agency, the Media Development Authority, released new regulations to require pay television providers to "cross carry" exclusive broadcasting content acquired after March 12, 2010. Under the new rules, a pay television company with an exclusive contract for a channel would be required to offer that content to customers of other pay television companies. The United States is concerned that that the regulations may interfere in the competitive marketplace by denying content holders, many of which are U.S. based, the ability to negotiate freely, and that the regulation is an overly broad remedy for addressing the perceived problem of content fragmentation (inability of consumers to get a range of popular content from a single pay TV supplier). In addition, the regulations raise serious concerns with respect to Singapore's commitments to protect the right of content holders to determine access to their product. The policy has been in effect since August 1, 2011. The United States will continue to monitor the implementation of this regulation, particularly how it will be applied to content services provided over the Internet, where the rationale for regulatory intervention would appear less relevant, given the ability of consumers to easily access Internet-based services.

Basic Telecommunications

When fully completed in 2012, Singapore's next generation national broadband fiber network should allow fuller, more reasonably priced network access to provide telecommunication services to homes and businesses, bypassing the bottleneck of SingTel-owned circuits. About 70 percent of Singapore homes were connected to the network as of August 2011.

Audiovisual and Media Services

Singapore restricts the use of satellite dishes and has not authorized direct-to-home satellite television services. Singapore's Media Development Authority must license the installation and operation of broadcast receiving equipment, including satellite dishes.

Distribution, importation, or possession of any "offshore" or foreign newspaper must be approved by the government. Singapore has curtailed or banned the circulation of some foreign publications when it perceived defamation of the Singapore government in the publication.

Legal Services

U.S. and other foreign law firms with offices in Singapore cannot practice Singapore law, employ Singapore lawyers to practice Singapore law, or litigate in local courts, unless specifically approved to do so. Six foreign law firms have been granted "Qualifying Foreign Law Practice" licenses to practice certain areas of domestic law.

Banking

Singapore maintains legal distinctions between foreign currency transactions conducted in the Asian Dollar Market and Singapore dollar transactions and the type of license held (full, wholesale, or offshore). Except in retail banking, Singapore laws do not distinguish operationally between foreign and domestic banks.

Foreign banks and other financial institutions that issue credit cards in Singapore are unable to provide ATM services through local networks for holders of those cards. Foreign banks can only provide ATM services to locally issued credit card holders through their own network or through a foreign bank's shared ATM network. However, foreign banks that have been awarded Qualifying Full Bank privileges can negotiate with the local banks on a commercial basis to let their credit card holders obtain cash advances through the local bank's ATM networks. Foreign banks do not face the same restrictions for credit cards that they issue outside of Singapore.

The Minister in charge of the Monetary Authority of Singapore must provide specific types of approval for acquisitions of the voting shares of a local bank above specific thresholds. Although it has lifted the formal ceilings on foreign ownership of local banks and finance companies, the government of Singapore has indicated that it will not allow a foreign takeover of its three major local financial institutions.

OTHER BARRIERS

Competition

Singapore has an extensive network of government-linked corporations that are active in many sectors of the economy. The United States will continue to closely monitor Singapore's implementation of its commitments on competition under the United States-Singapore Free Trade Agreement.

SOUTH AFRICA

TRADE SUMMARY

The U.S. goods trade deficit with South Africa was $2.2 billion in 2011, down $372 million from 2010. U.S. goods exports in 2011 were $7.3 billion, up 29.5 percent from the previous year. Corresponding U.S. imports from South Africa were $9.5 billion, up 15.7 percent. South Africa is currently the 37th largest export market for U.S. goods.

U.S. exports of private commercial services (*i.e.*, excluding military and government) to South Africa were $2.5 billion in 2010 (latest data available), and U.S. imports were $1.7 billion. Sales of services in South Africa by majority U.S.-owned affiliates were $3.8 billion in 2009 (latest data available), while sales of services in the United States by majority South Africa-owned firms were $372 million.

The stock of U.S. foreign direct investment (FDI) in South Africa was $6.5 billion in 2010 (latest data available), up from $6.1 billion in 2009. U.S. FDI in South Africa was led by the manufacturing and wholesale trade sectors.

IMPORT POLICIES

Tariffs

South Africa is a member of the World Trade Organization (WTO), the Southern African Development Community, and the Southern African Customs Union (SACU). South Africa has preferential trade agreements with the European Union (EU), MERCOSUR, the European Free Trade Area, and SACU. As a member of SACU, South Africa applies the SACU common external tariff. In practice, South Africa effectively sets the level of most favored nation (MFN) tariffs applied by all SACU countries. In 2011, the average *ad valorem* MFN duty in South Africa was 7.7 percent. However, South Africa applies specific duties on 220 products, including textiles, fish, oil, and many agricultural goods.

Due to South Africa’s preferential arrangements with other countries, U.S. companies often face a disadvantage when exporting their products to South Africa, and many U.S. companies have cited differential tariffs as an impediment to doing business in South Africa. For instance, the South Africa-EU trade agreement resulted in import tariffs on EU goods that in many cases are much lower than tariffs on U.S. goods. For some products, exports from the EU enjoy a 10 percent to 15 percent tariff advantage compared to U.S. products. Key categories in which the U.S. faces a tariff disadvantage compared to the EU include cosmetics, distilled spirits, chocolate and confectionery products, plastics, textiles, trucks and parts, fiber optic cable, agricultural equipment, and arms and ammunition. The U.S. highlights this disparity consistently in bilateral discussions with South Africa.

Nontariff Measures

The International Trade Administration Commission of South Africa (ITAC) is authorized to prohibit specified classes of imports into South Africa by notice in the Government Gazette, unless the products are imported in accordance with a permit issued by ITAC. ITAC requires import permits on used goods if such goods are also manufactured domestically, thus creating a *de facto* import ban on most used goods, including used clothing. Other categories of controlled imports include waste, scrap, ashes, residues, and goods subject to quality specifications.

Other often-cited nontariff barriers to trade include customs valuation above invoice prices, excessive regulation, standards, and sanitary and phytosanitary measures.

Antidumping Measures

U.S. exporters have expressed concerns regarding transparency and due process with respect to ITAC's administration of trade remedy laws. At present, South Africa imposes antidumping duties on two products[1] from the United States: poultry products and acetaminophenol. In September 2007, South Africa's Supreme Court of Appeal ruled that ITAC had improperly calculated the five year expiration date of antidumping duties imposed on A4 paper imported from Indonesia. As a result, ITAC's domestic legal authority to impose antidumping duties had expired prior to the initiation of the sunset review for that product. ITAC subsequently announced its intention to terminate the antidumping duties on several imported products because the sunset review of those duties had not been initiated before the expiration of the five year period as calculated in accordance with the court's interpretation of South African law. At the same time, ITAC indicated its intention to seek court permission to retain the antidumping duties on many products from various countries, including poultry products and acetaminophenol from the United States. ITAC found that dumping and injury were likely to continue or recur even though those sunset reviews were initiated after the five year lapse date. In April 2010, ITAC, along with the Minister of Finance and the Minister of Trade and Industry, jointly filed an action with South Africa's High Court seeking permission to conduct, *de novo*, the sunset reviews on these products so that ITAC could avoid having to revoke the antidumping measures. A decision from the High Court is expected sometime in 2012.

GOVERNMENT PROCUREMENT

South Africa uses government procurement to promote the empowerment of the historically disadvantaged majority population in South Africa through its Broad-Based Black Economic Empowerment (BEE) strategy. See the section on Investment Barriers for more detail on BEE.

Increasingly, South Africa is using government procurement to support and promote domestic economic development and to fight persistent unemployment. South Africa's Preferential Procurement Policy Framework Act of 2000 and associated implementing regulations created the legal framework and a formula for evaluating tenders for government contracts. South African government and labor leaders also recently signed a pact to increase the government procurement of goods and services from South African producers to an "aspirational target" of 75 percent in a bid to boost industrialization and to create jobs.

South Africa's National Industrial Participation Program, introduced in 1996, subjects all government and parastatal purchases or lease contracts for goods, equipment, or services with an imported content equal to or exceeding $10 million (or the rand equivalent thereof) to an industrial participation obligation. This obligation requires that the supplier engage in local commercial or industrial activity valued at 30 percent or more of the value of the imported content of the total goods purchased or leased under a government tender.

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

[1] Antidumping measures on a third product, L-lysine-HC1, were terminated on June 22, 2011, when ITAC published a report on its website terminating the antidumping measure on imports from the United States.

INTELLECTUAL PROPERTY RIGHTS PROTECTION

The South African government has introduced measures to enhance enforcement of the 1997 Counterfeit Goods Act. The government has appointed more inspectors, designated more warehouses for securing counterfeit goods, destroyed counterfeit goods, and improved the training of customs, border police, and police officials. Under South African law, complainants can take both civil and criminal action against intellectual property rights (IPR) offenders. In practice, civil litigation in South Africa is an expensive and time-consuming process. As a result, most counterfeit goods complaints use criminal statutes. The number of arrests for trading in pirated or counterfeit goods has increased in recent years. For example, a December 2011 raid by the South African Police Service (SAPS) resulted in more than 30 arrests and the seizure of more than $6 million worth of counterfeit products. In addition, South Africa has taken steps to improve enforcement, such as the creation of the Department of Trade and Industry's (DTI) enforcement unit, and the establishment of Commercial Crime Courts in several cities. The South African government has also formed an interagency counterfeit division including the DTI, the South African Revenue Service, and SAPS to improve coordination of IPR enforcement. The DTI is working with universities and other local groups to incorporate IPR awareness into college curricula and training of local business groups.

The private sector and law enforcement cooperate extensively to stop the flow of counterfeit goods into the marketplace, and the private sector believes that significant progress has been made since 2001. Despite efforts to improve IPR enforcement, monetary losses from counterfeiting and piracy remain high; South Africa is also used as a transit point for counterfeit materials. U.S. industry is concerned about illegal commercial photocopying, especially at universities, libraries, and other on-campus venues. U.S. industry has also expressed concern about software and optical disc piracy, the growing number of counterfeit production facilities, advertisements of "burn-to-order" services and piracy over the Internet. Counterfeit medicines are also prevalent.

The U.S. continues to engage with South Africa on intellectual property issues through regular dialogue and extensive education and training.

SERVICES BARRIERS

Telecommunications

Regulation is divided between the Department of Communications (DOC) and the Independent Communications Authority of South Africa (ICASA), the latter of which replaced the South African Telecommunications Regulatory Authority and the Independent Broadcasting Authority in July 2000 under the ICASA Act (No. 13). Fixed-line telecommunications services in South Africa are dominated by Telkom, which held a legal monopoly prior to passage of the Electronic Communications Act of 2005. Despite its regulatory role, the DOC retains South Africa's ownership interest in Telkom. An ICASA proceeding has been pending since 2009 to determine whether ICASA should regulate foreign direct investment in electronic communications.

Liberalization measures implemented by the DOC have addressed some problems facing smaller operators. As a result, more mobile operators may now install their own fixed lines to link cell towers into their networks, Value Added Network Service (VANS) providers may use infrastructure not owned by Telkom, and VANS providers may offer voice services. In addition, private telecommunications network operators may sell spare capacity. However, VANS providers continue to be concerned over Telkom's monopoly. South Africa's Competition Tribunal is currently reviewing a case brought by several VANS providers in 2004. This case could result in a substantial fine for Telkom for charging excessive prices to VANS providers, refusing access to an essential facility, and engaging in price discrimination. A decision in this case is due in 2012.

Broadcasting

ICASA requires local content for satellite, terrestrial, and cable subscription services. Foreign ownership of a broadcaster is capped at a maximum of 20 percent. In July 2009, the South African government embarked on plans to amend the country's Broadcasting Act (1999). This followed a number of changes in the broadcasting and telecommunications sector, such as the migration from analog to digital television broadcasting. The DOC originally announced a goal to complete the digital migration by November 2011, but then pushed back the date to December 2013. South Africa plans to activate the digital signal in April 2012 and have 100 percent coverage by the 2013 deadline. Full migration should free up spectrum (approximately 80 megahertz to 100 megahertz) that could be used for new technology and electronic government services.

INVESTMENT BARRIERS

While South Africa is generally open to greenfield foreign direct investment, merger-and-acquisition-related foreign direct investment is scrutinized closely for its impact on jobs and local industry. Private sector and other stakeholders have expressed concern about politicization of South Africa's posture towards this type of investment.

Sectors such as financial services, mining, and petroleum have their own "transformation charters" intended to promote accelerated empowerment within the sectors. As of November 2011, these charters of the integrated transport, forest products, construction, tourism, and chartered accountancy sectors have force of law in South Africa. Many other sectors, including financial services; information, communications and technology; and property have transformation charters that do not have force of law, yet express the sector's commitment to "economic transformation."

ELECTRONIC COMMERCE

The Electronic Communications and Transactions Law governs electronic commerce in South Africa. The law was designed to facilitate electronic commerce, but has been criticized as imposing significant regulatory burdens. The law requires government accreditation for certain electronic signatures, takes government control of South Africa's ".za" domain name, and requires a long list of disclosures for websites that sell via the Internet.

In early 2006, the South African Law Reform Commission submitted draft legislation and discussion documents on privacy and data protection for public comment and held a series of workshops on the draft legislation. This legislation is still awaiting action by the National Assembly and remains in draft form. Industry is still evaluating the extent to which the legislation would affect the ability of South African and foreign companies to receive and send trans-border flows of personally identifiable data.

OTHER BARRIERS

Transparency and Corruption

South Africa has no fewer than 10 agencies engaged in anticorruption activities. Some, including the Public Service Commission, the Office of the Public Protector, and the Office of the Auditor-General, are constitutionally mandated to address corruption as part of their responsibilities. However, high rates of violent crime strain overall law enforcement capacity and make it difficult for South African criminal and judicial entities to dedicate adequate resources to anticorruption efforts. After allegations of corruption in his Cabinet, President Zuma reshuffled his Cabinet in October 2011 to remove some ministers who were under investigation.

BUSINESS MOBILITY

Companies in many economic sectors experience recruiting difficulty because of skills shortages and emigration. For a number of years, U.S. and other foreign companies have complained of difficulties in the procedures for obtaining temporary work permits for their skilled foreign employees.

SRI LANKA

TRADE SUMMARY

The U.S. goods trade deficit with Sri Lanka was $1.8 billion in 2011, up $211 million from 2010. U.S. goods exports in 2011 were $307 million, up 71.7 percent from the previous year. Corresponding U.S. imports from Sri Lanka were $2.1 billion, up 19.4 percent. Sri Lanka is currently the 114th largest export market for U.S. goods.

The stock of U.S. foreign direct investment (FDI) in Sri Lanka was $130 million in 2010 (latest data available), up from $110 million in 2009.

BILATERAL TRADE TALKS

The United States and the government of Sri Lanka held their annual trade discussions under the Trade and Investment Framework Agreement on November 15, 2011. The United States raised the issues of government procurement, agricultural market access, tariff levels, the investment climate, intellectual property rights and individual trade disputes. The United States and Sri Lanka had productive talks, and agreed to continue working on these and other issues.

IMPORT POLICIES

Despite an economy that is attempting to open to foreign trade and investment, the pace of reform in Sri Lanka has been uneven. The Trade, Tariff, and Investment Policy Division of the Ministry of Finance and Planning is charged with the formulation and implementation of trade and investment policies. The Trade and Tariff cluster of the National Council of Economic Development also examines trade and tariff issues and sends recommendations to the Ministry of Finance and Planning. Based on the Presidential Taxation Commission’s recommendations, the government simplified the tax structure in 2010, including eliminating some but not all supplementary charges on imports.

The government’s 2012 budget stressed the need to promote import substitution industries and proposed investment incentives for selected sectors identified as “strategic import replacement enterprises.” Manufacture of cement, steel, pharmaceuticals, fabric, and milk powder are encouraged through new government incentives. The import tax regime for these items would be largely unchanged, except for the introduction of an all inclusive charge of Rs 75 ($0.68) per kilogram (kg) on fabric to replace existing taxes. Yarn would be made tax free to facilitate the fabric industry. The budget emphasized the need to have price controls on pharmaceuticals, which, if implemented, is likely to be detrimental to the pharmaceutical import trade.

Import Charges

Sri Lanka's main trade policy instrument has been the import tariff. According to the WTO, Sri Lanka’s average applied agricultural tariff in 2010 was 25.4 percent, whereas its bound rates, *i.e.*, the rate that generally under WTO rules cannot be exceeded, are significantly higher, averaging 50 percent. However, the compounded taxes for imported agriculture products are routinely between 80 percent and 100 percent of the cost, insurance, and freight (CIF) value. In 2010, Sri Lanka’s average applied tariff for industrial and consumer goods was 9.2 percent. However, less than 30 percent of Sri Lanka’s tariffs on industrial and consumer goods are bound under WTO rules, meaning applied tariffs on those goods can be increased to any level.

The import tariff structure was simplified in June 2010 by reducing the number of tariff bands from five to four. As a result, the current tariff bands are: zero percent; 5 percent; 15 percent; and 30 percent. The highest duty band was increased from 28 percent to 30 percent. Textiles, pharmaceuticals, and medical equipment, machinery, basic raw materials, computers, software, solar lights, sports footwear and selected consumer electronics, have a zero tariff. Semi-processed raw material tariffs are at 5 percent, while intermediate product tariffs are at 15 percent. Most finished product tariffs are at 30 percent. There continue to be a number of deviations from the four-band tariff policy. Some items are subject to an *ad valorem* or a specific tariff, whichever is higher, and there is intermittent use of exemptions and waivers. Footwear, ceramic products, and agricultural products carry specific tariffs.

In addition to the import tariff, there are a number of supplementary taxes and levies on imports.

In 2010 the government eliminated the 5 percent to 10 percent Regional Infrastructure Fee for automobiles, the 1.5 percent Social Responsibility Levy, and the 15 percent general import surcharge. The Nation Building Tax on imports was reduced from three percent to two percent. Although the government eliminated or reduced several taxes, the existing levies on a variety of products continue to amount to between 60 percent and 100 percent of the CIF value of those products.

The 2012 budget introduced several changes to the import tax regime. There were changes to tax/levy rates on selected goods. Also, to avoid undervaluation of goods for customs purposes, the government introduced unit-based specific taxes on textiles and fruits, replacing the existing *ad valorem* tariffs.

In general, the frequent changes (mostly upward) of these rates have added unpredictability to foreign exporters' and local importers' cost calculations. Affected products from the United States include fruits, processed/packaged food, and personal care products. The United States continues to examine if these combined tariffs, levies, and taxes conflict with Sri Lanka's WTO commitments.

Other charges on imports include:

- An Export Development Board (EDB) levy, often referred to as a "cess," ranges from 10 percent to 35 percent *ad valorem* on a number of imports identified as "nonessential." Most of the items are subject to specific duties as well; for example, biscuits (35 percent or Rs 60 ($0.54) per kg) and butter, cheese and dairy spreads (30 percent or Rs 100 ($0.90) per kg). Whichever levy is higher, either *ad valorem* or specific rate, is applied. Also, when calculating the EDB levy, an imputed profit margin of 10 percent is added onto the import price. In some cases, such as on biscuits, chocolates, and soap, the tax is charged not on the import price but on 65 percent of the maximum retail price. In 2010, the EDB levy on a range of consumer electronics and motor vehicles was completely removed. Locally manufactured products are not subject to the EDB. In November 2011, the EDB levy on a range of items was changed. For example, the EDB levy on wheat flour was increased from 5 percent to 15 percent and shampoo was changed from 35 percent or Rs 350 ($3.16) per kg to Rs 500 ($4.52) per kg.

- A Ports and Airports Development Levy of five percent is applied on imports. Locally manufactured products are not subject to the Ports and Airports Development Levy.

- The Value Added Tax (VAT) rate of 20 percent was reduced to 12 percent on November 23, 2010. Also, from June 2010, a range of consumer electronics goods were exempted from the VAT. When calculating the VAT, an imputed profit margin of 10 percent is added on to the import price. Locally manufactured products are also subject to VAT, but not the imputed profit margin.

- Excise fees are charged on some products such as aerated water, liquor, beer, motor vehicles, and cigarettes. When calculating the excise fee, an imputed profit margin of 15 percent is added on to the import price. The excise fee is applied on the price inclusive of other duties. Locally manufactured products are also subject to excise fees.

- The Nation Building Tax (NBT) was reduced to 2 percent from 3 percent on January 1, 2011. The NBT is applied on the price inclusive of other duties. Local manufacturers also pay NBT.

- Beginning on November 21, 2011, new Special Commodity Levy (SCL) is charged on some food items including oranges, mandarins, grapes, and apples. The items subject to the SCL are exempted from all other taxes. The SCL on oranges is Rs 60 ($0.54) per kg; on mandarins Rs 35 ($0.32) per kg; on grapes Rs 120 ($1.09) per kg; and on apples Rs 45 ($0.41) per kg.

- Textiles and Apparel: In November 2011, the government introduced an all inclusive tax of Rs 75 per kg ($0.68) on imported textiles not intended for use by the apparel export industry. This tax replaces an Export Development Board Levy of Rs 50 ($0.45) per kg, a Ports and Airports Tax of 5 percent and a VAT of 12 percent.

- Currently, apparel imports are subject to a 15 percent import duty, a Rs 75 ($0.68) per unit Export Development Board Levy, a 12 percent VAT and a 5 percent Ports and Airports Levy.

Import Licensing

Sri Lanka requires import licenses for over 400 items at the 6-digit level of the Harmonized Tariff System, reportedly for health, environment, and national security reasons. Importers must pay an increased fee equal to 0.222 percent of the import price with a minimum fee of Rs 1,000 ($9.05) to receive an import license.

GOVERNMENT PROCUREMENT

Government procurement of most goods and services is primarily undertaken through a public tender process. Some tenders are open only to registered suppliers. Procurement is also undertaken outside the normal competitive tender process. The government publicly subscribes to principles of international competitive bidding, but charges of corruption and unfair awards are common. A special Cabinet-appointed review committee reviews unsolicited development proposals; it also has conducted procurements for the most important infrastructure projects outside of the regular government procurement process. These actions have raised concerns about the government's commitment to improve the transparency of procurement.

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

INTELLECTUAL PROPERTY RIGHTS PROTECTION

Weak intellectual property rights (IPR) enforcement remains a problem in Sri Lanka. Piracy levels remain very high for sound recordings and software. According to an industry-commissioned study, as much as 86 percent of personal computers in Sri Lanka used pirated software in 2010 (down slightly from 89 percent in 2009). However, the commercial value of pirated software rose to $83 million in 2010 from $77 million in 2009 due to increased personal computer sales. Despite this problem, industry reports that there has been an improvement in the use of legal software by large companies in Sri Lanka. Further, while government use of unauthorized software remains a problem, the government of Sri Lanka has published an information and communications technology policy requiring all government ministries and departments to use only licensed software.

Redress through the courts for IPR infringement is often a frustrating and time-consuming process. While police can take action against counterfeiting and piracy without complaints by rights holders, they rarely do so. In the apparel sector, however, rights holders have had some successes in combating trademark counterfeiting through the courts.

The Sri Lankan government's Director of Intellectual Property, along with international experts, continues to conduct IPR legal and enforcement training for customs, judicial, and police officials. The U.S. Embassy Colombo, the U.S. Patent and Trademarks Office, and the American Chamber of Commerce of Sri Lanka are also working with the government of Sri Lanka and the private sector to improve enforcement, provide enforcement training, and enhance public awareness. Sri Lankan Customs has created a computer based Customs Trade Mark recordation system, although it is not yet fully operational. A new IP unit has been established within the Criminal Investigative Division of the Sri Lankan police. The United States will monitor the effectiveness of these new programs.

SERVICES BARRIERS

Insurance

Sri Lanka does not allow cross-border supply of insurance, with the exception of health and travel insurance. In order to provide all other insurance services to resident Sri Lankans, insurance companies must be incorporated in Sri Lanka. Branch offices are not permitted. The Sri Lankan government requires all insurance companies to reinsure 20 percent of their insurance business with a state-run insurance fund.

Broadcasting

The government imposes taxes on foreign movies, programs, and commercials to be shown on television, ranging from Rs 25,000 ($226) for an imported English-language movie to Rs 90,000 ($814) per half hour of a foreign language program dubbed in the local language, Sinhala. Foreign television commercials are taxed at Rs 500,000 ($4,523) per year. Rates for non-English foreign programming are higher. Government approval is required for all foreign films and programs shown on television.

INVESTMENT BARRIERS

While Sri Lanka welcomes foreign investment, there are restrictions in a wide range of sectors. For example, foreign investment is not permitted in certain types of money lending activities, in coastal fishing, and in retail trade for investments of less than $2 million ($150,000 in the case of international brands and franchises). In other sectors, foreign investment is subject to case-by-case screening and approval when foreign equity exceeds 40 percent. These include shipping and travel agencies, freight forwarding, mass communications, deep sea fishing, local timber industries, mining and primary processing of natural resources, and the cultivation and primary processing of certain agriculture commodities. Foreign equity restrictions also apply in the air transportation, coastal shipping, lotteries, and gem mining sectors, as well as in "sensitive" industries such as military hardware.

On November 9, 2011, the government of Sri Lanka approved a new law entitled the "Revival of Underperforming Enterprises and Underutilized Assets Act" that allows expropriation of assets belonging to 37 companies the government considers as underperforming. These companies had leased land from the government, and the government states that the companies were not meeting conditions of their leases. Although many of the 37 companies were defunct, several were operating businesses, including one owned by a prominent member of the opposition. The Bill was passed under a mechanism that limited Parliamentary debate to one day. The Central Bank stated that the Bill was a "one off" measure, but the government has subsequently announced plans to retake 37,000 hectares of tea plantation land, which the government said was not being fully utilized. The law increases investor uncertainty regarding property rights in Sri Lanka and could become a significant barrier to foreign investment.

SWITZERLAND

TRADE SUMMARY

The U.S. goods trade surplus with Switzerland was $39 million in 2011, down $1.5 billion from 2010. U.S. goods exports in 2011 were $24.5 billion, up 18.2 percent from the previous year. Corresponding U.S. imports from Switzerland were $24.4 billion, up 27.6 percent. Switzerland is currently the 16th largest export market for U.S. goods.

U.S. exports of private commercial services (*i.e.*, excluding military and government) to Switzerland were $20.3 billion in 2010 (latest data available), and U.S. imports were $19.7 billion. Sales of services in Switzerland by majority U.S.-owned affiliates were $55.9 billion in 2009 (latest data available), while sales of services in the United States by majority Switzerland-owned firms were $46.1 billion.

The stock of U.S. foreign direct investment (FDI) in Switzerland was $143.6 billion in 2010 (latest data available), down from $149.8 billion in 2009. U.S. FDI in Switzerland is led by the nonbank holding companies, manufacturing, and wholesale trade sectors.

IMPORT POLICIES

Switzerland, along with Norway, Iceland, and Liechtenstein, is a member of the European Free Trade Association (EFTA). However unlike other EFTA members, Switzerland does not participate in the European Union (EU) single market through the European Economic Area (EEA) accord. According to the WTO, Switzerland's simple average applied tariff is 27.2 percent for agricultural goods and 1.9 percent for non-agricultural goods.

Agricultural Products

Access for U.S. agricultural products is restricted by high tariffs on certain products, preferential tariff rates for other countries, and government regulation. Switzerland's tariff schedule is comprised only of specific (non-*ad valorem*) duties. Imports of nearly all agricultural products, particularly those that compete with Swiss products, are subject to seasonal import duties, quotas, and import licensing. Agricultural products that are not produced in Switzerland, such as tropical fruit and nuts, tend to have lower tariffs.

Switzerland has a strict regulatory regime for agricultural biotechnology products. In order for biotechnology food or animal feed products to be imported and sold on the Swiss market, they must undergo a lengthy approval process. In addition, labeling is required for products containing biotechnology ingredients or derived from such ingredients. Recently, Switzerland further tightened labeling rules so that even so-called "second-generation" products derived from a biotechnology derivative (such as corn syrup produced from starch made from biotechnology corn) must also be labeled. The Swiss rules on approval and labeling roughly parallel those of the EU.

GOVERNMENT PROCUREMENT

Switzerland is a signatory to the WTO Agreement on Government Procurement (GPA), which covers both cantonal and federal procurement. However, since cantons are allowed to implement the GPA independent from federal intervention, disparities in procedures may be found among the cantons, which may hamper participation by foreign firms.

In contrast to cantonal and communal practice, federal authorities are not required to inform unsuccessful bidders of the selected tender or reasons for the award.

INTELLECTUAL PROPERTY RIGHTS PROTECTION

Switzerland generally maintains high standards of intellectual property rights (IPR) protection. U.S. copyright holders, however, have expressed concerns about the subsequent interpretation by prosecutors and judges of a verdict of the Swiss Supreme Court in 2010 prohibiting the use of IP addresses to identify copyright infringers, leaving them, in practice, unable to defend their intellectual property adequately in Switzerland, particularly as it relates to illegal, commercial-scale uploading of copyrighted material.

Switzerland was an active participant in the Anti-Counterfeiting Trade Agreement (ACTA) negotiations and signed the ACTA in October 2011. The ACTA establishes 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.

SERVICES BARRIERS

Telecommunications

Swisscom, a former government monopoly still owned largely by the state, appears not to have fully complied with the Law of Telecommunications, which took effect in 2007 and was designed to improve telecommunications competition in Switzerland. The Swiss Federal Communications Commission stated in December 2010 that 8.9 percent of all broadband connections (including DSL and CATV) were unbundled and 12.3 percent of the DSL connections were unbundled. In addition, in March 2011, Swisscom had unbundled 270,000 subscriber lines, up from 255,000 in December 2010.

Swisscom’s competitors complain that the price charged by Swisscom to use its fiber network is too expensive, despite legislation requiring that wholesale broadband access be offered to competitors at cost-oriented prices to allow competitors time to invest in their own competing facilities. On December 8, 2011, the Swiss Federal Communications Commission reduced (retroactive to all of 2011) the price for unbundled lines from CHF16.60 ($18.12) to CHF15.50 ($16.92). Although this is an improvement, it is still four francs to five francs above the European average. The regulator also reduced the rates for interconnection and collocation. The regulator also announced that beginning in 2013, it will include new-generation technologies, such as optical fiber, as a basis for calculating the cost-based wholesale access rate.

Insurance

The manager of a foreign-owned branch must be resident in Switzerland and the majority of the Board of Directors of the Swiss subsidiary must have citizenship in an EU or EFTA country. Public monopolies exist for fire and natural damage insurance in 19 cantons and for the insurance of workplace accidents in certain industries.

TAIWAN

TRADE SUMMARY

The U.S. goods trade deficit with Taiwan was $10.1 billion as of August 2011, up $3.6 billion from the same period in 2010. U.S. goods exports in January 2011 to August 2011 were $17.8 billion, up 9.2 percent from the previous year. Corresponding U.S. imports from Taiwan were $27.9 billion, up 22.4 percent. Taiwan is currently the 13th largest export market for U.S. goods.

U.S. exports of private commercial services (*i.e.*, excluding military and government) to Taiwan were $6.5 billion in 2009 (latest data available), and U.S. imports were $5.1 billion. Sales of services in Taiwan by majority U.S.-owned affiliates were $10.7 billion in 2008 (latest data available), while sales of services in the United States by majority Taiwan-owned firms were $2.2 billion.

The stock of U.S. foreign direct investment (FDI) in Taiwan was $21.0 billion in 2010 (latest data available), up from $19.5 billion in 2009. U.S. FDI in Taiwan is mostly in the manufacturing, wholesale trade, and finance/insurance sectors.

In June 2010, Taiwan and the People's Republic of China (PRC) signed the Economic Cooperation Framework Agreement (ECFA), a landmark trade agreement that Taiwan authorities anticipate will contribute to domestic economic growth and assist Taiwan's efforts to conclude trade agreements with other countries. The ECFA entered into force on January 1, 2011. WTO Members are required to notify any bilateral or regional trade agreement to the WTO upon entry into force of the agreement. As of February 2012, the ECFA had not yet been formally notified.

IMPORT POLICIES

Tariffs

When Taiwan became a WTO Member in January 2002, the authorities implemented tariff-rate quotas (TRQs) on small passenger cars and 16 agricultural products. On January 1, 2007, in accordance with its WTO commitments, Taiwan made additional tariff cuts and increased TRQ amounts on these products. Beginning January 2011, Taiwan fully eliminated TRQs on small passenger cars. In addition, the commodity tax on small passenger cars dropped from 35 percent to 30 percent. This tax is waived for electric cars until 2014 in an effort to promote energy conservation.

Taiwan maintains Special Safeguards (SSGs) for a number of agricultural products covered by TRQs. SSGs, which are generally permitted under Article 5 of the WTO Agreement on Agriculture, allow Taiwan to impose additional duties when import quantities exceed SSG trigger volumes or import prices fall below SSG trigger prices. Because Taiwan previously did not import many of these products, SSG trigger volumes are relatively low. Over the last few years, Taiwan has applied SSG provisions in several agricultural product categories, including poultry, certain types of offal, and milk.

U.S. industry continues to request that Taiwan lower tariffs on many goods, including large motorcycles.

Import Controls

Taiwan has eliminated more than 99 percent of its import controls, but 101 product categories still face import restrictions, down from 107 product categories in 2010. Of these 101 categories, 15 require import permits from the Board of Foreign Trade, and 86 categories are prohibited. Most of the requirements reportedly are based on public health and national defense concerns.

The Economic Cooperation Framework Agreement includes early harvest lists of 267 goods permitted to enter Taiwan from the PRC with tariff reductions and exemptions. The early harvest lists began a three year phase-in period on January 1, 2011, with the goal of eliminating tariffs on all of the 267 items at the end of the period. Taiwan still retains import bans on more than 2,000 products from the PRC.

Agriculture and Fish Products

Prior to joining the WTO, Taiwan banned or restricted imports of 42 agricultural and fish items. In January 2002, Taiwan eliminated restrictions on the importation of 18 of these items and implemented tariff-rate quotas on the remaining 24 items. In October 2002, market access for rice was changed from a minimum market access regime to a TRQ. On January 1, 2005, Taiwan eliminated TRQs on four products of interest to the United States, including chicken meat, poultry offal, and pork bellies and offal. In February 2005, Taiwan unilaterally eliminated sugar from its TRQ. At the end of 2007, Taiwan phased out TRQs for persimmons, mackerel, carangid, and sardines. Currently, 16 agricultural products are subject to TRQs.

Beef and Pork

The United States is deeply concerned about Taiwan's trade practices affecting U.S. meat exports, including beef. For details, please see the 2012 USTR Report on Sanitary and Phytosanitary Barriers.

Rice

Upon accession to the WTO in 2002, Taiwan committed to lifting the ban on rice imports and opened up an import quota of 144,720 metric tons on a brown rice basis under a "special treatment" regime. Starting in 2003, Taiwan shifted its rice importation from a special treatment regime to a complex TRQ system that includes a ceiling price mechanism. After the United States and other WTO members raised objections to Taiwan's method of quota allocation, Taiwan subsequently agreed that its public sector import quota would be allocated based on a country-specific quota (CSQ) regime, with the U.S. quota accounting for the largest share at 64,634 metric tons valued at approximately $45 million at current world prices.

The United States continues to engage Taiwan on issues relating to fulfilling its CSQ for importation of U.S. rice. Since 2007, U.S. exporters have raised concerns that Taiwan's ceiling price mechanism has disrupted Taiwan's tendering process for procurement of U.S. rice. The ceiling price is not public, but in recent years it is believed to have been set lower than the price levels bid by U.S. exporters, causing tenders to fail. In 2007 and 2008, public sector rice tenders for U.S. rice repeatedly failed. Although Taiwan met its rice import obligations in 2009, 2010, and 2011, Taiwan has not addressed filling the shortfalls from 2007 and 2008. The United States continues to engage Taiwan on the ceiling price mechanism and on filling past shortfalls (approximately 70,000 metric tons).

Automobiles and Motorcycles

Although the Ministry of Transportation and Communications (MOTC) opened most expressways to large motorcycles with engine displacement of 550cc or more in 2007, the MOTC has not allowed motorcycles with engine displacement of over 550cc on the highways based on the results of a feasibility study made by Directorate General of Highways (DGH) in 2009. However, the Legislative Yuan on November 8, 2011 passed an amendment to the "road traffic management and penalty act" allowing motorcycles with engine displacement over 550cc to travel on highways during specific time periods and on certain road segments to be announced by MOTC beginning in 2012.

Distilled Spirits

Differential taxation for domestic and imported distilled spirits has been a contentious issue between Taiwan and a number of its important trading partners in the past, and it was the subject of negotiations during Taiwan's WTO accession process. Actions taken by Taiwan in 2010 have again raised concerns for the United States and other trading partners, including the European Union.

Specifically, on September 16, 2010, Taiwan implemented a significant tax reduction on domestic *mijiu* rice wine. This tax reduction resulted from the amendment of Taiwan's "Enforcement Rules of the Tobacco and Alcohol Tax Act" which created a new subcategory of "cooking rice wine" that covers *mijiu* rice wine, a domestically produced distilled spirit. Prior to this amendment, the enforcement rules required that "cooking alcoholic products" must contain a minimum salt content of more than 0.5 percent of total volume, ensuring that such products would be distinguished from other distilled spirits and not consumed as a beverage. The 2010 amendment categorized cooking wine into two subgroups, one group with a salt content requirement, and the other under "cooking alcoholic products" for products with alcohol content no greater than 20 percent, labeled "exclusively used for cooking." Based on these specifications, *mijiu* rice wine under these categories is taxed at NT$9 ($0.30) per liter, a much lower tax rate than what is applied to non-cooking alcoholic products, NT$2.5 ($0.08) per liter per degree (percentage) of alcohol content.

The United States and other trading partners continue to express their strong concerns to the Taiwan authorities that steps should be taken to ensure that the domestic *mijiu* rice wine will not compete with, or substitute for, like imported alcoholic beverages, and that imported alcoholic beverages would not be taxed at a higher rate than like domestically produced alcoholic beverages.

EXPORT SUBSIDIES

Taiwan provides incentives to industrial firms in export processing zones and to firms in designated "emerging industries." Taiwan has notified the WTO of these programs.

To increase Taiwan's export competitiveness and economic growth, the Ministry of Finance in October 2011 resumed tax rebates for customs duties on certain components and raw materials that are imported into Taiwan and then used to produce goods for export. The rebate applies to 1,269 products in categories including electronics, textiles, machinery, chemicals, and plastics.

INTELLECTUAL PROPERTY RIGHTS PROTECTION

Taiwan generally provides effective intellectual property rights (IPR) protection and enforcement. Rights holders continue to express concern, however, regarding infringement of copyrighted material on the Internet, illegal textbook copying on university campuses and nearby businesses, inadequate protection for the packaging, configuration, and outward appearance of products (trade dress), end-user piracy of software, signal theft of cable TV, trade secret theft and misappropriation, and the continued availability of counterfeit pharmaceuticals in Taiwan. The importation and trans-shipment of counterfeit products from China is also a problem, as well as the collusion of some Taiwanese companies in supplying components to factories in China producing "Shanzhai" counterfeits (*e.g.*, mobile phones, netbooks, and other electronic devices) and the transfer of proprietary technology by company employees to mainland businesses. The United States also continues to encourage Taiwan to provide an effective system to address patent-related issues expeditiously in connection with applications to market pharmaceutical products.

The Legislative Yuan amended the Taiwan Copyright Law in 2009 to require Internet service providers (ISPs) to undertake specific and effective notice-and-takedown actions against online infringers to avoid liability for the infringing activities of users on their networks. The law's regulations, however, failed to indicate clearly what constituted an infringement, how notifications should be handled, and other procedural matters. As a result, the law has not been effectively implemented.

In May 2011, the Legislative Yuan passed an amendment to the Trademark law which extends the scope of goods eligible for protection as trademarks, broadens the conditions in which infringement shall be deemed to have occurred, and strengthens customs enforcement mechanisms for trademarked goods.

SERVICES BARRIERS

Banking Services

Foreign banks may set up representative offices, branches, and subsidiaries in Taiwan. Foreign invested banks in Taiwan are accorded national treatment. Foreign entities may acquire up to 100 percent equity in Taiwan banks, subject to certain requirements. Industry has raised concerns that foreign banks operating in Taiwan have been asked to surrender their branch office license if they have established subsidiaries in Taiwan, in contravention of a prior understanding that these banks had with the financial regulators that they could keep both forms of operation. Further, Taiwan's banking regulatory body, the Financial Supervisory Commission (FSC), plans to require foreign subsidiary banks to establish stand-alone onshore data centers for servicing local residents and enterprises. FSC officials have argued that offshore, regional data centers neither provide Taiwan customers real time service nor guarantee their information security. FSC has also expressed concerns about its ability to exercise supervision over the operations of offshore data centers and these centers' ability to respond to Taiwan customers' needs during an emergency. Foreign banks have complained about the nontransparent nature of FSC decision making on this issue and such new requirement's variance with international practice.

Securities Services

Foreign securities firms may set up representative offices, branches, and subsidiaries, and Taiwan securities firms are not subject to any foreign ownership limit. In general, an asset management business requires a securities investment trust enterprise (SITE) license and/or securities investment consultant enterprise (SICE) license. Both SITEs and SICEs are allowed to raise and sell offshore funds, or a fund established outside of Taiwan. Neither SITEs nor SICEs are subject to any foreign ownership limit. In practice, however, the FSC has adopted several administrative measures to restrict offshore funds established by asset management businesses. For example, the FSC recently proposed to inspect more closely asset management companies that want to raise offshore funds exceeding NT$20 billion ($666 million) in Taiwan.

Pay Television Services

The Cable Radio and Television Law restricts foreign investment in pay television services to a total equity share of 20 percent for direct investment, or 60 percent for direct plus indirect investment. In addition, continuing caps on monthly cable television fees and geographic restrictions on cable franchises are hampering the Taiwan public's access to a broader range of programming. These relatively low fees and franchise restrictions may also reduce the cable industry's incentives to invest in expensive digitalization of Taiwan's largely analog cable system. Analog cable systems are more susceptible to signal theft. The Legislative Yuan is expected to pass an amendment to the Cable Radio and Television Law in the current session, which would ease the aforementioned restrictions and increase the cable digital television penetration rate to 75 percent by 2015.

Telecommunications Services

The National Communications Commission (NCC) is an independent agency which regulates Taiwan's telecommunications and broadcasting sectors, and supports the development of these industries and is modeled after the U.S Federal Communications Commission. In 2008, the NCC began accepting and reviewing license applications when submitted, rather than on a quarterly basis. In addition to authorizing NT$35 billion ($1.1 billion) of new broadband network construction which has been ongoing since 2003, the NCC in July 2007 issued 6 regional licenses to Worldwide Interoperability for Microwave Access (WiMax) operators. WiMax operators began services in 2009 but immediately faced operational difficulties based on low consumer interest, with consumers reluctant to switch from existing 3G and 2G services, and the WiMAX technology faces a strong challenge from the competing 4G technology, Long Term Evolution. As a result, Taiwan's 6 WiMax operators had only 129,000 users by the end of September of 2011.

The NCC has been ineffective in integrating telecommunications and broadcasting regulations, causing Taiwan's telecommunications industry to fall behind in an era of digital convergence. For example, current regulations prevent Taiwan's principal fixed line phone company, Chunghwa Telecom (CHT) from running multimedia-on-demand programs, and restrict another primary mobile phone operator, Taiwan Mobile Co., from acquiring a cable television multisystem operator. In addition, existing fixed line operators report that they still face difficulties in negotiating reasonable interconnection arrangements at technically feasible points in the network of the dominant carrier, CHT.

INVESTMENT BARRIERS

Taiwan prohibits or restricts foreign investment in certain sectors, including agricultural production, chemical manufacturing, bus transportation, and public utilities. National treatment has recently been accorded in the postal services and pesticide production sectors. Shipping companies registered in Taiwan are subject to a foreign ownership limit of 50 percent. Foreign ownership in Taiwan-registered merchant ships is limited to a 50 percent stake for ships engaged in international shipping, and to a 33 percent stake for those involved in domestic shipping. For vessels operating between Taiwan and the PRC, there is no foreign ownership requirement, as long as a Taiwan-registered company registers the shipment.

The total direct and indirect foreign ownership limit on wireless and wire line telecommunications firms is 60 percent, including a direct foreign investment limit of 49 percent. Separate rules exist for CHT, the legacy carrier still partially owned by the Ministry of Transportation and Communications. CHT controls 97 percent of the fixed line telecommunications market. For CHT, the cap on direct and indirect foreign investment was raised to 55 percent in December 2007, including a direct foreign investment limit of 49 percent. The total direct and indirect foreign ownership limit on cable television broadcasting services is 60 percent, which includes a 20 percent limit on foreign direct investment.

Foreign ownership in satellite television broadcasting services, power transmission and distribution, piped distribution of natural gas, high speed railways, airport ground handling firms, air cargo terminals, air catering companies, and air cargo forwarders is limited to 49 percent of the total shares issued. In July 2007, the foreign ownership limit on airline companies was raised from 33 percent to 49.99 percent, with each individual foreign investor subject to an ownership limit of 25 percent. Taiwan maintains extensive barriers against mainland Chinese investments, but is reviewing ways to liberalize the rules gradually.

Portfolio Investment

Foreign portfolio investors are required to register and can do so via the Internet. Up to 30 percent of funds remitted for purposes of portfolio investment may be held in money market or other similar instruments. Funds for futures trading, however, must be remitted to Taiwan specifically for that purpose and are segregated from funds remitted for equity investment. In 2007, Taiwan raised the cap from NT$50 million ($1.7 million) to NT$300 million ($9.2 million) on the balance of a foreign investor's NT$ omnibus account resulting from profits gained from futures trading in Taiwan. If the balance exceeds the limit, the foreign investor is required to convert the NT dollars into U.S. dollars within 5 working days, with the new balance below NT$10 million ($0.3 million). Except for investors from the PRC, offshore foreign portfolio investors may trade in Taiwan's stock market regardless of their size.

Since April 2009, Taiwan has allowed PRC-based qualified domestic institutional investors to engage in portfolio investment and futures trading in Taiwan. Chinese investors may invest in the following Taiwan securities: shares of listed companies; beneficial certificates; public sector bonds; financial bonds; corporate bonds issued by public companies; asset-backed securities; and call warrants. A PRC-based institutional investor that engages in futures trading can only do so using foreign currencies. Foreign hedge funds have been permitted to trade in Taiwan's stock market since 2003, but they are subject to Taiwan authorities' close surveillance. Foreign individual investors are subject to an investment limit. Onshore foreign individuals and institutional investors are also subject to annual inward and outward limits of $5 million and $50 million, respectively.

OTHER BARRIERS

Pharmaceuticals

The United States has been encouraging Taiwan to adopt a system of actual transaction pricing in order to address the significant gap between the amount that the Taiwan government reimburses for a pharmaceutical product and the price actually paid to the provider of that product. This gap distorts pharmaceutical trade and prescription patterns in Taiwan. These distortions are compounded by another aspect of the Taiwan health care system which permits doctors to both prescribe and dispense pharmaceuticals. Research-based pharmaceutical companies see separating these functions as essential to resolving the long-term pricing problem.

On January 4, 2011, Taiwan lawmakers passed an amendment to the National Health Insurance Act (NHIA), which established Taiwan's national health insurance program in 1995, to reduce the program's NT$50 billion ($1.6 billion) deficit as well as introduce more equitability and efficiency into the health insurance system. Changes in the NHIA affecting pharmaceutical products include a proposal for a new drug pricing and reimbursement method called the "Drug Expenditure Target" (DET), as well as measures that address problems associated with generic and innovative drug pricing mechanisms. Proponents of these reforms hope that they will also help reduce incentives that create the price gap between reimbursement rates and actual price paid for the pharmaceutical products.

Industry efforts for NHIA reforms are primarily focused on: implementation of a DET program that would improve the predictability of reimbursement rates, modification of classification procedures and improvements in reimbursements for breakthrough drugs, and adjustments to reimbursement mechanisms to more adequately match reimbursement rates to value of innovative and generic pharmaceutical products. Taiwan, however, has not yet implemented the DET, and instead, on December 1, 2011, implemented the 7th Price Volume Survey (PVS), a process by which Taiwan's Bureau of National Health Insurance (BNHI) conducts a comprehensive market survey, and based on these results, implements a series of reimbursement price reductions for products that appear to have been subject to significant discounts. This nontransparent process has created significant uncertainty in Taiwan's market, as it has often resulted in sudden, sharp reductions in reimbursement rates for many patented pharmaceutical products. As in the past, the seventh PVS resulted in significant reductions in reimbursement rates. While the DET is due to be implemented by July 2012, industry has raised concerns about whether the Department of Health will be able to meet this target date.

In January 2010, Taiwan announced a new reimbursement scheme for pharmaceutical products designed to encourage the research and development of new drugs, increase product quality, and reduce the widening gap between reimbursement rates and market prices. U.S. industry remains concerned over the very strict criteria for defining breakthrough drugs, which reduces incentives to bring new technologies and innovative products to Taiwan. The United States encourages Taiwan to continue to consult with relevant stakeholders in implementing policies that will facilitate the private sector's development of innovative products and improve patients' access to such products.

Taiwan formally established the Taiwan Food and Drug Administration (TFDA) on January 1, 2010 to replace the Bureau of Pharmaceutical Affairs. The TFDA is comprised of the agencies responsible for food and drug policy, license issuing, and product testing. Healthcare product manufacturers, including of pharmaceutical products and medical devices, must first apply to the TFDA for registration license approval and then to the BNHI for reimbursement in order to bring their products to market. Under new drug review and registration procedures developed with U.S. industry input designed to fast-track drug approvals, a firm can apply to BNHI for drug reimbursement based on an approval letter issued by TFDA prior to obtaining a drug registration license. BNHI and TFDA, however, have not yet expedited the process to the point of shortening the current three year to four year licensing and reimbursement approval period.

Medical Devices

The medical device industry welcomed the introduction of a balance billing mechanism in the amended NHIA, which allows partial patient self-pay for higher-end devices or new technologies. The medical device industry (like the pharmaceutical industry) has proposed suspending the PVS, arguing that it lacks transparency and does not reduce budgetary waste as intended.

The medical device industry has expressed concern over reimbursement policies that specify a single purchase price for all medical devices that treat a given indication. This policy does not take into account differences in quality and effectively subsidizes lower-cost devices while underpaying for more advanced, higher quality devices, thereby discouraging the introduction of these devices into the Taiwan market.

As for product registration, TFDA officials continue to work with industry to improve the medical device registration process, particularly with regard to the treatment of identical products made at different manufacturing sites, small modifications of previously approved devices, or complex devices assembled using various components sourced from manufacturers in different countries.

The Department of Health is also revising its testing and registration guidelines for in-vitro diagnostic drugs to adopt a more flexible procedure. The new guidelines are expected to allow importing companies to follow either U.S. or EU procedures, which could reduce excessive documentation and redundant testing for products made in Europe by U.S. companies.

THAILAND

TRADE SUMMARY

The U.S. goods trade deficit with Thailand was $13.9 billion in 2011, up $182 million from 2010. U.S. goods exports in 2011 were $10.9 billion, up 21.7 percent from the previous year. Corresponding U.S. imports from Thailand were $24.8 billion, up 9.4 percent. Thailand is currently the 27th largest export market for U.S. goods.

Computers and electronics products are a leading category in bilateral goods trade. In 2010, the United States exported $2.3 billion in electronics products, primarily semiconductors, to Thailand, while importing $9.1 billion from Thailand, mainly computers and communications equipment.

U.S. exports of private commercial services (*i.e.*, excluding military and government) to Thailand were $1.9 billion in 2010 (latest data available), and U.S. imports were $1.7 billion. Sales of services in Thailand by majority U.S.-owned affiliates were $4.8 billion in 2009 (latest data available), while sales of services in the United States by majority Thailand-owned firms were $137 million.

The stock of U.S. foreign direct investment (FDI) in Thailand was $12.7 billion in 2010 (latest data available), up from $9.8 billion in 2009. U.S. FDI in Thailand is led by the manufacturing and banking sectors.

IMPORT POLICIES

High tariffs in many sectors remain an impediment to market access in Thailand. While Thailand's average applied most favored nation (MFN) tariff rate was 10.4 percent in 2011, *ad valorem* tariffs are as high as 50 percent to 80 percent, and the *ad valorem* equivalent of some specific tariffs (charged mostly on agricultural products) is even higher. About one-third of Thailand's MFN tariff schedule involves duties of less than 5 percent, and almost 20 percent of tariff lines enter Thailand duty free, including in key sectors like chemicals, electronics, industrial machinery, and paper. Thailand has bound all tariffs on agricultural products in the WTO, but only approximately 70 percent of its tariff lines on industrial products. The highest *ad valorem* tariff rates apply to imports competing with locally produced goods, including automobiles and automotive parts, motorcycles, beef, pork, poultry, tea, tobacco, flowers, wine, beer and spirits, and textiles and clothing.

Thailand has bound its tariffs on agricultural products at an average of 36.6 percent, although its average applied MFN tariff on agricultural products is 24.3 percent. MFN duties on imported processed food products typically range from 30 percent to 50 percent, which have impeded access of U.S. exports of these products into Thailand. Tariffs on meats, fresh fruits (including citrus fruit and table grapes) and vegetables, fresh cheese, and pulses (*e.g.*, dry peas, lentils, and chickpeas) are similarly high. High tariffs are sometimes applied to products even when there is little domestic production. The type of potato used to produce frozen french fries, for example, is not produced in Thailand, yet imports of these potatoes face a 30 percent tariff. Tariffs on apples are 10 percent, while duties on pears and cherries range from 30 percent to 40 percent. U.S. fruit growers estimate they could export an additional $25 million or more of citrus fruits, apples, cherries, pears, and grapes to Thailand each year if these tariffs were eliminated. In addition, the lowering of tariffs below MFN rates through free trade agreements with countries such as China, Australia, and New Zealand has eroded the competitiveness of many U.S. products, including agricultural products, in recent years, even before these agreements are fully implemented.

For non-agricultural products with bindings, Thailand's average bound tariff is around 26 percent. Thailand's tariffs applied to industrial goods tend to be much lower than its bindings, averaging nine percent in 2011. However, Thailand imposes high tariffs in some sectors; the tariff on imported motor vehicles is 80 percent, 60 percent on motorcycles, 54 percent or 60 percent on distilled spirits (depending on the product), and 30 percent on certain articles of plastic. Despite the importance of the electronics sector to its economy, Thailand charges tariffs of 10 percent to 30 percent on a range of products including certain audiovisual products, reception apparatus, and other consumer electronics. According to information provided by Thailand to the WTO, tariffs are 60 percent for a number of clothing products, which may be above Thailand's WTO bound rates. Thailand also applies specific duties on more than one-third of all its textile tariff lines, which can result in even higher effective rates.

Substantial Thai tariffs on restaurant equipment, including ovens, fryers, ice cream machines, appliances, and cooking utensils, which are sometimes as high as 30 percent, hinder expansion of U.S. quick service restaurants in Thailand as well as U.S. exports.

Thailand applies a 10 percent tariff to most pharmaceuticals, including almost all products on the World Health Organization list of essential medicines.

Nontariff Barriers

Quantitative Restrictions and Import Licensing: Import licenses are required for at least 19 categories of items: certain chemical and pharmaceutical products, including clenbuterol, albuterol or salbutamol; unfinished garments, parts or components except collars, cuffs, waistbands, pockets, and cuffs for trousers; worked monument or building stone; used automobiles, including cars, motorcycles, six-wheeled buses having 30 seats or more, and certain used diesel engines; machinery and parts thereof which can be used to violate copyrights via cassette tape, video tape, and compact disc, as well as intaglio printing machines and color copier machines; waste and scraps of plastic; chainsaws and accessories; fish meal with protein content less than 60 percent, caffeine, and potassium permanganate. Imports of used motorcycle parts and gaming machines are prohibited. Import licenses for used automobiles and used motorcycles are granted only for imports intended for re-export or for individual, non-commercial use. Imports of certain minerals, arms and ammunition, and art objects require special permits from the relevant ministries.

Although Thailand has been relatively open to imports of feed ingredients, including corn, soybeans, and soybean meal, U.S. industry reports that the government has maintained excessively burdensome import requirements for feed products containing dairy ingredients. Nontransparent tariff-rate quotas (TRQs) on some products and price controls on others also impede market access. Thailand imposes domestic purchase requirements for several tariff-rate quota products, including soybeans. Delays in finalizing administrative TRQs have led to market uncertainty and shipping disruptions.

Thailand bans motorcycles from highways even though heavyweight motorcycles are designed for highway use, most countries accept their use, and many traffic studies demonstrate there is no underlying safety rationale for such bans.

Taxation: The complexity of Thailand's tax system has raised concerns among foreign businesses. Excise taxes are high on some items, such as unleaded gasoline, beer, wine, and distilled spirits. For example, when import duties, excise taxes, and other surcharges are calculated, the cumulative duty and tax burden on most imported spirits is approximately 400 percent. U.S. industry has expressed concern that the current excise tax structure imposes higher taxes on imported spirits than on locally produced white and brown spirits.

Excise taxes on automobiles in Thailand are based on various vehicle characteristics, such as engine size, weight, and wheelbase. In July 2004, Thailand revised its excise tax structure, but the tax calculation remains complex and heavily favors domestically manufactured vehicles. Excise taxes on passenger vehicles range from 30 percent to 50 percent, while pickup trucks, mostly produced in Thailand, are taxed at a rate of 3 percent. However, small passenger cars using E-20 gasoline and "eco" cars face reduced excise taxes of 25 percent and 17 percent, respectively.

Customs Barriers: The United States continues to have serious concerns about the lack of transparency in the Thai customs regime and the significant discretionary authority exercised by Customs Department officials. The Customs Department Director General retains the authority and discretion to arbitrarily increase the customs value of imports. The United States has raised concerns with the Thai government regarding this authority and has urged Thailand to eliminate this practice. The U.S. Government and industry also have expressed concern about the inconsistent application of Thailand's transaction valuation methodology and reports of repeated use of arbitrary values by the Customs Department.

The U.S. Government and exporters continue to urge the Customs Department to implement overdue reforms, including publishing proposals for changes in customs laws, regulations, and notifications and allowing sufficient time for comments on these proposals. Additional concerns involve the failure to publish customs rulings and the lengthy appeals process for these rulings, both of which create considerable uncertainty for importers.

U.S. companies also continue to report serious concerns about corruption and the inappropriate penalty-reward system for customs officials. In August 2009, the Thai government proposed a series of reforms to its customs laws and procedures which were to be sent to the Thai Parliament in 2011. However, following the change of government in August 2011, the proposed legislation stalled and must be re-introduced for consideration by Parliament.

GOVERNMENT PROCUREMENT

A specific set of rules, commonly referred to as the Prime Minister's Procurement Regulations, governs public sector procurement for ministries and state-owned enterprises. While these regulations require that nondiscriminatory treatment be accorded to all potential bidders and open competition be applied in all procurements, state enterprises and ministries typically apply additional procurement policies and practices. Preferential treatment is provided to domestic suppliers, including subsidiaries of U.S. firms registered as Thai companies, through an automatic seven percent price advantage over foreign bidders in evaluations in the initial bid round.

Where corruption is suspected during the bidding process, government agencies and state enterprises reserve the right to accept or reject any or all bids at any time and may also modify the technical requirements. This allows considerable leeway for government agencies and state-owned enterprises to manage procurements, while denying bidders recourse to challenge procedures. There are frequent allegations that the Thai government makes changes to technical requirements during the course of procurements.

Despite an official commitment to transparency in government procurement, U.S. companies and the Thai media have reported allegations of irregularities. Arbitration clauses included in concessions and government contracts require cabinet approval, and are handled on a case-by-case basis. Complaints may be made in administrative and judicial courts governed by Thai laws.

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

INTELLECTUAL PROPERTY RIGHTS PROTECTION

Thailand was listed on the Priority Watch List in the 2011 Special 301 Report. Key concerns cited in the 2011 report included continued widespread copyright piracy and trademark counterfeiting and growing challenges in the areas of Internet, cable, and signal piracy. The United States is encouraged by the Thai government's senior level commitment to stronger intellectual property rights (IPR) protection and enforcement through the creation of the National Task Force, its action plan to improve its IPR regime, the establishment of a National Committee on the Creative Economy, and the formation of the Thai-U.S. Creative Partnership, but concerns regarding IPR protection and enforcement remain and represent barriers to U.S. exports and investment. The United States will continue to encourage Thailand to quickly enact proposed legislation to amend its copyright law to, among other things, implement the WIPO Internet Treaties, address landlord liability for infringement and illegal camcording, and enhance the authority of Thai Customs to take enforcement actions *ex officio*. The United States continues to be concerned about the lack of transparency and opportunities for stakeholders to provide comments in connection with IPR policy discussions taking place at the Ministry of Public Health. The United States continues to encourage Thailand to engage in a meaningful and transparent manner with all relevant stakeholders, including IP rights holders, as it considers ways to address Thailand's public health challenges while maintaining a patent system that promotes investment, research, and innovation.

SERVICES BARRIERS

Telecommunications Services

Thailand has made progress toward reforming its telecommunications regulatory regime. However, significant obstacles to foreign investment remain. Despite capping foreign equity at 20 percent in its WTO commitments, Thai law allows foreign equity up to 49 percent in basic telecommunications service firms and higher for providers of value-added services that do not own their own telecommunications network, such as Internet service providers, audio text providers, and resale service providers (prepaid calling cards). The licensing regime, however, provides only limited access to certain narrowly defined subsectors.

The single independent regulator provided for in the 2007 Constitution, the National Broadcasting and Telecommunications Commission (NBTC), was appointed in 2011. The NBTC has authority to allocate additional spectrum for radio and television frequencies and telecommunications although the regulations and procedures for allocating frequencies have not yet been released. The delay in appointing the NBTC has delayed plans for expanding mobile services which require additional spectrum, including for services using third generation technology. Just prior to NBTC's appointment in September, Thailand adopted regulations to restrict "foreign dominance" in telecommunications. The regulations prohibit foreign ownership beyond 49 percent and look beyond traditional accounting methods for classifying shareholdings. For example, foreign dominance can be attributed through agent shareholders, shareholders with special voting rights, foreign participation in the appointment or control of the board of directors or senior management positions such as managing directors, chief financial officers, and the use of equipment and services sourced from majority foreign-owned companies. U.S. and other foreign telecommunications companies have expressed concern that the regulations may be extended to other telecommunications businesses or applied to other industries. Other issues in the telecommunications sector include the phasing-out of the concession contracts of the state-owned TOT and CAT Telecom; preferences accorded to TOT and CAT with respect to spectrum; the privatization of TOT and CAT; enforcing the interconnection obligations of these two operators; and Thailand's ongoing revision of its GATS schedule to reflect its 1998 commitments in the WTO, including with respect to improvements in foreign equity participation and regulatory oversight.

Although the National Telecommunications Commission has made progress in licensing new operators in some sub-sectors (*e.g.*, Internet access and private networks), it has yet to implement a framework for licensing competitors to the fixed services offered by CAT and TOT, covering domestic and international voice and data services.

Legal Services

U.S. investors may own law firms in Thailand, but U.S. citizens and other foreign nationals (with the exception of "grandfathered" non-citizens) may not provide legal services. In certain circumstances, foreign attorneys may act in a consultative capacity.

Financial Services

Significant restrictions remain on foreign participation in the financial services sector. The 2008 Financial Institutions Business Act, the consolidated financial act that replaced the 1962 Commercial Bank Act and a 1979 Act on financial services, allows foreign equity ownership up to 49 percent. However, foreign ownership between 25 percent and 49 percent requires prior approval from the Bank of Thailand. The law also allows the Ministry of Finance to authorize foreign ownership greater than 49 percent if deemed necessary to support the stability of the overall financial system during an economic crisis.

Beginning January 1, 2012, the Securities and Exchange Commission (SEC) began granting licenses to both domestic and foreign brokerages that meet minimum capital requirements. This represents a marked improvement over the previous SEC licensing regime, which maintained quotas on the total number of licenses awarded. Securities firms with foreign equity participation greater than 50 percent are still required to obtain permission from the Ministry of Commerce under Annex 3 (21) of the Foreign Business Act for non-brokerage services, such as securities underwriting, securities dealing, investment advisory, mutual fund management, and private fund management.

Thailand has removed some barriers to foreign ownership of domestic financial institutions. The Financial Institutions Act, passed at the end of 2007, gave power to the Bank of Thailand (the country's central bank) to raise the foreign ownership limit in a local bank from 25 percent to 49 percent on a case-by-case basis. The Act also allows the Minister of Finance to authorize foreign ownership above 49 percent. In January 2009, the Ministry of Finance allowed Malaysia's CIMB Group to hold majority shares (around 93 percent) in BankThai Bank, the country's ninth largest commercial bank. In February 2010, the Ministry of Finance allowed Industrial and Commercial Bank of China (ICBC – the largest commercial bank in China) to hold a 97.24 percent ownership interest in ACL Bank, Thailand's smallest commercial bank.

Thailand continues to implement the terms of its five year (2010 to 2014) Financial Sector Master Plan Phase II. Beginning in 2012, the Bank of Thailand will permit foreign banks to upgrade existing full branches to 'subsidiaries,' which will allow foreign banks to open up to 20 branches and 20 off-premise ATMs across Thailand. Qualifying branches must maintain a capital adequacy ratio of no less than 12 percent, compared with a domestic minimum requirement of 8.5 percent, and non-performing loans must be kept under 3.5 percent. In addition, the converted subsidiary must have a minimum of $333 million in paid-up-capital. As of December 2011, there were 15 foreign bank branches and one subsidiary operating in Thailand, including 3 American banks (Citibank, Bank of America, and JP Morgan Chase bank). Since March 2010, existing foreign bank branches have been permitted to open two additional branches in Thailand without having to meet additional capital requirements.

Restrictions on foreign investment and ownership in the insurance sector have been relaxed in recent years, but certain barriers remain. Foreign investors are permitted to own up to 25 percent equity in existing insurance firms and may hold up to a quarter of director seats. The Office of the Insurance Commission (OIC) may, at its discretion, raise the foreign equity and director limits to 49 percent and 50 percent respectively. In cases where insurance companies face financial problems that place insured members or the general public at risk, the Minister of Finance may further relax ownership restrictions upon recommendation by the OIC. In order to establish a branch office for either life or non-life insurance, foreign insurance companies are required to obtain a license from the Minister of Finance subject to cabinet approval. A foreign branch operating in Thailand must also place a security deposit and maintain an OIC-specified level of assets in-country that cannot be less than is otherwise required under the Life Insurance Act or the Non-Life Insurance Act. Branches of foreign insurance companies are not permitted to open additional branches.

Accounting Services

Foreigners are permitted to own up to 49 percent for most professional services companies, including accounting, through a limited liability company registered in Thailand. Foreigners cannot be licensed, however, as Certified Public Accountants unless they pass the required examination in the Thai language, are citizens of a country with a reciprocity agreement, and legally reside in Thailand. Foreign accountants may serve as business consultants.

Postal and Express Delivery Services

Thailand's Postal Act (1934) gives the government a monopoly on handling letters and postcards. Private express delivery companies must pay postal "fines" and penalties for delivery of documents in Thailand. These fines amount to an average of 37 baht per item (slightly more than $1) for shipments that weigh up to two kilograms.

Thailand also imposes a 49 percent limit on foreign ownership in land transport (trucking), which discourages investment in the express delivery sector. Express delivery firms prefer to control items throughout the supply of the service, including both air and ground based operations, in order to speed the movement of goods.

INVESTMENT BARRIERS

The Foreign Business Act (FBA) lays out the overall framework governing foreign investment in Thailand. Under the FBA, a foreigner, defined as a person or company of non-Thai nationality or a company for which foreign ownership accounts for 50 percent or more of total shares and/or registered shares, needs to obtain an alien business license from the relevant ministry before commencement of its business in a sector restricted by the FBA. Although the FBA prohibits majority foreign ownership of investment in most sectors, Thailand makes an exception for U.S. investors pursuant to the Treaty of Amity and Economic Relations (AER Treaty). Under the AER, Thailand may limit U.S. investment only in the following areas: "communications, transportation, fiduciary functions, banking involving depository functions, the exploitation of land or other natural resources, and domestic trade in indigenous agricultural products." Thailand's obligation to accord national treatment to U.S. investors in all other sectors does not extend to "the practice of professions, or callings reserved for Thai nationals."

ELECTRONIC COMMERCE

Thailand does not have a complete legal framework to support electronic commerce, but the Thai government is taking steps to create a more supportive environment. In July 2007, the Act on Computer-

Related Crime was enacted to criminalize offenses against computer systems and data. Thailand also enacted an electronic transaction law, as well as several royal decrees establishing policies for electronic transactions and e-payment service providers. Several additional measures are pending approval, including security measures for electronic transactions, a draft law on personal data protection, and regulations for certification authority.

OTHER BARRIERS

In the pharmaceutical sector, the Government Pharmaceutical Organization, a state-owned entity, is not subject to Thai Food and Drug Administration licensing requirements on the production, sale, and importation of pharmaceutical products and is exempt from rules against anticompetitive practices. The Thai government has established a National List of Essential Drugs (NLED) for procurement and dispensing at government hospitals. U.S. stakeholders have expressed concerns about the lack of transparency and due process for inclusion of drugs on the NLED. U.S. stakeholders has also have expressed serious concerns regarding the uncertain climate for its business in Thailand. The United States will continue to encourage Thailand to engage in a meaningful and transparent manner with all relevant stakeholders as it considers ways to address Thailand's public health challenges.

The Thai government retains authority to control prices or set *de facto* price ceilings for 39 goods and 2 services, including staple agricultural products (sugar, pork, cooking oil, condensed milk, wheat flour, and others), liquefied petroleum gas, medicines, sound recordings, and student uniforms. Price control review mechanisms are nontransparent. In practice, the Thai government also uses its control of major suppliers of products and services under state monopoly, such as the petroleum, aviation, and telecommunications sectors, to influence prices in the local market.

The 2007 Thai Constitution contains provisions to combat corruption, including enhancement of the status and powers of the National Anti-Corruption Commission, which is independent from other branches of government. Persons holding high political office and members of their immediate families are required to disclose their assets and liabilities before assuming and upon leaving office. Moreover, a law regulating the bidding process for government contracts defines actionable corruption offenses and increases penalties for violations. Despite these steps, corruption continues to be a serious concern. Several different agencies have anticorruption mechanisms and oversight with overlapping jurisdictions and varied levels of competence, policing powers, and capacity. Anticorruption mechanisms continue to be employed unevenly, and the lack of transparency in many government administrative procedures facilitates corruption.

TURKEY

TRADE SUMMARY

The U.S. goods trade surplus with Turkey was $9.4 billion in 2011, an increase of $3.1 billion from 2010. U.S. goods exports in 2011 were $14.6 billion, up 38.7 percent from the previous year. Corresponding U.S. imports from Turkey were $5.2 billion, up 24.1 percent. Turkey is currently the 21st largest export market for U.S. goods.

The stock of U.S. foreign direct investment (FDI) in Turkey was $5.7 billion in 2010 (latest data available), up from $5.0 billion in 2009. U.S. FDI in Turkey is led by the banking and manufacturing sectors.

IMPORT POLICIES

Tariffs and Quantitative Restrictions

Turkey applies the EU's common external customs tariff to third country nonagricultural imports (including from the United States) and does not impose duties on nonagricultural items from EU and European Free Trade Association (EFTA) countries.

Turkey continues to maintain high tariff rates on many food and agricultural products. Tariffs on fresh fruits range from 15.4 percent to 145.8 percent. Tariffs on processed fruit, fruit juice, and vegetables range between 19.5 percent and 130.0 percent.

U.S. exporters of rice, dried beans, pulses, sunflower seeds, and wheat have reported concerns with valuation of their products by Turkish customs authorities.

On September 15, 2011, the Turkish government published its decision (Official Gazette, Communiqué 2011/10 no. 28055) to increase tariffs on a wide range of woven fabrics, apparel, and apparel accessories. The government noted that it had conducted an investigation under safeguard procedures before implementing these increases. The tariff increases exclude EU member states and countries with which Turkey maintains free trade agreements, and are smaller for least developed countries.

Import Licenses and Other Restrictions

Import licenses are required for products that need after sales service (*e.g.*, photocopiers, advanced data processing equipment, and diesel generators), distilled spirits, and agricultural products. U.S. firms complain that lack of transparency in Turkey's import licensing system results in costly delays, demurrage charges, and other uncertainties that inhibit trade. U.S. producers have reported difficulties in obtaining import licenses during the domestic harvest season for products that compete with domestically produced food (such as pulses, nuts, dried fruits, cotton, grain, and oilseeds); however, this situation has reportedly improved in the past two years. U.S. companies also frequently find Turkish documentation requirements affecting all food imports to be onerous, inconsistent, nontransparent, and not in accordance with standard international practices, resulting on numerous occasions in shipments being held up at port.

The Turkish government has taken a number of steps to liberalize the distilled spirits and tobacco markets, including completing the privatization of the state-owned alcoholic beverage company and the state-owned tobacco company, as well as granting some private firms permission to import wine and alcoholic beverages. However, sales of imported products in these sectors have been inhibited by inordinately high tariffs (85 percent to 100 percent) and special tax treatment in some cases.

GOVERNMENT PROCUREMENT

Turkey is not a signatory to the WTO Agreement on Government Procurement; however, it is an observer to the Committee on Government Procurement.

Under Turkey's public tender law, foreign companies can participate in state tenders valued above an established threshold. The law provides a price preference of up to 15 percent for domestic bidders, which is not available if they form a joint venture with foreign bidders. Turkey has expanded the definition of domestic bidder to include foreign-owned corporate entities established under Turkish law. Although Turkish law requires competitive bidding procedures, U.S. companies have complained that Turkey's procurement process can be lengthy and overly complicated. One of the problems identified is the requirement to use model contracts, which some Turkish government procuring agencies interpret as not being subject to modification. This makes it difficult for companies to formulate proposals if the model contracts contain non-germane financial requirements or technical specifications.

Turkish military procurement policy generally mandates offset requirements in procurement specifications. Since the offset guidelines were modified in 2005 to encourage foreign direct investment and technology transfers, U.S. companies have won few new commercial defense sales. Some U.S. companies have declined to submit bids. The most objectionable requirements include those related to *force majeure*, liability, and requirements for technical data packages and certain licenses at the time of submission (pre-licensing).

EXPORT SUBSIDIES

Turkey employs a number of incentives to promote exports, although programs have been scaled back in recent years to comply with EU directives and WTO commitments. Published export subsidies ranging from 5 percent to 20 percent of export values are granted to 16 agricultural or processed agricultural product categories in the form of tax credits and debt forgiveness programs, and are paid for by taxes on exports of primary products such as hazelnuts and leather. The Turkish Grain Board generally sells domestic wheat at world prices (which are well below domestic prices) to Turkish flour and pasta manufacturers in quantities based upon their exports of flour and pasta.

INTELLECTUAL PROPERTY RIGHTS PROTECTION

Turkey remained on the Watch List in the 2011 Special 301 Report. Turkish intellectual property rights (IPR) efforts have been characterized by incremental improvements in public awareness and training initiatives; declining enforcement efforts in 2011; a failure to finalize legislation that could help enhance IPR protection, such as final patent and trademark laws (although a new Customs law was passed); and occasional failures in judicial enforcement and in the protection of confidential pharmaceutical test data. Serious counterfeiting and piracy persist, and there has been a growing trend of increased piracy over the Internet.

U.S. pharmaceutical companies have complained increasingly that Turkish requirements for Good Manufacturing Practices (GMP) certificates issued by the Ministry of Health are very difficult to meet and the pace of inspections is slow, creating a *de facto* import barrier because the backlog of products which cannot obtain Turkish marketing authorization because of GMP inspection delays is growing.

SERVICES BARRIERS

Telecommunications Services

In 2008, Turkey adopted Electronic Communications Law No. 5809 as part of its efforts to implement the European Union's 2003 regulatory framework, which clarified the functions of Turkey's regulator, the Information and Communication Technologies Authority (ICTA). ICTA is also responsible for enforcing bans on Internet content determined by courts to be offensive. Court decisions have on many occasions led to ICTA's blocking access for all consumers to various Internet-based service providers, such as the weblog hosting site wordpress.com and social networking sites like MySpace, and ICTA's on-again/off-again ban of video-sharing website YouTube.

Other Services Barriers

Turkish citizenship is required to practice as an accountant or certified public accountant, or to represent clients in Turkish courts. A decree awaiting final approval by the Council of Ministers would permit foreign doctors to work in Turkey.

INVESTMENT BARRIERS

Energy Sector

Turkish law calls for a liberalized energy market in which private firms are able to develop projects with a license obtained from the Energy Market Regulatory Authority, an independent regulatory body. The state electricity utility has been unbundled into power generation, transmission, distribution, and trading companies. Of the 21 regional distribution companies, as of October 2011, nine have been fully transferred to the private sector, nine have been tendered and are in the process of being transferred (two of these nine tenders are in the courts and expected to be cancelled), and three are in the tendering process. The government plans to finalize privatization of all distribution regions and start privatization of the generation facilities in 2012.

Liberalization in the natural gas sector has faced delays. The state pipeline company, BOTAS, remains dominant in gas importation, despite legislation requiring a phased transfer of 80 percent of its gas purchase contracts to the private sector by the end of 2009. Except for a small scale contract transfer tender in 2005, BOTAS has failed to reach its targets and still has an 86 percent share in the gas market. In October 2011, BOTAS announced it would not renew an expiring six billion cubic meter per year natural gas contract. The Turkish Ministry of Energy and Natural Resources announced that the private sector could negotiate with the contract's Russian supplier, Gazprom, to replace the volume previously sold to BOTAS.

As the result of a 1997 court decision, the Turkish government blocked full repatriation of profits by foreign oil companies under Article 116 of the 1954 Petroleum Law, which had protected foreign investors from the impact of lira depreciation. Affected companies have challenged the 1997 decision in Turkish courts, but the judgments in almost all such lawsuits have gone against claimant companies. A new petroleum law that would provide greater investment incentives and protections has been submitted to the Turkish parliament. Although this law is expected to come up for legislative consideration in early 2012, prospects for passage appear to be slim.

Work Permits

Many foreign (and reportedly many Turkish) employers perceive the difficulty in obtaining Turkish work permits for professional or highly skilled foreign workers as a pervasive problem. Companies complain that the application process is time-consuming and requires extensive documentation, the adjudication process is lengthy (often exceeding the time for which the permit is requested), and the chances of approval are low.

Real Estate

Foreign ownership of real estate in Turkey has long been a contentious issue. In early 2008, the Constitutional Court issued two decisions that suspended portions of the Foreign Direct Investment Law and the Title Deed Law, which had allowed foreign individuals and companies to purchase land. In response, the Turkish government passed new legislation to permit these purchases again, but imposed an upper limit on the amount of land that can be owned by foreign individuals: no foreign individual may own more than 2.5 acres, and all foreign individuals together can own no more than 10 percent of the land in any given development zone. Information on the amount of land currently held by foreigners in any development zone is not readily available. The lack of information on foreign land acquisition may create obstacles for individual investors seeking to purchase land in Turkey. There are, however, no limits on the amount of land that can be owned by foreign companies with a legal presence in Turkey, so long as the land is being used in connection with their business activities.

OTHER BARRIERS

Corruption

Turkey has ratified the OECD anti-bribery convention and passed implementing legislation that makes bribery of foreign and domestic officials illegal, and precludes tax deductions for bribes. Despite this, many foreign firms doing business in Turkey perceive corruption of some government officials and politicians to be a problem.

The judicial system is also perceived by many observers to be susceptible to external influence and to be somewhat biased against foreigners.

Taxes

Turkey assesses a special consumption tax of 37 percent to 130 percent on all motor vehicles based on engine size, which has a disproportionate effect on automobiles imported from the United States.

CORPORATE GOVERNANCE

According to the OECD, Turkey’s overall corporate governance outlook is positive because the authorities have already adopted, or are introducing, high quality corporate governance standards (including audit standards). Transparency has improved significantly. However, the OECD reports that Turkey needs to improve in the areas of control and disclosure of related-party transactions and self-dealing, protection of minority shareholders, and the role of the board in overseeing management and controlling shareholders.

PHARMACEUTICALS

The U.S. pharmaceutical industry has expressed strong concerns regarding reimbursement policies established by the Turkish government, identifying a lack of transparency, timeliness and predictability in the process as concerns. In 2009, the Turkish Ministry of Health (MOH) negotiated a protocol with industry that allowed for a gradual increase in pharmaceutical spending each year through 2012. However, in mid-2010, the MOH and the Turkish Ministry of Labor and Social Security sought significant price discounts from the pharmaceutical industry, citing a budget shortfall. The significant discounts required may dissuade some U.S. companies from launching new products in Turkey.

UKRAINE

TRADE SUMMARY

The U.S. goods trade surplus with Ukraine was $645 million in 2011, an increase of $364 million from 2010. U.S. goods exports in 2011 were $2.1 billion, up 54.9 percent from the previous year. Corresponding U.S. imports from Ukraine were $1.5 billion, up 35.4 percent. Ukraine is currently the 61st largest export market for U.S. goods.

The stock of U.S. foreign direct investment (FDI) in Ukraine was $902 million in 2010 (latest data available), up from $799 million in 2009.

United States-Ukraine Trade and Investment Cooperation Agreement

The United States and Ukraine signed a Trade and Investment Cooperation Agreement (TICA) on April 1, 2008, establishing a forum for discussion of bilateral trade and investment relations. The TICA established a joint United States-Ukraine Council on Trade and Investment, which addresses a wide range of trade and investment issues including market access, intellectual property, tax policy, and specific business disputes. The Council seeks to increase commercial and investment opportunities by identifying and working to remove impediments to trade and investment flows between the United States and Ukraine. The Council last met in October 2010.

IMPORT POLICIES

Ukraine continues to maintain import licensing requirements and fees on certain imports. Ukraine imposes several duties and taxes on imported goods: customs/import tariffs, value-added tax (VAT), and excise duties. Additionally, imports into Ukraine are subject to customs processing fees, a unified fee on vehicles crossing Ukraine's borders, and port fees.

Customs/Import Tariffs

Imports from the United States are subject to Ukraine's most favored nation (MFN) simple applied tariff rate, which slightly increased in 2011 to an average of 4.8 percent, up from 4.6 percent in 2010. For agricultural goods, the average applied tariff rate is 8.7 percent. For industrial goods the average applied rate is now 3.6 percent. Ukraine applies preferential tariff rates to imports from its 12 FTA partners and certain Commonwealth of Independent States (CIS) countries. Most MFN customs tariffs are levied at *ad valorem* rates, and only 1.5 percent of tariff lines (down from 5.97 percent prior to Ukraine's WTO accession) are subject to specific or combined rates of duty. These specific and combined rates apply primarily to agricultural goods that compete with agricultural goods produced in Ukraine, such as grains, sugar, and vegetables such as carrots and potatoes.

Although Ukraine's MFN tariff rates are relatively low, the Ukraine State Customs Service (SCS) continues to assign higher customs values to U.S. and other country imports, including to food and agricultural products and pharmaceuticals, than is declared in the import documentation. There are concerns about how the SCS is determining and/or calculating these values. For some shipments, it is alleged that the result is a customs valuation 100 percent higher than declared in the import documentation. Customs valuation decisions are not published, reducing transparency. Importers who have sought to appeal the assigned customs valuation have been instructed by the SCS to have the government from the country of the product's origin provide verification. These practices have made the process of importing U.S. meat products, in particular, expensive and have impeded trade in these products. Importers complain that valuation and classification disputes with the SCS lead to extensive and costly delays in trade. In one case, a customs valuation dispute led to criminal charges against a local employee of a U.S. firm. Importers repeatedly single out the ports of Odesa and Illichivsk as notoriously difficult and delay-prone. The U.S. Government has raised its concerns about these valuation practices and clearance delays, including at Trade and Investment Council meetings.

Excise Duties

Ukraine applies excise duties to a limited set of goods, such as alcoholic beverages, tobacco products, motor vehicles, motorcycles, and petroleum products. Excise duties apply equally to imported and domestically manufactured goods. While excise duties are mainly specific, in the case of tobacco products both specific and *ad valorem* rates are applied. High excise duties hinder U.S. exports of wine and grape spirits and automobiles to Ukraine. Import tariffs on automobiles were significantly reduced to implement commitments Ukraine made in the context of its WTO accession; however, the government has introduced a registration fee that is higher for imported used cars and therefore discourages imports of foreign used cars. In addition, the government of Ukraine is currently conducting a safeguards investigation regarding the importation of passenger automobiles, which could increase the import duty on such vehicles.

Import Licenses

Import licenses are required for some goods. The list of goods covered by the licensing regime and the license terms are reviewed and amended annually by the Cabinet of Ministers. In 2011, the list included printers' ink, paper with watermarks, optical media production inputs such as polycarbonate, equipment for the production of CDs, pharmaceuticals, paints and lacquers, dyes, hygiene products, cosmetic products, pedicure and manicure products, shaving aerosols and deodorants, lubricants, waxes, shoe polishes, insecticides, solvents, silicone, fire extinguishers and the chemicals that fill extinguishers, refrigerators and freezers, air-conditioners, humidifiers, poultry meat and related products, salo, pig and poultry fat, fungicides, insecticides, herbicides, plant growth enhancers/regulators, and other selected industrial chemical products.

While these import licenses are granted automatically to applicants, some products require a separate licensing approval, which may or may not be automatic, from the relevant administrative agency before receiving the necessary import license from the Ministry of Economic Development and Trade. The Ukrainian State Veterinary and Phytosanitary Service established a procedure of import approvals that results in non-automatic licensing. The procedure is prescribed in the 1992 Law on Veterinary Medicine and 2009 Decree 652 of the Cabinet of Ministers and covers all commodities subject to veterinary control. Approval is needed even for cases in which a bilateral veterinary certificate is issued by the country of origin. In 2010, the Chief State Inspector of the Veterinary and Phytosanitary Service of Ukraine canceled the authority of regional veterinary offices to issue permits for imports. Since this decision, U.S. and other exporters have faced substantial delays and difficulties in obtaining permits to import meat products.

In December 2010, the Ministry of Environment renewed and clarified strict procedures for obtaining its approval to import goods that are potentially ozone-depleting. The stricter procedures continue to delay shipments and significantly increased business costs for importers of a wide range of goods, including aerosols, refrigerators, mascara, lipstick, toothpaste, and coffee makers.

For some goods, product certification is a prerequisite for an import license. Importers can request that a foreign facility be certified as in compliance with Ukraine's technical regulations that apply to imports. The U.S. distilled spirits industry reports that this option usually involves a burdensome and costly inspection visit by Ukrainian government officials. If approved, the supplier receives a certificate of conformity valid for two years to three years and avoids the burden of certifying each shipment and mandatory laboratory testing upon arrival in Ukraine.

GOVERNMENT PROCUREMENT

Ukraine is not yet a signatory to the WTO Agreement on Government Procurement (GPA), but it commenced negotiations to accede to the GPA in February 2011, in accordance with its commitment when it became a WTO Member.

Ukraine amended its 2010 government procurement law in June 2011 with respect to the definition of a state-owned company and the requirements for procurement for natural monopolies. The amendment has the potential, if properly implemented, to bring Ukraine's procurement procedures into greater conformity with the GPA by improving the definition of a state-owned company and the requirements for procurement of natural monopolies. Despite the amendment, important parts of government procurement, such as preparations for Euro 2012 (the European Championship for national soccer/football teams, for which Ukraine built two new publicly-funded stadiums), remain excluded.

Ukraine's government procurement law requires that all government procurement of goods and services valued at more than Ukrainian Hryvna (UAH) 100,000 (approximately $12,500) and public works valued at more than UAH 300,000 (approximately $38,000) must be procured through competitive tenders. However, a large percentage of government procurement, including for Euro 2012, are exempted from the procurement rules and can be conducted using sole-source contracts. Open international tenders are used where procurement is financed by an entity outside of Ukraine. The Anti-Monopoly Committee of Ukraine has the authority to review disputes arising from public procurements. Courts may also hear government procurement-related cases. Cases must be filed on tight timelines, often within 14 days of the alleged violation. Implementation of the law since its adoption in 2010 has been uneven, and Ukraine's efforts to reform procurement in the health care sector resulted in the suspension of the state procurement of medicines for much of 2011, triggering shortages of important medications.

Ukraine's procurement rules generally do not restrict foreign enterprises from participating in government procurement, but, in practice, foreign companies claim that they are rarely able to compete on an equal footing with domestic companies. Foreign companies generally win only a tiny fraction of total procurements. Among the problems faced by foreign firms are: (1) the lack of public notice of tender rules and requirements; (2) nontransparent preferences in tender awards; (3) the imposition of conditions that were not part of the original tender requirements; and (4) ineffective grievance and dispute resolution mechanisms, which often allow a losing bidder to block the tender after the contract has been awarded.

EXPORT BARRIERS

Exports of some categories of products are subject to registration by the Ministry of Economic Development and Trade. Products that must receive a license prior to export from Ukraine include precious metals and stones, cast iron, ferronickel, ferrotitanium, ferroalloys, steel, copper, aluminum alloys, lead, some metallurgy equipment, unrefined oil and gas, scrap metal, printers' ink, optical polycarbonates for laser reading systems, optical disc manufacturing equipment, and paper with watermarks. The government has eliminated most export duties, with the notable exception of duties on natural gas, livestock, raw hides, some oil seeds, and scrap metal.

Export Restrictions on Grains

Ukraine ranks among the top grain exporters in the world, but has periodically resorted to grain export restrictions. The supply of products deemed "socially important" (*e.g.*, vegetable oil, bread, and sugar) is controlled by the government through price controls and restrictions on exports.

Ukraine's major grain exporters, which include a number of U.S. companies, experienced severe difficulty exporting grain in the 2010/2011 marketing year. After imposing nontransparent and burdensome testing requirements, the government of Ukraine introduced grain export quotas in October 2010 in a nontransparent and arbitrary process that failed to allocate export quotas to most non-Ukrainian companies. The government of Ukraine lifted the export quotas on corn in May 2011, and on remaining products in June 2011. Effective July 1, 2011, the government of Ukraine imposed export duties on wheat (9 percent but not less than €17 per metric ton), corn (12 percent but not less than €20 per metric ton), and barley (14 percent but not less than €23 per metric ton). Export duties on corn and wheat were eliminated in October 2011. Export duties on barley expired January 1, 2012.

Live Cattle, Sheep, Hides, and Skins

Export duties remain in place on live cattle, sheep, hides, and skins. However, trade in these products has been negligible. Pursuant to its WTO accession commitments, Ukraine continues a staged reduction of these export duties. Export duties on live calves, cows, and sheep, currently at 35 percent, will fall to 10 percent in 2016. The export duty on raw hides, currently at 27 percent, will fall to 20 percent in 2018.

Scrap Metal

Upon WTO accession, Ukraine lowered export duties on ferrous scrap exports to €25 per metric ton for ferrous metals and to 30 percent *ad valorem* (with minimum specific rates for some products) for nonferrous metals. Laws passed in 2006 and 2007 as part of the accession process provide for staged duty reductions to €10 per metric ton over a period of 6 years (2008 to 2014) for ferrous metals and reductions to 15 percent *ad valorem* but not less than €0.2 to €0.8 per metric ton over a period of 5 years (2008 to 2013) for nonferrous metals. According to Ukrainian law, the export duty in 2011 for ferrous metals was €14.8 per metric ton and 21 percent *ad valorem* for nonferrous metals (with minimum, specific rates for some products), matching the level committed to at the time of accession.

Sunflower Seed, Flaxseed, and Linseed

Sunflower seed, flaxseed, and linseed have been subject to an export duty since June 2001. As required by its WTO accession agreement, the export duty on sunflower seed was lowered from 17 percent to 14 percent in 2008. The export duties are subject to a 1 percent decrease annually until duties reach 10 percent. The export duty was 10 percent as of January 1, 2012.

INTELLECTUAL PROPERTY RIGHTS PROTECTION

Ukraine remained on the Watch List in the 2011 Special 301 Report. Key concerns cited in the report include weak enforcement, widespread retail piracy, the trans-shipment of pirated and counterfeit goods, piracy over the Internet, and inefficiencies in the judicial system. The need to improve its protection of intellectual property rights (IPR) was a major theme of the bilateral 2010 United States-Ukraine Trade and Investment Council meeting, during which the two countries agreed to an IPR Action Plan. That plan identifies steps to be taken by Ukraine with respect to various matters, including public awareness, enforcement, passage of pending legislation, violations of data protection, pharmaceutical patents, and government use of illegal software. The government of Ukraine formally adopted the IPR plan in February 2011.

SERVICES BARRIERS

Audiovisual Services

Ukrainian law requires film prints and digital encryption keys to be produced in Ukraine, each of which is a significant impediment for distributors of foreign films. A Ukrainian language content requirement also exists for radio and television broadcasting.

Financial Services

The United States continues to monitor Ukraine's actions with regard to electronic payments services. Ukraine's parliament is considering new legislation that would require all electronic financial transactions made in Ukraine to be resolved within the country at processing centers operated by the National Bank of Ukraine. This proposed change could increase costs and reduce the reliability of transactions, as well as restrict the ability of foreign firms to compete against local service providers. A ruling by the Ukrainian Anti-Monopoly Committee modified the National Bank of Ukraine's 2008 rules that required any bank that wished to bid on cash management contracts for state employee salaries to join the National System of Mass Electronic Payment (NSMEP). NSMEP operates as a domestic electronic payments system in Ukraine, competing against foreign service suppliers. Under the modified ruling, banks are still required to become members of NSMEP, but there is no provision to force them to issue payment cards exclusively through that system. However, Ukraine's parliament is considering legislation that would require all banks to join NSMEP and use that service exclusively for electronic payment transactions. This would force banks wishing to bid on government cash management contracts to base their bids on NSMEP-branded cards, thus shutting out foreign service suppliers.

INVESTMENT BARRIERS

The State Agency on Investment and National Projects is charged with helping attract foreign investment to the country. The government of Ukraine continues to have an advisory body composed of representatives from foreign and domestic companies to advise the President on efforts to improve the business and investment climate.

The United States has a bilateral investment treaty (BIT) with Ukraine, which took effect in 1996. The BIT guarantees U.S. investors non-discriminatory treatment, the right to make financial transfers freely and without delay, international legal standards for expropriation, including compensation, and access to international arbitration in the event of an investment dispute. There are a number of longstanding, and a number of new, U.S. company investment disputes. In most cases, there has been little progress toward resolution despite sustained advocacy by the United States.

Foreign companies/physical persons are prohibited from direct ownership or establishment of television stations in Ukraine. Ukrainian law also limits foreign investment in television stations, although it does not clearly state what these limits are. Ukraine also maintains domestic film broadcast quotas (at not less than 50 percent), and requirements for Ukrainian language in television broadcasts (at not less than 75 percent for nationwide television and radio stations).

Taxation

Companies report that Ukraine's taxation system is a major obstacle for U.S. investors doing business in Ukraine. Ukraine maintains a corporate profit tax (25 percent, which is scheduled to drop to 16 percent by 2014), a personal income tax (with a flat rate of 15 percent, scheduled to rise to 17 percent by 2014), a Value Added Tax (of 20 percent), and a payroll tax (varying between 33.2 percent and 49.6 percent) that funds pension and social insurance programs. An average Ukrainian business has to pay 99 separate taxes and its profits are taxed at an overall rate of 58.4 percent. Many analysts single out the payroll tax as being exceptionally high and the main reason why shadow wage payments remain common in Ukraine. Ukraine adopted a new tax code in 2010. However, the revised code has been criticized for expanding the authority of the State Tax Administration (STA), failing to address the system's high administrative costs and for suppressing the small and medium enterprise sector by making it harder to qualify for the simplified tax system and for making it more difficult for those under the simplified tax system to interact with businesses in the regular tax system.

In recent years, delays in the payment of VAT refunds to exporters have also been a problem. While the government of Ukraine finally refunded a large proportion of VAT refund arrears through a VAT bond scheme in August 2010 (some of these claims had been pending for over two years), the manner in which refunds were distributed was not transparent and the firms complained that they should have received cash rather than bonds. Additionally, some companies received reduced refunds or were refused refunds for arbitrary reasons. U.S. grain traders in particular claim several hundred million dollars in VAT arrears. In 2011, the STA instituted an automated system for VAT refunds, but nontransparent criteria have prevented most firms from participating in the system and receiving their refunds. Ukraine's inability to refund VAT in a timely manner remains a problem, and delays in reimbursement have become an important cost factor for many foreign companies. Since the issuance of bonds in 2010, the government of Ukraine has continued to accumulate substantial new arrears in VAT refunds to U.S. and other companies, to aggressively inspect companies in an attempt to write-off claimed VAT payments for reasons that appear spurious, and to distribute VAT refunds in an arbitrary fashion that appears to favor companies connected to the government or those that pay bribes. Improvements to the system would have an important, positive impact on the investment climate.

Privatization

The State Property Fund oversees the privatization process in Ukraine. Privatization rules generally apply to both foreign and domestic investors, and, in theory, a relatively level playing field exists. Observers claim, however, that a common abuse of privatization laws is that the terms of a privatization contest are arbitrarily adjusted to fit the characteristics of a pre-selected bidder. Few major new privatizations have been conducted since the privatization rush of 2004. In 2010, the State Property Fund attempted to revoke the privatization of the Krivorizhstal factory (now named Arcelor Mittal Kryvyi Rih), claiming that Mittal Steel had failed to meet its contractual obligations. Ukraine's Commercial Court considered the case and ruled that the government had no basis to reclaim the facility.

The most notable privatization in 2011 was that of telecommunications company Ukrtelecom, in which a 97 percent stake was sold to a small Austrian investment firm for $1.3 billion in a nontransparent one-bid auction. Strict tender conditions restricted potential buyers.

The State Property Fund has also identified the Kryvorizhskyy Ore Mining and Processing Plant, and Turboatom (a producer of turbines for power plants), as priorities for privatization, but neither privatization has moved forward. Additionally, the government is in the early stages of privatizing the regional energy utilities (Oblenergos) and is currently vetting companies that offered bids for two such Oblenergoes (Kyivenergo and Zakhidenergo).

Although the government announced its intention to privatize all of the 112 coal mines still owned by the government in 2011, it conducted auctions for only 2 state-owned coal mines in 2011. There are concerns that a few Ukrainian and Russian firms are trying to acquire these mines without going through a fair, transparent privatization process. Industry analysts dismissed the announcement, as similar proclamations have been made in previous years without results. They believe that the majority of the state-owned mines are no longer economically productive, and would need to be bundled with other assets to attract investor interest.

Ukraine maintains a moratorium on the sale of agricultural farmland, which was recently extended to January 1, 2013. This provision blocks private investors from purchasing some of the 33 million hectares of arable land in Ukraine and constitutes an obstacle to the development of the agricultural sector. However, the government of Ukraine's draft "Law on the Land Market," which would end the moratorium, includes problematic provisions such as prohibitive taxes on re-selling land and the creation of a State Land Bank with the exclusive right to issue land mortgages. While essential in the long term, concerns exist that land privatization under current circumstances could lead to widespread corruption, nontransparent privatizations, and disruptions in the productive utilization of agricultural land.

Corporate Raiding

Ukraine continues to have problems with corporate raiding activities. Some researchers claim that thousands of Ukrainian enterprises have suffered raiding attempts in the last several years. These raiders frequently purchase a small stake in a company, and then take advantage of deficient legislation, corrupt courts, and a weak regulatory system to gain control of the company to the detriment of rightful shareholders. This development harms investors, including U.S. companies and shareholders, and has damaged the image of Ukraine among foreign investors. The Ukrainian government has taken little action to stop this phenomenon, and some U.S. investors complain that the government protects raiders who are politically well connected.

UNITED ARAB EMIRATES

TRADE SUMMARY

The United Arab Emirates (UAE) is a federation of seven emirates (Abu Dhabi, Dubai, Sharjah, Ajman, Umm Al-Qaiwain, Fujairah, and Ras Al-Khaimah).

The U.S. goods trade surplus with United Arab Emirates was $13.5 billion in 2011, an increase of $2.9 billion from 2010. U.S. goods exports in 2011 were $15.9 billion, up 36.2 percent from the previous year. Corresponding U.S. imports from United Arab Emirates were $2.4 billion, up 113.0 percent. United Arab Emirates is currently the 19th largest export market for U.S. goods.

The stock of U.S. foreign direct investment (FDI) in United Arab Emirates was $4.3 billion in 2010 (latest data available), up from $4.2 billion in 2009. U.S. FDI in the United Arab Emirates is led by the wholesale trade and manufacturing sectors.

IMPORT POLICIES

Tariffs

As a member of the Gulf Cooperation Council (GCC), the UAE applies the GCC common external tariff of five percent for most products, with a limited number of exceptions. Currently, the UAE's exceptions to the 5 percent tariff are a 50 percent tariff on alcohol, a 100 percent tariff on tobacco, and duty exemptions for 53 food and agricultural items. According to the WTO, the UAE's simple average applied tariff is 6.6 percent for agricultural goods and 4.7 percent for non-agricultural goods.

Import Licensing

Only firms with an appropriate trade license can engage in importation, and only UAE registered companies, which must have at least 51 percent ownership by a UAE national, can obtain such a license. This licensing provision does not apply to goods imported into free zones. Some goods for personal consumption do not require import licenses.

Documentation Requirements

Since 1998, the UAE has required that documentation for all imported products be authenticated by the UAE Embassy in the exporting country. There is an established fee schedule for this authentication. For U.S. exports, if validation is not obtained in the United States, customs authorities will apply the fee schedule when the goods arrive in the UAE.

GOVERNMENT PROCUREMENT

The UAE grants a 10 percent price preference for local firms in government procurement. The UAE requires companies to register with the government before they can participate in government procurement, but to be eligible for registration, a company must have at least 51 percent UAE ownership. This requirement does not apply to major projects or defense contracts where there is no local company able to provide the goods or services required.

The UAE's offset program requires defense contractors which are awarded contracts valued at more than $10 million to establish commercially viable joint ventures with local business partners that would be projected to yield profits equivalent to 60 percent of the contract value within a specified period (usually 7 years). To date, more than 40 such joint venture projects have been launched. There are also reports, as well as anecdotal evidence, indicating that defense contractors can sometimes satisfy their offset obligations through an up-front, lump-sum payment directly to the UAE Offsets Group.

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

INTELLECTUAL PROPERTY RIGHTS PROTECTION

The UAE has made the protection of intellectual property a priority in recent years. In June 2011, the UAE established an independent office for intellectual property rights (IPR) at the Ministry of Economy and for the first time appointed an assistant undersecretary position for IPR. According to 2011 industry estimates, the rate of software piracy in the UAE is the lowest in the Middle East, and, after South Africa, the second lowest in the Middle East and Africa. While the UAE is recognized as the regional leader in fighting computer software piracy, other industry stakeholders believe the UAE could be doing more. For example, the recording industry has complained about the UAE's failure to establish a royalty collecting mechanism for the use of recorded music, which means that rights holders are not being remunerated for certain uses of such works. In addition, compliance representatives of U.S. rights holders have voiced growing concerns regarding the lack of transparency and information exchange when UAE customs officials conduct raids and seizures.

The six Member States of the GCC are working to harmonize their IP regimes. In connection with that effort, the GCC recently approved a common trademark law. Each Member State is expected to adopt that law. The United States has established a dialogue with GCC technical experts to discuss this law and other Customs Union efforts regarding IPR.

SERVICES BARRIERS

Insurance

Foreign insurance companies may operate only as branches in the UAE. An insurance company established in the UAE must be a public joint stock company. At least 75 percent of the capital in such companies must be owned by UAE nationals, while the remaining 25 percent may be owned by a foreigner. Since 2008, new insurance licenses have been issued only to UAE and GCC firms.

In the Emirate of Abu Dhabi, the offering of insurance coverage for construction projects and companies under the Abu Dhabi National Oil Company (ADNOC) is restricted to Abu Dhabi-based insurance companies.

Banking

The UAE Central Bank does not grant new licenses to foreign banks. In 2008, the Central Bank allowed several foreign banks already operating in the UAE to set up new branches. According to Central Bank statistics, there were no new foreign banks in 2009, 2010 and 2011, but one branch was opened in 2010. The number of electronic banking service units for foreign banks operating in the UAE was 47 in 2011, down from 50 units in 2010. In 2011, local banks opened 13 new branches. Foreign banks are taxed at 20 percent of their profits.

Agent and Distributor Rules

It remains difficult, if not impossible, to sell products in UAE markets without a local agent. Only UAE nationals or companies wholly owned by UAE nationals can register with the Ministry of Economy as commercial agents.

The provisions relating to commercial agencies are collectively set out in Federal Law No. 18 of 1981 on the Organization of Commercial Agencies as amended by Federal Law No. 14 of 1988 (the Agency Law) and applies to all registered commercial agents. Federal Law No. 18 of 1993 (Commercial Procedure) and Federal Law No. 5 of 1985 (Civil Code) govern unregistered commercial agencies.

On March 22, 2010, the UAE issued Federal Law No. 2 of 2010 amending certain provisions of the Commercial Agency Law. The amendments prevent the termination, or non-renewal, of a commercial agency unless the principal has a material reason to justify the termination or non-renewal. Further, a principal may not re-register the commercial agency in the name of another agent even if the previous agency was for a fixed term unless: (i) it is amicably terminated by the principal and the agent; (ii) termination or non-renewal is for justifiable reasons that are satisfactory to the Commercial Agencies Committee; or (iii) a final judicial judgment is issued ordering the cancellation of the agency.

The 2010 Amendments also reinstate the specialized Commercial Agencies Committee, which had been revoked in 2006. The Commercial Agencies Committee has original jurisdiction over disputes involving registered commercial agents. Any commercial dispute should be referred first to the Commercial Agencies Committee. In April 2011, the UAE Cabinet issued Resolution No. 3 of 2011, Concerning the Commercial Agency Committee, which further outlines the responsibilities of the Committee. These include receiving applications for settling agency disputes and managing the process of cancelling registered agencies. The Committee is permitted to abstain from settling a dispute referred to it and can advise the parties to refer the matter to litigation. A party may challenge the determination of the Committee by bringing a matter to the UAE courts within 30 days of the date of receiving notice of the Committee's resolution. The Committee is permitted to seek the assistance of any expert or "appropriate person" for performing its duties. It also has the right to demand the submission of further information and documentation involved in the dispute.

Telecommunications

UAE currently has two telecommunications companies which are largely government-owned: Emirates Telecommunications Corporation (Etisalat), the former telecommunications monopoly, and Emirates Integrated Technology Company (which operates under the trade name Du). The UAE has committed to remove the duopoly by December 31, 2015, after which time it will consider issuing further licenses. One U.S. trade association representing Voice over Internet Protocol (VoIP) providers has complained that the UAE is limiting their ability to provide these services by licensing only two companies; other companies using this technology are subject to having their services blocked.

In January 2011, the UAE Telecommunications Regulatory Authority (TRA) announced that it will no longer enforce the ban on Skype in a sign that the UAE could be shifting its stance on Internet telephone services. Software applications using VoIP technology are illegal in the UAE unless they are sanctioned by a licensed operator. TRA has delegated the decision to allow the use of Skype to the country's two operators, Etisalat and Du.

In January 2011, the TRA issued a new regulation concerning mobile telecommunications apparatus. The regulation grants the TRA the authority to issue regulations with respect to importing, manufacturing, using, and managing telecommunications apparatus, and the TRA has the exclusive competence in issuing all authorizations and approval in relation to telecommunications apparatus comprised in, or intended for, use in connection with a telecommunications network. Moreover, the regulation prohibits anyone from selling or offering for sale any telecommunications apparatus which has not been approved by the TRA.

Transportation

Federal Act No. 9 on Land Transport and Public Roads was decreed on July 13, 2011 and is scheduled to take effect in 2012. The law authorizes the National Transport Authority (NTA) to oversee licensing of all commercial transport vehicles, including those used by couriers. Discussions are ongoing to clarify the scope and implementation of the law. The NTA has asserted that the aim of the law is not to place an undue burden on the courier industry, but to regulate and standardize the land transportation regime across the UAE to improve security and safety.

INVESTMENT BARRIERS

Except for companies located in one of the UAE's free trade zones, at least 51 percent of a company established in the UAE must be owned by a UAE national. A company engaged in importing and distributing a product must be either a 100 percent UAE-owned agency/distributorship or a 51 percent UAE-owned limited liability company. While the UAE government is reportedly considering liberalizing specific sectors where there is a need for foreign expertise or where local investments are insufficient to sustain 100 percent local ownership, the government has yet to enact measures to achieve this end.

Resolution of investment disputes continues to be a problem in the UAE. Foreign investors have expressed concern that pursuing international arbitration in such disputes may jeopardize their business activities in the UAE. Foreign investors also report a reluctance to take disputes to the domestic court system, due to a perceived lack of impartiality.

A number of American firms have expressed increased frustration with lengthy delays and burdensome procedures in receiving payment for projects undertaken in the UAE, particularly for work done on behalf of certain public-sector entities. Another area that is drawing concern from U.S. firms involves requests by some UAE procuring entities to include language in contracts that would place American firms in violation of laws related to commercial boycotts of Israel. Companies have reported losing business because procuring entities would not strike such language from proposed contracts.

VENEZUELA

TRADE SUMMARY

The U.S. goods trade deficit with Venezuela was $30.9 billion in 2011, up $8.8 billion from 2010. U.S. goods exports in 2011 were $12.4 billion, up 16.0 percent from the previous year. Corresponding U.S. imports from Venezuela were $43.3 billion, up 32.2 percent. Venezuela is currently the 26th largest export market for U.S. goods.

U.S. exports of private commercial services (*i.e.*, excluding military and government) to Venezuela were $5.0 billion in 2010 (latest data available), and U.S. imports were $729 million. Sales of services in Venezuela by majority U.S.-owned affiliates were $3.9 billion in 2009 (latest data available), while sales of services in the United States by majority Venezuela-owned firms were $806 million.

The stock of U.S. foreign direct investment (FDI) in Venezuela was $13.7 billion in 2010 (latest data available), down from $14.2 billion in 2009. U.S. FDI in Venezuela is primarily concentrated in the nonbank holding companies and manufacturing sectors.

IMPORT POLICIES

Venezuela officially withdrew from the Andean Community (AC) in April 2006. President Chavez stated publicly that the reason for the withdrawal was the entry of other AC member countries into free trade agreements or negotiations with the United States, which, according to the Venezuelan government, changed the essence of the pact.

Under AC rules, following a member's formal withdrawal, only tariff-related decisions and resolutions remain in force, and they expire after a period of five years from the date of withdrawal. For Venezuela, this five year period ended on April 22, 2011. Over the years, AC norms, which cover a wide range of disciplines, have been incorporated into the Venezuelan legal framework. Although the Venezuelan government has yet to officially clarify the legal impact of leaving the AC, to date Venezuela has continued to follow AC norms. In November 2006, Venezuela's Supreme Court accepted a petition requesting an interpretation of the current validity of AC norms. As of December 2011, the court had not issued a ruling on the matter.

Tariffs

According to the WTO, in 2011 Venezuela applied a simple average tariff of 15 percent on agricultural goods and 12.1 percent on non agricultural goods.

In December 2005, Venezuela signed a framework agreement to join the Southern Cone Common Market (MERCOSUR). MERCOSUR membership is contingent upon approval by the legislatures of all MERCOSUR countries. The last hurdle to Venezuela's full membership in MERCOSUR is obtaining Paraguay's formal approval. Under the terms of its accession, Venezuela will have four years from its date of accession to adopt the MERCOSUR Common External Tariff (CET) and to provide duty-free treatment to its four MERCOSUR partners on all goods, with sensitive products allowed a two year extension. Paraguay's congress continues to block Venezuela's entrance into MERCOSUR.

Nontariff Measures

A Law of Fair Costs and Prices was promulgated on July 14, 2011, and entered into effect on November 22, 2011. The law gives the Venezuelan government broad authority to regulate the prices of almost all goods and services sold to the public, including imported products. A new bureaucracy has been empowered to decide whether prices are "fair" and to identify businesses that make "excessive profits." At the time of writing, businesses are providing the cost and other data requested by the government, despite the fact that detailed implementing regulations have not been released. The law will initially be applied to foodstuffs, personal care and household cleaning products, and construction materials.

Currency controls introduced in 2003 continue to pose a significant barrier to most trade with Venezuela, with the possible exception of food and agricultural goods and health and pharmaceutical products. There are currently two entities through which importers may seek foreign exchange: (1) the Foreign Exchange Commission, or *Comision de Administracion de Divisas* (CADIVI); and (2) the Transaction System for Foreign Currency Denominated Securities (SITME), which falls under the supervision of the Central Bank of Venezuela (BCV).

The official exchange rate was fixed at 2.15 bolivars (Bs)/$1 from March 2005 through January 10, 2010. On January 11, 2010, the government devalued the currency and set 2 exchange rates, 1 at 2.6 Bs/$1 (which applied to certain priority imports such as food, healthcare, science and technology products, capital goods, and public sector imports) and 1 at 4.3 Bs/$1 (which applied to non-priority imports and most other categories of foreign exchange requests). On December 30, 2010, the government announced the devaluation of the currency as of January 1, 2011, eliminating the 2.6 Bs rate and creating a single official exchange rate of 4.3 Bs/$1, which remains the official rate of exchange. SITME operations since June 2010 have had an implicit exchange rate of approximately 5.30 Bs/$1.

Importers who wish to use the CADIVI system must first enroll in its Registry of Users of the System of Administration of Foreign Exchange (RUSAD). Importers who receive pre-approval may import goods and then apply for CADIVI approval to purchase dollars at the relevant official rate to pay for the imports. The CADIVI system is available for importers in sectors classified as strategic, including food, health products, machinery and equipment, commerce, chemicals, and metals. Authorizations for foreign currency through CADIVI are not expeditious, and can require the submission of significant numbers of supporting documents by the Venezuelan importer with the support or collaboration of the exporter.

When oil prices fell sharply in the latter half of 2008, the Venezuelan government reduced overall CADIVI approvals from an average of $187 million per working day in October 2008 to a daily average of $118 million for 2009. In the period from January to September 2011, CADIVI approved a total of $22.9 billion in foreign exchange disbursals, averaging $128 million per working day. This included $14.8 billion in approvals for imports (not including imports under the Latin American Integration Association Agreement). Import sectors receiving the greatest exchange flows were: food (22.7 percent), healthcare (23.3 percent), automotive (13.1 percent), commerce (8.5 percent), machinery and equipment (5.2 percent), and chemical (8.5 percent).

The need to obtain CADIVI pre-approval to import goods and for payments at the official exchange rate has caused increased obstacles to trade due to the complex pre-approval process, delays in receiving approvals and payments, and restrictions on imports and importers. Once goods have arrived in Venezuela, cleared customs, and have been verified, CADIVI should approve payment within 30 days. However, importers have reported delays in receiving such approvals, as well as unpredictability and inconsistency in their grant. Many companies have moved to the SITME foreign exchange market (*discussed below*) to obtain foreign currency to pay for imports, somewhat alleviating the demand on the CADIVI system. However, many companies continue to report that they are not receiving sufficient foreign exchange to satisfy their business needs. Additionally, since 2006, CADIVI approvals for dividend repatriation have been minimal.

In May 2010, the Venezuelan government abolished the former "*permuta*," or parallel market foreign exchange system, in place since currency controls were implemented in 2003. In June 2010, the BCV created SITME. Average SITME approvals since June 2010 have been approximately $35 million per business day, while average disbursals in the former parallel market in 2009 were estimated at $110 million per business day. SITME operations have received an exchange rate of approximately 5.30 Bs/$1. Under SITME, transaction amounts for individual customers are limited to $50,000 a day, with a maximum total of $350,000 a month. New regulations that took effect on January 1, 2012, require that all importers who wish to use SITME must first register in a new registry called RUSITME, similar to CADIVI's RUSAD. Requests for SITME exchange transactions are made through Venezuelan banks. Importers must have been bank clients for 90 days prior to their registration in the RUSITME system. Importers and others that acquire foreign exchange through CADIVI are not allowed to access SITME during the 90 days that follow. The elimination of the *permuta* market and restricted access to CADIVI and SITME has resulted in the growth of a black market for foreign exchange transactions.

Burdensome documentation requirements are another significant disincentive to importation. Beginning January 1, 2008, all automobile importers were required to obtain a license from the Ministry of People's Power for Commerce for authorization to receive foreign exchange for the importation of assembled vehicles. According to the resolution, approval of these licenses depends on "national need, the capacity of national production, plans to expand local production, model cost, historic sales, and the efficient use of fuel." As part of requesting this license, all automotive companies have to include their "national production plan" and their "vehicle importation plan." The law also prohibits the importation of passenger cars with engines larger than three liters, thus discriminating against companies selling predominantly larger cars. Venezuela prohibits the importation of used cars, buses, and trucks, and used tires, as well as used clothing.

Since 2008, the government has used an import quota mechanism for vehicles in a bid to increase the number of automobiles assembled in Venezuela. However, carmakers are subject to limited allocations of dollars to import components they need to carry out production in Venezuela. On an annual basis, assemblers may present their requests for a determined number and models of imported vehicles, which are then subject to the issuance of import licenses by the government. Import licenses have generally been awarded to assemblers that have a sister assembler in countries that already have government-to-government agreements with Venezuela, such as Argentina and Ecuador.

The 2008 automotive regime added a requirement to produce dual fuel (gasoline and natural gas) vehicles. The original law mandated that all new vehicles sold in Venezuela after December 1, 2008, be dual fuel. This rule was twice postponed and then changed. As of April 1, 2009, 30 percent of vehicles sold must be dual fuel, and each Venezuelan assembler must produce at least 2 dual fuel models. This dual fuel requirement also applies to vehicles imported by assemblers. Of the total number of vehicles brought into the country by an importer, 30 percent of the imported vehicles must be dual models, and the remaining 70 percent must be converted once imported. As of December 2011, however, the ability of the assemblers to meet this requirement is unclear due to the size of the investments needed to comply. In addition, the gradually increasing requirement for local content in domestically assembled vehicles was changed to a flat 50 percent requirement, which will be applicable beginning in 2013. A new requirement for motors to be assembled in Venezuela by 2010 was also added. Assemblers have stated that these two requirements are extremely problematic. Local industry is unable to produce sufficient components to allow 50 percent local content, and the variety of motors and the necessary large production runs will make local motor assembly prohibitively expensive.

In addition, Venezuela also appears to protect some industries within its agricultural sector through the use of licenses and sanitary permits that restrict imports. The Venezuelan government applies fixed farm gate prices for producers of corn, rice, sorghum, sugar cane, milk, and beef. These prices are reviewed only when the industry applies sufficient pressure and still generally lag behind increases in input costs. Since 2007, selected basic commodities are granted agricultural subsidies based on acreage or volume.

Venezuela maintains the authority to impose tariff-rate quotas (TRQs) for up to 62 Harmonized System code 8-digit headings. Currently, the government is applying TRQs to oilseeds, corn, wheat, milk and dairy, and sugar. The issuance of import licenses for such TRQs is neither transparent nor automatic and has negatively affected trade in basic agricultural commodities as well as processed products. Import licenses and sanitary permits are restrictive for products for which the government is trying to increase domestic output, such as raw materials for processing. The Venezuelan government has denied import licenses for both in-quota and over-quota quantities, even though importers are often willing to pay the over-quota tariff for additional quantities of some products. Furthermore, the Venezuelan government has not published regulations establishing the TRQ mechanism for certain eligible products and has refused to activate the TRQ for other products, such as pork.

Importers of many basic commodities, horticultural products, and agricultural inputs must request a "certificate of nonproduction" or a "certificate of insufficient production" before trade can take place. If the certificate is issued, the importer can request foreign exchange and obtain import licenses, import permits, and possibly tax exoneration from other government offices. Some goods may require a certificate from more than one ministry, increasing processing time. The number of ministries and agencies involved and the constant shifting of responsibilities among them has hampered the issuance of import permits, licenses, and the registration of local and imported food products. On January 18, 2008, the government of Venezuela passed a resolution waiving the "certificate of nonproduction" requirement for 51 goods to mitigate food shortages. Most recently, in 2010, the Venezuelan government updated that list, which now includes 467 agricultural products. When there is a deficit, imports are readily authorized. This has been the case for the last several years as demand has exceeded domestic supply. Since September 2007, the government of Venezuela has banned non-food use of corn and has controlled product movement through "mobilization guides," which results in a *de facto* export ban. Since the passage of a February 2009 resolution, products such as coffee and sugar, and other basic food items, cannot be exported until domestic demand is satisfied.

Since January 2003, the Venezuelan government has waived import duties for staple products. Initially, the import duty waiver was granted for a six month period. Since then, some products were added or removed from the initial list, and there were certain periods when this policy lapsed. On January 18, 2008, the government of Venezuela created a new list of tax-exempt goods that featured some products on the then current list and some additions. The list was last updated in October 2008, with customs duties for live cattle imports exonerated to allow more cattle into the country for processing.

The Venezuelan government is the main importer of basic foodstuffs and has created a large food distribution network targeted at the low and middle economic classes. The *Corporacion Venezolana de Alimentos* (CVAL) and *the Corporación de Abastecimiento y Servicios Agrícolas* (CASA) are the leading state trading entities. At the same time, *Mercado de Alimentos, C.A.* (MERCAL) and *Productora y Distribuidora Venezolana de Alimentos* (PDVAL) a division of Venezuela's state-owned oil company *Petroleos de Venezuela* (PDVSA) also import for their own food marketing chains, offering products at prices that are at or below government fixed prices. Two supermarket chains, *Corporacion de Mercados Socialistas* (COMERSO) and *Abastos Bicentenarios* have been created to increase the government's market presence, and to compete with the private sector. Venezuela's food program is focused on providing a government-subsidized basic basket of products, including dry milk, precooked corn flour, black beans, rice, vegetable oils, sardines, pasta, sugar, bologna, margarine, deviled ham, eggs, mayonnaise, and sauces. Government entities have an advantage in purchasing abroad because they have guaranteed access to official dollars, import licenses and permits, and import products without tariffs and custom duties.

COMERSO, which was created in April 2010, now handles purchases for government-run supermarket chains. It appears that the expansion of the government role in trade is likely to grow. On December 1, 2010, the Venezuelan government created a new corporation, Venecom, which, according to the announcement in Venezuela's Official Gazette, is charged with handling foreign trade in support of the development of small and medium sized industry. Venecom follows in the footsteps of *Suministros Venezolanos Industriales C.A.* (SUVINCA), which was established in 2006 and began operations in 2008, and is charged with supporting the government's plan to develop 200 socialist factories. SUVINCA and Venecom are reportedly involved in importing for these sectors.

GOVERNMENT PROCUREMENT

Venezuela's government procurement law covers purchases by government entities, national universities, and autonomous state and municipal institutions. It is not clear to what degree the public procurement law applies to joint ventures in which a state entity has a controlling interest. The law requires a procuring entity to prepare a budget estimate for a procurement based on reference prices maintained by the Ministry of Light Industry and Trade. Although the law forbids discrimination between domestic and foreign suppliers, it provides that the President can mandate temporary changes in the bidding process "under exceptional circumstances," in accordance with "economic development plans" that promote national development or provides preferences to domestic goods and suppliers. These measures can include price preferences for domestic goods and suppliers, reservation of procurements for nationals, requirements for domestic content, technology transfer, or the use of local labor and other incentives to purchase from companies domiciled in Venezuela. For example, government decree 1892 establishes a 5 percent preference for bids from companies whose products have over 20 percent local content. In addition, half of that 20 percent of content must be from small to medium sized domestic enterprises. The Venezuelan government is increasingly awarding contracts directly, thus avoiding competition required by the government procurement law. There are allegations that companies from certain countries are favored while those from other countries, including the United States, receive less favorable treatment.

A presidential decree published in 2008 raised additional concerns. The decree established a National Service of Contractors, with which firms must register in order to sell to the government. Tenders will not be accepted without prior registration. Some observers assert that the registration requirement allows additional screening for political acceptability of a company.

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

INTELLECTUAL PROPERTY RIGHTS PROTECTION

Venezuela was listed on the Priority Watch List in the 2011 Special 301 Report. Key concerns cited in the Report relate to the deteriorating environment for the protection and enforcement of intellectual property rights (IPR) in Venezuela. The reinstatement of the 1955 Industrial Property Law created uncertainty with respect to patent and trademark protections. Copyright piracy and trademark counterfeiting remain widespread. Other concerns include the lack of effective protection against unfair commercial use of undisclosed test and other data generated to obtain marketing approval for pharmaceutical products. Recent progress includes passage of a Law on Crime and Contraband, which imposes penalties for smuggling violations and provides for the seizure of goods that infringe IPR. However, Venezuela must still make significant improvements to its regime for IPR protection and enforcement.

SERVICES BARRIERS

Venezuela maintains restrictions on a number of services sectors, including professional services, audiovisual, and telecommunications services. In any enterprise with more than 10 workers, foreign employees are restricted to 10 percent of the work force, and Venezuelan law limits foreign employee salaries to 20 percent of the payroll.

Professional Services

Foreign equity participation in professional firms is restricted to a maximum of 19.9 percent. Only Venezuelan citizens may provide accounting and auditing services to government institutions and related institutions, such as banks and hospitals. In addition, only Venezuelan citizens may act as accountants for companies in which the government has at least a 25 percent ownership interest. A foreign lawyer cannot provide legal advice on foreign or international law without being fully licensed as a lawyer in Venezuela. Foreigners are required to establish a commercial presence for the provision of engineering services. Foreign consulting engineers must work through local firms or employ Venezuelan engineers.

Financial Services

The insurance law, approved in July 2010, establishes that for all insurance companies, at least half of the members of the board must be of Venezuelan nationality. In addition, all members of the board must be living in and have resident status in the country.

Audiovisual Services

Venezuela limits foreign equity participation to less than 20 percent for enterprises engaged in Spanish language television and radio broadcasting. At least half of the television programming must be dedicated to national programming. Additionally, half of both FM and AM radio broadcasting must be dedicated to Venezuelan-produced material. In the case of music, 50 percent of the Venezuelan-produced material must be traditional Venezuelan songs. There is also an annual quota regarding the distribution and exhibition of Venezuelan films required of cinema owners and film distributors. Additionally, there is a requirement that a percentage of film copying be done in Venezuelan facilities.

INVESTMENT BARRIERS

The government continues to control key sectors of the economy, including oil, petrochemicals, and much of the mining and aluminum industries. Venezuela began an ambitious program of privatization under the Caldera administration (1994 to 1999), but under President Chavez (since 2000) privatization has been halted and the government has re-nationalized certain key sectors of the economy. In 2007, the government nationalized certain electricity and telecommunications providers. In 2008, the government nationalized certain cement companies and an aluminum company, and proposed the nationalization of a commercial bank. In 2009, the government nationalized a food production plant and 76 oil field services companies. In 2010, the government nationalized a number of companies involved in the agricultural sector, drilling rigs belonging to a U.S. company, and a number of housing projects. According to data maintained by *Conindustria (Confederación Venezolana de Industriales)*, there were 499 industrial sector expropriations in 2011 alone, and a total of 988 nationalizations since 2002. Of these, 408 had been companies involved in the construction sector, 229 in agriculture or related industries, and 210 in the oil sector. Other sectors affected have included food, mining, chemical, and transport services.

Foreign investment continues to be restricted in the petroleum sector. The exploration, production, refinement, transportation, storage, and foreign and domestic sale of hydrocarbons are reserved to the state. However, private companies may engage in hydrocarbons-related activities through mixed companies and equity joint ventures with the state-owned oil company, PDVSA. Sales to foreign investors of interests in the subsidiaries and affiliates of PDVSA are permitted following approval by the government.

Since 2004, the national government has made significant changes to royalty policies, tax policies, and contracts involving hydrocarbons-related activities. This has substantially increased uncertainty in the hydrocarbons sector and raised concerns for companies operating in Venezuela. In 2006, the government transferred operating service agreements to mixed companies in which PDVSA holds a majority stake. President Chavez issued a decree in late February 2007 requiring that four projects relating to the development of Venezuela's extra heavy crude oil reserves be converted into PDVSA-controlled joint ventures in which the government would hold at least a 60 percent equity stake. The decree established a deadline of April 30, 2007, for completing the transfer. ConocoPhillips and ExxonMobil refused to transfer their investment stakes in three of these projects. Nevertheless, the Venezuelan government took control of these investments. Both companies have filed international arbitration claims against the Venezuelan government.

Both the 2001 Hydrocarbons Law and the 1999 Gaseous Hydrocarbons Law require that there be a competitive process for the identification of private partners for projects to be developed by PDVSA. However, the government may directly award contracts when the project is to be developed under special circumstances or is of national interest. Oil companies from politically strategic partner countries seem to be the preferred partners for the development of many new projects.

In May 2009, the Venezuelan government promulgated a law reserving to the state those assets and services related to the performance of primary activities identified in the 2001 Hydrocarbons Law. Specifically, the assets and services included: (1) those involved in the injection of water, steam, or gas into petroleum reservoirs; (2) those related to gas compression; and (3) assets and services associated with the hydrocarbons industry on Lake Maracaibo in western Venezuela. This included boats for the transportation of personnel, divers, and maintenance; cranes and crane barges; tugs; flat barges; light vessels; cutting barges; barges for laying pipeline and sub-aquatic cable; vessel maintenance facilities; docks; and any type of dikes. Seventy-six companies, including several U.S.-owned firms, were nationalized pursuant to this law and none has received compensation to date. Several affected U.S.-owned firms have filed international arbitration claims against the Venezuelan government.

In June 2009, the government promulgated the Organic Law for the Development of Petrochemical Activities to regulate the execution of petrochemical activities and to reserve to the state activities defined as primary and intermediate activities, as well as all facilities and works required to carry out these activities. As a result, only the state and companies in which the state has at least a 50 percent ownership stake may carry out primary and intermediate petrochemical activities. In October 2010, the government nationalized a petrochemical plant that was partly owned by a private U.S. entity.

The previous government had passed legislation in 1998 aimed at introducing domestic and foreign competition into the domestic gasoline market. The law allowed foreign and private Venezuelan investors to own and operate service stations, although the government retained the right to set prices. The government has not raised gasoline prices in several years even though currency devaluations and a high inflation rate have eliminated service station profit margins. An Organic Law on the Restructuring of the Internal Liquid Fuels Market came into effect on September 18, 2008. The law mandated government control of domestic transportation and wholesale of liquid fuels and set a 60-day period for negotiations with the affected companies. Affected companies have not yet been compensated and negotiations are ongoing. All establishments that carry out retail activities of liquid fuels were to be rebranded as PDVSA. The law did not define the term "liquid fuels," creating uncertainty as to whether it applied to products other than gasoline or diesel fuel, such as motor oils and lubricants. Also unclear was whether the law applied only to fuel pumps and storage tanks at service stations or to the entire retail entity (including any other services provided, such as convenience stores). In 2010, the government seized some gasoline stations along the Colombian border. It has also nationalized fuel distribution companies and Venezuela's largest privately-owned lubricant manufacturer.

Electric power generation, transmission, and distribution were previously open to private participation under Venezuelan law. However, President Chavez announced in January 2007 that the Venezuelan government would nationalize strategic areas, including telecommunications and the electrical sector. As a result, a U.S. power generating company, AES Corporation, sold its 82.14 percent stake in Electricidad de Caracas, the company that provides power to the Caracas metropolitan area, to the Venezuelan government in March 2007. The government also purchased the assets of several smaller power producers. At the end of August 2010, the National Assembly passed an Organic Law for the Reorganization of the Electricity Sector, effectively ordering the fusion of all electricity utilities under one central holding entity that would have 75 percent direct government ownership and 25 percent PDVSA ownership.

In early 2005, President Chavez reorganized the ministries that govern the energy and mining sectors. One result of this restructuring was to increase ministerial control over basic industries and to strengthen the state-owned *Corporacion Venezolana de Guayana* (CVG), which controlled steel and aluminum production, electricity generation, and mining. Under its new board of directors, named in February 2005, CVG announced a review of all existing contracts between CVG companies and third parties. A draft mining law is still pending in the National Assembly that seeks to repeal "inactive" concessions of foreign companies and to structure the mining sector under a joint-venture model. In April 2008, the government revoked U.S.-based Gold Reserve's gold mining concession. In October 2009, Gold Reserve filed for international arbitration against the Venezuelan government. In April 2010, President Chavez declared that he would order the Ministry of Basic Industry and Mines to cancel all mine concession agreements and expropriate gold and diamond mining activity taking place in the state of Bolivar. In October 2010, President Chavez announced a decision to nationalize the Las Cristinas gold concession located in southern Bolivar State, which had been held by Canada's Crystallex. The press has reported government plans to form a Venezuelan-Chinese joint venture to take over this concession. In August 2011, President Chavez signed a law that reserved to the state the right to explore for and manage the gold industry, as well as its connected activities, effectively nationalizing Venezuela's gold industry. In December 2011, President Chavez announced changes to various ministerial competencies, moving mining into the reformed Ministry of Petroleum and Mining.

On December 23, 2011, PDSVA lost an International Chamber of Commerce arbitration case against a major international oil company. With another case involving the same company pending before the World Bank's International Centre for the Settlement of Investment Disputes (ICSID), President Chavez announced on January 8, 2012 that the Venezuelan government would not recognize any ICSID decision related to the company's claim and stated that his government should withdraw from ICSID. On January 24, 2012, the Venezuelan government withdrew from the ICSID Convention; pursuant to the Convention, the withdrawal will take effect six months thereafter (*i.e.*, on July 25, 2012). At least 20 ICSID cases against Venezuela are currently pending.

VIETNAM

TRADE SUMMARY

The U.S. goods trade deficit with Vietnam was $13.1 billion in 2011, up $2.0 billion from 2010. U.S. goods exports in 2011 were $4.3 billion, up 17.0 percent from the previous year. Corresponding U.S. imports from Vietnam were $17.5 billion, up 17.6 percent. Vietnam is currently the 45th largest export market for U.S. goods.

The stock of U.S. foreign direct investment (FDI) in Vietnam was $623 million in 2010 (latest data available), up from $525 million in 2009.

The United States and Vietnam held numerous discussions throughout 2011 under the Trade and Investment Framework Agreement, including convening at the Ministerial level in May 2011. The TIFA provided a forum to help monitor and implement Vietnam's WTO commitments, address bilateral trade issues, and promote increased trade and investment. In June 2008, the two countries launched negotiations for a Bilateral Investment Treaty (BIT). Three rounds of BIT negotiations were held in 2009 and 2010. Information Communication Technology Commercial Dialogues were held in 2009 and 2010.

In December 2009, the United States announced its intention to enter into an Asia-Pacific trade agreement called the Trans-Pacific Partnership (TPP), with the objective of shaping a high standard, broad-based regional agreement. This agreement will create a potential platform for economic integration across the Asia-Pacific region, a means to advance U.S. economic interests with the fastest-growing economies in the world, and a tool to expand U.S. exports, which are critical to U.S. economic recovery and the creation and retention of high-paying, high-quality jobs in the United States. In addition to Vietnam, the TPP negotiating partners currently include Australia, Brunei, Chile, Malaysia, New Zealand, Peru, and Singapore. Japan, Canada, and Mexico also have expressed interest in joining the negotiations.

IMPORT POLICIES

Tariffs

Vietnam significantly reduced its tariff rates on products of interest to the United States in the context of its entry into the WTO in January 2007 and as part of the accession process agreed to bind all tariffs. As a result, the vast majority of U.S. exports now face tariffs of 15 percent or less. However, Vietnam has recently increased tariff rates on a range of products, in some cases up to its WTO bindings. Most recently, in June 2010, the Ministry of Finance issued Circular 91, which raised tariff rates on 10 product categories, including shelled walnuts, tomato ketchup and other tomato sauces, and ink-jet printers. U.S. industry has identified significant barriers arising from high tariffs applied on a range of products. In the agricultural and horticultural sectors, priorities identified include fresh apples, cherries, pears, and citrus; almonds; cooked and raw frozen poultry; fresh/chilled and frozen pork; cheese; frozen potato products; flatbread; tomato concentrate and tomato sauce; ice cream powder; cereals and preparations; sugars; and confectionaries. Several beverage products were also identified, including distilled spirits, powdered teas, nutritional supplements (including protein drink mixes) and coffee. In addition, high tariffs were noted on selected equipment for restaurant use, large engine motorcycles, automobiles and automotive parts, and plastics. To address these concerns, the United States and Vietnam are currently negotiating reciprocal preferential tariff concessions in the context of the TPP negotiations.

Nontariff barriers

Vietnam has made significant progress in eliminating nontariff barriers under the 2001 United States-Vietnam Bilateral Trade Agreement and through Vietnam's accession to the WTO. As a result, Vietnam has eliminated many quantitative restrictions on imports and other nontariff measures, such as quotas, bans, permits, prior authorization requirements, licensing requirements, or other restrictions having the same effect, that would be inconsistent with its WTO commitments. However, other nontariff barriers remain.

Import prohibitions: Vietnam currently prohibits the commercial importation of a limited number of products, including cultural products deemed "depraved and reactionary," firecrackers, certain children's toys, second-hand consumer goods, right-hand drive motor vehicles, and used spare parts for vehicles. In July 2010, Vietnam prohibited the importation of certain variety cuts of beef, pork, and poultry. U.S. meat exporters have reported that the measure has had a significant impact on U.S. exports to this growing market. The United States and other trading partners continue to raise concerns both bilaterally and in the WTO in order to restore trade in these important products.

Quantitative restrictions and import licensing: In July 2010, Vietnam's Ministry of Industry and Trade (MOIT) enacted Circular 24, imposing an import licensing requirement on a wide range of products including industrial products, certain food and agricultural products, and textile and apparel products. U.S. exporters have identified several transparency concerns with Circular 24 and a number have faced difficulty in receiving approval for their products. The United States continues to raise concerns regarding these requirements in bilateral meetings and in relevant committee meetings at the WTO seeking notification of the measure under the WTO Import Licensing Agreement, and urging the government of Vietnam to revise the measure to address U.S. concerns.

On May 6, 2011, MOIT issued Notice 197, which went into force on June 1, 2011. Notice 197 restricts the import of wines, spirits, cosmetics, and mobile phones to three seaports (Hanoi, Da Nang, and Ho Chi Minh City), and requires importers to submit new documentation that must be notarized by Vietnam's diplomatic missions abroad. The United States has raised questions and concerns regarding this measure bilaterally and in the WTO Technical Barriers to Trade Committee. The United States will continue to press Vietnam to address its concerns on this measure.

Price Registration and Stabilization: Circular 122 on price management and registration entered into force on October 1, 2010. Circular 122 states that the Ministry of Finance may apply price controls when prices increase or decrease without a "legitimate excuse," and subjects an extensive list of goods to pricing registration, including steel, liquefied petroleum gas, chemical fertilizers, plant protection products, animal drugs and vaccines, salt, milk/nutritional powders for children under six years old, sugar, rice, animal feed, coal, paper, and textbooks. U.S. companies with products covered under this circular are concerned about the potential impact of the measures, which they believe may be implemented in a discriminatory manner. The United States and other foreign governments have repeatedly raised concerns about Circular 122 with the Vietnamese government and will continue to press this issue.

Customs: Vietnam implemented the WTO Customs Valuation Agreement through the 2006 Customs Law and related implementing regulations, significantly improving customs valuation in Vietnam. However, U.S. exporters report that inefficient customs clearance remains a key concern. The United States will continue to work with Vietnam to monitor implementation of the WTO Customs Valuation Agreement and other customs issues as part of the ongoing TIFA dialogue.

Trading rights: Import rights are granted for all goods except for a limited number of products reserved for importation through state trading enterprises and those products subject to a phase in period under

Vietnam's WTO accession agreement. Vietnam has reserved the right of importation to state trading entities in the following product categories: cigars and cigarettes, crude oil, newspapers, journals and periodicals, and recorded media for sound or pictures (with certain exclusions). The United States continues to monitor Vietnam's implementation of its trading rights commitments under the WTO.

Other Nontariff Barriers: U.S. stakeholders have raised concerns about apparent discriminatory treatment against foreign firms across a range of product registration requirements for imported pharmaceuticals. The United States will continue to work closely with the Ministry of Health and other relevant agencies to seek improvements in the transparency of the pharmaceutical regulatory process.

U.S. stakeholders also have identified Vietnam's restrictions on advertising of distilled spirits in print, electronic, and broadcast media as a barrier to increased exports of distilled spirits.

GOVERNMENT PROCUREMENT

Vietnam's 2006 Law on Procurement provides for greater transparency in procurement procedures; decentralization of procurement decision making to the ministries, agencies, and local authorities; appeal processes; and enforcement provisions.

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

INTELLECTUAL PROPERTY RIGHTS PROTECTION

Vietnam maintained its position on the Watch List in the 2011 Special 301 report. While recognizing the strides Vietnam has made in intellectual property rights (IPR) protection and enforcement over the past several years, the United States noted that enforcement efforts have not kept pace with rising levels of IPR infringement and piracy in the country. Furthermore, administrative enforcement actions and penalties, the most commonly used means of enforcing IPR in Vietnam, have not served as a sufficient deterrent. Over the past year, Vietnamese agencies took some initial steps to enforce IPR protections on the Internet, including by issuing warning letters and by meeting with Internet service providers (ISPs) in response to rights holders' requests to address infringing content. The United States continues to urge Vietnam to undertake more aggressive actions to combat the rising problem of intellectual property infringement, including piracy. The United States will continue to work with Vietnamese authorities and encourage more vigorous enforcement actions.

In 2009, Vietnam revised its intellectual property law, as well as IPR related provisions in the Criminal Code, to provide criminal penalties for IPR infringement conducted on a commercial scale. Vietnam has stated it will clarify the IPR related provisions in the Criminal Code through an implementing decree. The United States continues to monitor implementation of these important provisions. In September 2010, Vietnam issued a new decree on administrative penalties for industrial property violations.

SERVICES BARRIERS

In the Bilateral Trade Agreement and in Vietnam's WTO services schedule, Vietnam committed to a high level of liberalization in a broad array of service sectors, including financial services, telecommunications, express delivery, professional services, and distribution services. As part of these negotiations, Vietnam also retained some market access limitations and exceptions to national treatment.

Audiovisual Services

Foreigners may invest in cinema construction and operation only through joint ventures with local Vietnamese partners, subject to government approval. Films are subject to censorship before public viewing, a process which is nontransparent and for which the right of appeal of a censor's decisions is not well established.

Broadcasting

In March, 2011, the Prime Minister issued Decision 20, Regulation on Pay TV Operation Management. Decision 20 requires that foreign pay television providers use a local agent to translate in advance all movies and programming on science, education, sports, entertainment and music, and that all foreign news programs provide a summary of the content in Vietnamese in advance of airing. The measure also requires foreign content providers to secure the services of a local editing company for post-production work (including translation, content review, and payment of a placement fee) in order for that advertisement to be approved for placement in a Vietnamese broadcast. U.S. content providers report that these new requirements will make it difficult for U.S. and other foreign news carriers to operate in Vietnam. The United States continues to raise concerns over Decision 20 with the Ministry of Information and Communication and will continue to monitor the implementation of these regulations.

Express Delivery Services

As of January 2012, 100 percent foreign ownership is permitted in this sector.

Telecommunications

Vietnam permits foreign participation in the telecommunications sector, with varying equity limitations depending on the sub-sector (Vietnam has identified five basic and eight value-added sub-sectors). For instance, foreign ownership in services supplying closed-user networks (*e.g.*, corporate data networks) is permitted up to 70 percent, while foreign ownership in facility-based basic services (*e.g.*, public voice service where the supplier owns its transmission facilities) is generally capped at 49 percent. As of January 2010, Vietnam also allows foreign equity of up to 65 percent for non-facilities-based public telecommunications services (*i.e.*, services provided by a supplier that does not own its own transmission capacity, but contracts for such capacity, including submarine cable capacity, from a facilities-based supplier).

Opportunities for foreign firms to form joint ventures in the facilities-based sector are further restricted by a policy requiring facilities-based operators be majority state-owned firms, limiting the pool of such partners, and reinforcing government control over market entry. There are signs this policy may be easing, however, with one purely private facilities-based supplier reportedly licensed. In 2011, Vietnam issued decree 25/2011/ND-CP on the implementation of the 2009 Law on Telecommunications. This decree stipulates that an organization or individual owning more than 20 percent of charter capital or shares in telecommunication enterprises shall not be allowed to possess more than 20 percent of charter capital or shares of other telecommunication enterprises doing business in the same market. While this rule may help in preventing consolidation in the market, promoting competition (currently, both the mobile and fixed sectors have numerous participants), the effect on foreign participation (where a foreign firm may seek stakes in more than one entity) remains unclear.

In 2010 and 2011, users widely reported incidents of having no access to certain websites, including foreign-based social networking sites, with the apparent involvement of Vietnamese ISPs. Although the government of Vietnam has officially denied it is blocking certain websites, it has publicly stated that it has undertaken efforts to ensure that Internet usage does not promote "antisocial" behavior. The Vietnamese government's blocking of legitimate websites appears to be occurring less frequently for most, (though not all) Internet service providers, however, in some cases ISPs appear to be using blocking as a means to extract commercial concessions from site operators. The United States has raised serious concerns about these Internet restrictions with the Vietnamese government and will continue monitor this issue closely.

Distribution Services

Foreign participation in this sector, which includes commission agents' services, wholesale services, retail services, franchising, and direct sales activities, is allowed without equity limitations. However, foreign-invested distributors are restricted from trading in a limited number of goods that are excluded from Vietnam's distribution sector commitments either during a phase out period or for an indefinite time period, as set out in Vietnam's WTO Schedule of Specific Commitments. The United States continues to urge Vietnam to further reduce or eliminate these product-specific restrictions on foreign-invested distributors, including in the distribution of videos (tapes, VCDs, DVDs) and pharmaceuticals. In addition, the United States will continue to seek greater clarity and transparency in distribution licensing to address issues with licensing procedures.

Banking and Securities Services

Foreign equity in joint venture banks is limited to 49 percent. Beginning January 2012, 100 percent foreign ownership of securities firms will be permitted.

In 2010, Vietnam made progress in strengthening the country's banking sector by officially promulgating the Law on Credit Institutions and Circular 13 (and subsequent amendment Circular 19) on prudential ratios for credit institutions. While these new regulations are aimed at improving the capital position of the banking industry, they have also introduced new requirements and restrictions, such as those for calculation of capital adequacy ratios, which can cause compliance-related difficulties. Foreign banks have also raised concerns about provisions in the Law on Credit Institutions which limit lending by foreign bank branches in Vietnam based on their local charter capital, rather than on the global capital of the parent bank.

INVESTMENT BARRIERS

Vietnam's Investment Law sets criteria designating certain sectors in which foreign investment is prohibited and others in which foreign investment is subject to conditions ("conditional sectors"). Vietnam also has specific laws that apply to investment in conditional sectors such as banking, securities, insurance, mining, telecommunications, real estate, ports and aviation. Investments in conditional sectors, and other projects deemed sensitive, are subject to extensive and additional review, sometimes requiring the Prime Minister's approval, which can often delay the approval of investment licenses.

All land in Vietnam is owned and managed by the state and, as such, neither foreigners nor Vietnamese nationals can own land. The 2006 Investment Law permits foreign invested enterprises to rent land for a period of 50 years and up to 70 years in special cases. Investors can obtain land use rights and mortgage both the structures erected on that land and the value of land use rights.

ELECTRONIC COMMERCE

Electronic commerce remains underdeveloped in Vietnam. Development has been hampered by the low number of Internet subscribers, concerns about data protection and data privacy, limited bandwidth and other problems with the Internet infrastructure, limitations in the financial services sector (including few credit cards users), and regulatory barriers. The 2006 Law on Electronic Transactions gave legal standing to electronic contracts and electronic signatures and allocated the responsibilities of parties with respect to the transmission and receipt of electronic data. As noted above, some U.S. companies have experienced intermittent blocking of their websites in Vietnam.

OTHER BARRIERS

Both foreign and domestic firms have identified corruption in Vietnam in all phases of business operations as an obstacle to their business activities. The lack of transparency, accountability, and media freedom, along with widespread official corruption and inefficient bureaucracy, remain serious problems.

Competition among government agencies for control over business and investments has created confusing and overlapping jurisdictions and overly bureaucratic procedures that in turn create opportunities for corruption. Inadequate accountability systems contribute to these problems. With the assistance of the United States and other donors, Vietnam is in the process of implementing a public administration reform program and continuing to enhance transparency. The United States will continue to work with Vietnam to support administrative reform efforts and promote greater transparency.

APPENDIX I

APPENDIX I

Report on Progress in Reducing Trade-Related Barriers to the Export of Greenhouse Gas Intensity Reducing Technologies

This Appendix provides an update on progress the Administration has made in reducing trade-related barriers to the export of greenhouse gas intensity reducing technologies (GHGIRTs), as called for by the Energy Policy Act of 2005. In October 2006, pursuant to section 1611 of the Act,[1] USTR prepared a report that identified trade barriers that face U.S. exporters of GHGIRTs in the top 25 greenhouse gas (GHG) emitting developing countries and described the steps the United States is taking to reduce these and other barriers to trade.[2] The Act also calls for USTR to report annually on progress made with respect to removing the barriers identified in the initial report. USTR submitted the first annual progress report in October 2007; this report, as well as the initial report, are available at www.ustr.gov. USTR will continue to submit further annual progress reports as part of the NTE Report.

As described in the initial 2006 GHGIRT report, barriers to the exports of GHGIRTs are generally those identified in the NTE with respect to other exports to the 25 developing countries: *e.g.*, lack of adequate and effective intellectual property rights protections; lack of regulatory transparency and sound legal infrastructure; state-controlled oil and energy sectors, which are often slower to invest in new technologies; cumbersome and unpredictable customs procedures; corruption; import licensing schemes; local content requirements; investment restrictions, including requirements to partner with domestic firms; and high applied tariff rates for some countries. Progress in removing such barriers is noted below in the appropriate country chapter of the report. The reader is also referred to USTR's "Special 301" report pursuant to section 182 of the Trade Act of 1974. The "Special 301" report describes the adequacy and effectiveness of intellectual property rights protection and enforcement of U.S. trading partners; the 2012 report will be released later this year.

Concerning relevant multilateral activities, the United States continues to exercise leadership within the Asia Pacific Economic Cooperation (APEC) forum and the World Trade Organization

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

[2] These 25 countries were identified in the Department of State's 2006 **"**Report to Congress on Developing Country Emissions of Greenhouse Gases and Climate Change Technology Deployment." They are: China; India; South Africa; Mexico; Brazil; Indonesia; Thailand; Kazakhstan; Malaysia; Egypt; Argentina; Venezuela; Uzbekistan; Pakistan; Nigeria; Algeria; Philippines; Iraq; Vietnam; Colombia; Chile; Libya; Turkmenistan; Bangladesh; and Azerbaijan. In 2008, Morocco replaced Azerbaijan on the list. The United States-Morocco Free Trade Agreement contains commitments, *inter alia*, to promote intellectual property rights, effectively enforce environmental laws, improve transparency, eliminate tariffs on GHGIRTs and open Morocco's market to U.S. environmental services firms.

in pushing for increased liberalization of global trade in environmental goods and services, including GHGIRTs.

As host of APEC this year, the Obama Administration made green growth one of its top priorities and succeeded in obtaining concrete, practical outcomes that will foster new, green jobs, improve our environment, and lower trade and investment barriers for our environmental technology exporters. Specifically, APEC Leaders agreed in Honolulu in November 2011 to lower applied tariffs on environmental goods to 5 percent or less by 2015 and work to develop a list of applicable environmental goods in 2012. They also agreed to eliminate local content requirements (LCRs) that distort trade and investment in EGS by the end of 2012, and refrain from creating new LCRs. APEC Leaders further agreed to "pursue liberalization of environmental goods and services in the WTO, including by exploring creative and innovative solutions to advance the Doha mandate to reduce and, as appropriate, eliminate tariff and nontariff barriers to these goods and services."

We will work to implement these APEC commitments, and ensure that others do the same. We will also continue to work with other like-minded and ambitious WTO Members to explore fresh approaches to removing trade and investment barriers to environmental goods directly relevant to addressing climate change, such as solar panels and stoves, and wind and hydraulic turbines. We believe that such action could make an important contribution to both the DDA and the global climate negotiations.

In addition, we will build on the momentum created by APEC Leaders and continue to press for model TPP commitments on EGS, including immediate duty-free treatment for GHGIRTs, and substantial new market access for environmental and related clean energy services, as well as elimination of problematic LCRs.

APPENDIX II

APPENDIX
US Data for Given Trade Partners in Rank Order of US Goods Exports
(Values in Millions of Dollars)

	Trade Balance		Change	Exports*	Exports*	Change 2010/11		Imports**	Imports**	Change 2010/11		FDI***	FDI***	% Change	
Country	**2010**	**2011**	**2010-11**	**2010**	**2011**	**Value**	**Percent**	**2010**	**2011**	**Value**	**Percent**	**2009**	**2010**	**2009-10**	**FDI Area**
World	-634,897	-726,377	-91,480	1,278,263	1,480,552	202,289	15.8	1,913,160	2,206,929	293,769	15.4	3,547,038	3,908,231	10.2	Nonbank Holding Co, Finance/Ins, Manuf
Canada	-28,542	-35,746	-7,204	249,105	280,764	31,659	12.7	277,647	316,511	38,863	14.0	266,577	296,691	11.3	Manuf, Nonbank Holding Co, Finance/Ins
Mexico	-66,435	-65,562	873	163,473	197,544	34,071	20.8	229,908	263,106	33,198	14.4	89,419	90,304	1.0	Manuf, Nonbank Holding Co, Finance/Ins
China	-273,063	-295,457	-22,393	91,881	103,879	11,998	13.1	364,944	399,335	34,391	9.4	49,799	60,452	21.4	Manuf, Banking
Japan	-60,060	-62,643	-2,583	60,486	66,168	5,683	9.4	120,545	128,811	8,266	6.9	96,015	113,263	18.0	Fin/Ins, Manuf, N.bank H.C, Wholesale tr.
United Kingdom	-1,361	4,787	6,149	48,414	55,964	7,550	15.6	49,775	51,176	1,401	2.8	458,536	508,369	10.9	Finance/Ins, Nonbank Holding Co, Manuf
Germany	-34,268	-49,266	-14,998	48,161	49,134	973	2.0	82,429	98,401	15,971	19.4	110,958	105,828	-4.6	Nonbank Holding Co, Manuf, Finance/Ins
Korea, Republic of	-10,029	-13,131	-3,102	38,846	43,505	4,659	12.0	48,875	56,636	7,761	15.9	26,813	30,165	12.5	Manufacturing, Banking
Brazil	11,467	11,572	104	35,425	42,943	7,518	21.2	23,958	31,372	7,414	30.9	55,176	66,021	19.7	Manuf, Finance/Insurance
Netherlands	15,884	19,356	3,471	34,939	42,827	7,888	22.6	19,055	23,471	4,416	23.2	481,140	521,427	8.4	Nonbank Holding Co, Finance/Ins, Manuf
Hong Kong	22,274	32,215	9,941	26,570	36,513	9,942	37.4	4,296	4,298	2	0.0	49,152	54,035	9.9	Nonbank Holding Co, Wholesale, Fin/Ins
Singapore	11,590	12,282	692	29,017	31,393	2,376	8.2	17,427	19,111	1,683	9.7	88,925	106,042	19.2	Nonbank Holding Co, Manuf
Belgium	9,904	12,447	2,543	25,456	29,877	4,421	17.4	15,552	17,430	1,878	12.1	70,697	73,526	4.0	Fin/Ins, Manuf, Wholesale trade
France	-11,386	-12,139	-753	26,969	27,844	876	3.2	38,355	39,983	1,629	4.2	89,249	92,820	4.0	Manuf, Fin/Ins, Nonbank Holding Co
Australia	13,215	17,276	4,061	21,798	27,516	5,718	26.2	8,583	10,240	1,657	19.3	109,827	133,990	22.0	Finance/Ins, Nonbank Holding Co, Mining
Taiwan	-9,803	-15,429	-5,627	26,043	25,898	-145	-0.6	35,846	41,328	5,482	15.3	19,237	20,977	9.0	Finance/Ins, Manuf., Wholesale trade
Switzerland	1,551	39	-1,513	20,687	24,453	3,765	18.2	19,136	24,414	5,278	27.6	149,772	143,627	-4.1	Nonbank Holding Co, Manuf, Wholesale
India	-10,282	-14,540	-4,257	19,250	21,628	2,377	12.4	29,533	36,167	6,635	22.5	20,894	27,066	29.5	Info, Prof, scient, and tech, Manuf
Italy	-14,286	-17,977	-3,691	14,219	15,991	1,772	12.5	28,505	33,968	5,463	19.2	29,861	29,015	-2.8	Manuf, Wholesale trade, Fin/Insurance
United Arab Emirates	10,528	13,454	2,926	11,673	15,894	4,220	36.2	1,145	2,440	1,294	113.0	4,195	4,271	1.8	Wholesale trade, Manufacturing
Chile	3,896	6,805	2,909	10,905	15,873	4,968	45.6	7,009	9,069	2,060	29.4	21,549	26,260	21.9	Mining, Finance/Insurance, Manufacturing
Turkey	6,339	9,412	3,073	10,546	14,632	4,086	38.7	4,207	5,220	1,013	24.1	5,042	5,693	12.9	Banking, Manufacturing
Colombia	-3,590	-8,801	-5,211	12,069	14,315	2,245	18.6	15,659	23,116	7,457	47.6	6,176	6,574	6.4	Mining, Manufacturing
Malaysia	-11,820	-11,554	267	14,080	14,218	138	1.0	25,900	25,772	-128	-0.5	13,235	15,982	20.8	Manufacturing, Banking
Israel	-9,688	-9,072	616	11,294	13,956	2,661	23.6	20,982	23,027	2,045	9.7	9,273	9,694	4.5	Manuf
Saudi Arabia	-19,857	-33,657	-13,800	11,556	13,820	2,263	19.6	31,413	47,476	16,064	51.1	8,023	8,005	-0.2	Nonbank Holding Co
Venezuela	-22,058	-30,903	-8,845	10,649	12,351	1,701	16.0	32,707	43,253	10,546	32.2	14,242	13,693	-3.9	Nonbank Holding Co, Manufacturing
Thailand	-13,716	-13,898	-182	8,977	10,928	1,951	21.7	22,693	24,826	2,133	9.4	9,776	12,701	29.9	Manufacturing, Banking
Spain	1,625	-328	-1,953	10,178	10,651	473	4.7	8,553	10,980	2,427	28.4	57,357	58,053	1.2	Nonbank Holding Co, Manuf
Argentina	3,592	5,385	1,793	7,395	9,885	2,490	33.7	3,803	4,500	697	18.3	14,328			Mining, Manufacturing
Peru	1,697	2,083	386	6,754	8,319	1,565	23.2	5,057	6,236	1,179	23.3	5,594	7,907	41.3	Mining
Russia	-19,685	-26,287	-6,602	6,006	8,285	2,279	37.9	25,691	34,573	8,882	34.6	19,945	9,880	-50.5	Manufacturing, Banking, Mining
Panama	5,682	7,863	2,182	6,063	8,253	2,190	36.1	381	389	8	2.2	6,871	6,040	-12.1	Finance/Ins, Wholesale trade
Philippines	-606	-1,437	-831	7,376	7,706	330	4.5	7,982	9,143	1,161	14.5	5,908	6,579	11.4	Manufacturing
Ireland	-26,572	-31,613	-5,040	7,276	7,608	332	4.6	33,848	39,220	5,373	15.9	160,232	190,478	18.9	Nonbank Holding Co, Information, Manuf
Indonesia	-9,532	-11,696	-2,164	6,946	7,415	469	6.7	16,478	19,111	2,633	16.0	15,645	15,502	-0.9	Nonbank Holding Co, Mining
Dominican Republic	2,908	3,156	248	6,579	7,346	767	11.7	3,672	4,190	519	14.1	1,105	1,344	21.6	Manufacturing
South Africa	-2,589	-2,217	372	5,631	7,294	1,663	29.5	8,220	9,511	1,291	15.7	6,107	6,503	6.5	Manufacturing, Wholesale trade
Guatemala	1,285	2,063	777	4,478	6,205	1,727	38.6	3,193	4,143	950	29.7	971	1,083	11.5	
Egypt	4,597	4,124	-472	6,835	6,183	-652	-9.5	2,238	2,059	-180	-8.0	9,149	11,746	28.4	
Honduras	674	1,639	965	4,606	6,139	1,533	33.3	3,932	4,500	568	14.4	870	1,027	18.0	Manufacturing

*US Total Goods Exports (f.a.s.); **US General Goods Imports (customs value); ***Stock of US Foreign Direct Investment Abroad

APPENDIX

US Data for Given Trade Partners in Rank Order of US Goods Exports

(Values in Millions of Dollars)

Country	Trade Balance 2010	Trade Balance 2011	Change 2010-11	Exports* 2010	Exports* 2011	Change 2010/11 Value	Change 2010/11 Percent	Imports** 2010	Imports** 2011	Change 2010/11 Value	Change 2010/11 Percent	FDI*** 2009	FDI*** 2010	% Change 2009-10	FDI Area
Costa Rica	-3,517	-4,000	-483	5,180	6,118	938	18.1	8,697	10,118	1,421	16.3	1,712	1,651.0	-3.6	Manuf
Ecuador	-2,041	-3,565	-1,524	5,410	6,058	648	12.0	7,451	9,623	2,172	29.1	1,209	1,250	3.4	Manufacturing, Mining
Sweden	-5,789	-6,216	-428	4,706	5,264	558	11.8	10,495	11,480	985	9.4	35,846	29,444	-17.9	Finance/Ins, Nonbank Holding Co
Nigeria	-26,448	-28,923	-2,475	4,068	4,815	747	18.4	30,516	33,738	3,222	10.6	4,971	5,224	5.1	Mining
Vietnam	-11,159	-13,145	-1,986	3,709	4,341	632	17.0	14,868	17,485	2,617	17.6	525	623	18.7	
Norway	-3,851	-4,683	-831	3,099	3,633	534	17.2	6,950	8,315	1,365	19.6	27,652	33,843	22.4	Mining, Manufacturing
New Zealand	57	411	355	2,819	3,571	752	26.7	2,762	3,160	397	14.4	6,270	6,872	9.6	Finance/Insurance, Manuf
El Salvador	227	889	661	2,433	3,371	938	38.6	2,206	2,483	277	12.6	3,318	3,683	11.0	
Finland	-1,702	-1,250	452	2,181	3,159	978	44.8	3,884	4,409	526	13.5	1,988	1,472	-26.0	Manufacturing, Wholesale trade
Poland	19	-1,248	-1,267	2,982	3,129	147	4.9	2,964	4,377	1,413	47.7	13,455	12,684	-5.7	Manufacturing, Finance/Insurance
Austria	-4,408	-6,596	-2,188	2,428	2,887	459	18.9	6,835	9,483	2,648	38.7	15,628	16,876	8.0	Nonbank Holding Co, Manufacturing
Morocco	1,262	1,868	606	1,947	2,863	916	47.0	685	995	310	45.2	317	329	3.8	
Qatar	2,693	1,563	-1,131	3,160	2,796	-364	-11.5	466	1,233	767	164.5		9,974		
Kuwait	-2,608	-5,081	-2,473	2,774	2,727	-47	-1.7	5,382	7,809	2,427	45.1	1,414	1,489	5.3	
Denmark	-3,879	-4,515	-637	2,133	2,245	112	5.3	6,011	6,760	749	12.5	9,790	9,828	0.4	Manuf, Wholesale trade
Ukraine	281	645	364	1,359	2,104	746	54.9	1,078	1,460	382	35.4	799	902	12.9	
Pakistan	-1,607	-1,826	-219	1,901	2,004	102	5.4	3,509	3,830	321	9.2	517			
Paraguay	1,748	1,866	118	1,810	1,976	166	9.2	62	110	48	77.0		193		
Czech Republic	-1,039	-1,663	-624	1,411	1,681	270	19.1	2,450	3,344	894	36.5	5,355	5,909	10.3	Manuf, Banking
Luxembourg	988	1,088	99	1,439	1,585	146	10.1	451	497	47	10.3	206,133	274,923	33.4	Nonbank Holding co., Finance/Insurance
Angola	-10,646	-12,097	-1,451	1,294	1,501	207	16.0	11,940	13,597	1,658	13.9	2,545			
Hungary	-1,200	-1,462	-262	1,290	1,473	184	14.2	2,489	2,935	445	17.9	3,914	4,863	24.2	Manuf, Banking
Jordan	200	394	194	1,174	1,454	280	23.9	974	1,061	86	8.9	172	211	22.7	
Oman	332	-775	-1,107	1,105	1,434	329	29.8	773	2,209	1,436	185.6				
Portugal	-1,083	-1,274	-191	1,058	1,314	257	24.3	2,141	2,589	448	20.9	2,667	2,639	-1.0	Manuf, Finance/Ins, Wholesale trade
Bahrain	829	695	-135	1,250	1,213	-36	-2.9	420	518	98	23.4				
Ghana	716	414	-302	989	1,193	203	20.5	273	779	506	184.9				
Greece	310	219	-91	1,108	1,083	-25	-2.2	798	865	67	8.4	1,995	1,798	-9.9	Manuf, Wholesale trade,Fin/Insurance
Nicaragua	-1,026	-1,551	-525	981	1,053	72	7.3	2,007	2,604	597	29.7	301	300	-0.3	
Romania	-278	-525	-247	730	914	184	25.2	1,008	1,439	432	42.8	1,676	1,775	5.9	
Kazakhstan	-1,142	-855	287	730	826	95	13.0	1,872	1,681	-191	-10.2	7,746	9,597	23.9	
Ethiopia	645	546	-100	773	690	-83	-10.8	128	144	16	12.9	2	6	200.0	
Bolivia	-173	-236	-63	507	667	160	31.5	680	903	223	32.8	300			
Kenya	64	83	19	375	464	89	23.7	311	381	70	22.6	257	263	2.3	
Sri Lanka	-1,570	-1,780	-211	179	307	128	71.7	1,748	2,087	339	19.4	110	130	18.2	
Cambodia	-2,147	-2,527	-380	154	186	32	20.8	2,301	2,712	412	17.9		4		
Brunei	112	161	49	124	184	60	48.4	12	23	12	97.2	20	34	70.0	
Congo, Dem Rep of	-434	-439	-5	93	166	73	78.3	528	606	78	14.8	169	129	-23.7	
Laos	-47	-33	14	12	26	14	117.5	59	59	0	-0.4				
European Union - 27	-79,611	-99,163	-19,552	239,583	268,635	29,052	12.1	319,195	367,799	48,604	15.2	1,743,929	1,930,005	10.7	Nonbank Holding Co, Finance/Ins, Manuf

*US Total Goods Exports (f.a.s.); **US General Goods Imports (customs value); ***Stock of US Foreign Direct Investment Abroad