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LIST OF FREQUENTLY USED ACRONYMS

AML	Antimonopoly Law
APEC	Asia Pacific Economic Cooperation
ASEAN	Association of Southeast Asian Nations
ATPA	Andean Trade Preferences Act
BIT	Bilateral Investment Treaty
CACM	Central American Common Market
CARICOM	Caribbean Common Market
CBERA	Caribbean Basin Economic Recovery Act
CBI	Caribbean Basin Initiative
CFTA	Canada Free Trade Agreement
CTE	Committee on Trade and the Environment
CTG	Council for Trade in Goods
CVD	Countervailing Duty
DSB	Dispute Settlement Body
EU	European Union
EFTA	European Free Trade Association
FDI	Foreign Direct Investment
FTAA	Free Trade Area of the Americas
GATT	General Agreement on Tariffs and Trade
GATS	General Agreement on Trade in Services
GDP	Gross Domestic Product
GEC	Global Electronic Commerce
GSP	Generalized System of Preferences
IPR	Intellectual Property Rights
ITA	Information Technology Agreement
LDBDC	Least Developed Beneficiary Country
MAI	Multilateral Agreement on Investment
MERCOSUL/MERCOSUR	Southern Common Market
MFA	Multifiber Arrangement
MOU	Memorandum of Understanding
MRA	Mutual Recognition Agreement
NAFTA	North American Free Trade Agreement
NIS	Newly Independent States
NTR	Normal Trade Relations Status
OECD	Organization for Economic Cooperation and Development
PFCF	Priority Foreign Country Practice
ROU	Record of Understanding
SACU	Southern African Customs Union
SADC	Southern African Development Community
TAA	Trade Adjustment Assistance
TEP	Transatlantic Economic Partnership
TRIMS	Trade Related Investment Measures

TRIPS	Trade Related Intellectual Property Rights
URAA	Uruguay Round Agreements Act
USDA	U.S. Department of Agriculture
USITC	U.S. International Trade Commission
USTR	United States Trade Representative
WTO	World Trade Organization

FOREWORD

The 2000 National Trade Estimate Report on Foreign Trade Barriers (NTE) is the fifteenth in an annual series that surveys significant foreign barriers to U.S. exports.

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

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

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 actions being taken to eliminate any act, policy, or practice identified in the report.

SCOPE AND COVERAGE

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

Trade barriers elude fixed definitions, but may be broadly defined as government laws, regulations, policies, or practices that either protect domestic products from foreign competition or artificially stimulate exports of particular domestic products. This report classifies foreign trade barriers into ten different categories. These categories cover government-imposed measures and policies that restrict, prevent, or impede the international exchange of goods and services. They include:

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

- Standards, testing, labeling and certification (including unnecessarily restrictive application of sanitary and phytosanitary standards and environmental measures, and refusal to accept U.S. manufacturers' self-certification of conformance to foreign product standards);

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

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

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

- Services barriers (e.g., limits on the range of financial services offered by foreign financial institutions,[1] regulation of international data flows, and restrictions on the use of foreign data processing);

- Investment barriers (e.g., limitations on foreign equity participation and on access to foreign government-funded research and development (R&D) programs, local content and export performance requirements, and restrictions on transferring earnings and capital);

- Anticompetitive practices with trade effects tolerated by foreign governments (including anticompetitive activities of both state-owned and private firms that apply to services or to goods and that restrict the sale of U.S. products to any firm, not just to foreign firms that perpetuate the practices);

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

- Other barriers (barriers that encompass more than one category, e.g., bribery and corruption,[2] or that affect a single sector).

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

This report discusses the largest export markets for the United States, including: 50 nations, the European Union, Taiwan, Hong Kong and two regional bodies. 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.

In prior reports, most non-market economies also were excluded, since the trade barriers in those countries were qualitatively different from those found in other economies. However, as the economies of the republics of the former Soviet Union and most economies of the countries of Central Europe evolve away from central planning toward a market orientation, some of them have changed sufficiently to warrant an examination of their trade regimes. Where such examination has revealed trade barriers, those barriers have been included in this report.

The merchandise trade data contained in the NTE report are based on total U.S. exports, free alongside (f.a.s.)[3] value, and general U.S. imports, customs value (defined in Section 402, Tariff Act of 1930, 19 U.S.C. 1401a), as reported by the Bureau of the Census, Department of Commerce. (NOTE: These data are ranked according to size of export market in the Appendix.) The direct investment data are from the

September 1999 issue of the Survey of Current Business and unpublished data from the Bureau of Economic Analysis, Department of Commerce.

TRADE IMPACT ESTIMATES AND FOREIGN BARRIERS

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

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

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

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

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

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

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The same limitations that affect the ability to estimate the impact of foreign barriers upon U.S. goods exports apply to U.S. services exports. Furthermore, the trade data on services exports are extremely limited and of questionable reliability. 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 report includes generic government regulations and practices which are not product-specific. These are among the most difficult types of foreign practices for which to estimate trade effects.

In the context of trade actions brought under U.S. law, estimations of the impact of foreign practices on U.S. commerce are substantially more feasible. Trade actions under U.S. law are generally 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 used to compute these valuations are sometimes uncertain. Hence, their inclusion in the NTE report should not be construed as U.S. Government endorsement of the estimates they reflect.

March 31, 2000

Endnotes

1. The current NTE report covers only those financial services-related market access issues brought to the attention of USTR by outside sources. For the reader interested in a more comprehensive discussion of financial services barriers, the Treasury Department publishes quadrennially (most recently in 1998) the National Treatment Study. Prepared in collaboration with the Secretary of State, the Office of the Comptroller of the Currency, the Federal Reserve Board, the Federal Deposit Insurance Corporation, the Securities and Exchange Commission, and the Department of Commerce, the study analyzes in detail treatment of U.S. commercial banks and securities firms in foreign markets. It is intended as an authoritative reference for assessing financial services regimes abroad.

2. Corruption takes many forms, and can affect trade in many different ways. In many countries, it affects customs practices and decisions on the award 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. U.S. firms also report that demands for bribes or “facilitation fees” from foreign customs officials can be an every-day element of the customs importation process.

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 foreign contracts. This is particularly true in large infrastructure projects.

Since the United States enacted the Foreign Corrupt Practices Act (FCPA) in 1977, U.S. companies have been prohibited from bribing foreign public officials. The result has been that foreign firms in international business transactions have enjoyed a competitive advantage, particularly in the developing world.

Foreword

The United States Government has been well aware of the discrepancy between U.S. law and that of its competitors, and has taken a leading role in addressing bribery and corruption in international business transactions with its trading partners at the Organization for Economic Cooperation and Development (OECD). With the strong urging of the United States, at the 1996 OECD Ministerial meeting, Ministers committed to take steps to eliminate the tax deductibility in their countries of bribes to foreign public officials, to criminalize bribery, and to examine methods to accomplish those objectives. In May 1997, OECD member countries agreed to criminalize bribery and complete negotiations on an international convention by the end of the year. This goal was achieved in November 1997, when negotiators from thirty-four countries (the twenty-nine OECD member states and five other nations (Argentina, Brazil, Bulgaria, Chile and the Slovak Republic)) adopted a Convention on Combating Bribery of Foreign Public Officials in International Business Transactions. The Convention was signed by representatives of thirty-three participating countries on December 17, 1997 in Paris. The Convention entered into force on February 15, 1999, on the basis of the requirement that five of the ten largest OECD members ratify the Convention in order for it to enter into force. As of February 19, 2000, the Convention had been ratified by the United States, Australia, Austria, Belgium, Bulgaria, Canada, the Czech Republic, Finland, Germany, Greece, Hungary, Iceland, Japan, Korea, Norway, the United Kingdom, Mexico, Spain, Sweden, Slovakia and Turkey.

In March 1996, countries in the Western Hemisphere concluded negotiation of the Inter-American Convention Against Corruption. This Convention, a direct result of the Summit of the Americas Plan of Action, requires that parties criminalize bribery throughout the region, and describes criminalization using language modeled on the FCPA. The Convention entered into force in March 1997 for those countries which have ratified the Convention. The United States is taking steps towards ratification of the Convention. Meanwhile, the Organization of American States is working on a set of model laws that ratifying countries can use to implement the Convention. In addition, the OAS Working Group on Probity and Public Ethics is considering mechanisms to monitor implementation of the Convention.

The United States is an active participant in the Southeastern Europe Stability Pact. Countries in the region have agreed to a Compact and Plan of Action in which they commit themselves to take specific anti-corruption actions, including improving transparency in government procurement.

To complement efforts in these fora, the United States has pressed the World Trade Organization (WTO) to take up work in related areas. Because corruption in trade transactions often has its genesis in the absence of a rules-based customs environment, the United States has provided leadership at the WTO in several areas to address some of the problems associated with bribery and corruption in the customs area. In March 2000, the Working Party on Preshipment Inspection issued its final report that included several immediate actions to be undertaken by Members to strengthen the operation of the Agreement on Preshipment Inspection. The United States has also continued to lead an initiative to ensure full and timely implementation of the WTO Agreement on Customs Valuation, with significant success. Finally, as a part of the follow-up to the 1996 WTO Ministerial decision to undertake exploratory and analytical work on the simplification of trade and customs procedures, the United States has identified the matter of customs integrity as a priority item. In July 1999, the United States submitted a proposal to the WTO General Council for negotiations to be undertaken in the area of Trade Facilitation, with the objective of ensuring a rules-based environment for conducting trade transactions.

In addition, at the 1996 WTO Ministerial Conference in Singapore, the United States succeeded in securing agreement to initiate work on transparency in government procurement in the WTO. Accordingly, the WTO Working Group on Transparency in Government Procurement was established and held its first meetings in 1997. Since then, the Working Group has made significant progress on its mandate, which calls for conducting a study on transparency in government procurement and developing elements for inclusion in a multilateral agreement. To facilitate progress on the development of concrete WTO commitments in this area, the United States, Hungary, and Korea submitted a draft text for an agreement to the Working Group in July 1999. Intensive consultations organized by the United States in late 1999 resulted in a significant convergence of views on many of the key procedural elements of a potential agreement.

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The United States views a WTO agreement on transparency in government procurement as an important complement to its efforts to combat corruption relating to government procurement worldwide and believes that the agreement should address fundamental aspects of transparency, including:

- Publication of information regarding the regulatory framework for procurement, including relevant laws, regulations and administrative guidelines;
- Publication of information regarding opportunities for participation in government procurement, including notices of future procurements;
- Utilization of competitive procurement procedures;
- Clear specification in tender documents of evaluation criteria for award of contracts;
- Availability to suppliers of information regarding contracts that have been awarded; and
- Availability of mechanisms to challenge contract awards and other procurement decisions.

3. 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.

THE ARAB LEAGUE
(Boycott of Israel)

The Arab League boycott of the state of Israel is an impediment to U.S. trade and investment in the Middle East and North Africa. Arab League members include the Palestinian Authority and the following states: Algeria, Bahrain, Comoros, Djibouti, Egypt, Iraq, Jordan, Kuwait, Lebanon, Libya, Mauritania, Morocco, Oman, Qatar, Saudi Arabia, Somalia, Sudan, Syria, Tunisia, the United Arab Emirates (UAE), and Yemen. However, not all Arab League members participate in the boycott.

The primary aspect of the boycott prohibits the importation of Israeli-origin goods and services into boycotting countries. The secondary and tertiary aspects of the boycott discriminate against U.S. and other foreign firms that do business with both Israel and boycotting countries and directly affect U.S. exports to the region. The secondary boycott prohibits any entity in Arab League states from engaging in business with U.S. or other foreign firms that contribute to Israel's military or economic development. The tertiary boycott prohibits business dealings with U.S. and other firms that do business with blacklisted companies. Such firms are placed on a blacklist maintained by the Damascus-based Central Boycott Office (CBO), a specialized bureau of the Arab League.

The CBO uses a variety of means to determine compliance with the boycott, including analyzing information obtained through questionnaires sent out to third-country individuals and firms. If the CBO suspects that a firm has engaged in proscribed activities, it may recommend that the Israel Boycott Offices of the member states add the firm to the blacklist. Boycott offices of Arab League states are supposed to meet in Damascus twice a year to consider adding foreign firms to (or removing foreign firms from) the blacklist. There has been no regional boycott meeting since April 1993 because of the inability to assemble a quorum, and some states have dismantled their boycott offices entirely. However, the semiannual Arab League Ministerials have sometimes discussed boycott issues.

While the legal structure of the boycott in the Arab League remains unchanged, its enforcement varies widely from country to country. Some member governments of the Arab League have consistently maintained that only the Arab League as a whole can revoke the boycott. Other member governments support national discretion on adherence to the boycott, and a number of states have taken steps to dismantle their adherence to some aspects of it.

More specifically, Egypt has not enforced any aspect of the boycott since 1980, pursuant to its 1979 Treaty of Peace with Israel. Jordan formally terminated its adherence to all aspects of the boycott effective August 16, 1995, when legislation implementing its Treaty of Peace with Israel was enacted. The Palestinian Authority agreed not to enforce the boycott in a 1995 letter to then-U.S. Trade Representative Kantor.

The Gulf Cooperation Council countries (Bahrain, Kuwait, Oman, Qatar, Saudi Arabia, and the United Arab Emirates) announced in September 1994 their non-adherence to the secondary and tertiary aspects of the boycott (a decision that Kuwait had announced previously). In 1996, both Oman and Qatar ended boycott enforcement and established reciprocal trade arrangements with Israel. Other Arab League members that have stopped enforcing the boycott include: Mauritania, Morocco, and Tunisia, which have recognized Israel through establishment of limited diplomatic relations; Yemen, which formally renounced observance of the secondary and tertiary aspects of the boycott in 1995; and Algeria, which still adheres in principle but not in practice to the boycott. In Lebanon, the primary boycott is generally enforced, but Lebanese officials selectively enforce the secondary and tertiary boycotts.

While the boycott is no longer an issue in most Arab League countries, it remains a substantive impediment to doing business in those countries which still rigidly impose its terms. In this respect, Syria continues to be among the strictest adherents to the boycott. Although it allows goods to be imported with a positive, rather than negative, country of origin certificate, Syria strictly monitors and controls entry into its ports by ships that have made calls in Israel, and it often requires certifications of commercial activity in Israel by companies seeking to register trademarks or acquire import licenses.

Under U.S. antiboycott legislation enacted in 1978, U.S. firms are prohibited from providing any information about business relationships in response to a boycott request and are required to report receipt of any such request to the U.S. Department of Commerce's Office of Antiboycott Compliance. U.S. antiboycott laws also prohibit U.S. persons from taking certain other actions, including refusal to do business with a blacklisted company. Encouragingly, the number of boycott-related requests to U.S. firms to take prohibited actions continues to fall across the region. Boycott compliance requests most often reflect obsolete references in procurement or import documents, or a reluctance to make overt changes in document templates, rather than official policy. Although there have been exceptions, requests that foreign firms comply with secondary and tertiary boycott certifications are typically withdrawn when challenged. The fact that the *de jure* status of the boycott and U.S. law remain unchanged, however, makes the boycott a continuing problem for firms that may have to report boycott-related requests.

Where enforced, the boycott serves as a ban or zero quota on the products of a blacklisted firm. While it is unevenly applied, the boycott results in economic harm to U.S. firms in terms of lost sales, foregone opportunities, and distortion of investment decisions that are difficult to quantify accurately. The United States continues to oppose the boycott. Embassies and visiting officials raise the boycott with country officials, noting the persistence of prohibited boycott requests and the impact on both U.S. firms and on the countries' ability to expand trade and investment.

ARGENTINA

TRADE SUMMARY

In 1999, the U.S. trade surplus with Argentina was $2.3 billion, a decrease of $1.3 billion from the 1998 surplus. U.S. exports to Argentina were $4.9 billion during 1999, a decrease of $947 million from the level of U.S. exports to Argentina in 1998. Despite the 1999 economic slow-down in Argentina, it was the United States' 26th largest export market that year. U.S. imports from Argentina were $2.6 billion in 1999, up $346 million over 1998.

The stock of U.S. foreign direct investment (FDI) in Argentina in 1998 was $11.5 billion, an increase of 15 percent from the level of U.S. FDI in 1997. U.S. FDI in Argentina is concentrated largely in the chemical, energy and food processing industries, as well as in the finance and telecommunications sectors.

IMPORT POLICIES

During the 1990s, the Menem Administration made significant progress in reducing tariffs and non-tariff barriers, including in the areas of investment and government procurement. Still, a number of serious barriers to trade remain. President Fernando de la Rua, the candidate of the Alianza, was elected in October 1999 and assumed office December 10 of the same year. Most observers expect de la Rua to pursue trade policies similar to those of the previous government.

TARIFFS AND DUTIES

Mercosur

Argentina, Brazil, Paraguay and Uruguay officially inaugurated Mercosur (the Spanish abbreviation for Southern Common Market) in January 1991. On January 1, 1995, Mercosur designated itself as a customs union by establishing a common external tariff (CET) covering 85 percent of traded goods. Mercosur is gradually phasing in coverage of the CET through 2006, when all products should be covered by the customs union. (Under the CET, capital goods and information technology are excepted until 2001 and telecommunications equipment until 2006.) As of January 1, 1999, most trade between Brazil and Argentina enjoys duty-free status under the intra-Mercosur duty phase-out schedule. However, many sensitive sectors, such as sugar, autos and telecommunications equipment, are still assessed customs duties, falling on either Brazil's or Argentina's exception list. Chile became an Associate Member of Mercosur on October 1, 1996, and Bolivia did the same on April 1, 1997. Neither country participates in the CET, but Chile in particular began to participate more fully in Mercosur meetings over the course of 1999.

Prior to November 1997, Mercosur's CET ranged from zero to 20 percent. In November 1997, Mercosur's members agreed to temporarily raise the CET by three percentage points. Argentina implemented the increase in January 1998, and it is due to expire on December 31, 2000. Argentina's average applied tariff currently is around 13.5 percent. A small number of imports are banned altogether, such as re-manufactured auto parts. Tariffs on toys were significantly increased in January 1999, particularly those originating in countries that are not members of the WTO. The U.S. Government hopes to eliminate tariff barriers on a hemispheric basis through the Free Trade Area of the Americas (FTAA) negotiations.

Argentina's export sector was negatively affected by Brazil's devaluation of the Real in early 1999, particularly since nearly a third of Argentine exports have gone to Brazil in recent years. In the wake of the devaluation, the Government of Argentina initiated a number of actions to slow or limit what it feared would be a flood of imports from Brazil, which in many cases led to a negative Brazilian reaction and/or countermeasures. As a result, tensions within Mercosur increased significantly during 1999, exacerbated by the group's lack of an internal safeguard mechanism and macroeconomic policy coordination. Mercosur's weak dispute resolution procedures and the growing tendency of individual Mercosur members to negotiate preferential trade agreements with third countries also diluted the group's cohesion. The two governments sought to smooth over the conflicts through sectoral agreements on footwear, steel, and paper that aided somewhat in reducing friction, but restricted intra-Mercosur trade. Notably, intra-Mercosur trade fell by about a quarter in 1999.

Further, many issues remain unresolved between the giants of Mercosur, such as how to structure the Mercosur auto regime that was to have taken effect on January 1, 2000. Negotiations were ongoing as of February 2000. Further, Mercosur is slated to trade sugar duty-free between its members by January 1, 2001; these talks have not progressed. Notwithstanding, the de la Rua Administration has stated that it will seek to strengthen and deepen the institution of Mercosur.

Pre-shipment Inspection and Paperwork Requirements

In November 1997, the Government of Argentina put in place a pre-shipment inspection (PSI) regime, covering some l,800 goods for shipments valued at more than $3,000. The U.S. industry's greatest complaint concerning this regime has been unwarranted delays in processing. Some companies have also complained about the cost of PSI and that customs officials disregard pre-shipment valuations. In 1998, the Argentine Government expanded the product coverage of the PSI regime by over l,800 tariff classifications and lowered the shipment order value to $800. Argentina created in January 1999 a procedure for import monitoring which affects roughly one-fifth of its imports, principally textiles, toys and footwear, and is similar to an import licensing regime. Further, cumbersome certificate of origin (COO) requirements, particularly in the electronics and textile sectors, have been a barrier to U.S. exports. The de la Rua Administration reportedly is considering whether to continue the PSI program. The U.S. Government monitors PSI and customs valuation regimes carefully to detect any impediments to trade that may be inconsistent with WTO obligations.

Textiles, Apparel and Footwear

In October 1996, USTR initiated an investigation, under Section 301 of the Trade Act of 1974, into Argentina's application of specific duties on textiles, apparel and footwear; its three percent statistical tax on almost all imports; and its burdensome labeling requirements.

The United States and Argentina consulted extensively on labeling, leading to Argentina's modification of its labeling requirement. To address the remaining issues, the United States requested the establishment of a WTO dispute settlement panel in January 1997. In February 1997, the WTO dispute settlement body established a panel to examine Argentina's specific duties on textiles, apparel and footwear as well as Argentina's statistical tax on imports. Argentina subsequently informed the WTO that it had revoked the specific duties on footwear and replaced them with nearly identical provisional safeguard duties on non-Mercosur imports.

In November 1997, the panel found in favor of the United States, stating that under GATT Article II Argentina could not impose specific duties where it bound its tariffs exclusively in *ad valorem* terms. The panel also found that Argentina's three percent statistical tax on almost all imports violated GATT Article VIII. Argentina appealed the panel decision, but the WTO Appellate Body upheld the panel determination in March 1998. To implement the panel determination, in October 1998 Argentina capped its duties on textiles and apparel at the bound rate of 35 percent. On the statistical tax, Argentina reduced the tax to 0.5 percent in January 1998, and subsequently imposed a further cap on the tax.

Footwear Safeguard

The 1997 WTO panel did not opine on Argentina's footwear regime because Argentina had rescinded its specific duties. However, Argentina subsequently concluded that its domestic industry was being seriously injured by imports, and it thus replaced the specific duties on footwear with nearly-identical duties imposed as a safeguard measure. In September 1997, Argentina extended the application of the safeguard duties until February 2000. In November 1998, Argentina modified the footwear safeguard to establish a stringent quantitative restriction in addition to the high safeguard duties already imposed on footwear imports (imports from Mercosur countries were excluded). Under the modified safeguard measure, footwear imports below the quota limit are subject to the original safeguard duty. Once the quota limit is filled, imports are assessed a duty rate that is double the normal safeguard duty.

Believing that the footwear safeguard raises serious questions regarding Argentina's WTO obligations, the United States raised the issue bilaterally at high levels on many occasions. Moreover, the Unites States reserved its right to participate in the panel established at the EU's request to examine Argentina's footwear safeguard. In addition, in March 1999 the United States requested the establishment of a panel to examine the consistency of Argentina's modified safeguard with the requirements of the Agreement on Safeguards.

The WTO panel established to review the EU's complaint determined in June 1999 that Argentina's investigation of its footwear industry did not satisfy the requirements of the Safeguards Agreement. The panel thus concluded that the investigation could not serve as a basis to impose either the original safeguard or the subsequent modification. The WTO Appellate Body affirmed that determination in December 1999. The U.S. Government is working to ensure that Argentina fully complies with this ruling.

In this effort, it is important to ensure that non-tariff measures do not become another restriction on free trade. The U.S. Government has expressed concern to Argentine authorities about licensing and labeling requirements suddenly imposed on shoe imports in August 1999. Administrative delays related to these measures effectively blocked shoe imports from some trading partners for several months. Brazilian footwear imports, which were exempted from the Argentine safeguard measure, were particularly hard hit, and the Argentine Government began to process import licenses more expeditiously after an agreement was reached between the Brazilian and Argentine footwear sectors in November 1999. The United States will continue to monitor closely the evolution of Argentine trade measures in this sector.

STANDARDS, TESTING, LABELING AND CERTIFICATION

Agricultural Products

In October 1995, Argentina placed a ban on imports of California fresh fruit due to the detection of oriental fruit flies in the state. While Argentina relaxed its ban on fruit from several California counties in 1996 and granted access in 1997 for citrus grown in these approved counties, Argentina continues to quarantine certain coastal counties no longer affected by the fly. In 1997, Argentina imposed a mandatory fumigation on all stone fruits from the approved counties due to concern over the walnut husk fly, despite the lack of credible evidence that stone fruits are a ready host for this pest. The U.S. Department of Agriculture (USDA) continues to press Argentina to completely revoke these bans and to process expeditiously the cases of other U.S. fruits currently denied access to Argentina, such as citrus from Florida and Arizona, as well as Pacific Northwest cherries.

In 1998, Argentina announced its intention to allow U.S. pork and pork products into Argentina. However, the required certification for trichinae, which is unnecessarily restrictive, effectively prevents U.S. pork from being shipped. USDA has proposed alternative language that should meet Argentina's needs, and is working with USTR to obtain a positive response. The U.S. pork industry believes that the Argentine market would be worth about $10 million in exports.

Non-agricultural Products

IRAM, Argentina's standards institute, bases some of its voluntary standards on international standards. In addition, IRAM standards are in some cases compatible with U.S. or European standards. Argentine buyers usually accept products that meet U.S. standards as well as U.S. product certifications and laboratory testing. In early 1998, however, Argentina began mandating compliance with new safety certifications on a wide range of products. Regulations that affect U.S. exports have now been issued for low voltage electrical products (household appliances, electronics products and electrical materials), toys, energy efficiency, covers for dangerous products, gas products, construction steel, personal protective equipment and elevators. The procedures for compliance often appear inconsistent, redundant and non-transparent. Regulations that require product re-testing are particularly cumbersome and costly and are especially problematic for small and medium-sized U.S. companies. In some cases, Argentina has failed to fulfill the notification and comment requirements of the WTO Agreement on Technical Barriers to Trade (TBT) in its implementation of these measures. The United States has raised this issue with the Argentine Government in Geneva and bilaterally.

INTELLECTUAL PROPERTY RIGHTS PROTECTION

Patents

Argentina's lack of adequate and effective patent protection has been a longstanding irritant in our bilateral trade relationship. Argentina is on the Special 301 Priority Watch List. Many of the TRIPS inconsistencies in the Argentine patent law were not previously actionable in the WTO, because Argentina availed itself of the developing county transition period. However, most of Argentina's TRIPS obligations came into force on January 1, 2000. As a result, the U.S. Government is currently evaluating the manner in which we might address remaining concerns with Argentina's intellectual property regime.

In March 1996, Executive Decree 260, which consolidated Argentine patent law, authorized the National Intellectual Property Institute (INPI) to approve pharmaceutical patents only starting in November 2000, and contained a host of problematic provisions. In December 1996, the Argentine Congress passed unsatisfactory legislation dealing with the protection of confidential test data, and the implementing regulations have yet to be finalized by the Government of Argentina. This law permits Argentine competitors to rely on data submitted by innovative companies to obtain product registration in Argentina, the United States and certain other countries. As a result of the law, in August 1998 the Government of Argentina eliminated protection that it had previously accorded data used in the registration of agrochemical products. During 1999, this backsliding was addressed by the U.S. Government through WTO dispute settlement consultations, which were announced by USTR in the context of the 1999 Special 301 Review.

In these consultations, we discussed another shortcoming in the Argentine intellectual property regime – Argentina's failure to provide effective Exclusive Marketing Rights (EMR's) for qualifying pharmaceutical products. The United States is seriously considering a WTO panel on these and other potential TRIPS violations that became actionable in January 2000.

The Menem Administration removed INPI's previous board of directors in January 1999, two months after INPI approved the first EMR granted in Argentina. A group of interim administrators was appointed immediately, and later their term was extended. During the remainder of 1999, INPI failed to act on a number of well-documented EMR applications by U.S. firms, and denied one application on seemingly unsustainable grounds. The U.S. industry estimates that Argentina's lack of pharmaceutical patent protection results in losses of over $600 million a year.

Copyrights

Argentina's copyright laws provide generally good protection, but are under review by the Government of Argentina to ensure that these laws fully meet TRIPS requirements. Argentina adopted legislation in 1999 to ratify the World Intellectual Property Organization (WIPO) Copyright Treaty and the WIPO Performance and Phonograms treaty. To better protect software, the Argentine Government promulgated legislation in November 1998 establishing software piracy as a criminal offense, thus avoiding problems generated by previous court rulings. It is important that Argentina act swiftly to legalize software used by the Government.

Enforcement of copyrights on recorded music, videos, books and computer software generally remains spotty. Although Argentine Customs and other Government authorities generally cooperate with industry efforts to stop shipments of pirated merchandise, inadequate resources and slow court procedures have hampered the effectiveness of enforcement efforts. Inadequate border controls, particularly at the Paraguayan/Brazilian frontier, contribute to the regional circulation of pirated goods. The U.S. copyright industry estimates annual losses due to copyright infringement at over $275 million.

Trademarks

U.S. companies report that the process of registering trademarks generally takes over five months. Once a trademark is registered, however, enforcement is relatively efficient and reliable.

SERVICES BARRIERS

In the 1990s, Argentina enacted liberalization in the service sector as part of its broader economic reform program, but some barriers continue to exist. For example, the Argentine Government obliges cable/pay television operators to register their programming with a government body. In addition, restrictions regarding the showing, printing and dubbing of films have burdened U.S. exports, as has the practice of charging *ad valorem* customs duties based on the value of "authors' rights," rather than solely on the value of the physical materials being imported, as is the WTO standard. The U.S. Government is further concerned by a new bill that would create a society to collect remuneration owed to represented performers, a proposal which seems to be redundant and burdensome.

Argentina reportedly levies an excise tax on reinsurance premiums ceded abroad. The tax is defined as a percentage of the gross reinsurance premium. This results in an excise tax withheld at 3.5 percent of gross premiums.

In the WTO, Argentina has committed to allow foreign suppliers of non-insurance financial services to establish all forms of commercial presence and to provide substantially full market access and national treatment to foreign suppliers of non-insurance financial services. The only significant remaining national treatment issue is lending limits for foreign bank branches that are based on local paid-in "capital," not parent bank capital. This effectively removes the rationale for establishing in branch form.

In the WTO negotiations on telecommunications services, Argentina made commitments on most basic telecommunications services and adopted the reference paper on regulatory commitments. Argentina ratified the Fourth Protocol to the General Agreement on Trade in Services (GATS) in July 1998. While Argentina opened long distance services to increased competition in November 1999, it will continue to limit full market access for local, domestic and international long distance, cellular and other wireless and international data services until November 2000.

INVESTMENT BARRIERS

In line with WTO rules, Argentina notified measures inconsistent with its obligations under the WTO Agreement on Trade-Related Investment Measures (TRIMS). These measures deal with local content and trade balancing in the automotive industry. Proper notification allowed developing-country WTO members to maintain such measures for a five-year transitional period, ending January 1, 2000. Argentina and its Mercosur partners were unable to agree on a common auto regime by that date, however. Argentina and Brazil signed a 60-day interim agreement in December 1999 to allow the talks to continue. Meanwhile, Argentina submitted a request to the WTO for a lengthy, seven-year extension to its transition period. The United States is working with other WTO Members to effect a case-by-case review of all TRIMS extension requests, with an effort to ensure that the individual needs of those countries that have made requests can be addressed. This process does not limit a Member's rights under the WTO Agreement.

ELECTRONIC COMMERCE

Argentina has made a broad range of value-added and basic telecommunications GATS commitments that have helped support the development of electronic commerce. The Argentines have taken steps to lower the cost of Internet usage and have shown interest in the U.S. electronic commerce initiatives in the FTAA and WTO. The United States and Argentina have signed a bilateral initiative to promote the growth of electronic commerce. Despite supporting electronic commerce, the Government of Argentina has not signed onto the WTO Information Technology Agreement (ITA). In addition, Argentina does not allow the use of electronically produced air waybills, slowing the customs processing of critical "just-in-time" shipments and interfering with Argentina's ability to conduct electronic commerce transactions.

AUSTRALIA

TRADE SUMMARY

The U.S. trade surplus with Australia was $6.5 billion in 1999, $27 million lower than in 1998. U.S. merchandise exports to Australia were $11.8 billion, down $119 million (almost 1.0 percent) from 1998. Australia was the United States 15th largest export market in 1999. U.S. imports from Australia totaled $5.3 billion in 1999, a 1.7 percent decrease from 1998. The stock of U.S. foreign direct investment in Australia was $33.7 billion in 1998, 12.6 percent higher than in 1997. U.S. direct investment in Australia is largely concentrated in manufacturing and finance.

IMPORT POLICIES

Tariffs

Although Australia did not support the "zero for zero" on paper and plasterboard items in the Uruguay Round, Australia has since supported tariff elimination in the entire forest products sector through the Accelerated Tariff Liberalization initiative in the WTO. Australia did not adhere to the "zero for zero" agreement for distilled spirits (Australia is the third largest market for U.S. exports of distilled spirits).

STANDARDS, TESTING, LABELING AND CERTIFICATION

Sanitary and Phytosanitary Controls

The Government of Australia limits agricultural imports through quarantine and health restrictions, in some cases apparently without the necessary risk assessment to provide the WTO-required scientific basis for such restrictions. As the result of an independent review of its animal and plant quarantine policies, Australia has implemented a formalized process for conducting import risk assessments (IRA). The new process provides for extensive stakeholder consultations and appeals, with 18 months stated as the length of time required to carry out a non-routine risk analysis. The United States was concerned that many commodities that had been discussed previously would have to start the review process all over again under the new rules, and indeed this has been true in all cases except one.

The WTO found Australia's prohibition on the importation of all fresh, chilled, and frozen salmon to be inconsistent with Australia's obligations under the WTO. In February 1999, the WTO ruled that Australia had until July 1999 to bring its regime into conformity with its WTO obligations (i.e., open its market). Australia responded by carrying out an IRA released in July 1999, allowing for importation with certain restrictions. At the time of this report, the United States is in the process of determining next steps.

Australia prohibits poultry imports (with the exception of cooked poultry) without having completed the required WTO risk assessments. However, the Australian Quarantine and Inspection Service (AQIS) has recently started the process of undertaking an import risk analysis of uncooked chicken meat. A ruling is expected during 2000. The Australian Government has lifted the ban on cooked chicken imports from the United States, Denmark and Thailand, but with recommended temperature/time treatment requirements so extreme as to effectively prohibit imports. A ban also exists on cooked U.S. pork (except canned products), but a generic IRA is presently in process. The United States has raised these issues at the highest levels of the Australian government and will continue to do so at all levels and in all appropriate fora.

Prior to 1994, imported feed grains were restricted from entering Australia, ostensibly due to phytosanitary concerns. During the 1994-95 drought the United States obtained approval to export feed grains to Australia to supplement domestic production. Since then, the requirement that all feed grains be steam-treated or processed in an alternative satisfactory manner at the port of entry has made further importation commercially unviable. Australia permits the importation of specified feed grains for processing in metropolitan areas under strict quarantine conditions, although facilities are currently available only at the Port of Brisbane.

An import risk assessment on maize is currently underway. The draft IRA issued during 1999 was even more restrictive; however, an extensive response submitted by the United States could see changes to the draft IRA. A second draft IRA will be issued for stakeholder input before a final IRA is published.

Phytosanitary regulations also prohibit or severely limit the entry of many fruits from the United States, including Florida citrus, grapes, blueberries, stone fruit, apples and pears. After receiving U.S. cherries from California in 1996, the Australian Government decided to revisit the pest risk analysis because of the amount of cherries which had to be treated upon arrival. U.S. cherries from 13 counties in California were again accepted in 1998. Australia is studying Pacific Northwest cherries to determine if the pest and disease situation there is similar enough to California to preclude the need for a separate IRA. The United States is waiting for the release of Australia's risk analyses on Florida citrus. The Government of Australia has said that it is waiting for additional data on the epidemiology of citrus canker from Florida before it can release the IRA on Florida citrus. Australia will begin the IRA for U.S. stone fruit early in 2000 once it receives additional data from the California tree fruit industry. A U.S. industries estimate of the market opportunities which could arise from Australia's removal of its restrictions on fresh fruit is $20-$75 million. Industry marketers of Florida citrus estimate that export sales of Florida citrus would exceed $3 million.

On January 13, 2000, Australia released its final import risk assessment (IRA) on California table grapes. The IRA determined that California table grapes will meet Australia's phytosanitary requirements if imported under one of the two fumigation options specified in the IRA. Option A allows import throughout the entire year if the grapes are fumigated in California. Option B allows imports from June to September to specified ports when the grapes are fumigated upon arrival. Before trade begins there is a thirty-day appeal period where a stakeholder may appeal the procedure Australia followed in reaching this decision. In the event of an appeal, Australia would form an Appeal Panel to determine the merits of the appeal. The Australian Government received 10 appeals, whose merits the Appeals Panel approved. AQIS has 45 days to respond to the issues raised in the four areas addressed in the complaints: environment, economics, evaluation of the systems approach, and efficacy treatments. If AQIS addresses the appeals within 45 days and the new protocols for imports are established, shipments of California grapes may still begin this season. The United States will continue to encourage the Australian government to act expeditiously in accordance with its timetable.

The U.S. industry estimates that Australia will import between one and one and a half million boxes per year, placing Australia in the top five markets for California grapes. The estimated value for those shipments is between $12 and $19 million.

Agri-Biotech Products

A new mandatory standard for foods produced using biotechnology came into effect in May 1999. The standard prohibits the sale of food produced using gene technology, unless the food has been assessed by the Australia New Zealand Food Authority (ANZFA) and listed in the standard. The Australia New Zealand Food Standards Council has directed ANZFA to require labeling for virtually all foods produced using biotechnology and draft labeling regulations have been in place since mid-1999. Implementation of any labeling regime has been postponed, however, pending an assessment of cost and other factors. Labeling regulations are expected to be finalized during 2000.

The U.S. Government will be monitoring both of these programs to determine whether they are being implemented in a manner that is consistent with Australia's international obligations.

GOVERNMENT PROCUREMENT

The United States continues to urge Australia to join and adhere to the WTO Agreement on

Government Procurement. Australia has supported multilateral efforts to achieve a transparency agreement in the WTO.

EXPORT SUBSIDIES

Australia maintains several programs intended to enhance Australian exports. These programs include the following:

Export Market Development Grants (EMDG): This scheme encourages Australian exporters to develop overseas markets for goods, services, tourism, industrial property rights and technology of substantially Australian origin. EMDG scheme grants are available only to Australian firms, to partially reimburse eligible expenditures (primarily marketing costs) while developing overseas markets. Funding for the EMDG scheme was recently extended to the 2001-02 fiscal year.

Export Facilitation Scheme: Under the terms of the EFS, manufacturers of automotive vehicles and components receive subsidies based on the level of exports of specified automotive products. The subsidies are in the form of duty rebate "credits" which recipients can, in turn, use to offset their duty liability on imports of specified automotive products. In general, the level of the subsidy is determined based on the sales value of the eligible exports, but the calculation is also done in a way which rewards domestic value-added. The greater the value of any qualifying exported product, the greater the import credit granted. Significantly, however, there is no requirement that the imported products be physically incorporated into the exported product. Imports of finished vehicles for consumption on the Australian market are fully eligible for duty rebates under this scheme. The subsidy benefits are freely transferable and may be sold among participants in the program. It is true that the benefits are progressively reduced each year in line with the annual 2.5 percent tariff reduction on passenger motor vehicles. Nonetheless, the level of benefits will remain significant in the year 2000, when Australia's duty on imported vehicles and components will be 15 percent. The EFS is scheduled to terminate on December 31, 2000.

The EFS was replaced on October 13, 1999 by the Automotive Competitiveness and Investment Scheme (ACIS). The ACIS is scheduled to begin on January 1, 2001 and will run for five years. Like its EFS predecessor, the ACIS benefits will be in the form of transferrable import duty credits. In contrast to the EFS, the ACIS makes no overt export contingency references. The U.S. Government will pay careful attention to the Australian Government's eventual implementation of this program.

As described by the Australian Government, the ACIS will reward passenger motor vehicle manufacturers for performance in production and investment in new productive capital assets. Component manufacturers and service providers will also be rewarded for investment in new productive capital assets and in technology development. The value of assistance offered to an individual firm under the ACIS will be limited to five percent of its sales of eligible products or services produced in Australia in the previous year.

Textiles, clothing and footwear (TCF) import credit scheme: Similar to the automotive export facilitation scheme, the TCF import credit scheme grants duty rebate credits to Australian exporters of TCF products, entitling them to a reduction in import duties on eligible TCF imports. The value of import credits granted is calculated as 15 percent of the domestic value-added in TCF exports. Import credits are freely transferable and may be sold among participants in the program. The scheme is scheduled to terminate on June 30, 2000.

The Australian Government will commence its TCF 2000 development package on July 1, 2000, which will run for five years. For Australian-based firms, the package will provide a rebate of up to 20 percent of eligible investment expenditure, reimbursement of up to 45 percent of expenditure on eligible innovation-related activities, and payment of up to five percent of TCF-value-added by firms in

Australia. All firms engaged in textiles, clothing, footwear and leather manufacturing in Australia will be eligible to apply.

Automotive Leather: A World Trade Organization dispute settlement panel issued a report finding that Australia failed to comply with the WTO Dispute Settlement Body's ruling that Australia withdraw a prohibited export subsidy bestowed on an Australian producer of automotive leather. The panel affirmed the U.S. position that the recipient's repayment of a small prospective portion of the grant was insufficient to satisfy the WTO requirement that the subsidy be withdrawn. At issue was a grant of 30 million Australian dollars that violates WTO subsidy rules because it was contingent on export performance.

The United States and Australia continue to discuss ways Australia can address the issue of compliance in accordance with the WTO DSB Panel Report. We are aiming to resolve this matter in an expeditious and satisfactory manner.

INTELLECTUAL PROPERTY RIGHTS PROTECTION

In general, Australia provides sound intellectual property protection, including for copyrights, patents, trademarks, designs and integrated circuits, and plant breeders' rights. However, the United States is concerned with the recent Australian minimalist approach toward intellectual property protection in several important areas. We have made these concerns known to the Australian Government on numerous occasions.

Not until April 1998 did Australia begin a regime to protect test data submitted to regulatory authorities for marketing approval of pharmaceuticals. During the same year it enacted legislation to provide the same level of protection for agricultural chemicals and veterinary medicine. This regime is a minimalist one, providing protection only for new chemical compounds. No protection is provided for new uses or new formulations for existing compounds.

In 1998 Australia passed legislation to allow parallel importation of sound recordings and effective January 1, 2000 for branded goods, such as clothing, footwear, toys, and packaged food. The Government of Australia is also considering the removal of parallel import protection for additional copyrighted works including software, electronic games and gaming equipment.

Steadily growing parallel importation of DVDs is of increasing concern to the motion picture industry. The Australian government has not updated its laws to impose stiffer fines on pirated goods in general. U.S. industry has seen measurable losses as a result. For example, since 1997, the number of pirated VCDs seized in Australia has increased by 300 percent and is now believed to control two percent of the video market in Australia.

The Australian Copyright Act, its interpretation by Australian courts in certain instances, and the position taken by the Australian Federal Police not to pursue criminal prosecution where civil remedies are available, has created costly and burdensome obstacles to the enforcement of intellectual property rights against piracy. The civil remedies available have not proven an effective deterrent to piracy.

During August 1999, the Australian Parliament enacted legislation that allows for software decompilation under certain conditions. The U.S. Government has expressed serious concerns about the scope of this proposal and its potential to result in significant copyright infringement.

U.S. copyright interests have stressed deep concern about the digital agenda legislation that the Australian government plans to report out in April for a vote sometime this year. The industry is concerned that the legislation which the Australian Government is proposing would allow for unfettered worldwide trafficking in devices and services aimed at hacking through encryption, password protection and other technologies copyright owners use to manage access to and use of their works. The United States has been seeking to convince the Australians of the potential perils of this "loophole" and will continue to seek the government's cooperation in this matter.

INVESTMENT BARRIERS

All potential foreign investors in Australia are required to submit to a screening process for investment approval. Application of Australia's foreign investment law provides discretion for the government to deny specific foreign investment based on "national interest." Australia's commitments under the GATS Agreement of the WTO are limited as a result of Australia's screening program.

OTHER BARRIERS

Commodity Boards and Agricultural Support

The export of wheat, rice and sugar remains under the exclusive control of commodity boards. The privatization of the Australian Wheat Board (AWB) in July 1999 saw its export controls transferred to the Wheat Export Authority with veto rights over bulk export requests retained by the grower-owned former subsidiary of the AWB, AWB (International) Ltd. A review of wheat export arrangements is to be conducted during 2000. The Queensland Sugar Corporation maintains its exclusive authority over exports of sugar from Queensland, the Australian state that exports almost all Australian sugar. The New South Wales Rice Board controls both exports and the domestic marketing of rice for the state of New South Wales, Australia's chief rice-exporter.

While domestic marketing of barley has been deregulated, the export monopoly administered by the Australian Barley Board has been extended until 2001. Approximately 95 percent of dairy exports are made by the private sector and about five percent by an arm of the Australian Dairy Corporation. Australia terminated its export support payment scheme for dairy producers in 1995, replaced by a new internal support program. The Australian government has indicated its willingness to provide a structural adjustment package to dairy producers when the internal support program terminates on June 30, 2000.

BRAZIL

TRADE SUMMARY

In 1999, the U.S. trade surplus with Brazil was $1.9 billion, compared to $5 billion in 1998. Part of the decline in the U.S. surplus with Brazil can be attributed to the devaluation of the Brazilian currency, the Real, in January 1999 and economic slowdown in Brazil. U.S. merchandise exports to Brazil in 1999 were $13.2 billion, down approximately $1.9 billion from 1998. Nevertheless, Brazil was the United States' 11th largest export market in 1999. U.S. imports from Brazil were $11.3 billion in 1999, an increase of $1.2 billion from 1998.

The stock of U.S. foreign direct investment (FDI) in Brazil in 1998 was approximately $38 billion, an increase of 7.8 percent from the level of U.S. FDI in 1997 and more than double the 1994 FDI stock. U.S. FDI in Brazil is concentrated largely in the manufacturing, finance, power and telecommunications sectors. U.S. FDI in the power and telecommunications industries has risen rapidly in recent years due to the country's ongoing privatization program.

OVERVIEW

The economic liberalization initiated in 1990 and accelerated with the Real Plan in 1994 produced significant changes in Brazil's trade regime, resulting in a more open and competitive economy. Imports surged as a result of these policies. From mid-1994 to January 1999, under the former policy of a sliding exchange rate band, the Real lost competitiveness relative to the dollar due to higher inflation in Brazil than the United States. From time to time, the Brazilian Government has imposed trade restrictive measures to fight resulting deficits. That said, most markets continue to be characterized by competition and participation by foreign firms through imports, local production and joint ventures. A series of complicated, high taxes charged in Brazil, commonly referred to as the "Brazil Cost," is a common complaint of those doing business in Brazil. In January 1999, Brazil was forced to devalue the Real. The Brazilian trade deficit with the United States was halved in 1999.

The Brazilian Government has initiated large-scale programs to privatize its parastatal enterprises, and has realized approximately $100 billion in privatization revenues since mid-1994. However, the Government of Brazil still dominates certain sectors of the economy, including the petroleum and electrical energy sectors, thereby limiting trade, investment and procurement opportunities. However, the federal government has opened cellular telephone service to private investors and foreign firms and privatized remaining telephone services with the July 1998 auction of the national monopoly provider Telebras. In early 1999, the Brazilian Government auctioned operating rights for so-called "mirror" telephone operations across the country. Several Brazilian states have worked with Brazil's National Development Bank to develop privatization plans for state-controlled companies in the energy, financial and transportation sectors. Since 1996, states have realized approximately $32 billion in sales revenues through privatizations. Brazilian Federal Government officials plan to expand sales of government-owned firms in the financial and the electricity sectors during 2000.

IMPORT POLICIES

Tariffs

In 1999, Brazil's average applied tariff was 14 percent. Brazil currently maintains no applied tariff rates in excess of 35 percent, but does have safeguard measures in place for some imports, such as toys. A small number of imports are banned altogether, such as re-manufactured auto parts.

Brazil and its Mercosur partners, Argentina, Paraguay and Uruguay, implemented the Mercosur Common External Tariff (CET) on January 1, 1995. The CET covers approximately 85 percent of 9,394 tariff items. Most of the remaining 15 percent should be covered by 2001, and full coverage should be reached by 2006. Exceptions to the CET include telecommunications equipment, computers, some capital goods and products included on Brazil's national list of exceptions to the CET, such as footwear, powdered milk, wine and consumer electronics.

Since January 1, 1999, most trade between Brazil and Argentina has enjoyed duty-free status under the intra-Mercosur duty phase-out schedule. However, many sensitive sectors are still assessed customs duties. Mercosur had a difficult year in 1999, largely reflecting bilateral trade tensions generated by Brazil's devaluation of the Real and exacerbated by the group's lack of an internal safeguard mechanism. Mercosur's weak dispute resolution procedures and the growing tendency of individual Mercosur members to negotiate preferential trade agreements with third countries did not help matters. However, Mercosur closed the year with a Presidential-level meeting in Uruguay that re-affirmed the leaders' commitment to progress and unity in Mercosur. As a result, the Governments of Brazil and Argentina have deepened discussions, along with their Mercosur partners, on how best to strengthen the group. The Mercosur countries now monitor each other's macroeconomic policies more closely.

In November 1997, after consulting with its Mercosur neighbors, Brazil implemented a temporary three-percentage point increase on virtually all tariff items, both inside and outside the CET. The tariff increases also affected most capital goods, which constitute over half of U.S. exports to Brazil. However, Brazil exempted capital goods not available domestically, reducing tariffs as high as 20 percent on those items down to five percent under its so-called *ex-tarifario* regime. In January 2000, Brazil added 407 products to the *ex-tarifario* list, bringing the total number of items covered by the special regime to around 1,450 products. Brazil intends to end the *ex-tarifario* regime in 2001, at which time it plans to fold capital goods into the Mercosur CET and to apply a common 14 percent tariff on these items.

Import Licensing/Customs Valuation

In January 1997, the Secretariat of Foreign Trade (SECEX) implemented a computerized trade documentation system (SISCOMEX) to handle import licensing, and a wide variety of products are subject to non-automatic licensing. There are fees assessed per import statement submitted through SISCOMEX, and importers must comply with onerous registration guidelines, including a minimum capital requirement, to register with SECEX. Complete information on requirements for importing into Brazil is available only through SISCOMEX, which is only available to registered importers. Beginning in October 1998, Brazil issued a series of administrative measures that required additional sanitary/phytosanitary (SPS), quality and safety approvals from various government entities for products subject to non-automatic licences.

A primary concern is the use of minimum reference prices both as a requirement to obtain import licenses and/or as a base requirement for import. It appears that the Government of Brazil is requiring some products to meet minimum prices for the issuance of import licenses and/or in order to receive normal customs processing. This would raise questions about whether Brazil's regime is consistent with its obligations under the WTO. In Brazil, imports falling below set price levels either do not receive licenses or are sent to what is known as the "grey line" for enhanced customs scrutiny. This process is opaque and burdens U.S. exports, particularly in the textile, steel and forestry sectors. The United States is considering pursuing WTO consultations to attempt to resolve these concerns, and in November 1999 actively participated as an interested third party in European WTO consultations on the issue. The Brazilian Government reportedly has modified its customs regime somewhat, but it has not codified these changes in a public document.

In addition, product registrations from the Ministry of Health will be required for imported processed food products and food supplement products effective March 1, 2000, with a reduced term of validity for registrations. Registration fees for these imports, as well as for medical and pharmaceutical products, are scheduled to increase significantly and increased several times over the course of 1999. The U.S. Government also has received complaints relating to Brazil's "law of similars," including that it leads to non-transparent preferences for Brazilian products in procurement bids for government and non-profit hospitals and prejudices against the import of refurbished medical equipment when domestically-produced "similars" exist. Implementation of such import measures continues to be poorly coordinated and not well publicized, magnifying the negative impact on U.S. exports.

Import Financing

In April 1997, Brazil imposed requirements which effectively eliminated supplier credit of less than 180 days for imports originating in countries that are not members of Mercosur while providing substantial disincentives for supplying credit terms of one year or less. In March 1999, the Government of Brazil relaxed the requirement considerably and in October 1999 abolished it completely. However, there are reports of "administrative restrictions" on import financing for certain sectors, such as toys.

STANDARDS, TESTING, LABELING AND CERTIFICATION

Some progress has been made in the area of SPS measures, illustrated by Brazil's authorization of hard red winter wheat imports from the United States in 1998. However, such measures remain significant barriers in many cases, in part driven by Brazil's implementation of the harmonized phytosanitary standards of the Southern Cone Phytosanitary Committee (COSAVE). The United States had reached an agreement with technical officials that other types of wheat do not pose a risk to Brazil, but approval of other types of wheat has not occurred. The U.S. Government will continue to work to resolve outstanding issues to obtain market access for all U.S. wheat.

Brazil prohibits the entry of poultry and poultry products from the United States, alleging lack of reciprocity. The issue, however, should not be reciprocity, rather, the fulfilment of WTO obligations regarding sanitary and phytosanitary decisions, which dictate that such determinations shall be based only upon sufficient scientific evidence. Brazil also bans the importation of beef produced with growth hormones.

On November 5, 1999, the Brazilian Government published a new measure requiring all shipments crated in wood or containing solid wood packaging materials to be accompanied by phytosanitary certificates from their country of origin stating that the wood packaging materials had been treated by heat or fumigation. Wood-containing packages without the certificate must be fumigated or incinerated upon arrival. The measure took effect on January 5, 2000, and was reportedly taken to avoid the potential introduction of the Asian long-horned beetle into Brazil. The measure applies to imports originating from the United States, China, Japan, North Korea and South Korea. U.S. officials are working with the Brazilian Government to review the requirement and to provide assurances that U.S. solid wood packaging material poses no pest risk.

Biotechnology

Brazil has an approval process for bio-genetically altered agricultural products which resulted in the approval of Roundup Ready soybeans in 1998. However, the Brazilian government subsequently withdrew its approval in response to a court ruling, citing the need for environmental impact studies on the product. To date, the Brazilian Government has still yet to re-approve Roundup Ready soybeans for use on the Brazilian market, while the issue remains in the courts.

GOVERNMENT PROCUREMENT

Brazil is not a signatory to the WTO Agreement on Government Procurement, and transparency in the procurement process could be improved. Remaining limitations on foreign capital participation in procurement bids can reportedly impair access for potential service providers, including in the energy and construction sectors. Brazilian federal, state and municipal governments, as well as related agencies and companies, follow a "buy national" policy, and rules permit the government to provide preferential treatment in government procurement decisions to foreign companies with production facilities in Brazil. However, Brazil permits foreign companies to compete in any procurement-related multilateral development bank loans and opens selected procurements to international tenders. To the extent that the privatization program in Brazil continues and non-discriminatory policies are adopted, U.S. firms will have greater opportunities in Brazil. To illustrate, in 1998 when the Government of Brazil reviewed fiber optic products solely on their merits, U.S. fiber optic cable was certified for sale in Brazil.

Law 8666 of 1993, covering most government procurement other than informatics and telecommunications, requires non-discriminatory treatment for all bidders, regardless of the nationality or origin of product or service. However, the law's implementing regulations allow consideration of non-price factors, give preferences to certain goods produced in Brazil and stipulate local content requirements for eligibility for fiscal benefits. Decree 1070 of March 1994, which regulates the procurement of informatics and telecommunications goods and services, requires federal agencies and parastatal entities to give preference to locally-produced computer products based on a complicated and non-transparent price/technology matrix.

EXPORT SUBSIDIES

The Government of Brazil offers a variety of tax and tariff incentives to encourage production for export and the use of Brazilian inputs in exported products. Several of these programs have been found to be countervailable under U.S. law in the context of specific countervailing duty cases, such as that of steel. Incentives include tax and tariff exemptions for equipment and materials imported for the production of goods for export (drawback regime), excise and sales tax exemptions on exported products and rebates on materials used in the manufacture of exported products. Exporters enjoy exemption from withholding tax for remittances overseas for loan payments and marketing, as well as from the financial operations tax for deposit receipts on export products. They are also eligible for a rebate on social contribution taxes paid on locally-acquired production inputs. The Government of Brazil has proposed tax reform, which would alter the value-added tax, thus modifying some of these incentives. In addition, Brazil is under extreme pressure to remove these subsidies for exports destined for Mercosur, especially in light of the Real devaluation. The IMF has also indicated an interest in eliminating some of Brazil's export subsidies.

An export credit program known as PROEX was established in 1991. PROEX is intended to equalize domestic and international interest rates for export financing and to directly finance production of tradeable goods. Revisions to PROEX were announced most recently in 1999, expanding the program. In 1999, roughly $861 million was budgeted for PROEX, with $416 million slated for equalization and $446 million for direct financing. The full amount for equalization was spent, while $155 million was spent on financing through November 1999. Historically, PROEX has never used more than 30 percent of its allocated budget, but in 1998 utilized over 50 percent of its allocated resources for the first time, and around 70 percent in 1999. During the first half of 1999, PROEX was used by 331 exporters in support of 2,700 transactions destined for 82 countries. Some 18.8 percent of the value of such exports was destined for the United States. Sectors supported included transportation (31 percent), agribusiness (28 percent), and machinery/equipment (18 percent).

In 1999, a WTO panel found PROEX interest equalization payments on regional aircraft to be a prohibited export subsidy. The WTO Appellate Body upheld this finding. The Government of Brazil states that it has modified PROEX so as to bring it into conformity with WTO subsidy rules, but Canada has challenged this position in the WTO. The United States intervened in this challenge as a third party and also has expressed some concerns about the adequacy of Brazil's implementation of the panel's findings.

INTELLECTUAL PROPERTY RIGHTS PROTECTION

Patents and Trademarks

Brazil's industrial property law, covering patents and trademarks, took effect in May 1997. The law improved most aspects of Brazil's industrial property regime, providing patent protection for pharmaceutical products and processes, agrochemical products and other inventions. However, some problems remain, such as the TRIPS-inconsistent provision that prohibits importation as a means of satisfying the requirement that the patent be "worked" in that country. The U.S. Government is considering pursuing resolution of this matter in the WTO.

The Government of Brazil reportedly is planning to submit a bill to the Congress in 2000 that would bring the data confidentiality portions of the industrial property law fully in line with TRIPS. On December 30, 1999, the Brazilian Government issued a *Medida Provisoria* that includes some problematic provisions, including a requirement for Health Ministry approval prior to the issuance of a pharmaceutical patent. This would appear to conflict with Article 27 of the TRIPS Agreement, and U.S. officials have raised this concern with their Brazilian counterparts.

"Pipeline" protection is provided for inventions not previously patentable in Brazil because of limitations on patentable subject matter, if these inventions were patented in another country and not marketed in Brazil. While Brazil's patent office, the National Institute for Industrial Property (INPI), has attempted somewhat to address its large backlog of both pipeline and regular patent applications, the resources and support necessary to effectively and consistently manage the processing of patent applications have been lacking. The Brazilian Government, however, has begun to computerize the patent and trademark offices.

The 1997 industrial property law also added provisions for the protection of "well-known" trademarks, but contains a long list of categories of marks that are not registrable. U.S. industry has expressed concern with the continued high level of counterfeiting in Brazil.

A law on the protection of layout designs of integrated circuits (required by TRIPS), introduced in April 1996, has not been enacted. The Government of Brazil reportedly intends to submit new legislation on integrated circuits in order to meet Brazil's TRIPS obligations in this area.

Copyrights

A copyright bill that included amendments to bring Brazil into compliance with the Berne Convention and TRIPS was signed by President Cardoso in February 1998. A software law was signed by President Cardoso that same month, thus protecting computer programs as "literary works," increasing the term of protection to 50 years, and making software infringement a fiscal, as well as an intellectual property, crime.

Copyright enforcement in Brazil continues to be uneven. The U.S. industry reports that in 1998 its trade losses from copyright piracy in Brazil were over $900 million, the largest amount of losses due to copyright piracy in the hemisphere. Problems have been particularly acute with respect to sound recordings and video cassettes, and virtually all audio cassettes sold are pirated copies. Brazil accounts for over half of the sales market for sound recordings in Latin America and is the largest market for videos in the hemisphere. Vigorous industry anti-piracy campaigns have had a positive impact and general awareness among the populace has increased significantly. However, efforts in 1999 resulted in many prosecutions but few convictions of intellectual property rights violators. While anti-piracy actions in 1999 resulted in larger seizures of pirated CDs, the sound recording industry estimates that the piracy rate for CD's in 1999 was between 30 to 40 percent.

Much pirated material continues to enter Brazil from across the border in Paraguay. The Federal Government of Brazil to date has not given police adequate tools or training to effectively enforce the law. Further, the penal code should be amended to provide higher fines that create a true deterrent to infringement, increase the effectiveness of the criminal enforcement system and decrease delays in the judicial process. The generally inefficient nature of Brazil's courts and judicial system have complicated the enforcement of intellectual property rights. The Brazilian Government is working on a project to broaden criminal penalties and streamline the judicial process, and expects the draft bill to be submitted to Congress in 2000. The Government is also working to create an inter-agency IPR committee, coordinated by the Ministry of Justice, to improve anti-piracy enforcement.

Brazil has not yet ratified the WIPO Treaties on Copyright and Performances and Phonograms.

SERVICES BARRIERS

Brazil has not yet ratified either the WTO Basic Telecommunications Agreement, formally known as the Fourth Protocol to the General Agreement on Trade in Services (GATS), or the WTO Financial Services Agreement, formally known as the Fifth Protocol to the GATS, which is necessary to bring Brazil's commitments under the Agreements into force.

U.S. service exports to Brazil are impeded by restrictive investment laws, lack of transparency in administrative procedures, legal and administrative restrictions on remittances and sometimes arbitrary application of regulations. Service trade opportunities in some sectors have been affected by limitations on foreign capital participation.

Telecommunications

Brazil's telecommunications sector has undergone significant liberalization in the past few years, although some limits remain on the level of foreign ownership. For example, the 1996 law opening cellular telephone service to foreign operators requires Brazilian majority ownership (51 percent) of any company or consortium providing telecommunications services in Brazil. The state-owned telephone system (Telebras) was sold in July 1998, with significant foreign participation. This privatization has presented regulatory challenges. ANATEL, the independent regulator, is still in the process of developing a new quality certification program. Further, ANATEL is considering which bands to allocate for PCS services, a determination that the United States hopes will lead to a technology-neutral, market-oriented environment. In addition, Brazil plans to limit competition with Embratel, the long distance and international carrier, to a duopoly arrangement until January 1, 2003.

Brazil maintains an array of practices designed to favor public procurement of domestic over imported telecommunications equipment. This system of preferences includes "equivalence provisions" that require service providers to give priority to Brazilian products and a tax program subsidizing domestics. As the telecommunications services sector becomes more competitive under Brazil's new telecommunications law, it is unclear whether discriminatory equipment procurement practices will remain viable. These policies disadvantage public sector entities by imposing higher equipment costs upon them than private sector service providers.

In the WTO negotiations on basic telecommunications services, Brazil made commitments on most basic telecommunications services and committed to remove foreign investment restrictions on cellular and satellite services by July 20, 1999, which we understand has not yet occurred. However, as noted, Brazil is overdue in ratifying the WTO Basic Telecommunications Agreement, which is necessary to bring these commitments on basic telecommunications services into effect.

Maritime

Actions taken by Brazil in late 1998 called into question Brazilian observance of the U.S.-Brazil Bilateral Maritime Agreement, which was signed by the Brazilian Government, but never ratified. In November 1998, the U.S. Government responded by lifting its exemption of tonnage tax and lighthouse money for Brazilian ships. In early 1999, the Brazilian Government addressed the U.S. Government's primary concerns and these exemptions for Brazilian ships were restored. The U.S. and Brazilian Governments signed a newly revised bilateral Maritime Agreement in October 1999, ending a period of tensions related to preferences afforded to certain classes of cargo. The new agreement must still be ratified by the Brazilian Congress. The 1996 cabotage law limits foreign participation in cabotage to countries that have reciprocal cabotage arrangements with Brazil, such as the United States.

Audio Visual Services

Brazil has a requirement that 100 percent of all films and television be printed locally. Importation of color prints for the theatrical and television markets is prohibited. Further, a theatrical screen quota for local films was maintained at 49 days per calendar year for 1999. Potential quotas of domestic titles for video retailers and distributors, along with mandated local content requirements for cable television programming, are other potential burdens on commerce. On March 17, 1999, a bill was introduced that proposes a five percent tax on the box office admissions of foreign films, the proceeds of which would be used to finance the Brazilian film industry. The United States believes development of an even stronger Brazilian film industry is an admirable objective, but not if it comes at the expense of foreign film distributors. Another problematic bill was introduced that would increase a withholding tax increase, but only on remittances of funds generated by foreign audiovisual works.

Delivery Services

Brazil does not allow the use of electronically produced air waybills, preventing use of certain kinds of software for express shipments and slowing the customs processing of critical "just-in-time" shipments.

Insurance

Brazil is South America's largest potential insurance market, and premiums have grown rapidly in recent years. In 1996, Brazil eliminated the distinction between foreign and domestic capital in this sector and many major U.S. firms have since entered the market, mainly via joint ventures with established companies. Brazil maintains a state-owned reinsurance monopoly, the 50 percent government-owned Brazil Reinsurance Institute (IRB). While a 1996 constitutional reform ostensibly eliminated this monopoly requirement, private reinsurers are precluded from operating in Brazil until IRB is privatized. Until the market is open to competition, domestic reinsurance costs remain high for both domestic and foreign insurers. The Brazilian Government intends to privatize IRB in 2000 and a preparatory law to that effect was passed in December 1999. New regulations governing the privatized reinsurance market still maintain preferential treatment for the IRB and other local reinsurers for two years, and are structured in such a way that will limit reinsurance options for primary insurers and create higher prices for the domestic market. In addition, the Government of Brazil denies foreign marine cargo insurers the opportunity to compete for business and requires state companies doing business with insurance brokerage firms to use 100 percent Brazilian-owned brokerages.

Banking and Other Financial Services

Under the 1997 WTO Financial Services Agreement, which Brazil has yet to ratify, Brazil made commitments in almost all service sub-sectors for non-insurance financial services, including banking and securities services. The most significant shortcoming in these commitments is that Brazil reserved the right to approve, on a case-by-case basis and subject to non-transparent criteria, all new foreign entry or expansion in the non-insurance financial services sector. In practice, Brazil generally has approved foreign service suppliers' plans to enter the market or expand existing operations, including through branching or the acquisition of troubled financial institutions. Indeed, as of June 1999, foreign owned or controlled banks accounted for 23 percent of total bank assets, and over 10 U.S. financial service suppliers had established significant operations in Brazil. In late 1999, however, the Government of Brazil announced that until it completes the privatization of eight state-owned banks, the only method of market entry or expansion allowed for foreign banks will be the purchase of one of the banks up for privatization.

INVESTMENT BARRIERS

In addition to restrictions on services-related investments, various prohibitions limit foreign investment in internal transportation, public utilities, media and other "strategic industries." In the auto sector, local content and incentive-based export performance requirements were introduced in 1995, but are due to expire consistent with a bilateral autos agreement between the United States and Brazil. Brazil is currently engaged in negotiations with its Mercosur partners to develop a common Mercosur auto regime.

Foreign ownership of land in rural areas and adjacent to national borders remains prohibited under Brazilian law. Despite investment restrictions, U.S. and other foreign firms have major investments in Brazil, with the U.S. investment stake more than doubling from 1994 to 1998. There is no Bilateral Investment Treaty between the United States and Brazil.

BULGARIA

TRADE SUMMARY

The U.S. trade deficit with Bulgaria was $97 million in 1999, $7 million lower than 1998. Bulgaria was the United States' 111th largest export market in 1999. U.S. merchandise exports to Bulgaria were $103 million, down $13 million (11 percent) from 1998. U.S. imports from Bulgaria were $200 million in 1999, a decrease of $19 million (8.9 percent) from 1998. The stock of U.S. foreign direct investment in 1998 was $21 million, a 4.6 percent increase from 1997.

IMPORT POLICIES

The U.S.-Bulgaria bilateral trade agreement, in place since 1991, provides mutual most-favored-nation (MFN) status. Bulgaria "graduated" from Jackson-Vanik requirements and was accorded unconditional MFN treatment by the United States in October 1996.

In January 1999, average Bulgarian import tariffs were reduced significantly and a five-percent import surcharge was eliminated ahead of schedule. Average tariffs are to be reduced further in 2000 to approximately 13.9 percent (approximately 11 percent for industrial goods and 24 percent for agricultural products). However, tariffs in areas of concern to U.S. exporters – including poultry legs and other agricultural products, wine and distilled spirits (20 percent) – are still relatively high, and exceed the European Union's (EU) common external tariff.

Bulgaria's 1994 Association Agreement with the EU phases out tariffs between Bulgaria and the EU over a ten-year period, while U.S. exporters will be subject to MFN duties. This has created a competitive disadvantage for some U.S. exporters, such as soda ash and hand tool exporters. The Association Agreement also provided preferential tariff arrangements for some farm products. In 1998, Bulgaria joined the Central European Free Trade Area (CEFTA). Over the following three years, tariffs on 80 percent of industrial goods traded between CEFTA countries are being eliminated. Under an agreement with the European Free Trade Association (EFTA), imports from EFTA countries also enjoy tariff preferences. A free trade agreement with Turkey took effect in January 1999. A free trade agreement with Macedonia will enter into force in January 2000. In December 1998, parliament revoked exemption from value-added tax (VAT) and customs duties for capital contributions in kind valued at over $100,000. In the past, some investors have reported that high import tariffs on products needed for the operation of their establishments in Bulgaria served as a significant barrier to investment. In December 1999, the EU announced its intention to begin accession negotiations with Bulgaria in early 2000.

Customs regulations and policies are sometimes reported to be cumbersome, arbitrary and inconsistent. Problems cited by U.S. companies include excessive documentation requirements, slow processing of shipments and corruption. Bulgaria uses the single customs administrative document used by EU members.

Bulgaria acceded to the World Trade Organization in December 1996.

STANDARDS, TESTING, LABELING AND CERTIFICATION

All imports of goods of plant or animal origin are subject to phytosanitary and veterinary control, and relevant certificates should accompany such goods. U.S. companies have complained of non-transparent standards and testing requirements in a number of industrial sectors.

GOVERNMENT PROCUREMENT

Bulgaria is not a signatory to the WTO Agreement on Government Procurement (GPA); it has the status of an observer to the GPA and would have to become a signatory in order to join the EU. In June 1999, parliament adopted a new law on procurement replacing the 1997 Law on Assignment of Government and Municipal Contracts. This legislation defines terms and conditions for public orders and aims for increased transparency and efficiency in public procurement. However, bidders still complain that tendering processes are frequently unclear and/or subject to irregularities, fueling speculation on corruption in government tenders. U.S. investors have also found that, in general, neither remaining state enterprises nor private firms are accustomed to competitive bidding procedures to supply goods and services. However, tenders organized under projects financed by international donors have tended to be open and transparent.

INTELLECTUAL PROPERTY RIGHTS PROTECTION

Bulgarian intellectual property rights (IPR) legislation is generally adequate, with modern patent and copyright laws and criminal penalties for copyright infringement. In September 1999, parliament passed a series of laws on trademarks and geographical indications, industrial designs and integrated circuits. A law for the protection of new types of plants and animal breeds was adopted in September 1996. Parliament is expected to approve additional legislation in the near future extending copyright protection to 70 years, and introducing a new neighboring right for film producers, provisional measures to preserve evidence of IPR infringement and special border measures.

Until recently, Bulgaria was the largest source of compact disk and CD-ROM piracy in Europe and was one of the world's leading exporters of pirated goods. For this reason, Bulgaria was placed on the Special 301 Priority Watch List in January 1998. In 1998, enforcement improved considerably with the introduction of a CD-production licensing system subject to 24-hour plant surveillance. CD manufacturers must also submit a copy of an agreement with the copyright holder before starting production. In recognition of the significant progress made by the Bulgarian Government in this area, Bulgaria was removed from all Watch Lists in April 1999.

Pharmaceuticals manufacturers note that Bulgaria has not introduced data exclusivity or supplementary patent protection in line with the Agreement on Trade-Related Aspects of Intellectual Property Rights (TRIPS) and the EU Association Agreement. The industry further claims that drug pricing and reimbursement procedures are not transparent. These companies also report that enforcement of patent rights for their products is ineffective.

Software piracy continues to be a serious problem, although an industry legalization campaign which began in 1999 has made noticeable gains against unauthorized software. Local software industry representatives report that, with good cooperation from Bulgarian law enforcement authorities, the campaign has brought down the piracy rate to approximately 80 percent of the products in the market being unauthorized copies from above 90 percent previously. The Bulgarian Government signed an agreement with Microsoft in December 1998 which commits the state administration to license all company products.

Due to improvements in enforcement and the legal regime, audiovisual piracy decreased dramatically in 1998 and 1999. According to local industry representatives, the proportion of unauthorized films on cable television has been reduced from 80 to 10 percent over the last two years. The piracy rate for other television programs is estimated at 30 percent. Video piracy is estimated at 20 percent. DVD only appeared on the Bulgarian market in December 1999 and piracy currently does not appear to be a problem with this new format. The Motion Picture Association estimates that it lost $4 million in revenues in 1999 due to audio-visual piracy.

U.S. industries report that lack of effective judicial remedies for infringement of intellectual property rights is a barrier to investment. U.S. companies have also cited illegal use of trademarks as a barrier to the Bulgarian market.

SERVICES BARRIERS

As in other countries aspiring to membership in the EU, Bulgaria's 1998 radio and television law requires a "predominant portion" of certain programming to be drawn from European-produced works and sets quotas for Bulgarian works within that portion. However, this requirement will only be applied to the extent "practicable." Foreign broadcasters transmitting into Bulgaria must have a local representative, and broadcasters are prohibited from entering into barter agreements with television program suppliers.

INVESTMENT BARRIERS

A Bilateral Investment Treaty (BIT) with the United States took effect in 1994. The BIT includes guarantees for U.S. investors of the better of national and MFN treatment, the right to make financial transfers freely and without delay, international law standards for expropriation and compensation, and access to international arbitration.

Foreign persons cannot own land in Bulgaria because of a constitutional prohibition, but foreign-owned companies registered in Bulgaria are considered to be Bulgarian persons. Foreign persons may acquire ownership of buildings and limited property rights, and may lease land. Local companies where foreign partners have controlling interests must obtain prior approval (licenses) to engage in certain activities: production and export of arms/ammunition; banking and insurance; exploration, development and exploitation of natural resources; and acquisition of property in certain geographic areas. There are no specific export-performance requirements nor specific restrictions on hiring of expatriate personnel, but residence permits are often difficult to obtain. Bulgaria's Commercial Code has provisions which do not adequately protect shareholders from abuses by other shareholders in a company.

OTHER BARRIERS

Foreign investors complain that tax evasion by private domestic firms combined with the failure of the authorities to enforce collection from large, often financially precarious, state-owned enterprises places the foreign investor at a real disadvantage. The government has implemented legal reforms designed to strengthen the country's business climate. Bulgaria has adopted legislation on foreign investment and secured lending, and is also making significant strides in regulation of the banking sector and the securities market. However, many business representatives contend that unnecessary licensing, administrative inefficiency and corruption continue to hinder private business development and market entry.

CAMEROON

TRADE SUMMARY

In 1999, the United States suffered its first trade deficit with Cameroon since 1995, mostly due to the rise in international oil prices. U.S. imports from Cameroon totaled $77 million, while U.S. exports to Cameroon totaled $37 million. The result was a $40 million trade deficit for the United States. In 1998, the United States had a $22 million trade surplus with Cameroon and a $64 million surplus in 1997. The stock of U.S. direct investment in Cameroon was estimated to have been $238 million in 1998, a 46 percent decline from 1997.

Cameroon is a member of the *Cosmonauté Economique et Monétaire de l'Afrique Central* (or CEMAC, the Central African Economic and Monetary Community), which also comprises Gabon, Central African Republic, Republic of Congo, Chad, and Equatorial Guinea. The treaty establishing CEMAC was signed on March 1994, but did not enter into force until August 1, 1999. The main objective of the treaty, which was born out of the Central African Customs and Economic Union, is to ensure the macroeconomic stability and credibility required to sustain a fixed exchange rate for the common currency, the CFAF franc. In addition to close monetary cooperation, the treaty envisions a single domestic market through the establishment of a full customs union, harmonization of legal and regulatory systems, implementation of common sectoral policies, and convergence of fiscal policies in support of the common monetary policy. In September 1999, the Council of Ministers of CEMAC adopted a regional plan to work toward macroeconomic policy convergence, the deepening of financial markets, and to accelerate the creation of a single domestic market.

A key component of CEMAC is the *Banque des Etats de l'Afrique Centrale* (BEAC), a regional central bank that issues the Central African Financial Cooperation (CFAF) franc for the community. Governing principles include the pooling of all foreign exchange, the guarantee of convertibility of the CFAF franc at a fixed parity through an unlimited overdraft facility with the French Treasury, a ceiling on central bank credit to governments, and a minimum foreign exchange cover of 20 percent of the currency issue. On January 1, 1999, the peg of the CFAF franc was shifted from the French franc to the euro at the rate of CFAF 656 = 1 euro. The change to the euro was accomplished after the Economic and Financial Council of the European Union agreed that France could continue to maintain its franc zone arrangements. Monetary cooperation agreements linking France and CEMAC have remained essentially unchanged after the introduction of the euro.

IMPORT POLICIES

Since 1994, Cameroon has been operating under the Central African Customs Union's regional reform program. This program has been expanded to include a new Customs Code and an amendment to the Investment Code. The new Customs Code eliminates most quantitative restrictions on foreign trade and simplifies customs procedures.

On January 1, 1998, the Generalized Preferential Tariff (TPG) was to have been completely eliminated for goods shipped between CEMAC countries. Only a value-added tax (replacing the turnover tax (TCA) in Cameroon) at the rate of 18.7percent is to be collected on intra regional goods. However, there has been some delay in achieving this goal among CEMAC countries. Customs duty, in addition to the value-added tax, is assessed on imports into CEMAC countries.

The Cameroon government has moved to intensify customs revenue collection by contracting the Swiss company SGS to assess and collect customs duties. The unweighted average of the Common External Tariff (CET) of the CEMAC is 18.4 percent. The CET is assessed through four tariff rates: 5 percent for essential goods, 10 percent for raw materials and capital goods, 20 percent for intermediate goods, and 30 percent for consumer goods. Cameroon currently imposes surcharges on maize meal and cement.

Import Licensing

Cameroon's import licensing procedures have been simplified. A prospective importer is now only required to have an "*agrement*," which serves as a two-year, renewable import license covering any item an importer may choose to import. Special import permits are granted to individuals who import items for personal use. Contractors importing equipment and supplies relating to public contracts can obtain a duty exemption from the Ministry of Economy and Finance. CEMAC has not yet created a regional licensing system.

Documentation Requirements

Cameroon requires a commercial invoice and a bill of lading for all imported goods. Shipping marks and numbers must match exactly those on the invoices and the goods. Three copies of the invoices are necessary for surface shipments while four copies are necessary for air shipments. The importer must also present an "*agrement*" and/or exemption, if appropriate. Documentation of bank transactions is required only if the value of the imported goods exceeds CFAF 2,000,000. This is also true for a pre-shipment inspection certificate, called a Clean Report of Findings from SGS. For certain imports, such as second-hand clothing, certificates of non-infestation are also required.

Customs Valuation

Customs taxes in Cameroon are levied on the C.I.F. value of the imported goods. The prevailing practice, however, is to value the goods at the list price of the goods in country of origin and include the cost of freight to Douala (the principal port of Cameroon). Customs fraud is still a major problem and protracted negotiations with customs officers over the value of imported goods are common.

STANDARDS, TESTING, LABELING AND CERTIFICATION

Standardization is at an early stage in Cameroon and is only partially regulated. The Department of Price Control, Weights and Measures is officially responsible for standards administration in Cameroon. Labels should be written in both French and English, and must include the country of origin as well as the name and address of the manufacturer. In addition, the product name, weight, and all ingredients including salt must be listed. Comments such as "made in," "to be consumed before a certain date," etc., should appear in either French or English. Canned goods require that the manufacture and the expiry dates be engraved or stamped on top of the package in indelible ink. Cigarettes destined for Cameroon must be pre-labeled. SGS may inspect the quality of any goods shipped into the country. In practice, imports are admitted into the country with little reference to standards or norms.

GOVERNMENT PROCUREMENT

Cameroon is not a member of the WTO Agreement on Government Procurement. Government procurement is administered by the Directorate of Public Works. Local companies receive preferential price margins and other preferences on all government procurement and development projects. Cameroon's tight budget circumstances require that most direct purchases by the government have pre-identified sources of financing. The Government of Cameroon has a low credit rating because of its continuing difficulty in paying its debts.

EXPORT CONTROLS AND SUBSIDIES

Coffee and cocoa exports must obtain a quality grade certification from one of three government-approved quality testing companies. Export licenses are also required for "strategic" products such as gold and diamonds and for ecologically sensitive items (i.e., items governed by the CITES Convention – live animals, birds, and medicinal plants). The government bans exports of some types of logs as an environmental conservation measure. Cameroon recently lifted some of its heavy export taxes which had penalized exports of agricultural products. No export subsidies are currently in place.

INTELLECTUAL PROPERTY RIGHTS PROTECTION

A new agreement among francophone African countries, signed in 1999 in Bangui, aims at bringing their intellectual property laws into compliance with the WTO Agreement on Trade Related Aspects of Intellectual Property Rights (TRIPS). Cameroon has ratified the Bangui Agreement and an interagency committee has been created to update Cameroon's IPR laws. Cameroon is also a party to the Paris Convention on Industrial Property and the Universal Copyright Convention. A licensed copyright company, the *Societe Civile Nationale des Droits d'Auteurs*, registers copyrights for music, books and periodicals, paintings, and theatrical productions. IPR enforcement is problematic due to the small size of the market, the cost of enforcement, and the fact that throughout the country there is only a rudimentary understanding of IPR. U.S. industry complains that software piracy is widespread.

Cameroon is the headquarters for the fourteen nation West Africa Intellectual Property Organization (OAPI), which offers registration for patents and trademarks. Patents in Cameroon are good for 10 years and renewable every five years thereafter, if the patent was used in any OAPI member country at least once. Compulsory licensing also exists. Registered trademarks are good for twenty years and renewable every 10 years thereafter. Trademark enforcement is weak due to limited government expertise and resources. OAPI is a member of the World Intellectual Property Organization (WIPO).

SERVICES BARRIERS

Cameroon has eliminated some restrictions on foreign trade in services. Restrictions remain in so-called "strategic" sectors such as water, electricity, public transportation (road and rail), and telecommunications.

Telecommunications

Cameroon is preparing to privatize its telecommunications sector. In preparation, a 1998 telecommunications law established a telecommunications board to regulate, control, and oversee the sector. In December 1999, the government announced the tender of CAMTEL, the largest state-owned firm, with the intention of finalizing a sale in CY2000. In the near future, two private cellular telephone companies, one French-owned, will compete in the Cameroon market. Cellular telephone service, operating on the GSM 900 standard, is currently available in limited geographical areas, but service is expected to cover the whole country in a few years.

Banking

Cameroon has made important strides in the reform and restructuring of its banking sector, which now includes eight operating banks. In January 2000, the last state-owned bank was sold to a French bank. The sector is managed by the *Banque des Etats de l'Afrique Centrale* (BEAC). The Central African Banking Commission (COBAC), which functions as the supervisory body for the region's banking sector, also regulates Cameroon's banking system. COBAC is a jurisdictional body with the authority to take disciplinary action. A regional stock exchange may be launched in Douala in CY2000.

Insurance

Cameroon is one of the fourteen French-speaking African nations that ratified the CIMA treaty and adopted a common code with respect to the insurance sector. This supranational code was designed to regulate the insurance sector in all signatory states. Enforcement of the CIMA code of regulations has led to the closure of some weak insurance companies and the restructuring of the sector, which is almost completed. Foreign firms can operate in Cameroon, but they must have local partners.

Shipping

Infrastructure for distribution of goods is not well developed, but it does provide limited access to all 10 of Cameroon's provinces. The country's major port is at Douala, with smaller ports at Limbe and Kribi. Though the Port of Douala is considered the major port of entry for the central African region, it is one of the most inefficient ports in Africa and is in need of constant dredging and major refitting. An average of three days is needed to clear goods through customs. In December 1997, the Government of Cameroon liberalized auxiliary port and maritime services and the maritime transport sector is now open to any transporter serving Cameroon ports. The government hopes to expand cargo handling capacity at Limbe and Kribi. Cameroon has a relatively well developed rail system and three international airports, along with 50 small airports or airstrips. Domestic air service is not well developed.

INVESTMENT BARRIERS

Capital movements within CEMAC are completely free; those between the CEMAC and third countries are permitted, provided that proper supporting documentation is available and prior notification is given to the exchange control authority. Regarding inward or outward foreign direct investments, investors are required only to declare to the Ministry of Finance transactions above a prescribed threshold and within 30 days of the realization of the investment. There is still a lingering perception that controls on transfers remain in force due to BEAC's decision to monitor outward transfers and the fact that BEAC's payments system is cumbersome and time-consuming. To further streamline the exchange system in CEMAC, the BEAC has finalized new foreign exchange regulations for member countries. The regulations would make members' exchange regulations uniform vis-a-vis third countries.

The Government of Cameroon realizes that the country needs foreign investment to develop. The Ministry of Industrial Development and Trade recently presented the first draft of a new Investment Code that would significantly open Cameroon's investment regime. However, the country's legal system is prone to favoritism and corruption, and tax authorities can hinder investment by being difficult.

Cameroon has a bilateral investment treaty with the United States that provides, inter alia, investor-state international arbitration, the right to make transfers freely and without delay, and the right of establishment. Cameroon is a member of the francophone Organization for the Harmonization of Business Laws (in French, OHADA). OHADA codes are applicable throughout French-speaking West Africa and are either in place in Cameroon or planned to be in place within the next few years.

Electronic Commerce

Internet access is still in its infancy in Cameroon and legislation to govern Internet services has not been devised. Currently, no special restrictions on these services have been imposed. New investment in the telecommunications sector should hasten the development of Internet services.

Agent and Distributor Rules

Agents and distributors must register with the government and their contracts with their suppliers must be notarized and published in the local press.

Procedural and Financial Irregularities

A number of international watchdog organizations have ranked Cameroon as one of the most corrupt countries in Africa. A flawed judicial system is a major obstacle to the development of Cameroon's economy and society. Court decisions are often arbitrary and subject to corruption. Many accused individuals find it easier and cheaper to bribe a judge than to hire a lawyer to win a case. Local and foreign investors, including some U.S. firms, have found Cameroon courts too complicated and costly to litigate contract or property rights, obtain a fair and expeditious hearing, or defend themselves against frivolous lawsuits. Persons accused of corruption by the local press are seldom investigated or called before the courts to account for their actions.

CANADA

TRADE SUMMARY

Canada has an affluent, high-technology and market-oriented economy. Its close proximity to the United States fosters a volume of two-way bilateral merchandise trade that is larger than two-way trade between the United States and any other single country in the world. In 1999, U.S. merchandise exports to Canada were $163.9 billion, an increase of $9.8 billion (6.3 percent) from 1998. U.S. goods imports from Canada were $198.3 billion in 1999, an increase of $23.5 billion (13.4 percent) from 1998.

In 1998, total two-way trade in goods and services between the United States and Canada was $364.5 billion, or nearly $1 billion each day (for services, latest annual data available). This was more than U.S. trade with the rest of the Western Hemisphere, and just under three-quarters of total U.S. goods and services trade with the entire fifteen-country European Union (EU).

The United States and Canada also share one of the world's largest bilateral direct investment relationships. In 1998, the stock of U.S. foreign direct investment in Canada was $103.9 billion, an increase of 8.2 percent from 1997. In 1998, the stock of Canadian direct foreign investment in the United States was $74.8 billion. U.S. investment in Canada, which is a major contributor to the U.S. non-merchandise trade surplus with Canada, is concentrated in the manufacturing, natural resources and financial services sectors.

A Trading Relationship Based on Free Trade

The North American Free Trade Agreement (NAFTA) came into force on January 1, 1994. NAFTA superseded the U.S.-Canada Free Trade Agreement (CFTA) and expanded the free trade area to include Mexico. The NAFTA extended the CFTA to important sectors such as trade in services, investment, and government procurement. The bilateral phase-out of tariffs between Canada and the United States outlined in the CFTA, and now set forth in NAFTA, was completed on January 1, 1998, except for certain supply-managed products in Canada, and dairy, sugar, peanuts and cotton in the United States. However, there still exists some non-tariff barriers of concern at both the federal and provincial levels, impeding access to the Canadian market for U.S. goods and services.

IMPORT POLICIES

Supply Managed Products

Canada closely restricts imports of certain "supply-managed" agricultural products whose domestic production is limited by quota (dairy products, eggs and poultry), severely limiting the ability of U.S. producers to export to Canada.

In April 1999, the United States obtained a favorable ruling in a WTO dispute settlement proceeding challenging Canada's operation of an export subsidy regime for dairy products and Canada's administration of a tariff-rate quota for milk and cream. The WTO panel found that the provision of milk to exporters for processing at prices which were substantially below the prices charged for such milk when delivered for processing for domestic consumption constituted an export subsidy. In light of this finding, the Panel also concluded that Canada had violated its export subsidy reduction commitments by exporting a higher volume of subsidized dairy products than permitted by Canada's obligations under the WTO Agreement on Agriculture. The Panel also found that Canada had improperly imposed a limit on the value of milk that could be imported in any single entry under the relevant tariff-quota.

The Panel's findings were sustained by the WTO Appellate Body in October 1999 in an appeal initiated by Canada. Following these rulings, the United States and Canada engaged in discussions to reach agreement on the period available to Canada to bring its export subsidy system and tariff-rate quota administration into compliance with its WTO obligations. As the result of an agreement concluded on December 22, Canada will comply immediately with its WTO export subsidy commitments on butter, skimmed milk powder, and an array of other dairy products. Canada also has committed to reducing subsidized cheese exports and is scheduled to be in compliance with its reduction commitments on cheese by August 1, 2000. The necessary regulatory reform of the tariff-rate quota was accomplished by February 1, 2000.

The Province of Quebec continues to apply coloring restrictions on dairy margarine. In addition, provincial marketing restrictions on butter/margarine blends or imitation dairy products have served as a limitation and in certain cases, prohibition to the sales of these products into many provinces.

Horticultural Import Restrictions

Certain restrictions prohibit bulk produce imports without a special ministerial waiver of Canadian packaging regulations.

Other Products

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

The Canadian Wheat Board and State Trading Enterprises

Despite recent changes in the organization of the Canadian Wheat Board (CWB), the CWB continues to enjoy government-sanctioned monopoly status as well as other privileges that restrict competition.

In June 1998, the Canadian Parliament passed Bill C-4, an act to reform the CWB. The Canadian government contends that, as a result of this legislation, Canadian producers have a greater decision-making role in the operations and general policy direction of the CWB. Unfortunately, C-4 did nothing to result in competition, either by ending CWB's monopoly privileges or its financial link to the government. The United States is calling for the WTO agriculture negotiations to create disciplines for State Trading Enterprises (STE's) that would provide for greater openness, allow for greater competition in the marketplace, and reduce or eliminate the trade-distorting effects of monopoly STE's, like the Canadian Wheat Board.

BARRIERS TO NON-AGRICULTURAL GOODS

Restrictions on U.S. Publications

In June 1999, the United States and Canada announced an agreement under which U.S. publications would be allowed gradual access to the Canadian market. They are now permitted to carry up to 12 percent of advertising space for ads primarily directed at the Canadian market. This ceiling will rise to 18 percent by mid-2002. Canada also agreed to permit foreign investment in its periodicals industry on the condition that such investments are of net benefit to Canada. The United States will continue to monitor Canada's investment, tax, access systems and postal subsidies for Canadian-produced magazines.

Barriers to Film Exports

Film classification, for the purpose of theatrical and home video distribution in Canada, is within the exclusive jurisdiction of the provinces. There are presently seven different provincial classification boards to which member companies must submit products destined for theatrical release, five of which also classify products intended for home video distribution.

In addition, the Province of Quebec requires that all video products bear a government-issued classification sticker. U.S. exports are burdened by this added regulatory requirement, which results in fewer titles being made available.

The lack of a national classification system and the negative precedent established by the Quebec stickering procedures continue to create significant consumer confusion and administrative expense resulting in fewer U.S. exports.

U.S. exports are also constrained by the Quebec Cinema Act, which encourages French language dubbing to be done in Quebec by placing certain distribution restrictions on English language versions of those films that have been dubbed in French outside of the Province of Quebec. The Cinema Act thus limits a company's ability to utilize the most cost-effective means to dub a film in French.

INTELLECTUAL PROPERTY RIGHTS PROTECTION

Articles 33 and 70 of the WTO Agreement on Trade-Related Aspects of Intellectual Property Rights (TRIPS Agreement) require all WTO members to provide a patent term of at least twenty years from the date of filing of the patent application. For a large group of patents, Canada applies a term that in many cases is shorter – calculated as seventeen years from the date that a patent is issued. A term of seventeen years from issuance is not the same as a term of twenty years from filing. With respect to a large number of existing patents, Canada is in violation of the TRIPS Agreement because of its failure to provide an adequate patent term. Thus, on April 30, 1999, the United States initiated a WTO dispute settlement proceeding against Canada on this issue. On September 22, 1999, the WTO established a panel to review the issue and the final panel report is scheduled to be circulated in April of 2000.

In 1999, the European Union initiated a WTO dispute settlement proceeding against Canada with respect to Canadian generic drug companies being allowed to "early work" and "stockpile" their products. ("Early working" is the production by a generic drug manufacturer of a patented drug – during the patent term – for the purposes of obtaining regulatory approval of the generic drug, and of marketing it without delay after the patent expires. "Stockpiling" is, in effect, inventory building of the "early worked" generic product.) On March 17, 2000, a panel report was circulated, finding that "early working" is permissible under the TRIPS Agreement, while "stockpiling" is not.

Canada is a member of the World Intellectual Property Organization (WIPO). Canada also adheres to a number of international agreements, including the Berne Convention for the Protection of Literary and Artistic Works (1971), and the 1952 Universal Copyright Convention (UCC). These two agreements require that Canada provide national treatment with respect to intellectual property rights (IPR). On December 18, 1997, the Canadian government committed itself to sign two new international treaties dealing with copyright and with protection for performers and "phonogram" producers. The WIPO Copyright Treaty and the WIPO Performances and Phonograms Treaty are designed to establish international minimum standards in the area of copyright and related rights.

The 1997 amendments to Canada's Copyright Act contain two provisions whereby Canada is applying the principle of reciprocity rather than national treatment. The first provision is for the payment of a neighboring rights royalty to be made by broadcasters to artists from countries that are signatories to the 1961 Rome Convention. The royalty has been set for five years, 1998 – 2002, and Canada started collecting it retroactively as of January 1, 1998. The United States is not a signatory of the Convention, and it is not yet clear whether U.S. artists will receive national treatment in the distribution of these royalties.

The second provision is for the payment of a levy by manufacturers and importers of blank analog and digital tapes and diskettes to artists from countries that afford an equivalent benefit to Canadian artists. On December 17, 1999, the Canadian Copyright Board (CCB) officially set the levy on recordable media, which took effect the same day. The levy covers 1999 and 2000 only. However, the Canadian Private Copyright Collective (CPCC) can file by March 31, 2000, for an extended levy to go into effect the following year. The United States does not impose a levy on analog tape, only on digital audio recording media, with proceeds distributed to applicable artists, including Canadians.

The USG perceives Canada's reciprocity requirement for both the neighboring rights royalty and the blank tape levy as denying national treatment to U.S. copyright holders. The U.S. Trade Representative (USTR) has placed Canada on its Special 301 "Watch List." While the GOC may grant to countries some or all of the benefits of the new regime if it considers that such countries grant or have undertaken to grant equivalent rights to Canadians, the GOC has yet to announce a determination with regard to the United States.

SERVICES BARRIERS

Broadcasting

The Broadcasting Act lists among its objectives "to safeguard, enrich and strengthen the cultural, political, social and economic fabric of Canada." The federal broadcasting regulator, the Canadian Radio-Television and Telecommunications Commission (CRTC), is charged with implementing this policy. The CRTC requires that Canadian conventional, over-the-air broadcasts make up 60 percent of television broadcast time – 50 percent during prime time hours (6 p.m. to midnight). It also requires that 35 percent of musical selections broadcast on radio should qualify as "Canadian" under a Canadian Government-determined points system. Direct-to-home (DTH) broadcasts must contain a preponderance (more than 50 percent) of Canadian content. For some specialty services like pay audio services, the applicable percentage of Canadian content is subject to change.

The Broadcasting Act also requires Canadian cable television providers to carry a majority of Canadian signals and services. Non-programming service packages may consist of entirely non-Canadian signals and services whereas programming service packages must contain at least one Canadian signal or service. U.S.-origin signals on non-basic pay television must be selected from a CRTC approved list. U.S.-based services deemed to be competitive with already licensed Canadian services are not eligible for this list.

Under previous CRTC policy, in cases where a Canadian service was licensed in a format competitive with that of an authorized non-Canadian service, the Commission could drop the non-Canadian service, if the new Canadian applicant requested it to do so. This policy led to one "de-listing" in 1995, and deterred potential new entrants from attempting to enter the Canadian market. In July 1997, the CRTC announced that it would no longer be "disposed" to take such action. Nonetheless, Canadian licensees may still appeal the listing of competitive services. In this connection, the CRTC will consider the removal of existing non-Canadian services from the list if they change format so as to compete with a Canadian pay or specialty service.

USTR will continue to closely monitor the effect of these policies on U.S. commercial interests.

Basic Telecommunications Services

Under the terms of the WTO Agreement on Basic Telecommunications Services, Canada's commitments permit foreign firms to provide local, long-distance, and international services through any means of technology, on a facilities-based or resale basis. However, Canada retained a 46.7 percent limit on foreign ownership for all services except fixed satellite services and submarine cables. In addition, Canada also retained a requirement for "Canadian control" of basic telecommunications facilities (at least 80 percent of the members of a board of directors must be Canadian citizens), and a routing restriction to promote the use of Canadian facilities.

In September 1998, Canada eliminated third country routing restrictions for international traffic routed to and from Canada through the United States. Teleglobe Inc. is no longer the sole overseas facilities-based provider as of January 1, 1999, and licenses to land submarine cables are no longer limited. Telesat Canada will relinquish its monopoly control of fixed satellite space segment facilities used to provide national and U.S.-Canada telecommunications services on March 1, 2000.

Canada requires all long-distance telecommunications firms to pay “contributions” to cover the costs of local service companies, whose facilities the long distance companies use. The contribution funds are redistributed to local service companies to defray the cost of deploying local residential lines to all regions of Canada. However, the dominant local service companies are also long distance market competitors, controlling more than half of long distance market share. Companies that do not provide local residential services argue that the contribution charges are set unjustifiably high, disadvantaging them compared to the competitors who receive (as well as pay into) monies from the contributions scheme. Recipients of contributions monies are not required to account for how they expend these funds to provide local residential services. The Canadian Radio-Television and Telecommunications Commission (CRTC) refused in a December 1999 ruling to reduce the contribution charges, a decision which is likely to be appealed.

Insurance

In Canada’s insurance market, companies can incorporate under provincial or federal law. Foreign ownership remains subject to investment review thresholds, and several provinces continue to subject foreign investments in existing, provincially incorporated companies to authorization. Insurance companies may supply their services directly, although life insurance companies are not generally allowed to offer other services (except for health, accident and sickness insurance), but may be affiliated with, and distribute the products of, a property and casualty insurer. A commercial presence is required to offer insurance, reinsurance and retrocession services in Canada. However, insurance companies may branch from abroad on condition that they maintain in trust assets equivalent to their liabilities in Canada. Insurance companies can own deposit-taking financial institutions, investment dealers, mutual fund dealers and securities firms. In addition, insurance companies may engage directly in lending activities on an equal footing with deposit-taking institutions.

In British Columbia, Saskatchewan and Manitoba, consumers must purchase the required minimum automobile insurance from the government insurer. Additional coverage is provided by government and private providers. In Quebec, bodily injury claims are covered by a government insurer; however, automobile and property damage is covered by private insurers. All other provinces are served by private insurers, but both premiums and insurance policy terms are highly regulated.

Engineering Services

The Canadian government, at the provincial and federal level, subsidizes Canadian firms’ bids for feasibility studies and other work in third countries. Export subsidies are provided through the Export Development Corporation, the Canadian International Development Agency, and the Program for Export Market Development. Local engineers and construction firms are given preference for all government contracts. U.S. companies must form joint ventures with Canadian firms to bid on a project. There are also many interprovincial barriers to trade in AEC services in Canada which favor locally established firms over extra-provincial firms.

Legal

For foreign legal consultants (advisory services on foreign and public international law only), a commercial presence must take the form of a sole proprietorship or partnership. In addition, for lawyers, permanent residence is required for accreditation in Prince Edward Island, Ontario, Alberta, and Newfoundland; and citizenship is required in Quebec.

INVESTMENT BARRIERS

General Establishment Restrictions

Under the Investment Canada Act and standing Canadian regulatory policy, Canada maintains restrictions which inhibit new or expanded foreign investment in the energy, publishing, telecommunications, transportation, film, music, broadcasting, and cable television sectors.

Investment Canada Act

The Investment Canada Act (ICA) is intended to encourage, regulate and facilitate foreign investment in Canada. Investment Canada, the federal regulatory agency, only reviews (a) the direct or indirect acquisition by a non-Canadian of an existing Canadian business of substantial size (as defined below); and (b) the specific acquisition of an existing Canadian business or establishment of a new Canadian business by a non-Canadian in designated types of business activity relating to Canada's cultural, heritage or national identity (as described below) where the federal government has authorized such review as being in the public interest.

Investment Canada must be given notice of any investment by a non-Canadian to establish a new Canadian business (regardless of size) or to acquire direct control of any existing Canadian business which either has assets of C$5 million or more or is in a business that is identified by regulation to be culturally sensitive or in uranium production, financial services or transportation services, or to acquire the indirect control of any existing Canadian business the assets of which exceed C$50 million in value. The C$5 million threshold is increased to C$192 million in the case where the acquiring non-Canadian is from a member of the World Trade Organization (WTO), and there is no review process applicable to an indirect acquisition of a Canadian business by any acquirer from a member of the WTO. In practice, the Minister of Industry has allowed most transactions to proceed, though in some instances upon compliance by the applicant with certain undertakings. ICA also sets strict time limits within which Investment Canada must respond, in an effort to ensure that the legislation does not unduly delay any investment in Canada.

Publishing Policy

Since January 1992, Canadian book publishing and distribution firms that fall into foreign hands through indirect acquisition need not be divested to Canadian control, but the foreign investor must negotiate specific commitments to promote Canadian publishing. Foreign investors may directly acquire Canadian book firms under limited circumstances. Under an agreement reached with the United States in May 1999 on periodicals, Canada will permit up to 51 percent foreign ownership in the establishment and acquisition of foreign-owned businesses to publish, distribute and sell periodicals. However, acquisition of Canadian-owned businesses continues to be prohibited. After one year, Canada will permit up to and including 100 percent foreign ownership. Partnerships of foreign investors with majority Canadian ownership will be permitted. The United States is monitoring the effect of these policies on U.S. interests.

Film Industry Investment

Canadian policies prohibit foreign acquisitions of Canadian-owned film distribution firms and allow investment to establish new distribution firms only for proprietary products. Indirect or direct acquisition of a foreign distribution firm operating in Canada is only allowed if the investor undertakes to reinvest a portion of its Canadian earnings in a manner specified by the Canadian Government.

GOVERNMENT PROCUREMENT

In addition to Canada's international obligations in the area of procurement under the NAFTA, Canada is also a party to the WTO Agreement on Government Procurement (GPA). Canada is the only party to the GPA that has not assumed obligations to cover procurements of entities below the central government level. A number of Canadian Provincial governments maintain 10 percent price preferences favoring Canadian suppliers over U.S. and other foreign suppliers.

ELECTRONIC COMMERCE

There are currently few barriers to U.S.-based electronic commerce in Canada. The Canadian Radio-Television and Telecommunications Commission (CRTC) announced in 1999 that it would not attempt to regulate the Internet.

Early in 2000 Canada passed a new personal information protection law, Bill C-6, which requires persons or firms which collect personal information in the course of commercial activities to inform the subject of all purposes to which the data may be put, and to obtain informed consent for its use. This law initially applies only to the federally-regulated private sector (e.g. airlines, telecommunications), but its application will expand to other commercial activities in 2003, or when provincial governments pass substantially similar legislation.

CHILE

TRADE SUMMARY

The 1999 U.S. trade surplus with Chile totaled roughly $143 million, a $1.4 billion decrease from 1998. U.S. imports from Chile in 1999 totaled $2.9 billion, while U.S. exports to Chile in 1999 were $3.1 billion. Despite the reduction in U.S. exports to Chile, due in part to an economic slow-down in 1999, Chile was the 32nd largest export market of the United States last year. In 1998, U.S. foreign direct investment (FDI) was $9.1 billion.

IMPORT POLICIES

Chile has a generally open trade regime and unilaterally reduces its applied tariffs. On January 1, 2000, Chile's uniform *ad valorem* tariff decreased from ten percent to nine percent for virtually all imports from countries without free trade agreements (FTA) with Chile, including the United States. The uniform tariff is set to decline by one percentage point per year until it reaches six percent in 2003. Imports of used goods, however, are assessed a 16.5 percent tariff, while computer products enter Chile duty free. The importation of used automobiles is prohibited. Virtually all of Chile's tariffs are bound at 25 percent *ad valorem*, with the exception of tariffs for wheat, flour, vegetable oil and sugar, which are subject to a complex price band regime and bound at 31.5 percent.

Dairy products are also bound at 31.5 percent. A subsidies investigation is currently ongoing for U.S. milk powder exports to Chile. On December 29, 1999, Chile invoked provisional duties of an additional 21 percent on imports of powdered milk products from the European Union and the United States. Chilean officials are expected to announce a final ruling by early April.

Chile maintains a complex price band system for certain agricultural products that keeps domestic prices within a predetermined range. Due to low international wheat prices in 1998 and 1999, this system led to applied import duties as high as 90 percent, well above Chile's WTO bound rate. The methodology behind this system calls into question Chile's consistency with the WTO Customs Valuation Agreement (CVA), due to its use of minimum reference prices. Chile's obligations under the CVA took effect on January 1, 2000. In the case of wheat flour, the United States has a significant export interest.

The Government of Chile initiated a safeguards investigation on the 31 agricultural products governed by price bands in September 1999. This led to the imposition of provisional safeguard duties in November 1999, which mirror those already applied under the price-band system. In January 2000, the Chilean Government found a threat of serious injury to the products under evaluation in the safeguard investigation and decreed that the provisional duties be formalized and extended for one year.

STANDARDS, TESTING, LABELING AND CERTIFICATION

Chile's strict animal health and phytosanitary requirements prevent the entry of numerous products, such as Northwest cherries and some citrus. As a result of efforts by the U.S. Government on sanitary and phytosanitary issues, Chile has begun to open its market to some trade in certain horticultural products, including citrus, table grapes, kiwis, apples, and pears from the U.S. west coast. However, U.S. exports of fresh and frozen poultry are effectively blocked from the Chilean market by salmonella inspection requirements that the United States considers unjustified. According to U.S. and Chilean industry sources, U.S. dry peas exported to Chile are subject to Chilean fumigation requirements although Canadian dry peas are not. Chile does not permit U.S. beef in consumer cuts to enter the market without being graded and labeled to Chilean standards, which are incompatible with the U.S. grading and labeling system. Chile announced in October 1999 that all unprocessed livestock products entering the country must come from plants previously inspected by the Ministry of Agriculture. This temporarily halted trade in a wide range of meat and dairy products. The United States Government continues to press

Chile to implement and enforce WTO-consistent sanitary and phytosanitary requirements.

EXPORT SUBSIDIES

Chile employs a number of export-promotion measures to help non-traditional exports, including through the Chilean Government's active export-promotion agency "ProChile." Chile provides a simplified duty drawback program for non-traditional exports, which does not reflect actual duties paid on imported components. In general, Chile's export promotion measures are intended to expedite and simplify the paperwork involved in the export process. The Government of Chile also provides exporters with quicker returns of value-added taxes than it provides to other producers. One such export-promotion measure lets all exporters defer import duties for up to seven years on imported capital equipment or receive an equivalent subsidy for domestically produced capital goods. Chile has announced that, in accordance with its WTO commitments, the drawback program will be phased out; legislation to effect this change is expected to receive congressional approval in 2000. The Chilean forestation subsidy program was reinstated in 1998.

INTELLECTUAL PROPERTY RIGHTS PROTECTION

Patents and trademarks

Chile implemented a patent, trademark and industrial design law in 1991 that provides product patent protection for pharmaceuticals and a limited form of pipeline protection. While the law is generally strong, deficiencies exist, including: a term of protection inconsistent with the TRIPS term of 20 years from filing; no provisions for restoring patent term in appropriate circumstances; inadequate industrial-design protection; and a lack of full "pipeline" protection for pharmaceutical products patented in other countries prior to the time product patent protection became available in Chile. The Government of Chile introduced legislation in 1999 intended to make this and other Chilean intellectual property laws fully TRIPS-consistent. However, this legislation was not passed prior to January 1, 2000, when most of Chile's TRIPS obligations came into effect.

The U.S. Government has urged that the Government of Chile ensure that TRIPS-consistent intellectual property protection be provided as soon as possible. The Chilean Congress should address the draft bill soon after reconvening in March. In a preliminary review of the draft legislation, the United States saw with concern that protection for undisclosed data, including test data confidentiality, did not appear to be addressed. Chile does not currently provide a reasonable term of protection for test data. In addition, the Chilean patent office faces a significant backlog of patent applications, although the Government of Chile made some progress in this area in 1999.

Chile's trademark law is generally consistent with international standards, but contains some deficiencies, including: no requirement of use to maintain trademark protection; a "novelty" requirement for trademark registrations; unclear provision for trademarking figurative marks, color or packaging; and no provisions for protection of "well-known" marks. Some U.S. trademark holders have complained of inadequate enforcement of trademark rights in Chile.

Copyrights

Chile revised its copyright law in 1992, extending the term of protection to the author's life plus 50 years, the standard in the WTO TRIPS Agreement. While the copyright law provides protection that is nearly consistent with international standards in most areas, shortcomings remain. The Chilean law does not clearly protect computer software as a "literary work," does not provide clear rental and importation rights, provides inadequate penalties, has no provision for *ex parte* civil searches, is uncertain regarding the availability of injunctions and temporary restraining orders and places unnecessary constraints on contractual rights. Despite active enforcement efforts, piracy of computer software and video recordings remains significant. Revision of the 1992 copyright law is also addressed in the Government of Chile's 1999 intellectual property rights bill.

Chile has not yet ratified the WIPO Treaties on Copyright and Performances & Phonograms.

SERVICES BARRIERS

Chile's relatively-open services trade and investment regime stands in contrast to its relatively-limited GATS commitments. In particular, Chile maintains a "horizontal" limitation, applying to all sectors in Chile's GATS schedule, under which authorization for foreign investment in service industries may be contingent on a number of factors, including: employment generation, use of local inputs and competition. This restriction undermines the commercial value and predictability of Chile's GATS commitments.

Chile has made WTO commitments on most basic telecommunications services, adopting the WTO reference paper on regulatory commitments and ratifying the GATS Fourth Protocol. Nonetheless, U.S. companies occasionally complain of regulatory delays. Access surcharges for incoming international calls were lowered dramatically in May 1999, decreasing complaints by U.S. and other international carriers. These charges are discriminatory, applying to incoming, but not outgoing, international calls.

During the 1997 WTO financial services negotiations, Chile made commitments in all banking services and most securities and other financial services. However, Chile made commitments neither for asset management services, including the management of mutual funds or pension funds, nor for financial information services. Chile also reserved the right to apply economic needs and national interest tests when licensing foreign financial service suppliers. In practice, Chile has allowed foreign banks to establish as branches or subsidiaries and to provide the same range of services that domestic banks are allowed. Providers of securities and asset management services, including pension fund and mutual fund management services, have been allowed to establish 100 percent owned subsidiaries in Chile.

INVESTMENT BARRIERS

While Chile welcomes foreign investment, controls and restrictions exist. Under a law that regulates nearly all foreign direct investment, profits may be repatriated immediately, but none of the original capital may be repatriated for one year. Foreign direct investment is subject to *pro forma* screening by the government of Chile. Until mid-1998, all funds entering Chile as ordinary foreign capital were subject to a non-interest-bearing reserve deposit requirement that significantly increased the cost of these capital flows. The reserve requirement, which applied to foreign capital introduced into Chile for most lending purposes, investment in government securities and other so-called "speculative" purposes, was reduced from 30 percent to 10 percent in June 1998 and to zero two months later. This reduction, made in response to declining capital inflows stemming from the global economic crisis, could be reversed at any time, although President Ricardo Lagos, who took office in March 2000, has promised to permanently eliminate the reserve requirement. Chile and the United States are negotiating a bilateral tax treaty and hope to agree on a final text in 2000. Until the agreement takes effect, profits of U.S. companies will continue to be subject to taxation by the governments of both nations.

Chile notified to the WTO measures inconsistent with its obligations under the WTO Agreement on Trade-Related Investment Measures (TRIMS). These measures deal with local content and trade balancing in the automotive industry. Proper notification allowed developing-country WTO Members to maintain such measures for a five-year transitional period after entry into force of the WTO. Chile did not meet the January 1, 2000, deadline for eliminating these measures, and requested a five-month extension on its TRIMS transition period in December 1999. The request for an extension was based on the need for more time to fully dismantle the exemption from payment of customs duties envisaged in Article 3 of the Chilean Automotive Statute (Law No. 18.483), thereby bringing the statute fully into line with Chile's commitments under the TRIMS agreement, which is anticipated prior to May 31, 2000.

ELECTRONIC COMMERCE

There is a growing recognition of the vast potential of electronic commerce in an economy characterized by an export and services orientation. Further, Chile has enjoyed rapid growth in the computer/telecommunications sector and in Internet use. There is evidence of a growing consensus between market participants and policy officials that the regulatory treatment of the industry should promote the sector's competitiveness. While there is an awareness of the myriad privacy, security, contract law, etc., issues raised by electronic commerce, there is also recognition that the eventual creation of national policies addressing such issues will have to move hand-in-hand with developments internationally.

In February 2000, Chile became the first country in Latin America to sign a Joint Statement on Electronic Commerce with the United States, highlighting the countries' agreement that the private sector should take the lead on the establishment of business practices related to electronic commerce.

OTHER BARRIERS

Distilled Spirits Tax

Chile's tax regime historically has imposed higher taxes on distilled spirits imports than on *pisco*, a spirit manufactured in Chile. The United States has consistently expressed concern regarding the inconsistency of the taxes with Article III:2 of the General Agreement on Tariffs and Trade (GATT), which burden exports of U.S. vodka, whiskey, gin and other spirits. In November 1997, the Chilean Congress passed a bill to modify the liquor tax system. The modification took effect December 1, 1997, with a three-year phase-in period. The amended system still burdens U.S. exports. In March 1998, the European Union initiated a WTO panel proceeding to review this discriminatory practice, in which the United States was a third-party participant. The panel and the WTO Appellate Body in July 1999 found Chile to be in violation of GATT Article III:2, due to the disparate and protectionist tax treatment of imports directly competitive or substitutable for *pisco*. At the January 2000 meeting of the WTO Dispute Settlement Body, the Government of Chile pledged to bring its tax regime on distilled spirits into compliance with its WTO obligations. Under WTO rules, the maximum time frame for such actions is 15 months. The U.S. Government has encouraged the Government of Chile to do so expeditiously.

Luxury tax

In addition to the nine percent import tariff and the 18 percent value-added tax, automobile imports are subject to additional taxation. A "luxury tax" of 85 percent is also levied on CIF value above a certain price level. The Chilean Government raised this price threshold from \$10,000 in 1999 to \$15,000 in 2000, easing – but not eliminating – the competitive disadvantage placed on higher priced U.S.-made automobiles that often include expensive safety features.

PEOPLE'S REPUBLIC OF CHINA

TRADE SUMMARY

U.S. exports to China have increased nearly 77 percent since 1992, despite a 7.9 percent export decline in 1999. U.S. exports to China are dominated by higher-valued capital goods and industrial supplies, which account for some 85 percent of U.S. exports to China. The 1999 decline, in part, reflected a slowdown in China's economy. This decrease in export growth largely resulted from declines in two major sectors: aircraft and machinery. Exports to China in these categories decreased by 20 percent in 1999.

China continued to be a growing supplier of U.S. goods imports. Purchases from China increased by 14.9 percent in 1999, but accounted for only 8 percent of total U.S. goods imports in 1999. The increase in imports from China appears to be associated, in part, with the shift from elsewhere in Asia of parts of the production processes dependent on lower-skilled workers. U.S. imports from China are primarily low value-added consumer goods, such as toys, footware, apparel, and some areas of consumer electronics. Consumer goods now make up nearly 70 percent of U.S. imports from China.

As China's share of such U.S. imports has risen, that of other Asian countries has fallen, reflecting displacement by China of goods from other suppliers. For example, China's import share of U.S. imports of footwear has increased from 9 percent to 60 percent between 1989 and 1999, while the share from four Asian countries (Hong Kong, Taiwan, South Korea, and Japan) fell from a collective 51 percent to 2 percent. Similarly, for U.S. imports of toys and sporting goods, China's share increased from 22 percent to 61 percent, while the share for the four Asian countries declined from a collective 58 percent to 21 percent.

OVERVIEW

China's accession to the WTO, based on the U.S.-China bilateral market access agreement of November 15, 1999, is critical to opening China's market to U.S. goods and services. Indeed, the commitments made in the bilateral agreement would address the concerns expressed below. By encouraging structural reform and the rule of law, accession to the WTO will also support China's own domestic reform process.

The WTO Agreement builds on, but goes far beyond in the breadth and level of commitments, the fourteen trade agreements negotiated between the United States and China since 1979. These bilateral agreements included sectors ranging from civil aviation and satellite exports to agriculture and intellectual property rights protection.

The Chinese government has recognized for a number of years that economic reform and market opening are cornerstones of sustainable economic growth. Nonetheless, these reforms have been difficult for certain constituencies, particularly in the aging industrial sector and the heavily protected agricultural sector. Thus, while China today has a more open and competitive economy than 15 years ago, there are very substantial barriers in place. Government at the central, provincial, and local levels has sought to protect emerging or noncompetitive sectors from foreign competition. Resistance at the provincial and local levels of government have restricted the central government's ability to implement trade reforms, in particular with respect to intellectual property rights (IPR) protection. Import barriers, a nontransparent and inconsistent legal system, and limitations on market access combine to make it difficult for foreign firms to compete effectively in the domestic marketplace.

The Chinese Economy in 1999

China officially estimated GDP growth at 7.1 percent in 1999, continuing the gradual slowdown from the double-digit economic growth of the early 1990s. Consumer spending languished despite an ongoing infrastructure spending program and a separate social welfare benefit and civil service salary increase in mid-1999. State-owned enterprise (SOE) reform continued at a gradual pace, and layoffs contributed to a growing unemployment problem. Price deflation continued in 1999. New bank lending grew more slowly, perhaps reflecting increased prudence on the part of the dominant state-owned banks as managers were for the first time being held accountable for bad loans. The poor financial condition of the banking sector remains a major concern.

The overall economic picture is as follows: Exports rebounded from consecutive declines in the first months of the year to finish 1999 up 6.1 percent over 1998. China has maintained competitiveness in many of its major export sectors, although signs of weakness are evident in steel. Chinese imports increased by an estimated 18.2 percent in 1999, largely due to the effect of the antismuggling campaign announced in late 1998. Real import levels (allowing for the crackdown in smuggling) are widely believed to have remained stable, and may have actually declined in some sectors. Inflows of foreign direct investment slumped by 10.5 percent, year on year, through the end of October. New commitments dropped even more substantially, by 20.3 percent to $31.3 billion through the end of October.

Problems Continue Despite Progress

In an effort to cope with a slowing economy and relatively weak external demand, China continued its unilateral trade reform efforts in 1999. Some of the policies adopted will improve market access for U.S. goods and services. For example, a significant expansion in the number of firms with trading rights, reductions in the number of products subject to import quotas, and an improved system of distribution rights should benefit foreign firms. Despite this progress, measures in other areas effectively closed certain markets for imported goods and services.

In several cases, new barriers were erected. The vague wording of many Chinese laws and regulations often leads to conflicts with other laws or broader trade and investment policies, and makes compliance difficult.

Examples of Special Concern in 1999 Include:

Encryption regulations: In January 2000, the Chinese government implemented draft regulations governing the sale, distribution, use and production of commercial encryption products in China, including a ban on the sale of all foreign products. As originally proposed, the rules could have had a stifling effect on the development on the Internet and e-commerce in China and U.S. companies seeking market access. The Chinese Government, realizing the practical and commercial implications of implementing such a broad regulatory regime, recently issued a statement clarifying its commercial encryption policy. According to the March 2000 statement, the regulations will be limited to "specialized hardware and software products for which encryption and decoding operations are its core functions." Wireless phones, Windows software, and browser software are not covered. Registration requirements are also relaxed. In addition, the regulations are being researched and will be revised "in accordance with WTO regulations and promises to foreign governments." This is a positive step; the U.S. Government will continue to work with the U.S. business community to ensure that their concerns are met in future rulemakings.

Controls on social survey activities conducted by or for foreign entities: Regulations published by the State Statistical Bureau (SSB) in July 1999, require all foreign companies conducting market surveys in China to go through an annual registration process. The regulations stipulate that all survey activities undertaken by foreign institutions, or domestic agencies employed by foreigners, must first be approved by provincial statistical bureaus or the SSB. Finished survey results must also be cleared with the approving agency. The regulations will be expensive and time consuming to comply with. More important, they have the potential to limit the ability of legitimate firms to conduct market research. In addition, the potential for compromise of confidential business information is substantial.

Pharmaceutical import bans and pricing caps: The Chinese Government banned the import of nine generic medicines, including several varieties of antibiotics, pain relievers, and vitamin C, in mid-1999, in an effort to control falling prices in the domestic market. In addition, in late 1998, the Chinese government implemented price caps on pharmaceuticals, claiming it was doing so to contain health care costs.

New testing requirements for imported cosmetics: For manufactured goods, China requires quality licenses before granting import approval. Testing assesses conformity to standards and specifications often unknown or unavailable to foreigners and not applied equally to domestic products. For example, in mid-1999, the Ministry of Health imposed strict conformity assessment requirements on imports of cosmetic products containing sunscreens, skin lighteners or hair-restorers. Industry sources say the testing requirements create an effective import barrier as they are both opaque and expensive to carry out.

Restrictions on the importation of silicone structural glazing (SSG) sealant: The SSG sealant market in China is dominated by imports, estimated at $40 million annually. On July 1, 1999, the State Economic and Trade Commission (SETC) implemented a series of regulations aimed at strengthening government control over SSG sealant imports. The regulations designate a profit-seeking state-owned company, China Yuanwang Corp., as the sole import, inspection and warehousing agent for SSG sealant. In addition, import of the sealant has been restricted to five Chinese ports.

New controls on the processing industry: Regulations implemented in June 1999 further restrict the importation of certain commodities related to the processing trade. These measures are designed to shift the direction of China's processing trade toward products with higher technological content and higher value added potential. The regulations prohibit the import of used garments, certain kinds of used publications, toxic industrial waste, junk cars, used automobiles or components, seeds, seedlings, fertilizers, feed, additives, or antibiotics used in the cultivation or breeding of any export commodity. The regulations also restrict imports of plastic raw materials, raw materials for chemical fibers, cotton, cotton yarn, cotton cloth, and some steel products.

IMPORT POLICIES

China, at present, restricts imports through a variety of means, including high tariffs and taxes, non-tariff measures, trading rights restrictions, and other barriers. Prohibitively high tariffs, in combination with taxes, other import restrictions, and foreign exchange controls, form an effective firewall against many imports. Chinese officials are increasingly aware, however, that such protective measures contribute to endemic inefficiencies in the domestic economy and create an environment conducive to smuggling. To this end, the Chinese Government moved in 1999 to increase the number of firms with import/export trading rights, further reduce the number of goods subject to import quotas and licensing requirements, and cut tariffs.

As one step in the process to accede to the WTO, China concluded a bilateral market access agreement with the United States on November 15, 1999. Once it becomes a member, it must fulfill its commitments to reduce and ultimately eliminate the existing substantial barriers to access of U.S. goods and services to the Chinese market.

TARIFFS AND TAXES

Tariffs

Under the terms of the bilateral WTO Agreement, once China accedes to the WTO its industrial tariffs will fall from an overall average of about 17 percent at present to an average of 9.4 percent by 2005. Tariffs for U.S. priority agriculture products will fall from an average 31 percent to 14 percent by January 2004. In January 1999, the Minister of Finance announced tariff cuts on 1,014 products in the forestry, textile and toy sectors to set the stage for WTO accession negotiations. At present, however, high tariffs constitute an effective import barrier. In late 1999, for example, some motor vehicles faced tariffs of over 100 percent. U.S. industry points out that tariff rates for sectors in which China is trying to build international competitiveness remain especially high. As discussed below, tariff barriers are often exacerbated by non-tariff barriers that, even if tariffs are reduced, would impede imports.

Tariff rates significantly lower than the published MFN rate may be applied in the case of goods that the government has identified as necessary to the development of a key industry. This has been particularly true of high technology items. These products benefit form a government plan to increase investment in high technology manufacturing by domestic and foreign firms. Under the terms of a new foreign investment policy announced on September 8, 1999, foreign invested firms who produce certain types of high technology goods, or who are export-oriented, will no longer have to pay duty on imported equipment which is not manufactured in China and which is for the enterprise's own use. China's Customs Administration has also occasionally granted preferential tariff rates in the case of other key sectors – in particular, the automobile industry.

In August 1998, the Customs Administration launched an ambitious program to standardize enforcement of customs regulations throughout China as part of a larger campaign to combat smuggling. The program was introduced to control and ultimately eliminate "flexible" application of customs duty rates at the port of entry. While foreign businesses selling goods into China might at times benefit from lower import duty rates, lack of uniformity made it difficult to anticipate in advance what the applied duty would be.

The program successfully reduced the flexibility of local customs officials to "negotiate" duties. An 18.2 percent increase in imports, year-on-year, in 1999 is believed to be largely due to the clampdown on irregular customs practices and smuggling. On the other hand, the Chinese government has yet to seriously address the excessively high tariffs that create an environment conducive to gray market transactions and smuggling in the first place.

China is beginning to use antidumping investigations to control surges in imports of certain products. The Chinese government issued a final determination in China's first- ever antidumping case against the United States on June 3, 1999, on newsprint. China also initiated an antidumping investigation against U.S., Japanese and German manufacturers of acrylic acid products on December 10, 1999. We are looking closely at China's use of antidumping laws to ensure they are not used as barriers to trade.

Taxation

China Customs announced on January 3, 2000, that it was cutting import taxes on a number of products by as much as 2 percent, effective January 1, 2000. The cuts cover several hundred products in the textile, raw material, and production machinery and parts sectors.

Imports are sometimes subject to discriminatory application of China's valued-added tax (VAT), which ranges between 13 and 17 percent, depending on the product. While the VAT tax is collected on imports at the border, domestic producers either fail to pay the VAT or absorb the tax without passing it on to their customers and then receive loans to defray the company's losses.

Non-tariff Measures

Despite considerable progress in the 1990s, non-tariff barriers to trade and trade distorting measures persist. Non-tariff barriers (NTBS) include quotas, import licensing, import substitution and local content policies, and unnecessarily restrictive certification and quarantine standards. Trade barriers, such as export performance requirements, still distort trade. Foreign invested enterprises (FIES) continue to report being forced to accept export performance requirements in investment contracts; they say that failure to meet these requirements can result in loss of licenses for foreign exchange or contract termination. Similarly, some firms report being forced to accept contracts mandating increased "local content;" government agencies strongly encourage firms to "buy Chinese."

Non-tariff barriers to trade are primarily administered at national and subnational levels by the State Economic and Trade Commission (SETC), the State Development and Planning Commission (SDPC), the Ministry of Foreign Trade and Economic Cooperation (MOFTEC), the Customs Administration, and the Ministry of Information Industries (MII). Specific non-tariff barriers result from complex negotiations between the central government and various ministries, state-owned corporations and trading companies.

Import Quotas

At present, quotas limit over 40 categories of commodities, including watches, automobiles, grains, edible oils, and certain textile products. The central government sets annual quotas through negotiations usually held late in each year. Officials at local and central levels evaluate the need for quantitative restrictions on particular products. Once demand has been determined, the central government allocates quota to provinces and special economic zones who distribute it to end-users. Quota amounts are often unannounced and allocation remains nontransparent to outsiders. Monopoly importers, such as exist for theatrical film imports, are able to establish *de facto* quotas which maximize their monopoly rents.

China has been gradually reducing quotas and other quantitative restrictions, but would be required to eliminate most of them only if it accedes to the WTO. Specifically, China would be required to eliminate existing quotas upon accession for the top U.S. priority products and will phase out remaining quotas, generally by 2002, but no later than 2005. Quotas will grow at an annual rate of 15 percent from levels at or above current trade.

Import Licenses

Many products that are subject to import quotas also require import licenses. Since the early 1990s, China has eliminated many import license requirements, a process that is likely to continue as preparations are made for China's WTO accession. Licenses are still required, however, for a number of items important to the United States, including grains, oilseeds and oilseed products, cotton, iron and steel products, commercial aircraft, passenger vehicles, hauling trucks, and rubber products. MOFTEC administers the licensing system, but as of late 1999 had given primary authority for approval and import of some agricultural items to the State Administration for Entry-Exit Inspection and Quarantine (SAIQ).

Although labeled "automatic," a license applicant must prove that there is "demand" for the import and that there is sufficient foreign exchange available to pay for the transaction.

Tariff-Rate Quotas

In 1996, China introduced tariff-rate quotas (TRQ) on imports of wheat, corn, rice, soybeans, cotton, barley, and vegetable oils. The regulations governing TRQ Administration have not been made public and TRQ quantities are not announced, inhibiting trade in these goods. Out-of-quota rates are currently as high as 121.6 percent. These issues were addressed in the bilateral market access agreement on China's accession. Once it accedes to the WTO, China will establish large and increasing tariff-rate quotas for these commodities, with low in-quota duties ranging from 1 to 10 percent. A portion of each TRQ will be reserved for importation through entities other than state trading entities. To maximize the likelihood that TRQs will fill, China agreed to specific rules for administration of the TRQs, including increased transparency and reallocation of unused quota to end users that have an interest in importing.

Export Licenses

Export licenses discourage foreign investment in the manufacturing sector and slow the flow of trade. On January 1, 1999, China announced that the number of products requiring export licenses had been cut from 707 to 395, a 44-percent reduction. Products still requiring licenses include raw materials, lethal chemicals and food products. Some manufactured goods – certain types of textiles, electric fans, computers, black and white televisions and bicycles – also require export licenses.

Transparency

The 1992 Bilateral Market Access MOU laid the foundation for China to improve the transparency of its trade regime. Pursuant to the agreement, China has designated the MOFTEC Gazette as the official register for publication of all laws and regulations relating to international trade. The Gazette is updated as new regulations are announced and is available on a subscription basis.

Finding information about economic and trade regulations in the print and electronic media is becoming easier. Economic newspapers now routinely carry the text of government policies and regulations. Most government ministries have also taken to publishing digests of their regulations, both in hardcopy and on their websites. The State Council and MOFTEC websites, CEI.gov.cn and MOFTEC.gov.cn, respectively, are particularly good examples of this trend. In addition, a number of commercial entities now offer databases and translations of many regulations.

Despite this progress, access to information is still a problem. Chinese ministries routinely implement policies based on "guidance" or "opinions" that are not available to foreign firms and have not always been willing to consult with Chinese and foreign industry representatives before new regulations are implemented. Experimental or informal policies and draft regulations are regarded as internal matters and access to them is tightly controlled. It can be extremely difficult to obtain copies of draft regulations, even when they have a direct effect on foreign investment. The opaque nature of customs and other government procedures also complicate the ability of businesses to take full advantage of commercial opportunities in China.

A further complicating factor is that laws and regulations in China tend to be far more general than in other countries. This allows Chinese courts to apply them flexibly, but also results in inconsistency. Companies have difficulty determining precisely whether their activities contravene a particular regulation. Agencies at all levels of government have rulemaking authority, resulting in regulations that are frequently contradictory. Finally, while there seems to be no shortage of rules and regulations, there are few procedures in place for appeal of regulatory decisions.

TRADING RIGHTS AND OTHER RESTRICTIONS

Trading Rights

China restricts the types and numbers of entities that have the legal right to engage in international trade. Only those firms with trading rights may bring goods into China. In addition, some goods such as grains, cotton, vegetable oils, petroleum and related products are imported principally through state trading enterprises.

Severe restrictions on the type and number of firms with trading rights contribute to systemic inefficiencies in the trading system and create substantial incentives to engage in smuggling and other corrupt practices. The restrictions also inhibit the ability of Chinese firms to export their products to foreign markets.

Liberalization of the trading system, which had been proceeding at a gradual pace since 1995, was given a major push in early 1999 when MOFTEC announced new guidelines allowing a wide variety of Chinese firms to register to conduct foreign trade. The guidelines allow, for the first time, both manufacturing and "nonproduction" firms with annual export volumes valued in excess of $10 million to register for trading privileges. Firms with trading rights must undergo an annual qualifications test and certification process. MOFTEC estimates that over 6,000 Chinese manufacturers, including over 200 private firms, have so far been allowed to conduct foreign trade under the new policy. MOFTEC is working on guidelines to allow foreign companies, subject to certain restrictions, to directly engage in trade.

Despite this progress, substantial restrictions remain for both domestic and foreign-invested firms. As part of its bilateral WTO accession agreement, China committed to phase out restrictions on trading rights within 3 years of its accession. This tracks with China's commitment to phase out restrictions on distribution services within 3 years of its accession.

Local Agents

The ability of foreign firms to distribute directly their products in China has been subject to strict limitations. In general, foreign firms are only allowed to distribute products that they manufacture in China. Foreign firms have been required to go through local agents to distribute imported goods. China has agreed to eliminate distribution restrictions as part of its bid to join the WTO, but the current system inhibits the ability of U.S. firms to market their products effectively.

Import Substitution Policies

Import substitution policies, imposed on both an informal and formal basis, have been a continuing problem for U.S. business. While we have seen improvement in this area since 1992, instances of apparent import substitution policies by the Chinese government continue to occur. Recent examples include:

Generic Medicines. In an effort to support falling domestic prices and further protect the domestic pharmaceutical industry, China banned the import of nine generic medicines in 1999.

Telecommunications Equipment. In late 1998, the Ministry of Information Industries (MII) issued an internal circular instructing telecommunications companies to buy components and equipment from domestic sources.

Pharmaceutical Pricing. In 1998, the State Council released regulations that implement new pricing formulas for imported pharmaceuticals based on whether domestic substitutes exist. The regulations in addition impose restrictions on profits earned on sales of imported medicines based on whether a domestic substitute exists.

Power Generation. The Chinese government announced in mid 1998 that power generation facilities of 600 MW or smaller could not use imported equipment.

Automotive Industry. The 1994 automotive industrial policy explicitly called for production of domestic automobiles and automobile parts as substitutes for imports, and established local content requirements, which forced the use of domestic products.

STANDARDS, TESTING, LABELING AND CERTIFICATION

It is often difficult to ascertain what inspection requirements apply to a particular import, as China's framework of import standards is not fully developed.
Moreover, the United States and other countries have complained that safety and inspection procedures applied to foreign products are more rigorous than those applied to domestic products. Foreign suppliers have also had difficulty in learning exactly how and who conducts inspections.

Inspection Standards

Chinese law provides that all goods subject to inspection by law or according to the terms of a contract must be inspected prior to importation.

China maintains statutory inspection requirements known as "conformity assessment procedures" on about 800 imported goods, and an even greater number of exported products. Chinese buyers or their purchase agents must register for inspection of imported goods at the port of entry. The scope of inspection includes quality, technical specifications, quantity, weight, packaging, and safety requirements.

Quality Licenses

For manufactured goods, China requires that a quality license be issued before the goods can be imported into China. Obtaining quality licenses is a time-consuming process. While requirements vary according to the product, U.S. exporters have complained that they are burdensome and contrary to principles of national treatment.

Safety Licenses

China also imposes safety licensing requirements on certain products under the terms of the "Import and Export Commodity Inspection Law" of 1989. National health and quarantine regulations in addition require that all imported (but not domestic) food items be marked with a laser sticker as evidence of the product's safety. Importers are charged between 5 and 7 cents per sticker.

Major problems with China's safety licensing system include the lack of transparency, lack of national treatment, difficulty in determining relevant standards. Examples include:

Electronic Products. On January 1, 1999 China imposed mandatory safety inspections for imports of electronic products, including personal computers, monitors, printers, switches, television sets, and stereo equipment. As of January 1, 2000, these same products require an import commodity safety license.

Cosmetic Regulations. In mid 1999, the Ministry of Health imposed strict testing standards on imports of cosmetic products containing sunscreens, skin lighteners or hair restorers. Industry sources say the testing requirements create an effective import barrier, as they require individual testing requirements for each individual product containing one of the regulated substances, making them expensive to carry out.

Phytosanitary and Veterinary Import Quarantine Standards. China's phytosanitary and veterinary import standards have a history of uneven application and are sometimes based on dubious scientific principles. In addition, standards for domestic product are either nonexistent or nontransparent.

Nonetheless, China has made substantial progress in recent years. China committed to base agricultural import standards on science. China has signed several bilateral protocols with the United States governing the import of agricultural items including live horses (September 1994); apples from Washington, Oregon and Idaho (April 1995); ostriches, bovine embryos, swine and cattle (June 1995); cherries from Washington (March 1996), bovine and swine semen (February 1997) grapes from California (May 1997), cherries from Washington, Oregon, Idaho and California (May 1998) and bovine embryos (April 1999).

As part of its bid to join the WTO, China lifted its longstanding barriers on import of U.S. grain, citrus, and meat and poultry with the signing of the Bilateral Agricultural Cooperation Agreement (ACA) in April 1999. The ban on wheat from the Pacific Northwest, for example, was imposed in 1973, over 25 years ago. These import bans severely limited access for major U.S. agricultural products, costing the United States billions of dollars in lost trade. The major provisions of the Agreement are as follows:

Meat. China agreed to recognize the U.S. certification system for meat and poultry. This means that China will accept U.S. meat and poultry from all USDA-certified plants. With China's consumption of meat and poultry growing faster than its domestic production of livestock and feed ingredients, industry analysts predict a significant increase in demand for U.S. meat and poultry in the near term.

Citrus. China lifted its ban on imports of citrus from Arizona, California, Florida, and Texas. The United States currently exports over $100 million of fresh citrus annually to Hong Kong, much of which is believed to end up in China. Removal of phytosanitary restrictions is expected to result in an increase of U.S. citrus exports directly to China, if China accedes to the WTO on the basis of the bilateral agreement negotiated in November.

Wheat. China lifted its ban on imports of U.S. wheat and other grains from the Pacific Northwest and will allow the import of U.S. wheat that is at or below a specific tolerance for TCK smut. China already purchased 50,000 metric tons of wheat in February for shipment from the Pacific Northwest per the terms of the bilateral agreement.

GOVERNMENT PROCUREMENT

Government procurement in China has been a nontransparent and noncompetitive process. Most government contracts allow for preferential treatment of domestic suppliers. Even when procurement contracts have been open to foreign bidders, such suppliers have often been discouraged from bidding by the high price that has been set on their participation. The Chinese government has routinely sought to obtain offsets from foreign bidders in the form of local content requirements, technology transfers, investment requirements, countertrade, or other concessions. In addition, payment in foreign exchange is not always guaranteed. Many Chinese officials are beginning to recognize that by not allowing an open and competitive bidding process for government contracts, China is paying too much for them.

On April 17, 1999, the State Council issued "provisional procedures for the administration of government purchases." This is China's first national law regulating government procurement practices. It is intended as an interim measure; work on a permanent law is ongoing in the Financial Committee of the National People's Congress. The "provisional procedures" are intended to establish a basic regulatory framework while work on an omnibus law continues. Officials familiar with the draft of the permanent law indicate that the financial committee has been tasked with ensuring that the provisions are WTO compatible. Incomplete reform of the state-owned sector means that preexisting regulations requiring many SOES to make purchases through specific government suppliers are still in force. These regulations will have to be revised before the permanent law can be fully consistent with WTO principles.

The interim regulations appoint the Ministry of Finance and the provincial and municipal finance bureaus as the governing agency in the administration of and supervision of government procurement. The new regulation calls on all government procurement offices to "follow the principles of openness, fairness, equality, effectiveness, and safeguarding the public interest." It establishes rudimentary criteria for the qualification of domestic and foreign suppliers and various categories of procurement, including open tenders, tenders by invitation, competitive negotiation, and sole sourcing. The regulation also sets broad standards for publicity, notification, bid scheduling, sealed bidding and bid evaluation. Existing contracts will be grandfathered under the new regulations.

As written, the provisional procedures offer insufficient protection to foreign participants in government procurement projects. Among other requirements, foreign suppliers must obtain permission from the Ministry of Finance before bidding on a project. Since there is no similar requirement for domestic suppliers, the new regulations do not provide national treatment.

EXPORT SUBSIDIES

China abolished direct subsidies for exports on January 1, 1991. Nonetheless, many of China's manufactured exports receive indirect subsidies through guaranteed provision of energy, raw materials or labor supplies. Exports of agricultural products, particularly corn and cotton, currently benefit from direct export subsidies. Indirect export subsidies are difficult to quantify since they are most often the products of internal administrative decisions and not publicized. China has agreed to stop such subsidies should it become a member of the WTO, however. Other indirect subsidies are also available, for example bank loans that effectively need not be repaid.

Export Requirements. Export requirements are imposed on state trading companies and foreign invested enterprises. This practice has tended to encourage trading companies to over-export, even doing so is not commercially viable. The ensuing financial losses are often covered by state commercial banks when loans are not repaid.

Corn Exports. China moved in 1999 to bring prices for its exported corn into line with international prices, in the process effectively eliminating a long-standing export subsidy. For example, most of China's corn exports in 1998 were sold at prices between $25 and $45 per metric ton below domestic wholesale corn prices. The elimination of this practice is in line with China's commitment to eliminate export subsidies should it become a member of the WTO.

Tax Incentives. Preferential tax incentives are another example of indirect export subsidies. China is attempting to bring a greater degree of uniformity to the system of taxes and duties it imposes on enterprises in China, domestic and foreign alike. As a result, preferential tax and duty policies that benefit exporters in special economic zones and coastal cities have been targeted for revision. Current weakness in the domestic economy has delayed some of these revisions, since the government is reluctant to impose measures that could negatively affect exports. An early 1999 experiment in eliminating certain VAT rebates for exporters located in special economic zones was abandoned after protests from domestic and foreign export firms.

INTELLECTUAL PROPERTY RIGHTS PROTECTION

Vigorous enforcement of our bilateral agreements with China has resulted in significant improvements in both intellectual property (IP) protection and market access. Before our IP agreements in 1992 and 1995, and the enforcement action in 1996, China was one of the world's largest IP pirates and a major exporter of pirated products. Today, China has improved its legal framework – and it has virtually shut down the illegal production and export of pirated music and video CDs and CD-ROMs. Indeed, today it is an importer of such products from third countries. Enforcement of intellectual property rights has become part of China's nationwide anticrime campaign and the Chinese police and court system have become actively involved in combating IPR piracy. In fact, China has been conducting a nationwide antipiracy campaign against the illegal production and trade of CDs and VCDs since October of last year that remains in effect.

Other IPR issues remain. Local and foreign intellectual property owners suffer from, for example, counterfeiting of brand name products, software piracy and, most recently, pirating of Internet domain names. While regional cooperation on enforcement of IPR has improved, it is still problematic. Difficulties with enforcement at the grassroots level include local protectionism and corruption, reluctance or inability on the part of enforcement officials to impose deterrent level penalties, and a low number of criminal prosecutions.

IPR Legislation and Administration

As a result of the 1998 government reorganization, the Chinese government established the State Intellectual Property Office (SIPO) to monitor IPR protection and devise effective enforcement measures in China. While centralizing responsibility for IPR protection is a positive step, SIPO has yet to establish that it can manage its responsibilities effectively.

One positive measure of China's commitment to strengthen IPR protections is that revisions to China's trademark law, patent law, and copyright law are currently underway. The revisions are intended to bring the laws into conformity with the Agreement on Trade Related Aspects of International Property Rights (TRIPS) and other international IPR standards covered under the World Intellectual Property Organization (WIPO) treaties.

Specific Issues

Patents and Administrative Protection: Despite the promulgation of administrative protection regulations in 1992, there have been several cases in which domestic firms are authorized to import or produce products in China before a foreign product's registration for administrative protection is complete. It can take months for an application for administrative protection of a foreign patent in China to be approved. Under regulations promulgated in 1994, domestic versions of similar pharmaceuticals can be legally registered during the period while a foreign manufacturer's application for administrative protection is pending. This allows the domestic imitation to be legally sold free of infringement liability.

Trademarks and Copyrights: While domestic copyright owners can deal directly with local copyright bureaus, foreign copyright owners wishing to pursue administratively copyright infringement issues must go through the National Copyright Administration (NCA) in Beijing. This results in lengthy delays and goes against the principal of national treatment.

A shortage of agents authorized to accept trademark applications from foreign companies makes it difficult for foreigners to register trademarks. The lack of clear procedures to protect well-known unregistered trademarks makes it extremely difficult to oppose or cancel well-known marks registered by an unauthorized party.

The software industry lacks clear procedures for addressing corporate end user software piracy. U.S. software companies have asked the NCA to issue guidelines for administrative enforcement against this problem. China's State Council, the highest executive organ of the government, issued a decree in 1999 admonishing Chinese government agencies to purchase only legal computer software. This was a very positive step. Nevertheless, end-user piracy of computer software continues to cost U.S. companies millions of dollars each year.

Regulations on the use of copyright agents by foreign companies have not yet been finalized; this effectively prevents foreign companies from using agents to register copyrights.

Domain Name Disputes: Internet domain name piracy is a relatively new IPR problem. Current standards for resolving these disputes are inadequate and need to be revised to allow for the cancellation of a pirated name.

ELECTRONIC COMMERCE

While the Chinese Government recognizes the potential of electronic commerce to promote exports and increase competitiveness, the industry is still in its infancy, but appears to be growing as the number of people with access to the Internet has grown from approximately 2 million in 1998, to 9 million in 1999, and is projected to exceed 20 million in 2000. At present, electronic commerce sales and contracts are not legally binding. Chinese ministries with responsibility for electronic commerce favor increased regulation, partially in response to the inadequacy of existing infrastructure and partially because of the Chinese Government's desire to control information exchanges via the Internet between its citizens and those of other countries. The lack of legal certainty regarding electronic transactions and related security issues pose significant challenges to the development of electronic commerce in China.

In 1996, the Chinese Government established the China International Electronic Commerce Center (CIECC). A division of the Ministry of Foreign Trade and Economic Cooperation (MOFTEC), CIECC provides various electronic commerce services to Chinese enterprises and institutions in order to promote foreign trade. Due to an underdeveloped Internet infrastructure, a low subscriber base, and inadequate payment/credit systems, however, the more rigid electronic data interchange (EDI) based electronic commerce remains the dominant format in China. EDI functions like a club, with member firms paying fees to use the standardized forms and dedicated networks that manage information transactions.

Electronic commerce services are beginning to develop in China. In 1999, a number of on-line stores were introduced in China. Many restaurants, bakeries and other service outlets now allow patrons to place orders on-line for delivery. A number of problems inhibit the growth of the industry, however. Regulatory standards on electronic commerce have not been published and remain unclear. High connection rates charged by Internet service providers, who are currently far above internationally competitive rates, make Internet access unaffordable for most Chinese. Slow connection speeds are another major barrier. Finally, the lack of a safe and secure payment system requires that Internet transactions in China be conducted on a cash-on-delivery basis or delayed by a ten-to fifteen-day verification period.

SERVICES BARRIERS

China's services sector has been one of the most heavily regulated parts of the national economy – and one of the most protected. The service commitments included in the bilateral WTO accession agreement would provide meaningful access of foreign businesses to the full range of services sectors, and addresses the barriers identified below. The Chinese economy itself will benefit from the increased scope of services, and the professionalism and technical expertise that U.S. service providers will bring. There will be substantial efficiency gains to the domestic economy as well from increased foreign participation in financial, insurance, telecommunications, retail, distribution and professional services, after sales service and repair businesses.

At present, foreign service providers are largely restricted to operations under the terms of selective "experimental" licenses. The strict operational limits on forms of establishment for entry, and restrictions on the geographic scope of activities, severely limit the growth and profitability of these operations.

Since China's services sector remains underdeveloped and current foreign participation in the market is minimal, it is difficult to estimate how much such barriers to market access represent in lost U.S. exports of services. In some service sectors, such as insurance, even the most conservative estimates predict that total premiums will reach $15 - 30 billion in the next few years. If China were to lift completely barriers to market access in this sector, U.S. industry estimates that U.S. insurance providers could be expected to capture a portion of the Chinese market that could easily exceed $1-2 billion. In other services sectors, such as legal services, accountancy, and consulting, and where potential revenues are likely to be more modest, the lifting of barriers to market access would still result in significant increases in U.S. exports of services.

Financial Services (Banking and Securities)

Foreign banks are subject to a restrictive, non-transparent regulatory environment. Some progress has been made in the last year, but the market access of foreign banks and securities firms is still inadequate and largely unprofitable. Foreign securities firms continue to be barred from underwriting or trading domestic stocks or bonds. This has negatively affected the investment environment.

Events of significance in 1999 include the relaxation of restrictions on local currency business. Local currency licenses have been issued to banks in Shanghai and Shenzhen, and extension of this experiment to other cities such as Tianjin is planned. The geographic limits on the local currency business of foreign bank branches in Shanghai have been widened to include neighboring Zhejiang and Jiangsu. Local banks are now permitted to lend medium-term renminbi funds to foreign banks, and the central bank conducted the first rediscount transaction with a foreign bank. Despite these improvements, foreign banks are still restricted to taking local currency deposits from, and making local currency loans to, foreign investors registered in the specified geographic area.

Distribution

Distribution in China is largely reserved for domestic companies. Existing restrictions on distribution services limit the ability of foreign firms and importers to service and support their customers. In general, foreign importers have limited trading rights, cannot own or operate trucks or warehouses, and must sell and distribute their goods through state-sanctioned foreign trade corporations or import-export agents, who often impose huge markups on the final price.

Consolidation: Current law prohibits foreign companies with multiple operations in China from consolidating shipping and other distribution-related activities. Domestically manufactured products must be sold, delivered and serviced separately from imported products. These regulations prevent foreign enterprises from selling products from other domestic sources, even when the products concerned are related. These requirements create redundant systems and increase costs for foreign firms.

Retailing

Regulations broadening the scope for foreign investment in the retail sector were announced in June 1999. Aimed at encouraging the development of large retail chain stores along the Wal-Mart model, and said to be intended as a solution to the moribund condition of many state-owned department stores, these regulations encourage the entry of large international retailers into the Chinese market.

The regulations require foreign investors to have maintained an average annual volume of merchandise sales of at least $2 billion during the three years prior to the application for permission to operate in the Chinese market, in addition to having $200 million in assets. These requirements effectively eliminate medium and small sized retailers from participation in the Chinese market. The regulations require chain stores with fewer than three outlets to have minimum local equity ownership of 35 percent, chains with more than three outlets are required to have local equity ownership of no less than 51 percent.

Direct Sales: Pyramid schemes operated by a number of direct sales companies, both domestic and foreign, led to a government ban in 1998 on this type of retailing in China. This severely affected several legitimate U.S. companies that had put substantial investment into this sector in the early 1990s.

Telecommunications

National security concerns and protection of the monopoly rents of domestic industries have restricted the opening of China's domestic telecommunications services market. In addition, the lack of a telecommunications law has left both foreign and domestic companies vulnerable to inconsistent application of and changes to regulatory policies. For example, the Ministry of Information Industries (MII) move in 1999 to cancel contracts signed under an experimental joint venture formula ended the only acceptable means of foreign participation in China's telecommunications services market.

Internet Services: Development of China's Internet services market has been hurt by high connection costs and other problems. In addition, a state council directive published in mid 1999, bans cable networks from offering telecommunications services, including Internet access, and telecommunications providers from offering television broadcasting services.

Insurance Services

The need for a sound regulatory environment and improved solvency among insurance firms has led to gradual reforms in China's insurance industry. The Chinese Government passed a new insurance law in 1993 and formed the China Insurance Regulatory Commission in 1998 to oversee the development of the industry in China. The domestic insurance market was opened on an experimental basis to foreign insurers in 1992. Currently, 13 foreign insurers are licensed to operate in Shanghai or Guangzhou. The scope of business remains severely limited. Foreign insurers are at present not permitted to participate in the group, health, pension, and insurance brokerage markets.

Further opening of the insurance industry in China will be a key part of China's continued economic development. The domestic market currently lacks sufficient capital in the reinsurance and brokerage sector to spread risks generally and to ensure coverage for high-risk exposures such as space launches and spread risk. The success of reforms in China's state-owned sector will be dependent to some extent on the availability of solvent pension, medical, and life insurance services.

Audiovisual Services

Chinese Government concerns about the entry of politically sensitive materials into China have led to restrictions in audiovisual services. The websites of foreign news organizations are often blocked for extended periods of time, and news services must remain wary that new restrictions could be imposed on their activities. Distribution of sound recordings, videos, movies, books, and magazines is highly restricted. Inconsistent and subjective application of censorship regulations act as a further impediment to the growth of the market for foreign and domestic providers alike.

Legal Services

One of the cornerstones of China's reform process is the introduction of policies that support the principle of rule of law. The Chinese Government has made a concerted effort to modernize the existing legal infrastructure in China but there are still acute shortages of lawyers and judges.

Foreign law firms have largely been excluded from entering China's legal services sector. China has permitted the establishment of foreign law firms in designated cities on a case-by-case basis only. Foreign law firms are permitted to practice in one city only and are not permitted to hire Chinese nationals to practice law. Chinese law firms, on the other hand, have been able to open offices freely throughout China since 1996. Foreign attorneys have so far not been allowed to take China's bar examination necessary for licensing to practice law in China.

Accounting Services

Accounting standards in China are not consistent with internationally accepted practices, nor are existing standards uniformly applied. The quality of accounting reports produced in China is often far below the internationally accepted norm. In an effort to improve the situation, the Chinese Government has moved to close substandard firms and reexamine existing licensing procedures.

Foreign accounting firms wishing to provide the full range of accounting services in China have been required to partner with domestic firms. Foreign firms have complained that these joint ventures, in which they have not been permitted to take a majority share, are often not managed to international standards. In addition, representative offices of foreign accounting firms have been limited to providing consultancy services.

Travel and Tourism Services

At present, foreign travel and tourism service providers are prohibited from providing full-service travel agencies in China. Permitted activities are subject to geographic restrictions. There are also a number of restrictions in place regarding the hiring of guides and tourist agents.

Other Professional Services

U.S. engineers, architects and consultancy services have enjoyed a relatively more cooperative and open relationship with the Chinese Government. These professions operate in the Chinese market through joint venture arrangements and are less affected by regulatory problems than other service sectors.

INVESTMENT BARRIERS

Despite the ongoing commitment of the leadership to "further opening" to investment, foreign investment inflows are strictly controlled and channeled toward areas that support national development objectives. China encourages foreign investment in priority infrastructure sectors such as energy production, communications, agriculture, forestry, environmental protection, and transportation, and restricts or prohibits it in sectors such as telecommunications, where there is a desire to protect a domestic industry.

For the past six years, China has been the second largest recipient of FDI in the world, after the United States. According to Chinese statistics, utilized FDI in China since 1979 reached a cumulative total of just over $267 billion by the end of 1998, with over $45 billion that year, roughly the same as in 1997.

There are signs, however, that the rapidly increasing FDI inflows of recent years are slowing. The total value of newly pledged foreign investment contracts dropped in the first three quarters of 1999; actual FDI inflows decreased as well. The number of new projects has also declined significantly, although this has been partially offset by the increase in the size of new ventures. The Asian financial crisis is partly responsible for the slowdown, as investment from other Asian countries and overseas Chinese has fallen.

Chinese Government officials acknowledged in late 1999 that the strict regulation of foreign business activities, particularly in the service sector, had contributed to sliding foreign investment volumes. In July 1999, MOFTEC said that multinational conglomerates were shying away from the China market because "China still was not satisfying the (market access) conditions in the financial, telecommunications, insurance and other service sectors" needed to attract these firms.

Investment Guidelines

In an effort to further encourage inward flows of foreign investment, China has adjusted its investment guidelines a number of times over the last five years. The revisions have created confusion among potential investors and added to the perception that the investment guidelines lack transparency. Uncertainty as to which industries are being promoted as investment targets, and how long such designations will be valid, undermines confidence in the investment climate.

Nonetheless, China has taken some positive steps. The government announced a series of measures in August of 1999 that begin to decentralize investment approval decision-making authority and create new incentives for investments in key sectors and geographic regions. Among other improvements, the new guidelines allow authorities at the provincial level of government to approve "encouraged" foreign-invested projects.

Investment Restrictions

The Chinese Government places great emphasis on guiding new foreign investment toward "encouraged" industries and areas. Over the past four years, China has implemented new policies introducing further incentives for investments in high technology industries and in the central and western parts of the country in order to stimulate development in remote areas. At the same time, the government prohibits or restricts foreign investment in projects not in line with the state plan. There are, in addition, a number of sectors in which foreign investment is technically allowed, but not "encouraged." Restricted categories generally reflect:

- The protection of domestic industries, such as the service sector, in which China fears its domestic market would quickly be dominated by foreign firms;
- The goal of limiting imports of luxury products, requiring high volume imports of components or raw materials; and
- The avoidance of redundancy or excess capacity.

There are numerous examples of investment restrictions. For example, China bans investment in many telecommunications services, as well as in the news media, broadcast, and television sectors, citing national security interests. In addition, China restricts investment in much of the rest of the service sector, including distribution, construction, tourism and travel, shipping, advertising, legal services, and others. In many cases foreign firms must form a joint venture with a Chinese company, and restrict their equity ownership to a minority share, in order to invest in the China market. Finally, local content and other performance requirements in contracts inhibit investment into China.

Other Investment Issues

Designated Enterprises: Designation of key state enterprises in many industries, in particular the high technology sector, as the exclusive base for the development of critical technologies, limits the choice of joint venture partners. Such designated partners are sometimes unattractive for various business reasons such as lack or experience, inappropriate staffing levels, or weak finances.

Legal Arbitration: For many companies, the highly personalized nature of business in China often makes arbitration or other legal remedies impractical. Even when they have strong cases, foreign investors often decide against using arbitration or other legal means to resolve problems out of concern over permanently alienating critical business associates or government authorities.

ANTI-COMPETITIVE PRACTICES

Anti-competitive practices in China exist in the form of monopolistic or monopsonistic practices designed to protect the state-owned sector. In some cases, industrial conglomerates operating as monopolies or near monopolies (such as China telecom) have been authorized to fix prices, allocate contracts, and in other ways restrict competition among domestic and foreign suppliers. Such practices may restrict market access for certain imported products, raise production costs, and restrict market opportunities for foreign investors in China.

OTHER BARRIERS

Legal Framework

The lack of a clear and consistent framework of laws and regulations is an effective barrier to the participation of foreign firms in the domestic market. Although China is moving toward a commercial rule of law, many gaps exist. A comprehensive legal framework, coupled with adequate prior notice of proposed changes to laws and regulations, and an opportunity to comment on those changes, greatly enhances business conditions, promotes commerce, and reduces opportunities for corruption.

In China, laws are promulgated by a host of different ministries and governments at the provincial and local levels, as well as by the National People's Congress. As a result, regulations are frequently at odds with each other. Even though laws and regulations are now routinely published in China, they often leave room for discretionary application – either through honest misunderstanding or through selective application – or are ignored outright. Officials have sometimes selectively applied regulations against foreign firms.

Dispute Resolution

Skepticism about the independence and professionalism of China's court system and the enforceability of court judgements and awards remains high in the international community.

This has often caused both foreign and domestic companies to avoid enforcement actions through the Chinese courts. The Chinese Government is moving to establish consistent and reliable mechanisms for dispute resolution through the adoption of improved codes of ethics for lawyers and judges and increased emphasis on the consistent and predictable application of laws. The China International Economic and Trade Arbitration Commission (CIETAC) has become, over a short time frame, an effective forum for the arbitration of trade disputes. CIETAC's policies that approve foreign professionals to act as arbitrators, and streamline procedural requirements to allow for timely resolution of disputes have been well received by the foreign business community. The business community continues to press, however, for improvements in CIETAC rules, including increased flexibility in choosing arbitrators, and enhanced procedural rules to ensure orderly and fair management of cases.

Labor and Benefits

The Chinese Government is in the process of developing a nationwide uniform social insurance, medical insurance and pension system. At present, however, the cost of such benefits packages varies widely as existing standards and taxes are unevenly applied, depending on the enterprise or jurisdiction. This lack of uniformity and transparency creates problems for foreign investors. In addition, while average wages in China remain extremely low, the cost of employees in the large coastal cities where most foreign businesses are required to operate is among the highest in Asia. Expensive mandatory benefits and subsidies put the cost of labor for workers and professional staff in these cities above that of similar employees in Malaysia, Thailand, the Philippines, Vietnam, and Indonesia. The situation is complicated by restrictions on the movement of Chinese staff between locations in China.

Corruption

Despite the promulgation of China's first law on unfair competition in December 1993, official corruption remains widespread. The government continues to call for improved self discipline and anticorruption initiatives at all levels of government. However, it remains the case that contracts are often not awarded solely on the basis of commercial criteria. U.S. suppliers complain that the widespread existence of such practices in China puts them at a competitive disadvantage. While this dilemma is less severe in sectors where the United States holds clear technological preeminence or cost advantages, corruption does undermine the long-term competitiveness of both foreign and domestic entities in the Chinese market.

Smuggling

China's Customs General Administration announced an anti-smuggling campaign in late 1998. The campaign has reduced trade through black and gray market channels and resulted in an increase in imports through legitimate channels. It did not, however, address the tariff and non tariff barriers that created an environment conducive to smuggling in the first place. Further, in an effort to control illegal foreign exchange transactions and prevent capital flight, the state administration of foreign exchange announced regulations in late 1998 that place strict controls on foreign exchange transactions by foreign-invested firms.

COLOMBIA

TRADE SUMMARY

In 1999, the U.S. trade deficit with Colombia was $2.7 billion, an increase of $2.9 billion from the U.S. trade surplus of $165 million in 1998. U.S. merchandise exports to Colombia were approximately $3.5 billion, a decrease of $1.3 billion (26.7 percent) from the level of U.S. exports to Colombia in 1998. Colombia was the United States' 30th largest export market in 1999. U.S. imports from Colombia were about $6.3 billion in 1999, an increase of $1.6 billion (34.9 percent) from the level of imports in 1998.

The stock of U.S. foreign direct investment (FDI) in Colombia in 1998 was an estimated $4.3 billion, a decrease of 2.7 percent over the 1997 level. U.S. FDI was concentrated principally in the petroleum, manufacturing and financial sectors.

IMPORT POLICIES

Tariffs

Colombian import duties are quoted ad-valorem on the cost, insurance and freight (CIF) value of shipments. All duties – with a few exemptions – have been consolidated into the following four tariff levels: a) zero and five percent for raw materials, intermediate and capital goods not produced in Colombia; b) 10 and 15 percent for goods in the above categories but with domestic production registered in Colombia; c) 20 percent for finished consumer goods; and d) some exemptions to these general rules such as import duties for automobiles which remain at 35 percent, and agricultural products which fall under a variable price band import duty system. It is estimated that the basic weighted average of Colombian tariffs fluctuates between 11 and 13.5 percent. However, agricultural products under the Andean price band system are taxed above and beyond this standard tariff. Most imports are covered by a 15 percent value-added tax assessed on the CIF value of the shipment plus import duties.

The large number of integration agreements Colombia has signed with neighboring countries has created a complex system of tariffs that are applied according to the terms of the different treaties. In recent years Colombia has negotiated trade agreements with other Latin American and Caribbean countries. For instance, Colombia has a comprehensive Free Trade Agreement (FTA) with Mexico and Venezuela, known as the G-3 Agreement, which took effect in January 1995, and under which most tariffs are to be reduced to zero by the year 2007 (special treatment, however, was given to agricultural, agro-industrial, and automotive sectors). Colombia also has a partial FTA with Chile, which became effective in January 1994 and gradually eliminated all bilateral tariff and non-tariff barriers to zero. Colombia, along with the other members of the Andean Community, has entered into negotiations for an FTA with the countries of MERCOSUR. Over 10 different duties may be applied to a given product depending on whether it comes from the Andean Community countries, from Mexico under the G-3 Agreement or under the Latin American Integration Agreement (LAIA), from any other LAIA country, or from the Caribbean Community (CARICOM) countries. Colombia has bound its tariffs in the WTO at 30 percent for petrochemical products, 35 percent for a broad variety of industrial products, and 40 percent for textiles and apparel, footwear and other leather items, clothing, autos, and other products.

Since April 1995, Colombia has applied a variable import duty system on agricultural products commonly known as the "price band" system. Fourteen basic agricultural commodities (powdered milk, wheat, malting barley, yellow and white corn, crude palm and soybean oils, white rice, soybeans, white and raw sugars, chicken and turkey pieces, and pork meat), and an additional 147 commodities considered substitutes or related products, are subject to the variable import tariff price band system based on Andean Community board-determined ceiling, floor, and reference prices adjusted according to a CIF basis. The Andean Community price band system lacks transparency and can be manipulated to provide arbitrary levels of import protection, often resulting in artificially high, prohibitive tariff rates. The Colombian Ministry of Foreign Trade issued Decree 2650 on December 24, 1999, establishing a maximum tariff rate of 40 percent for imports of soybeans and soybean products which before Decree 2650 were subject to an average tariff rate of 60 percent. This decision will benefit U.S. soybean and soybean product exports to Colombia in the year 2000 and beyond.

Non-tariff Measures

Most agricultural products are issued automatic import licenses, but when the Colombian Ministry of Agriculture determines that imports are not needed and/or domestic production could suffer as a result, imports can be and are prohibited over indefinite time periods. Since the promulgation of Decree 2439 in November 1994, the Ministry of Agriculture has been required to approve import licenses for many agricultural items that compete with domestically produced commodities such as wheat, poultry, meat, malting barley, corn, cotton, rice, sorghum, wheat flour, oilseeds and their products (i.e., soybean meal and soybean oil). Colombia has implemented absorption agreements which require an importer to purchase a government-specified quantity of domestically produced goods as a precondition for the granting of import licenses. If the import licensing requirement for the products indicated above were eliminated, U.S. annual exports could increase $12 million according to U.S. industry estimates.

Two agricultural products that have been subject to more restrictive import licensing requirements are fresh/frozen poultry parts and powdered milk. If the import licensing requirement for chicken and turkey parts were eliminated, the U.S. industry estimates that its annual exports would increase by approximately $10 million.

Law 223, which took effect on January 1, 1996, subjected all distilled spirits to a value-added tax of 35 percent. However, the law makes an exception for whiskeys aged twelve or more years, which are subject to a 20 percent value-added tax. Bourbon and Tennessee Whiskey – both distinctive products of the United States – are typically aged from four to eight years and, as a consequence, face a higher tax rate than most competing imported whiskeys which are aged longer. This distinction creates a competitive disadvantage for Bourbon and Tennessee Whiskey. The United States has protested this discrimination, but the Government of Colombia has failed to eliminate it.

Colombia requires import licenses for less than two percent of all products, primarily weapons and other products related to national defense, as well as "precursor" chemicals that may be used in refining cocaine. The majority of used goods – including cars, remanufactured auto parts, tires and clothing – are prohibited from import, and those that are allowed, such as machinery, are subject to licensing.

In many instances Customs clearance processes – for example, valuation of imported merchandise and payments of duties and other taxes at commercial banks – can be performed fairly rapidly. Colombia's pre-shipment inspection of imported equipment previously performed by several independent testing agencies caused unnecessary delays until eliminated in mid-1999.

STANDARDS, TESTING, LABELING AND CERTIFICATION

The Colombian Institute of Technical Standards (ICONTEC), a private non-profit organization, provides quality certification and technical support services and serves as an Underwriters' Laboratories (UL) inspection center. ICONTEC is a member of the International Standards Organization (ISO) and the International Electrotechnical Commission (IEC). According to U.S. industry, Colombian requirements for phytosanitary registrations to bring new products into the market are excessive and often take as long as six to eight months to fulfill.

GOVERNMENT PROCUREMENT

The Government Procurement and Contracting Law, Law 80/93, sought to establish simpler procedures based on the principles of transparency and objective selection. It provided equal treatment to foreign companies on a reciprocal basis and eliminated the 20 percent surcharge previously added to foreign bids. It also eliminated unnecessary requirements and bureaucratic procedures that increased prices of public services and limited their availability. The law also settled procedures for the selection of suppliers, mainly through public tenders and in exceptional cases through direct contracts. In implementing Law 80, the Colombian government instituted a requirement that companies without local headquarters must certify that government procurement laws in the home country meet reciprocity requirements. Law 80 does not apply to contracts for the exploration and exploitation of renewable or non-renewable natural resources, their commercialization, and those activities performed by state companies involved in these sectors. Colombia is not a party to the WTO Agreement on Government Procurement.

EXPORT SUBSIDIES

As a result of the policies of “apertura” (the opening of markets to foreign investment) and commitments made by Colombia to abide by the provisions of the GATT Subsidies Code, Colombia agreed to phase-out any export subsidies inconsistent with that Code. This process will continue under the WTO Agreement on Subsidies and Countervailing Measures. For instance, Colombia has notified the WTO that its “special machinery import-export system” and “free zones” do, in fact, constitute export subsidies. Also, Colombia’s tax rebate certificate program (CERT) contains a subsidy component which the Government of Colombia has stated it will replace with an equitable drawback system, although it has not yet done so. On January 1, 2000, the Colombian government announced that it would eliminate the subsidy component of the CERT as per WTO regulations.

However, the Colombian Government’s recent efforts to increase exports have led to the formulation of a new customs code (Decree 2685 of December 28, 1999) which would provide for tariff exemptions on raw materials used by exporting enterprises. These incentives, which are very similar to the CERT, would be reinforced with “legal and tax stability agreements” providing for fixed tax and legal conditions over five and ten year periods to companies that develop special, and in some cases subsidize, export programs.

INTELLECTUAL PROPERTY RIGHTS PROTECTION

Colombia does not yet provide adequate and effective intellectual property protection. As a result, Colombia has been on the “Watch List” under the Special 301 provision of the 1988 Trade Act every year since 1989, and a 1999 out-of-cycle review placed Colombia once again in the same “Watch List” category. Colombia appears to have not yet fully implemented the provisions of the WTO Agreement on Trade-Related Aspects of Intellectual Property Rights (TRIPS).

Rampant pirating of subscription television services has traditionally been problematic. However, as of January 2000, the Colombian government has shown significant progress in implementing a cable television licensing process designed to enable programmers to receive programming fees from signal providers. Colombia’s Television Broadcast Law increased legal protection for all copyrighted programming by regulating satellite dishes, but enforcement has only recently begun through a licensing process that approved the issuance of 114 regional concession contracts by the end of 1999.

Patents and Trademarks

Two Andean Community Decisions on the protection of patents and trademarks and of plant varieties have been in effect in Colombia since January 1, 1994. The Decisions are comprehensive and offer a significant improvement over previous standards on protection of intellectual property in the Andean Community countries. The patent regime in Colombia currently provides for a 20-year term of protection for patents and reversal of the burden of proof in cases of alleged patent infringement. The provisions of the Decisions covering protection of trade secrets and new plant varieties are generally consistent with world-class standards for protecting intellectual property rights, and provide protection for a similar period of time. However, the Decisions still contain deficiencies which must be rectified in order to ensure compliance with the WTO TRIPS Agreement. In June 1996, Colombia ratified the Paris Convention for the Protection of Industrial Property, which went into effect in September 1996.

Colombian trademark protection requires registration and use of a trademark in Colombia. In a 1998 decree, Colombia announced that registration of a trademark must be accompanied with its use in order to prevent parallel imports. Trademark registrations have a ten-year duration and may be renewed for successive ten-year periods. Priority rights are granted to the first application for a trademark in another Andean Community country or in any country which grants reciprocal rights. Colombia is a member of the Inter-American Convention for Trademark and Commercial Protection. Enforcement in the trademark area remains weak and the backlog of pending cases in the Superintendency of Industry and Commerce stands at approximately 25,000 cases.

Copyrights

Andean Community Decision 351 on the protection of copyrights has been in effect in Colombia since January 1, 1994. Colombia also has a modern copyright law: Law 44 of 1993. The law extends protection for computer software to 50 years, but does not classify it as a literary work. Law 44 and Colombia's civil code include some provisions for enforcement of intellectual property and have been used to combat infringement and protect these rights. Colombia belongs to both the Berne and the Universal Copyright Conventions. Decision 351 provides a generally Berne-consistent system. Semiconductor layout designs are not protected under Colombian law.

A new Intellectual Property Rights (IPR) Investigative Unit was created within the Colombian government's Office of the Prosecutor General. The IPR Unit started operating in November 1999, and it was formed in part to address U.S. concerns about the Colombian government's commitments to reducing copyright violations in the areas of television programming, records, books, and software. The unit has opened 140 cases against pirate TV operators as well as a case against several telecommunications companies accused of offering illegal "callback" services.

Colombia's 1993 Copyright Law significantly increased penalties for copyright infringement, specifically empowering the Prosecutor General's office to combat piracy. Colombia ratified the Andean anti-piracy convention on February 25, 1999. The Colombian Government also issued a presidential directive mandating that all government entities purchase only legally copyrighted software and other goods protected by international copyright law. Colombia's Television Broadcast Law potentially increases protection for all copyrighted programming by regulating satellite dishes. In 1999, the Colombian National Television Commission (CNTV) took significant action to license legitimate pay television operators and to pursue pirate operators. Since November 1999, 117 concessions have been granted. All beneficiaries will have six months to become fully compliant under the conditions set by the 10-year concession agreements. CNTV also made efforts to pursue pirate operators by initiating investigations of 282 suspected pirate operators, eight of which so far have incurred sanctions. However, enforcement of copyright laws is still insufficient and U.S. industry estimates that the majority of the videocassette, sound recording, and business software products in the country are pirated.

SERVICES BARRIERS

In the General Agreement on Trade in Services (GATS), Colombia undertook commitments in the finance, tourism, law, accounting, mining, telecommunications, construction and engineering sectors. However, Colombia maintains barriers in a number of service areas, including audiovisual, data processing and professional services. In some industries, percentage limits are placed on foreign equity participation. In addition, a minimum of 50 percent of any television commercial for public broadcast network programming must be produced locally.

Cargo reserve requirements in transport have been eliminated. However, the Ministry of Foreign Trade reserves the right to impose restrictions on foreign vessels of nations which impose reserve requirements on Colombian vessels.

Foreign law firms are not permitted to have a commercial presence in Colombia unless the firm is headed by a Colombian attorney. Colombia also restricts the movement of personnel in several professional areas, such as architecture, engineering, law and construction. For firms with more than 10 employees, no more than 10 percent of the general workforce and twenty percent of specialists can be foreign nationals.

Financial Services

In 1991, Colombia promulgated Resolution 51, which permits 100 percent foreign ownership in financial services, although the use of foreign personnel in the financial services sector remains limited to administrators, legal representatives, and technicians. Prior approval from the Banking Superintendency is necessary for a foreign investor (acting as an individual or an investment fund) to acquire an equity participation of five percent or more in a Colombian financial entity. The establishment of a financial institution with foreign capital also requires authorization from the Banking Superintendency.

Colombia denies market access to foreign marine insurers. Colombia requires a commercial presence to sell all other insurance, except international travel or reinsurance. Colombia permits 100 percent foreign ownership of insurance subsidiaries, but the establishment of branch offices of foreign insurance companies is not allowed.

Foreign portfolio investment must be made through mutual funds. No single fund or fund's beneficiary may hold 10 percent or more of the voting stock in a Colombian company. For institutional funds organized under collective accounts, the limit is 40 percent of the voting stock. Financial institutions are prohibited from making loans to broker-dealer, fiduciary and pension fund management subsidiaries.

In March 1997, the Bank of the Republic created a reserve requirement on all foreign loans over six months, designed to reduce the amount of foreign private debt. Thirty percent of all proceeds from foreign loans were required to be left on deposit with the Central Bank in a non-interest bearing account for 18 months. The deposit requirement was reduced to 25 percent in February 1998, when the foreign exchange rate threatened to exceed the top of the band, and was again reduced to 10 percent in September 1998 (the term of the deposit requirement was also reduced to six months), as a means to increase liquidity, lower interest rates and reduce pressures on the price of the dollar. In January 1999, in an effort to stimulate imports, the Bank of the Republic completely removed the deposit requirement for import-related borrowing while maintaining a 10 percent deposit requirement on export-related foreign borrowing operations.

Basic Telecommunications Services

In the WTO negotiations on basic telecommunications services, Colombia made commitments on most basic telecommunications services and adopted, with several clarifications, the WTO reference paper on pro-competitive regulatory principles. However, Colombia specifically prohibited "callback" services. Currently foreign investment is allowed in telecommunications firms but under the WTO agreement, Colombia reserves the right to limit foreign investment in these firms based on an economic needs test. While Colombia has allowed new competitors into long distance and international services, high license fees are a significant barrier to entry.

Television Local Content Quotas

The Television Broadcast Law (Law 182/95) allows foreign direct investment in the Colombian motion picture industry, but limits foreign investment to fifteen percent of the total capital of local television programming production companies. The law increased restrictions on foreign content in broadcasting and imposed a complicated, burdensome system of sub-quotas for different hours of the day. Retransmissions of local productions are calculated to fulfill only part of the national content requirement. Foreign talent may be used in locally produced programming, but limits are set by the quasi-independent National Television Commission (CNTV).

Colombian television broadcast laws (Law 182/95 and Law 375/96) impose several restrictions on foreign investment. For example, foreign investors must be actively engaged in television operation in their home country. Their investments are limited to fifteen percent of the total capital of local television production companies and must involve an implicit transfer of technology. At least 50 percent of programmed advertising broadcast on television must have local content. CNTV has the authority to reduce these restrictions, but has not taken action in this area.

INVESTMENT BARRIERS

Under the Andean Community Common Automotive Policy, Venezuela, Ecuador and Colombia imposed local content requirements in the automotive assembly industry in order to qualify for reduced duties on imports. Such requirements are prohibited by Agreement on Trade-Related Investment Measures (TRIMS). Under this Agreement, Colombia was obligated to eliminate TRIMS by the year 2000. The latest Andean Automotive Policy Council determined in December 1999 that it would not eliminate all content requirements, but instead has decided to increase at least one requirement gradually to 34 percent by the year 2006. This revised automotive policy may be inconsistent with Colombia's WTO obligations under the TRIMS Agreement. The United States is working in the WTO to ensure that WTO members meet these obligations.

Under the TRIMS Agreement, Colombia was also permitted to maintain its absorption policy (see Non-tariff Measures) until January 2000. However, Colombia has requested an extension of this deadline. The United States is working with other WTO Members to effect a case-by-case review of all TRIMS extension requests, with an effort to ensure that the individual needs of those countries that have made requests can be addressed. This process does not limit a Member's rights under the WTO Agreement.

Investment screening has been largely eliminated, and the mechanisms that still exist are generally routine and non-discriminatory. Legislation grants standard national treatment to foreign direct investors and permits complete foreign ownership in virtually all sectors of the Colombian economy. However, since 1994, in an effort to curb money laundering, the Colombian government has prohibited foreign direct investors from obtaining ownership in real estate not connected with other investment activities. All foreign investment in petroleum exploration and development in Colombia must be carried out under an association contract between the foreign investor and Ecopetrol, the state oil company.

ELECTRONIC COMMERCE

Electronic commerce in Colombia is primarily regulated by Law 527 of August 28, 1999. The law assigns organizational, inspection, vigilance and sanctioning responsibilities to the Superintendency of Industry and Commerce. The Superintendency regulates certifying agencies, which are the only entities authorized by law to provide for registration, data transmission and reception services, and issuance of certificates related to electronic agreements. Law 527/99 provides the same contractual and legal validity to electronic data transfer as that of hard copies. For a digital signature to be valid, it must be verifiable, must be under the unique control of the person using it, and must be linked to the information or message being transferred. Certifying agencies (local or foreign) must be authorized by the Superintendency of Industry and Commerce to operate in Colombia.

Until validation procedures are implemented, electronic commerce applications will likely remain limited. Twelve of the largest domestic internet service providers, led and coordinated by the Colombian Chamber of Information and Telecommunications (CCIT), joined in November 1998 to build and operate the first Network Access Point (NAP) in the Andean region. The various partners which undertook the NAP project supply 80 percent of the internet service demand in Colombia, estimated at 1.2 million subscribers in 1999. Forty companies currently provide internet subscription services in the fifteen largest cities. As of year-end 1999, it is estimated that 200,000 internet subscribers used electronic commerce for virtual shopping in Colombia.

COSTA RICA

TRADE SUMMARY

In 1999, the U.S. trade deficit with Costa Rica was $1.6 billion, an increase of $1.1 billion from 1998. U.S. merchandise exports to Costa Rica were $2.4 billion, an increase of $80 million over 1998. Costa Rica was the United States' 37th largest export market in 1999. U.S. imports from Costa Rica were $4 billion in 1999, an increase of $1.2 billion from the level of imports in 1998.

The stock of U.S. foreign direct investment (FDI) in Costa Rica in 1998 was $2.1 billion. U.S. FDI in Costa Rica has concentrated largely in the manufacture of electronic and health care products. Much of the U.S. investment in manufacturing involves assembly of apparel and integrated circuits from imported parts. In addition, all baseballs used in the Major Leagues are assembled in Costa Rica from U.S. parts and materials.

IMPORT POLICIES

Costa Rica is a member of the Central American Common Market (CACM), which also includes Guatemala, El Salvador, Honduras, and Nicaragua. With the exception of certain items, notably agricultural products, there are no duties for products traded among CACM members. In 1995, the members of the CACM agreed to reduce the common external tariff (CET) to zero to 15 percent, but allowed each member to determine the timing of the reductions. Costa Rica completed its agreed reductions with a decree published on January 6, 2000.

Selective consumption (excise) taxes for many imported (and domestic) products have been reduced or eliminated. However, excise taxes, ranging from 5 percent to 75 percent, apply to about half of all products imported. Among the highest taxed items are arms and munitions (75 percent), costume jewelry (50 percent), fireworks (50 percent), whiskey (50 percent), new and used vehicles (varies), and wine and beer (40 percent). A one percent surcharge (Law 6966) imposed on most imports was eliminated at the end of 1999. A 13 percent value-added tax is also applied on most imports and local goods and services.

The Government of Costa Rica agreed to eliminate all import quotas in the Uruguay Round negotiations. In 2000, the tariff binding is 49 percent on most goods, excluding selected agricultural commodities, which are protected with significantly higher tariffs. Examples of such protection are dairy products and poultry products, with tariff bindings of 101 percent and 250 percent, respectively. Costa Rica began reducing applied tariffs on dairy and poultry products in 1999. The maximum applied rates for these products were 88 percent and 162 percent, respectively, on January 1, 2000. They are scheduled to decline to 80 percent and 158 percent on July 1, 2000.

Most applied tariffs on agricultural products range from one to fifteen percent *ad valorem*. The Government of Costa Rica reduced duties on imported raw materials, bulk grains, and oilseeds from five percent to one percent in July 1996. Imported automobiles, both new and used, are taxed relatively heavily. Under regulations in effect since late 1998, total taxes on cars from the latest four model years are 59 percent *ad valorem*, while rates for older cars range from 71-85 percent, depending on age.

A U.S. exporter faced difficulty in gaining entry for a shipment of U.S. rice in 1999, despite payment of the maximum bound rate tariff (35 percent). The process for obtaining standard sanitary phytosanitary documentation was extended beyond the normal period. While the shipment was eventually allowed to enter, the incident revealed that a law remains on the books stating that mills can only purchase rough rice from producers (and not intermediaries). The Government has since overturned that law, noting that it is not in accordance with Costa Rica's WTO obligations. U.S. industry estimates that it could increase rice exports by $5-25 million if current barriers to rice were removed.

Costa Rica has bilateral free trade agreements with the Dominican Republic and Mexico. When these agreements enter into force, U.S.

deciduous fruit could be placed at a disadvantage. This will particularly affect fruits that can be shipped out of the U.S. growing season.

Non-tariff Measures

The Costa Rican legislative assembly approved legislation implementing the Uruguay Round Agreements in December 1994. The law, published on December 27, 1994, eliminates quantitative restrictions, and requirements for import licenses and permits, for goods such as pork and related by-products, poultry, seeds, rice, wheat, corn (white and yellow), beans, sugar, sugar cane and related products, dairy products, and coffee. The import permits in many cases have been replaced by tariffs as a result of the Uruguay Round negotiations.

Costa Rican customs procedures have long been complex and bureaucratic. However, the 1995 passage of a new general customs law formalized reforms aimed at streamlining customs procedures. Much of the necessary processing is now accomplished electronically at "one-stop" import and export windows which have significantly reduced the time required for customs processing.

STANDARDS, TESTING, LABELING AND CERTIFICATION

Costa Rican law requires exclusive use of the metric system, but in practice Costa Rican officials do not challenge U.S. and European commercial and product standards. However, a system of standards is not uniformly implemented in Costa Rica due to a lack of adequate laboratory equipment and funds.

GOVERNMENT PROCUREMENT

Costa Rica's government procurement system is based on the 1995 reforms to the Costa Rican Financial Administration Law (Law No.7494), which came into effect in May 1996. Government entities or ministries with a regular annual budget of more than $200 million are permitted to issue public tenders subject to publication in the official newspaper (La Gaceta) for purchases over $2.3 million. Entities may make purchases between $130,000 and $2.3 million through tenders circulated on a registered suppliers list. Purchases under $130,000 may be made from a list of pre-selected bidders. Costa Rica is not a signatory of the WTO Agreement on Government Procurement.

EXPORT SUBSIDIES

Incentives for non-traditional exports, including the tax credit certificates (CATs) and tax holidays, were phased out in 1999. Tax holidays are still available for investors in free trade zones, unless tax credits are available in an investor's home country for taxes paid in Costa Rica.

INTELLECTUAL PROPERTY RIGHTS PROTECTION

Costa Rica is a signatory of all major international agreements and conventions on trademarks, copyrights, and patent protection. Costa Rica became a member of the World Intellectual Property Organization (WIPO) in 1980. Costa Rica's National Assembly approved seven new laws at the end of 1999 for the purposes of bringing the country's legal framework into compliance with the World Trade Organization's TRIPS Agreement. The Assembly will address additional legislation in early 2000. A report prepared by the International Intellectual Property Alliance (IIPA) estimates that copyright infringements in Costa Rica cost U.S. firms $6 million in 1998.

Copyrights

Costa Rican copyright law is generally adequate, but not uniformly enforced. The copyright regime was revised in 1994 to provide specific protection for computer software. The National Assembly ratified the WIPO Copyright Treaty and the Performances and Phonograms Treaty at the end of 1999. Piracy of satellite transmissions by the domestic cable television industry has been curtailed, but some apartment buildings and hotels, particularly in areas not served by major cable service providers, continue to engage in satellite signal piracy. Piracy of video recording and computer software is also widespread, although some progress has been made in reducing such practices. Video piracy has also been reduced over the last few years.

Patents

The Legislative Assembly ratified the Paris Convention for the Protection of Industrial Property in 1995. However, Costa Rican patent law remained deficient in several key areas. Patents were available for a non-extendable 12-year term from the date of grant. In the case of products deemed to be in the "public interest," such as pharmaceuticals, agricultural chemicals, fertilizers, and food and beverage products, the term of protection was only one year from the date of grant. Reforms to the new patent law, passed at the end of 1999, are intended to bring Costa Rica in line with its obligations in the WTO. The law, as reformed, extends full twenty-year patent protection terms for all inventions, including those "in the public interest." Costa Rica was bound to implement its TRIPS obligations by January 1, 2000.

Trademarks

Counterfeiting of well-known trademarks is widespread. Legal recourse against these practices in Costa Rica is available, but may require protracted and costly litigation. Costa Rica signed the Central American Convention for the Protection of Trademarks in 1994. A protocol amending the Convention to bring it into compliance with the TRIPS Agreement was ratified in late 1999.

SERVICES BARRIERS

State monopolies cover: insurance; telecommunications; large electrical generation plants; energy distribution; petroleum exploration, refining, distribution and marketing to the retail level; and railroad transportation. In addition, there are restrictions on the participation of foreign companies in some private sector activities, such as customs handling, medical services, and other professions requiring Costa Rican registration and long-term residency. Wholesalers must have resided in Costa Rica for 10 years and have conducted business there for three years.

In 1999, Costa Rica ratified the 1997 WTO Financial Services Agreement, formally known as the Fifth Protocol to the General Agreement on Trade in Services, and its commitments under this agreement have entered into force. Under this agreement, Costa Rica committed to allow foreign financial service providers to establish 100 percent owned bank subsidiaries in Costa Rica to provide lending and deposit taking services, leasing services, credit card services, and financial information services. Costa Rica made no commitments in the WTO for the provision of securities trading or underwriting services.

Financial reform legislation enacted in 1995 eliminated state-owned banks' monopoly on checking accounts and savings deposits of less than 30 days and allowed private commercial banks to access the Central Bank's discount window beginning in September 1996. To qualify for the benefits of the law, however, private commercial banks are required to lend between 10-17percent of their short-term assets to state-owned commercial banks and/or to open branches in rural areas of the country. This requirement is being challenged in Costa Rican courts.

Foreign individuals wishing to participate in some sectors may be discouraged by regulations governing the practice of a profession. For example, medical practitioners, lawyers, certified public accountants, engineers, architects, teachers, and other professionals must be members of an officially recognized guild (colegio) which sets residency, examination, and apprenticeship requirements.

The Costa Rican constitution grants a monopoly over the insurance sector to the National Insurance Institute (INS). The INS also provides fire department services and owns and manages medical/rehabilitation clinics.

INVESTMENT BARRIERS

An expropriation law (Law No. 7495) was enacted in 1995 to improve the protection of private property. The new law makes clear that expropriations are to occur only after full advance payment is made, in accordance with Article 45 of the Costa Rican constitution. The law applies to Costa Ricans and foreigners alike. Despite improvements in the legal framework, many cases remain unaddressed. One land invasion resulted in the death of a U.S. citizen in late 1997. The U.S. Government has urged the Costa Rican Government to provide prompt, adequate and effective compensation, to improve security, and to protect property owners.

Costa Rica affords national treatment for foreign investors who incorporate or otherwise establish their business locally, and there are no restrictions on the repatriation of investment assets or profits in sectors open to foreign investment. The U.S. and Costa Rican Governments have attempted to negotiate a bilateral investment treaty, but negotiations stalled at the beginning of 1997.

An electricity co-generation law enacted in 1996 allowed some private-sector participation in the production of electricity, but not in its transmission. This law has since been modified to permit the private construction and operation of plants under build-operate-transfer (BOT) and build-lease-transfer (BLT) mechanisms, but the operator must have at least 35 percent Costa Rican equity. Legislative proposals to open the electricity, telecommunications, and insurance sectors to foreign investment and competition face an uncertain future in the National Assembly.

It is difficult to quantify with precision whether, or to what extent, existing barriers to investment in protected sectors impact U.S. exports. Protected sectors of the Costa Rican market, including the telecommunications and electricity sectors, have historically been favorably disposed toward purchasing U.S. supplies and equipment. U.S. market share in supplying equipment to the telecommunications and electricity sectors as a whole has traditionally run between 30-45 percent. However, the parastatal telecommunications and electricity utilities traditionally purchase well over half their equipment from U.S. sources. These percentages could be affected depending on the nationality of private companies that eventually might be allowed to participate in these sectors (although the overall import market could expand after privatization).

DOMINICAN REPUBLIC

TRADE SUMMARY

In 1999, the U.S. trade deficit with the Dominican Republic was $196 million, a decrease of $269 million from 1998. U.S. merchandise exports to the Dominican Republic were $4.1 billion, an increase of $108 million over 1998. The Dominican Republic was the United States' 28th largest export market in 1999. U.S. imports from the Dominican Republic were $4.3 billion in 1999, a decrease of $161 million from the level of imports in 1998.

The stock of U.S. Foreign Direct Investment (FDI) in the Dominican Republic in 1998 was $535 million. U.S. FDI in the Dominican Republic is concentrated largely in the manufacturing and financial sectors. Much of the U.S. investment in the manufacturing sectors is located in export processing zones where footwear, apparel and, to a lesser extent, electronic products and medical goods, are assembled from U.S. components and materials and then exported back to the United States.

IMPORT POLICIES

Tariffs

Tariffs on most products fall within a range of three to thirty-five percent. However, the Government of the Dominican Republic imposes a five to eighty percent selective consumption tax on "nonessential" imports such as home appliances, alcohol, perfumes, jewelry, automobiles and auto parts. The calculation of this tax is non-transparent, and U.S. exporters have complained that it is applied to foreign products in a discriminatory manner. In 1998, the Fernandez Administration again proposed an extensive tariff reduction to the Dominican Congress in connection with its plans to submit for ratification a free trade agreement negotiated with Central America. The Congress has not yet acted on the proposal.

Non-tariff Barriers

U.S. producers of many products face an additional *de facto* trade barrier in the form of a highly discretionary customs valuation system. The Dominican Republic had committed to meet the obligations of the WTO Customs Valuation Agreement, which prohibits the use of arbitrary valuations, by January 1, 2000. The Dominican Government is currently seeking an extension of this deadline, but continues to confirm its commitment to coming into compliance with its WTO obligations.

Import permits are required for most agricultural products which, in the case of beef and pork products, are often delayed or withheld. Arbitrary customs clearance procedures sometimes delay the importation of merchandise for lengthy periods. Furthermore, the Dominican Government continues to require importers to obtain from a Dominican Consulate in the United States a consulate invoice and "legalization" of documents with attendant fees and delays.

U.S. companies have expressed concern that Dominican dealer protection legislation makes it extremely difficult to terminate contracts with local agents or distributors without paying exorbitant indemnities.

STANDARDS, TESTING, LABELING AND CERTIFICATION

The Dominican Republic generally accepts U.S. certifications and standards. U.S. agricultural exports are sometimes subject to arbitrarily enforced and non-scientifically based sanitary and phytosanitary measures.

GOVERNMENT PROCUREMENT

There is no explicit "buy national" policy; however, government procurement is often conducted without the benefit of open bidding. The processes by which contractors and/or suppliers are chosen are often opaque. The Dominican Republic is not a signatory of the WTO Agreement on Government Procurement.

EXPORT SUBSIDIES

The Dominican Republic does not have aggressive export-promotion schemes other than the exemptions given to firms in the free trade zones. A tax rebate scheme designed to encourage exports is considered a failure and is usually avoided by exporters.

INTELLECTUAL PROPERTY RIGHTS PROTECTION

Dominican law does not provide adequate and effective protection of intellectual property rights, in apparent contravention of international standards such as the WTO Agreement on Trade-Related Aspects of Intellectual Property Rights (TRIPS). Concerns exist in both the copyright and patent regimes.

The Dominican Republic was upgraded to the USTR Special 301 Priority Watch List in 1998, and designated again in 1999, due to continuing concerns about lack of TRIPS-consistent laws, and inadequate enforcement against piracy and counterfeiting. U.S. industry currently assesses its economic losses in the Dominican market in pharmaceutical products alone are in excess of $50 million. A report prepared by the International Intellectual Property Alliance (IIPA) estimates that copyright infringements in the Dominican Republic cost U.S. firms $17.5 million in 1998.

Copyrights

The piracy of computer software, video and audio tapes, and compact disk technologies, as well as television programming, continues although the Dominican copyright office has been more active in the past year in seeking to enforce the law. A U.S. Government review of the Dominican Republic's trade preferences under the Generalized System of Preferences (GSP), in response to a petition from the Motion Picture Association (MPA) claiming widespread cable television piracy, was terminated in 1994 when the Dominican Government took steps to address U.S. concerns. Larger cable television companies now generally pay fees and royalties, but some systems are still pirating signals and programs. The MPA and Television Association of Programmers (TAP) visited the Dominican Republic 1997 to raise this recurring problem. The Dominican Government has taken some steps in response, although such initiatives have not been enough to stem the problem. In early 2000, USTR accepted a GSP petition filed by the IIPA alleging deficiencies in both the Dominican Republic's legal framework, as well as its enforcement regime, which result in insufficient protection of intellectual property rights for copyrighted materials.

Patents

The existing 1911 Law provides for broad exclusions of subject matter from patentability, and includes onerous local working requirements. Current law is also inadequate with respect to term of protection. The Fernandez Government has submitted new intellectual property legislation to the Congress. There is some concern that the patent provisions of this legislation may not comply with the TRIPS Agreement. Moreover, the Ministry of Health is apparently continuing to grant marketing approvals for patent infringing products.

Trademarks

Trademark enforcement is inadequate, particularly in the area of well-known apparel and athletic shoe brands, which are counterfeited and sold widely on the local market.

SERVICES BARRIERS

Until recently, foreign participation in the financial services sector was restricted by law. The 1995 Foreign Investment Law, and a Financial-Monetary Code still before the Dominican Congress, permit foreign involvement in the financial services sector. However, the practical impact of these provisions is not clear. The Dominican Insurance Law requires that at least 51 percent of the shares of national insurance companies be held by Dominican shareholders. There is no secondary securities market in the Dominican Republic. The Dominican Republic has not yet ratified the 1997 WTO financial services agreement, formally known as the Fifth Protocol to the General Agreement on Trade in Services, which is necessary to bring its commitments under the financial services agreement into force. Under the Fifth Protocol, the Dominican Republic committed to allow foreign banks to establish branches or local companies with up to 49 percent foreign equity to supply deposit taking, lending, and credit card services. Foreign investors may also own up to 49 percent equity in local suppliers of leasing and insurance service suppliers.

INVESTMENT BARRIERS

Legislation designed to improve the investment climate passed in November 1995. Its implementing regulations were issued by the Fernandez administration in September 1996. The legislation does not contain procedures for settling disputes arising from Dominican Government actions. The seizures of foreign investors' property by past governments which are still unresolved, refusal to honor customs exoneration commitments, and the government's slowness in resolving claims for payments reduce the attractiveness of the investment climate, notwithstanding passage of the 1995 legislation.

Dominican expropriation standards do not appear to be consistent with international law standards; several investors have outstanding disputes concerning expropriated property. The Government continues to maintain that it wishes to resolve these issues although progress has been slow. The Dominican Republic does not recognize the right of investors to binding international arbitration.

The Fernandez Administration has made great efforts to increase foreign investment in the Dominican electrical sector, especially through a capitalization of the state electric company that leaves control of the distribution system and most of its generating capacity in private hands. The Dominican Government has failed, however, to live up to its commitments under agreements signed in connection with the capitalization, particularly with regard to payments to the six independent power producers (IPPs) that together provide nearly one-half of the nation's electricity. Substantial arrears to the IPPs have impeded their ability to buy fuel and meet other expenses, thus requiring some of them to suspend operations from time to time.

ECUADOR

TRADE SUMMARY

In 1999, the U.S. trade deficit with Ecuador was $894 million, an increase of $826 million from the U.S. trade deficit of $69 million in 1998. U.S. merchandise exports to Ecuador were approximately $920 million, a decrease of $766 million (45.4 percent) from the level of U.S. exports to Ecuador in 1998. Ecuador was the United States' 53rd largest export market in 1999. U.S. imports from Ecuador were about $1.8 billion in 1999, an increase of $59 million (3.4 percent) from the level of imports in 1998.

The stock of U.S. Foreign Direct Investment (FDI) in Ecuador in 1998 was $952 million, an increase of 13.6 percent from the level of U.S. FDI in 1997. U.S. FDI in Ecuador is concentrated largely in the petroleum, manufacturing, and wholesale sectors.

IMPORT POLICIES

Tariffs

When it joined the WTO in January 1996, Ecuador bound most of its tariff rates at 30 percent or less. Ecuador's average applied tariff rate is about 13 percent *ad valorem*. Since February 1995, Ecuador has applied a Common External Tariff (CET) with two of its Andean Pact partners, Colombia, and Venezuela. The CET has a four-tiered structure with levels of five percent for most raw materials and capital goods, 10 or 15 percent for intermediate goods, and 20 percent for most consumer goods. Ecuador harmonized its tariff schedule with the CET but took numerous exceptions in order to maintain lower tariff rates on capital goods and industrial inputs. Agricultural inputs and equipment are imported duty-free. In February 1999, the Government of Ecuador imposed additional temporary surcharges on imports to raise additional revenues. Given Ecuador's continuing fiscal problems, the surcharges could be extended indefinitely.

Non-tariff Measures

Ecuador appears to have failed to meet deadlines for fulfilling some of its WTO obligations to eliminate remaining non-tariff barriers. Prior authorization for certain goods is required before the central bank can issue an import license. For instance, the superintendency of telecommunications must authorize the import of telecommunications equipment for standards purposes. In spite of Ecuador's WTO accession commitment not to impose arbitrary and quantitative restrictions on agricultural imports, the Ministry of Agriculture often denies the issuance of import permits, apparently to protect local producers. The products most affected by this policy include frozen chicken parts, turkeys and, to a lesser extent, apples and fresh fruit. Import licenses require two signatures, one from the Ecuadorian Animal and Plant Health Inspection Service (SESA) and one from the Agriculture Ministry's Under Secretary of Policy and Investment. The Government of Ecuador claims its import procedures are not designed to delay imports and that the Under Secretary's signature is necessary to ensure that administrative import procedures are followed. However, the requirement for two approvals constitutes a non-tariff barrier that adversely affects U.S. exporters.

At present, 138 agricultural products, including wheat, white and yellow corn, rice, soybeans, soya and palm oil, barley, sugar, chicken parts, dairy products, and pork meat, are subject to a variable import tariff or price band system. Under this system, the *ad valorem* CET rates are adjusted according to the relationship between "marker" commodity reference prices and established floor and ceiling prices. The marker commodity reference prices are issued every other week by the Andean Community secretariat. Upon accession to the WTO, Ecuador bound its tariffs plus price bands on these commodities between 20 and 95 percent. All price bands are to be phased out by 2001, but no steps have been taken to comply with the commitments. Meanwhile, there have been reports that the customs authorities do not always accept the maximum tariff rates on products such as turkey meat and demand payments above WTO bound tariffs.

Through tariff-rate quotas (TRQs), Ecuador has agreed to provide minimum market access at nonrestrictive tariff rates while providing a measure of protection for import sensitive commodities. Except for wheat, corn, barley and soybeans, the Government of Ecuador has yet to implement the TRQ system. Tariff rates of 19 to 45 percent are used for seventeen agricultural products, mainly wheat, corn, chicken parts, turkey, powdered milk and soybean meal.

Ecuador also continues to impose certain formal and informal quantitative restrictions that appear to violate its WTO obligations. Ecuador apparently has failed to meet its WTO commitment to lift bans on the import of used motor vehicles, tires and clothing by July 1, 1996.

Pre-shipment inspection by an authorized inspection company (both before shipment and after specific export documentation has been completed at the intended destination) results in delays far exceeding the time saved in customs clearance. Customs authorities sometimes perform spot-checking, causing even further delays. This generally adds six to eight weeks to the date when merchandise reaches the retailer. Such practices make U.S. exporters less competitive than local suppliers.

The Government of Ecuador apparently has not complied with its WTO accession commitment to equalize the application of excise taxes between imported and domestic products. Excise taxes are levied on all liquor (26 percent), beer (30 percent), soft drinks (10 percent), cigarettes (75 percent), motor vehicles (5 percent) and aircraft (10 percent). Since excise taxes on imports are calculated on CIF values, the effective rate is higher for imports than for domestic products.

In a December 1999, the Ministry of Agriculture, through Ecuador's animal plant health inspection service (SESA), issued a new requirement that all importers must present a certificate that imported agricultural products (plants, animals, their products or byproducts) have not been produced using modern biotechnology.

STANDARDS, TESTING, LABELING AND CERTIFICATION

National standards are set by the Ecuadorian Norms Institute (INEN) of the Ministry of Commerce and generally follow international standards. Ecuador committed itself in its WTO accession protocol to conform with the WTO Agreement on Technical Barriers to Trade. According to Ecuadorian importers, bureaucratic procedures required to obtain clearance for imports have recently improved, but still appear to discriminate against foreign products. In 1998, Ecuador implemented a new law to eliminate some excessive requirements, such as notarization.

Ecuador has not yet fulfilled its 1995 bilateral commitment to the United States to accept U.S. certificates of free sale as the basis for sanitary registrations. To do so, the health code must be amended. However, to date, no steps have been taken to implement this commitment. The Ministry of Agriculture is responsible for administering Ecuador's zoosanitary and phytosanitary import controls. Although Ecuador made a commitment in its WTO accession to comply with the Agreement on the Application of Sanitary and Phytosanitary Measures (SPS), denials of SPS certification often appear to lack a scientific basis and have been used in a discriminatory fashion to block the import of U.S. products that compete with Ecuadorian production.

The Izquieta Perez National Hygiene Institute (INHIP) and accredited public and private laboratories conduct tests on consumer products that are required to obtain a sanitary registration from the Ministry of Health. Sanitary registrations are required for imported, as well as domestic, processed foods, cosmetics, pesticides, pharmaceuticals and syringes, as well as some other consumer goods. Corruption and inefficiency in the sanitary registration process has delayed and even blocked the entry of some imports from the United States.

GOVERNMENT PROCUREMENT

Government procurement is regulated by the 1990 public contracting law, although the government is considering introducing new legislation. In some instances, the military is not required to use this law for its purchases. Foreign bidders must be legally represented in Ecuador. There is no legal requirement to discriminate against U.S. or other foreign suppliers. Bidding for government contracts can be cumbersome and insufficiently transparent. Ecuador is not a signatory to the WTO Agreement on Government Procurement.

EXPORT SUBSIDIES

The Government of Ecuador has created a semi-independent agency, Corpei, to promote Ecuadorian exports. Using a World Bank loan, Corpei offers matching grants to exporters to help fund certain expenses, including international promotion events and export certifications. The maximum individual grant is $50,000. Corpei also subsidizes export credit insurance.

INTELLECTUAL PROPERTY RIGHTS PROTECTION

In 1998, the Ecuadorian Congress passed, and the President signed, a comprehensive law significantly improving the legal basis for protecting intellectual property, including patents, trademarks and copyrights.

The intellectual property law provides significantly greater protection for intellectual property, and enforcement copyrights has improved. Still, it can be difficult to obtain adequate and effective protection given the remaining shortcomings in the legal system. In 1999, USTR recognized the improvement made by the Government of Ecuador by moving Ecuador from the “Priority Watch List” to the “Watch List” under the Special 301 provision of the 1988 Trade Act. The United States continues to pursue its intellectual property concerns with Ecuador, including issuance of scores of pending (transitional) “pipeline” pharmaceutical patent applications and the continued judicial application of the discriminatory 1976 Agents and Distributors Protection Law (Dealers’ Act).

Ecuador’s current intellectual property regime is provided for under its Intellectual Property Rights (IPR) Law, Andean Pact Decisions 344, 345 and 351, and its public commitment to apply the WTO TRIPS Agreement from the date of its accession to the WTO. Ecuador is a member of the World Intellectual Property Organization (WIPO). Ecuador has ratified the Berne Convention for the Protection of Literary and Artistic Works and the Geneva Phonogram Convention, but not the Paris Convention for the Protection of Industrial Property.

In October 1993, Ecuador and the United States signed the bilateral Intellectual Property Rights Agreement (IPRA) that mandates full protection for copyrights, trademarks, patents, satellite signals, computer software, integrated circuit layout designs and trade secrets. However, the IPRA has not been ratified by the Ecuadorian Congress. The IPRA obligates Ecuador to establish criminal and border enforcement systems similar to those required under the TRIPS Agreement. While many of the areas covered by the IPRA have been addressed by the 1998 IPR law, the IPRA also calls for pharmaceutical pipeline patent protection.

In response to a November 1996 decision by the Andean Pact Tribunal, Ecuador repealed its implementing regulations for Andean Pact Decision 344 on industrial property, which included provisions for pipeline protection for previously unpatentable products. In December 1996, another decree re-established the National Directorate of Industrial Property (DNPI) as the competent patent and trademark authority and authorized the DNPI only to administer Decision 344 as written. In mid-1998, the Government of Ecuador issued twelve pipeline patents, but declined to take action on more than 140 other pipeline applications, citing, inter alia, Andean Community prohibitions and its intention to abolish the DNPI. In 1999, the Andean Community imposed sanctions on Ecuador for issuing the twelve pipeline patents, despite their having been issued pursuant to the IPRA.

Before its September 1997 prospective repeal, the Dealers' Act prevented U.S. and other foreign suppliers from terminating distributorship contracts without mutual consent and judicial approval, even if there was a termination clause in the contract that allowed either party to unilaterally terminate the contract. The act has continued to form the basis for judicial decisions involving contracts signed before the repeal and for cases in the judicial system before the repeal. As of the date of this report, several court cases against U.S. firms remain pending, with large potential claims that bear no relation to alleged damages.

Despite improvements, enforcement against intellectual property infringement remains a serious problem in Ecuador. The national police and the customs service are responsible for carrying out IPR enforcement orders, but there has sometimes been difficulty getting court orders enforced. There is a widespread local trade in pirated audio and video recordings, computer software and counterfeit activity regarding brand name apparel. Local registration of unauthorized copies of well-known trademarks has been reduced. Some local pharmaceutical companies produce or import pirated drugs and have sought to block improvements in patent protection.

Patents and Trademarks

The new IPR law provides an improved legal basis for protecting patents, trademarks, and trade secrets. However, concerns remain with such provisions as the lack of pipeline protection, working requirements for patents, compulsory licensing and ambiguities surrounding protection for test data.

Copyrights

The IPR law protects printed and recorded works for the life of the author plus 70 years. Corporations may protect works for 70 years from production date. The copyright law covers software and satellite signals. Semiconductor chip layouts are specifically protected.

SERVICES BARRIERS

Ecuador has ratified the WTO Agreement on Financial Services. The 1993 equity markets law and the 1994 general financial institutions law established open markets in financial services and provided for national treatment. Foreign professionals are subject to national licensing legislation, and accountants must be certified by the superintendent of banks. Foreign insurance companies may not present offers on government tenders.

Telecommunications services are reserved to the state, but foreign companies enjoy national treatment in providing services not monopolized by the state and will be invited to participate in the planned partial privatization of the two state telephone companies in 2000 or 2001. In the WTO negotiations on basic telecommunications services, Ecuador made commitments for domestic cellular services, but did not adopt commitments for other domestic and international services. It was one of the few countries that chose to make market access commitments without reinforcing regulatory commitments.

INVESTMENT BARRIERS

Ecuador's foreign investment policy is governed largely by the national implementing legislation for Andean Pact Decisions 291 and 292 of 1991 and 1993, respectively. Foreign investors are accorded the same rights of establishment as Ecuadorian private investors, may own up to 100 percent of enterprises in most sectors without prior government approval, and face the same tax regime. There are no controls or limits on transfers of profits or capital, and foreign exchange is readily available. The U.S.-Ecuador Bilateral Investment Treaty (BIT) entered into force in May 1997 and includes guarantees regarding national and most-favored-nation treatment, prompt, adequate and effective compensation for expropriation, financial transfers, and access to international arbitration.

Under the Andean Community Common Automotive Policy, Venezuela, Ecuador and Colombia imposed local content requirements in the automotive assembly industry in order to qualify for reduced duties on imports. Such requirements are prohibited by Agreement on Trade-Related Investment Measures (TRIMS). Under this Agreement, Ecuador was obligated to eliminate TRIMS by the year 2000. The latest Andean Automotive Policy Council determined in December 1999 that it would not eliminate all local content requirements, but instead has decided to increase at least one requirement gradually to 34 percent by the year 2006. This revised automotive policy may be inconsistent with Ecuador's WTO obligations under the TRIMS Agreement. The United States is working in the WTO to ensure that WTO members meet these obligations.

Certain sectors of Ecuador's economy are reserved to the state, although the scope for private sector participation, both foreign and domestic, is increasing. All foreign investment in petroleum exploration and development in Ecuador must be carried out under a contract with the state oil company. However, the government plans to attract increased foreign investment in the telecommunications, electricity, and oil sectors through privatization and new legislation. Foreign investment in domestic fishing operations, with exceptions, is limited to 49 percent of equity. Foreign companies cannot own more than 25 percent equity in broadcast stations. Foreign investors must obtain armed forces approval to obtain mining rights in zones adjacent to international boundaries. Foreigners are prohibited from owning land on the frontier or coast.

Appropriate compensation for expropriation is provided for in Ecuadorian law, but is often difficult to obtain. The extent to which foreign and domestic investors and lenders receive prompt, adequate and effective compensation is largely related to the particular judicial process underway. It can be difficult to enforce property and concession rights, particularly in agriculture and mining sectors. Oil, telecommunications, and other foreign companies often have had difficulties resolving contract issues with the state. Although Ecuador deposited its instrument of accession to the International Center for the Settlement of Investment Disputes (ICSID), the Government maintains that congressional ratification is necessary to make that membership effective.

EGYPT

TRADE SUMMARY

The U.S. trade surplus with Egypt was $2.4 billion in 1999, a $9 million increase from 1998. U.S. merchandise exports to Egypt were $3 billion, down $34 million (1.1 percent) from 1998. Egypt was the United States' 33rd largest export market in 1999. U.S. imports from Egypt totaled $617 million in 1999, a 6.6 percent decrease from 1998. The stock of U.S. foreign direct investment in Egypt was nearly $2 billion in 1998, 21.3 percent higher than in 1997. U.S. direct investment in Egypt is largely concentrated in petroleum, manufacturing, and banking.

IMPORT POLICIES

Since 1992, Egypt has undertaken import policies to promote greater trade liberalization, including efforts to replace non-tariff barriers with tariffs and to reduce its maximum tariff rate. The government of Egypt's major focus is to promote exports. However, a widening trade deficit has put pressure on it on occasion to try to slow down the growth in imports. This pressure may have played a part in a November 1998, government of Egypt decree requiring that consumer goods be imported directly from the country of origin. However, in November 1999, the government of Egypt amended this trade measure to allow consumer goods to be sourced from manufacturers' regional branches or distribution centers and eased standards for proving the origin of goods. Despite a series of tariff reductions, tariff rates on a number of products remain high, and mandatory quality control standards and other non-tariff barriers restrict imports of some U.S. products. Exporters to Egypt are frequently handicapped by the lack of advance notification on changes in import regulations.

Tariffs

The government of Egypt has made progress towards liberalizing Egypt's tariff structure. In the Uruguay Round, Egypt bound over 98 percent of its tariffs. Egypt's applied rate in 1998 was 26.8 percent (21 percent if alcoholic beverages are excluded), much lower than the bound rate in 1997 of 45 percent. Although tariffs have declined by more than half, they still remain relatively high, especially when compared to other developing countries with large internal markets and diversified industrial economies. Egypt charges a service and inspection fee of one percent on imports. It also charges an additional fee of two percent on goods subject to import duties of five to twenty-nine percent, and a service charge of three percent on goods subject to import duties of 30 percent or more.

Although the maximum tariff dropped from 100 percent in 1992 to 40 percent in 1998, a number of products remain excluded from this tariff ceiling. These include tariffs for textiles, which were recently set at 54 percent, passenger cars with engines greater than 1,300 cc, at 85 to 110 percent, whole poultry at 70 percent, and canned fruit products at 55 percent. Foreign movies are subject to duties and import taxes equaling approximately 87 percent as well as a 10 percent sales tax. Egypt also applies a discriminatory sales tax on high quality imported flour of 10 percent (in addition to a five percent tariff) which does not apply to a locally produced flour. Some twelve percent of Egypt's tariffs have applied rates in excess of their bound rates, including those on several dairy products, such as non-fat dry milk, whey powder, grated cheese, and processed and other cheeses. The government of Egypt has said that importers can raise a complaint if applied rates violate bound tariffs.

Some of the high tariffs are for items previously banned, such as textiles, where tariffs were set at 54 percent, plus a 10 percent sales tax, and a one percent service fee. In replacing the ban on whole poultry, Egypt initially set a tariff of 80 percent which has now been reduced to 70 percent. Egyptian customs authorities state that it will be reduced to 60 percent by 2005.

Egyptian law requires that all persons or companies importing into Egypt must register with the General Authority for Export and Import Control within the Ministry of Economy and Foreign Trade and that all registered importers be Egyptian nationals. All goods imported into Egypt must be accompanied by a customs declaration except for goods destined for the free zones. Exporters and importers claim that customs duty valuation often is arbitrary and that the rates charged often are higher than prescribed in the tariff code.

Tariffs are calculated using the so-called "Egyptian Selling Price," based on the commercial invoice accompanying a product the first time it is imported. Customs authorities retain information from the original commercial invoice and expect subsequent imports of the same product (regardless of the supplier) to have no lower price than that noted on the invoice from the first shipment. As a result of this presumption of level or increasing prices, and the belief that under-invoicing is widely practiced, customs officials routinely increase invoice values from 10-30 percent for customs valuation purposes. As customs procedures become increasingly automated through the use of computers, customs officials will no longer be able to exercise such subjective judgment over valuation of imports, especially after the WTO Customs Valuation Agreement comes into force for Egypt on July 1, 2000. The government of Egypt issued a decree (Decree No. 619) in November 1998, requiring that consumer goods be shipped directly from the country of origin. However, a liberalized amendment to that decree, issued in November 1999, allows shipment from a manufacturer's branches or distribution centers and eased standards for proving the origin of goods.

Import Bans

Egypt has eliminated most outright import bans. Egypt's ban on apparel products is scheduled to be lifted in 2001 in accordance with its obligations under the WTO Agreement on Textiles and Clothing. Egypt continues to ban poultry parts, though there are some indications that turkey parts may soon be permitted. In November 1998, the government of Egypt issued Decree 580 stipulating that automobiles must be imported in the year of manufacture.

STANDARDS, TESTING, LABELING AND CERTIFICATION

Standards are established by the Egyptian Organization for Standardization and Quality Control in the Ministry of Industry. However, verification of compliance is the responsibility of agencies affiliated to different ministries, including the Ministry of Health, the Ministry of Agriculture, the Atomic Energy Authority, and for imported goods by the General Authority for Export and Import Control in the Ministry of Economy and Foreign Trade. Administration of standards is made more complex by the fact that their formulation and enforcement is carried out by different organizations within different ministries with little or no inter-agency coordination. Since its accession to the WTO, Egypt has significantly increased efforts to bring Egyptian mandatory regulations into conformity with international standards. However, U.S. industry has expressed concern over the protectionist use of these regulations, rather than for legitimate health, safety and environmental protection concerns.

Egypt currently has about 4,000 standards; around 10 percent are mandatory. The majority of the mandatory standards are concerned with food products, engineering goods and textiles and clothing. Between 25 and 30 percent of Egyptian standards conform with international standards. Although Egyptian authorities stress that standards are applied even-handedly across the board, importers report that testing procedures for imports often differ and note that inadequately equipped laboratories often generate faulty analyses, which result in inaccurate test results; so far, about one percent of the standards issued since Egypt joined the WTO have been notified under the WTO agreement. In recent years efforts have been stepped up to increase the conformity of Egyptian standards with international standards.

Food imports are sometimes subject to arbitrary quality standards. For example, Egyptian Standard No. 1522 (1991) requires that meat imported for direct consumption contain no more than seven percent fat, and U.S. exporters, unable to meet this extraordinary requirement, estimate that they lose up to $2 million annually in sales of high quality beef to Egyptian beef producers who are not subject to these restrictions. New animal health requirements, implemented in 1998 restrict imports of U.S. dairy cattle. While standard international practice generally allows industry to regulate the shelf life of products, the government of Egypt requires that many imports (mainly foodstuffs) entering Egyptian ports must have 50 percent or more of their shelf life remaining. However, Egyptian shelf life standards ignore quality differences between producers and often have been established without any scientific justification. Regulations concerning food products are currently under review.

As tariffs and quantitative restrictions have been lowered, the list of imports subject to mandatory quality control has been expanded from 69 items in 1992 to 182 items in 1998. The list covers a wide range of categories including food stuffs, construction products, appliances, electric products, spare parts and consumer products. Inspections are carried out by the General Authority for Export and Import Control in the Ministry of Economy and Foreign Trade. Egypt is currently reviewing the system of mandatory quality control.

There are several labeling and packaging requirements. Poultry and meat products must be shipped directly from the country of origin to Egypt and sealed in packaging with details in Arabic both inside and outside the packaging. This requirement raises processing costs and discourages some exporters from competing in the market.

GOVERNMENT PROCUREMENT

Egypt is not a party to the WTO Agreement on Government Procurement, however, in 1998, Egypt passed a law outlining new regulations for government procurement. Among its provisions, the new law prohibits transforming a bid into a tender (a major defect of earlier legislation). In addition, it mandates that technical factors be considered in addition to price in the awarding of contracts. Previously, publicly-owned companies received preference, but under the new law, this preference only applies when the bid of a publicly-owned firm is within 15 percent of the other bids. The law also seeks to increase contractor rights through such steps as mandating the immediate return of deposits once the government announces the results of a tender. This law makes a number of positive changes to Egypt's government procurement practices, among them the requirement for an explanation of the grounds for a contract award. Concerns about transparency remain, however. For example, the Prime Minister has the authority to authorize the method of tendering for specific entities according to terms, conditions and rules which he determines.

INTELLECTUAL PROPERTY RIGHTS PROTECTION

In 1997, 1998, and 1999 Egypt was placed on the "Special 301" Priority Watch List due to the continued lack of progress in patent protection and in the enforcement of copyright protection. Egypt is a member of the World Trade Organization (WTO). In 1999, the government of Egypt continued work on new legislation to meet its obligations under the WTO Agreement on Trade-Related Aspects of Intellectual Property (TRIPS).

The current Egyptian patent law (Law 132 of 1949) provides protection below international standards. Draft legislation designed to improve patent protection is under review, but the government likely will opt to take advantage of the additional five years' transition period granted to certain developing countries under the TRIPS agreement for providing patent protection for pharmaceuticals. The government of Egypt has provided assurances that, pending the adoption of legislation extending such protection, it will fully implement its obligations under the TRIPS agreement to provide exclusive marketing rights for pharmaceutical products.

Egypt has further strengthened its copyright protection laws but enforcement remains inadequate. Law 29 of 1994 amended the copyright law (Law 38 of 1992) to ensure that computer software was afforded protection as a literary work, allowing it a 50-year protection term. Law 38 of 1992, an amendment to the 1954 copyright law, provided specific protection to computer software and increased the penalties against piracy, but failure to impose deterrent penalties has fostered continued high levels of piracy. A 1994 decree also clarified rental and public performance rights, protection for sound recordings, and the definition of personal use. In the new IPR law Egypt plans to strengthen its protection against unauthorized recording of live performance and broadcasts. Copyright piracy continues to affect most categories of works, including motion pictures (in video cassette format), sound recordings (including through false registration), printed matter (notably medical textbooks), and computer software.

In the area of computer software protection, the government of Egypt has begun to target large-scale end users and has recently taken steps to increase the authorized use of legitimate software by government departments. However, more remains to be done in this area.

Egypt is completely revising its trademark law in order to provide additional legal protection for trademarks and industrial designs. The trademark law will have new definitions for "mark" and "well known mark" to correspond to the TRIPS definitions, and will prohibit third party use of identical marks, which will improve the quality and transparency of the trademark registration system. The current trademark law, Law 57 of 1939, is not enforced strenuously and the courts have only limited experience in adjudicating infringement cases.

Egypt provides some protection for undisclosed information, which will be increased under the draft IPR law, especially in the area of test data submitted as a condition of approving the marketing of pharmaceutical products. The government of Egypt currently does not protect chip layout design, but protections are incorporated in the draft IPR law. Also incorporated in the new draft IPR law is protection for geographical indications. The government has also recently established a contact point in the Ministry of Economy and Foreign Trade to handle inquiries about the TRIPS agreement.

Pharmaceutical price controls

The government controls prices in the pharmaceutical sector. In many instances, the government has not allowed pharmaceutical prices to rise with general inflation and foreign companies occasionally allege discrimination in the granting of price increases. In addition, there are also regulations regarding the manufacture and registration of pharmaceuticals in finished dosage forms and requiring foreign companies to license the manufacture and sale of imported drugs to local companies.

SERVICES BARRIERS

Egypt participated actively in the Uruguay round negotiations on services and made commitments in four sectors: construction, tourism, financial services, and international maritime transport. Egypt's General Agreement on Trade in Services (GATS) commitments tend to bind the existing policy framework, which is being gradually liberalized. Egypt is planning to participate fully in the GATS 2000 negotiations. Egypt restricts the employment of foreigners to 10 percent of the personnel employed by a company. There are restrictions on the acquisition of land by foreigners for commercial purposes.

Egypt has restrictions for most service sectors in which it has made GATS commitments. These restrictions relate to limits on foreign equity participation, up to 49 or 51 percent, such as in construction, insurance, and transport services. An economic needs test is used to determine commercial presence for foreign bank branches and in insurance. In the 1997 WTO Financial Services Agreement, Egypt agreed to allow foreign equity participation to rise from a maximum of 49 to 51 percent in "life, health, and personal accident" insurance as of December 31, 1999. It also committed to relaxing its economic needs test in life, health and personal accident insurance in the year 2000 and in non-life insurance in the year 2002.

Banking

In 1998, legislation was passed to allow the privatization of four state banks that account for almost 50 percent of the banking sector's total assets. The government of Egypt has said that although it would have no objection to selling its majority ownership, the banks would remain under Egyptian control and no investor would be allowed to hold more than 10 percent equity in the bank. Of Egypt's 63 banks, 241 are foreign bank branches and 23 are joint-venture banks with foreign participation. The decision to allow foreign banks to set up branches in Egypt is based on an economic needs test. Foreign banks may also establish joint-venture banks in Egypt. In its 1997 WTO financial services commitments, Egypt did not limit foreign equity in such joint-ventures, but both foreign and domestic investors must obtain Central Bank approval to hold more than 10 percent of the equity of a bank. The Central Bank has not issued new bank licenses, either to foreign or domestic investors, for several years because of concerns of excess capacity in the sector. Egypt allows existing foreign bank branches to conduct local currency operations and two U.S. bank branches have licenses to do so.

Insurance

In 1998, the Egyptian government passed legislation which permits private investment in Egypt's three state-owned insurance companies. The law also removed all restrictions on minority foreign ownership of Egyptian insurance firms and abolished the prohibition on foreign nationals from serving as corporate officers. Foreign participation in Egypt's insurance market was first permitted by a 1995 law allowing foreign companies to hold up to a 49 percent stake. There are five private-sector Egyptian insurance companies, three of which are joint ventures with U.S. firms. Egypt continues to prohibit foreign insurance companies from establishing agencies or branches. Egypt has committed to relax its economic needs test in life, health, and personal accident insurance in 2000 and in non-life insurance in 2002. Egypt has made commitments to allow life and reinsurance brokerage on a cross-border basis. However, foreign insurance brokerage firms still are not permitted to establish offices in Egypt.

Securities

International investors are permitted to operate in the Egyptian stock market largely without restriction. Foreign brokers, including U.S. and European firms, are permitted to operate in the Egyptian stock exchange and have established or purchased stakes in brokerage companies. Egypt's WTO financial services commitment in the securities sector provides for unrestricted market access and national treatment in the sector.

Telecommunications

In October 1999, the government of Egypt created a new Ministry of Communications and Information Technology. The government had previously converted a government authority into Telecom Egypt (still currently state-owned), established a regulatory board for telecommunications and spun off responsibility for Internet, cellular telephone and pay telephone to the private sector. In recent years, Egypt's telecommunication infrastructure has undergone extensive modernization with the addition of five million lines. The government has indicated that it plans to sell 20 percent of Telecom Egypt in the first quarter of 2000. In 1996, a government-owned firm with an initial GSM capacity of 90,000 lines was created as an entity within Telecom Egypt predecessor ARENTO.

Early 1998 saw the establishment of two private companies Mobinil and Misrphone, which were granted cellular licenses, the latter of which taking over Telecom Egypt's cellular operations. This marked the first major entry of the private sector as operators in this sector and eventually boosted the total numbers of cell phones subscribers to 800,000. As of year end 1999, Telecom Egypt also had awarded contracts to two firms to install and operate pay phones. Foreign firms actively compete for contracts as Telecom Egypt works to expand and modernize its networks and switching equipment. However, in general, Telecom Egypt does not buy consulting or management services, and foreign firms do not currently play a significant operating role in Egypt's grid. Egypt has not yet undertaken obligations under the WTO Basic Telecommunications Agreement or the WTO Information Technology Agreement. However, some government of Egypt officials have expressed interest in both.

Maritime and Air Transportation

About 25 percent of Egypt's international trade is carried by ships flying the national flag, and receiving several incentives. In 1998, the government of Egypt passed a law permitting the private sector to carry out most maritime transport activities, including loading, supplying, and ship repair. Egypt also passed a law permitting private firms to build and operate new airports.

OTHER SERVICES BARRIERS

Egypt maintains several other barriers to the provision of services by U.S. firms. Foreign motion pictures are subject to a screen quota and limitations on the number of prints of a foreign film a distributor may import. Private and foreign air carriers may not operate charter flights to and from Cairo except with the approval of the national carrier. Only local nationals may become certified accountants. Private firms dominate advertising, accounting, car rental, and a wide range of consulting services.

INVESTMENT BARRIERS

Under the 1992 U.S.-Egypt Bilateral Investment Treaty (BIT), Egypt is obliged to maintain critical elements of an open investment regime, including national and Most-Favored-Nation (MFN) treatment of foreign investment (with exceptions limited by the Treaty), the right to make free financial transfers freely and without delay, and international law standards for expropriation and compensation. Moreover, the BIT establishes procedures for U.S. investors in Egypt to directly enforce the treaty's obligations, including international arbitration. Generally, current Egyptian law meets or surpasses BIT standards in all categories.

A 1997 law reaffirmed basic guarantees for investors and modified the framework for investment incentives. It offers automatic approval for most new-to-market companies and particular advantages for investors in 16 sectors including agriculture, maritime, transportation, and computer software development. Automatic approval does not extend to military and related products. The 1997 law permits the General Authority for Free Zones and Investment (GAFI), now a unit of the Ministry of Economy, substantial discretion in granting investment incentives. In general, incentives are geographically-based to encourage investment outside Cairo, with tax holidays of up to 20 years available to companies located in parts of upper Egypt. Current tax law does not grandfather favorable tax treatment to investments in expanded capacity in existing operations.

The People's Assembly amended the Companies Law (Law 159 of 1981) in 1998 to streamline procedures for establishing a new firm. In addition, the government reaffirmed its commitment to introduce a "unified" companies law to rationalize the multiple laws addressing incorporation procedures and eligibility for tax benefits and other incentives, although it did not set a target date for this effort.

The transition period under the WTO Agreement on Trade-Related Investment Measures (TRIMS) for Egypt ended January 1, 2000. Egypt maintains preferential tariff rates for auto parts, which are granted in exchange for reaching specified levels of local content. Some of Egypt's trading partners have questioned whether this is consistent with its obligations under the TRIMS Agreement. The United

States is working in the WTO to ensure that WTO members meet these obligations.

ANTI-COMPETITIVE PRACTICES

Egypt does not have a basic antitrust law. Given the relatively small size of the economy, most sectors are dominated by only a few players, whether private or public, and anti-competitive practices are a structural feature of the economy. Egypt is in the process of developing an antitrust law which is expected to incorporate aspects of earlier legislation on dumping, monopolies, and price fixing.

ELECTRONIC COMMERCE

Although both the Government of Egypt and the Egyptian private sector are very interested in developing electronic commerce, the current level of activity is low. The main hurdles to expanding electronic commerce in Egypt are the relatively high prices charged for Internet services and the relatively small number of users. Businesses also pay very high fees for dedicated Internet lines. Deregulation of the telecommunications sector and opening it to the private sector will lay the framework for the growth of electronic commerce in Egypt. To facilitate electronic commerce on a national scale, the prices of personal computers need to fall. In order to encourage the growth of electronic commerce, the government of Egypt recently announced plans to reduce import duties on imported computer components from twenty to five percent. In October 1999, Egypt and the United States signed a joint statement on electronic commerce designed to support the development of electronic commerce in Egypt. In November 1999, the United States and Egypt agreed to establish an electronic commerce Task Force to focus on business opportunities and government policies related to electronic commerce.

TRADE AND INVESTMENT FRAMEWORK AGREEMENT

As Egypt continues its transition from a command to a market economy, the business climate is slowly improving. Lack of transparency, excessive bureaucracy and low-level corruption are barriers to doing business in Egypt. The government of Egypt is trying to address at least some of these problems, however, through changes in procedures including increased computerization. In July 1999, the U.S. Trade Representative, Ambassador Charlene Barshefsky, and Minister of Economy and Foreign Trade, Youssef Boutros Ghali, signed a Trade and Investment Framework Agreement (TIFA) to serve as a forum for consultations on trade matters and in November 1999, the bilateral TIFA Council had its first meeting in Cairo.

EL SALVADOR

TRADE SUMMARY

In 1999, the U.S. trade deficit with El Salvador was $85 million. U.S. merchandise exports to El Salvador were $1.5 billion in 1999, an increase of $5 million over 1998 levels. El Salvador was the forty-seventh largest U.S. export market in 1999. Imports from El Salvador were $1.6 billion in 1999, an increase of $167 million over 1998 imports.

The stock of U.S. foreign direct investment in El Salvador was $599 million at the end of 1999, an increase of approximately $380 million over 1998.

IMPORT POLICIES

Tariffs

El Salvador is a member of the Central American Common Market (CACM), which also includes Guatemala, Honduras, Nicaragua and Costa Rica. It is also an active member of the Central American Northern Triangle Subregional Group, formed by El Salvador, Guatemala and Honduras, which seeks to further economic, political and social integration in the region. The Northern Triangle countries hope to conclude a free trade agreement with Mexico during 2000. CACM members are working to reduce their common external tariff (CET) from the current range of zero to 20 percent to zero to 15 percent by the year 2000, while allowing each country to implement the necessary reductions at its own pace.

El Salvador completed its tariff reduction program in July 1999, on schedule. Tariffs on capital goods and raw materials currently range from zero to one percent. Tariffs on intermediate goods range from five to ten percent, and the highest duty for final goods is 15 percent. With the exception of a few products, most trade within the CACM is duty-free.

There are no legal barriers to U.S. exports of manufactured goods or bulk, non-agricultural commodities to El Salvador. Except for vehicles, alcoholic beverages, tobacco and certain luxury items, U.S. exports face tariffs ranging from zero to 15 percent.

STANDARDS, TESTING, LABELING AND CERTIFICATION

Generally, standards have not been a barrier to the importation of U.S. consumer-ready food products. The Ministry of Health requires a certificate of free sale showing that the product has been approved by U.S. health authorities for public sale. Importers also may be required to deliver samples for laboratory testing, though this requirement generally has not been enforced. All imports of fresh food, agricultural commodities, and live animals, coming from non-CACM countries, must be accompanied by a sanitary certificate. Basic grains and dairy products also must have an import license.

Non-Tariff Measures

Since 1992, the Ministry of Agriculture has imposed arbitrary sanitary measures on U.S. poultry imports. These sanitary restrictions call for zero tolerance or negative laboratory tests for diseases such as avian adenovirus, chicken anemia, and salmonella. These diseases, common worldwide, are not recognized as List “A” diseases by the International Office of Epizootics. Given the ubiquitous nature of salmonella throughout the world, it would be difficult for any established poultry-producing country to guarantee zero tolerance or negative lab tests on meat that has not been cooked or irradiated. These standards are applied in a discriminatory manner by El Salvador, since domestic production is not subject to the same requirements as imports. As a result of these measures, exports of U.S. poultry to El Salvador have virtually ceased. U.S. officials have met with Salvadoran officials since November 1992 to discuss this problem, with no success to date.

The Government of El Salvador requires that rice shipments be accompanied by a U.S. Department of Agriculture certificate stating that the rice is free of T. Barclayana. There is no chemical treatment that is both practical and effective against T. Barclayana. El Salvador failed to notify the WTO, under the Agreement on the Application of Sanitary and Phytosanitary Measures, of these restrictions and has no risk assessments upon which to base such restrictions.

GOVERNMENT PROCUREMENT

Government purchases and construction contracts are usually open to foreign bidders. Infrastructure projects, especially those financed by multilateral lending institutions, are open to international bidders. The Legislative Assembly is studying a new, more transparent procurement law. El Salvador is not a signatory of the WTO Agreement on Government Procurement.

EXPORT SUBSIDIES

El Salvador offers a six percent rebate to exporters of non-traditional goods based on the F.O.B. value of the export. The following products do not enjoy this rebate: coffee, sugar, cotton, and metal/mineral products. However, processed coffee can apply for the rebate, if it incorporates 30 percent national value added – for instance if it is shipped as “gourmet” or “organic” coffee. Sugar can apply if it is exported as refined sugar. Assembly plants (maquilas) are eligible if they meet the criteria of adding 30 percent El Salvadoran input to the production process. As they already enjoy a ten-year exemption from income tax and duty-free privileges, firms operating in free trade zones are not eligible to receive rebates. According to COEXPORT (the El Salvadoran Exporters Association), 550 of their more than 600 registered members received rebates in 1999. The Ministry of Finance is reported to have reimbursed $12 million to El Salvadoran exporters in rebates in 1999. Until 1997, the Government withheld 25 percent of export rebates to satisfy income tax obligations. In 1998, however, this withholding requirement was abolished.

INTELLECTUAL PROPERTY RIGHTS PROTECTION

El Salvador’s intellectual property protection law has been in effect since 1993. The Special Unit for the Monitoring of Intellectual Property Rights, created in the Attorney General’s Office in 1996, has conducted raids and seizures of pirated shoes, clothing, books, music recordings, videos, pharmaceuticals, and software. El Salvador was removed from the Special 301 Watch List in July 1996.

Patents

The 1993 IPR law and El Salvador’s acceptance of the disciplines in the WTO Agreement on the Trade-Related Aspects of Intellectual Property Rights (TRIPS) addressed several areas of weakness in the patent regime. The 1993 IPR law lengthened patent terms to 20 years from the application filing date. However, several provisions are not TRIPS-consistent. These include: only 15 years protection from the date of solicitation for pharmaceutical products and processes. The government is expected to introduce legislation to the Legislative Assembly in early 2000 that is designed to meet its TRIPS obligations.

Copyrights

Copyrights are protected by the 1993 IPR law. The Penal Code was amended that same year to provide for criminal penalties for copyright violations. El Salvador is a signatory of the Berne Convention. Losses from software piracy were estimated by the Business Software Alliance (BSA) at $10.5 million in 1998. Losses from video piracy were estimated by the International Intellectual Property Alliance (IIPA) at $2 million in 1998.

Trademarks

Trademarks are regulated by the Central American Convention for the Protection of Industrial Property. The National Registry has computerized and streamlined its trademark registration process, with users reporting improved service. El Salvador is a signatory of the Geneva Phonograms, Paris Industrial Property, and Berne Artistic and Library Work Conventions, but does not belong to the Plant Varieties (UPOV) or the Brussels Satellite Conventions.

SERVICES BARRIERS

A new modern banking law was enacted in 1999. Foreign banks operating in El Salvador are governed by the same requirements as El Salvadoran banks and can offer a full range of services. Rules governing the opening of foreign bank branches are clear and transparent. In October 1996, the Legislative Assembly passed legislation regulating the insurance sector. The law establishes minimum requirements for net worth and capital investments, provides for a separate supervisory function, and lays out a framework for competition and transparency.

In 1999, El Salvador notified the WTO of its acceptance of the Fifth Protocol to the General Agreement of Trade in Services (GATS), which was necessary to bring into effect its commitments under the 1997 Financial Services Agreement.

Foreign investors are limited to 49 percent equity stakes in television and radio broadcasting. Foreign lawyers must be graduates of a Salvadoran university and notaries must be Salvadoran citizens.

ETHIOPIA

TRADE SUMMARY

In 1999, the U.S. merchandise trade surplus with Ethiopia was $134 million, an increase of $97 million over that of 1998. U.S. exports to Ethiopia were $165 million, an increase of $76 million (85 percent) over 1998. Ethiopia was the United States' 98th largest export market in 1999. U.S. imports from Ethiopia were $30 million in 1999, a decrease of $22 million (42 percent) from 1998. The stock of U.S. foreign direct investment in Ethiopia was estimated to have been $38 million in 1998. The war with Eritrea has deterred recent investment, in part directly and in part indirectly because of the decline in business activity.

IMPORT POLICIES

Ethiopia has significantly reduced customs duties on a wide range of imports during the last several years, especially for those intermediate goods that are inputs for Ethiopian exports. In December 1998, Ethiopia reduced the number of tariff bands to seven (including the zero rate) and reduced the maximum tariff rate to 40 percent. The result was a fall in the average tariff rate to 19.5 percent. Ethiopia has promised to further reduce import tariffs to an average of 17.5 percent by 2001.

There are 10 excise tax brackets applied equally to domestic and imported goods, ranging from 10 percent for textiles and electronic equipment to 200 percent for liquor and spirits. Excise tax rates of 100 percent and above have been set for luxury goods such as perfume, large cars, and tobacco. In December 1999, the Government of Ethiopia introduced a surtax of 10 percent on most imported goods, excluding fertilizer, fuel, transport machinery, and many capital goods. The sales tax rate is now a uniform 12 percent.

Ethiopia imposes no quantitative restrictions on imports and import licensing requirements do not represent a noteworthy trade barrier. Delays in customs clearance, however, remain a hindrance to importers. Not only is the clearance process slow, but imports are sometimes assessed using attributed values in place of invoice values, even when those invoices have been certified by trade officials in the exporting country.

The government requires that all imports be channeled through Ethiopian nationals registered as official importers or distribution agents.

As a result of the border dispute with Eritrea, Ethiopia has redirected nearly all of its foreign trade through the Port of Djibouti.

STANDARDS, TESTING, LABELING AND CERTIFICATION

The Ethiopian Quality and Standards Institute establishes guidelines and regulates domestic production and trade standards. The imposition of standards is consistent with international norms and does not constitute a barrier to the importation of U.S. products. However, there are instances in which regulatory or licensing requirements, bureaucratic delays, and misinterpretations have prevented the local sale of U.S. exports, particularly personal hygiene and health care products, which may be treated as if they were drugs. New drugs may require local research and testing for 3-5 years before the product can be sold in the local market. Importing a new grain or fertilizer may also involve some of the same hurdles in terms of testing and safety.

GOVERNMENT PROCUREMENT

Government procurement is conducted through competitive bidding. There are no burdensome administrative procedures or special requirements for documents.

EXPORT SUBSIDIES

The government of Ethiopia does not subsidize export products and does not provide preferential financing to exporting firms.

INTELLECTUAL PROPERTY RIGHTS PROTECTION

There are few mechanisms to protect intellectual property rights in Ethiopia at this time. Firms place notices in local newspapers to register their trademarks with the Ministry of Trade and Industry. In some cases, U.S. firms have been reluctant to sell products or franchise the use of technology due to the lack of protection for patents and copyrights. Although the Ethiopian Ministry of Information and Culture drafted a new copyright law in June 1999, the law has not yet been enacted.

SERVICES BARRIERS

Under Ethiopia's investment proclamation of June 1996, no foreign firm may invest in the domestic banking or insurance sectors. The Government retains the exclusive right to generate, supply, and transmit electricity (except for hydroelectric power) above 25 megawatts, provide air transport for more than 20 passengers and above 2700 kilograms of cargo, as well as to provide rail transport and non-courier postal services. Areas reserved for Ethiopian nationals include forwarding and shipping agent services, road and water transport services, retail, import and export trade, printing, cinemas, and other small service establishments. Professional service providers must be licensed by the government to practice in Ethiopia.

Although amendments issued in September 1998 to Ethiopia's investment proclamation maintained the exclusion on foreign participation in financial services (banking and insurance) and other services as noted above, they opened three formerly prohibited sectors to foreign investment: telecommunications, hydroelectric power generation below 25 megawatts, and defense. However, investment in telecommunications and defense must be "in partnership with the Government of Ethiopia." Another provision defines the list of services open to foreign investment to include engineering, architecture, accounting, auditing, and business consultancies. No regulations exist on international data flows or data processing, though the Ethiopian Telecommunications Company has maintained a monopoly in the provision of Internet services. Recently, the Government of Ethiopia indicated that the sector would be opened by announcing licensing charges for Internet service providers and other Internet services.

Under the new investment proclamation provisions, Ethiopian expatriates and permanent residents are considered as "domestic investors" and, therefore, are permitted to invest in areas off-limits to other foreign investors. These areas include the following: radio and television broadcasting; museums and theaters; printing; retail trade and brokerage; wholesale trade (excluding petroleum); import trade; export trade of coffee, oilseeds, pulses, hides/skins, live sheep, goats and cattle (not raised or fattened on own farm); construction companies except for grade-one contractors; tanning of hides and skins up to crust level; hotels (other than star-designated), motels, pensions, tearooms, coffee shops, bars, nightclubs, and restaurants (except for international or specialized); tour operators and travel agencies; road and water transport, car hire and taxi cabs; bakeries; grinding mills; barber shops and beauty salons; building and vehicle repair and maintenance; saw mills; and small scale mining.

INVESTMENT BARRIERS

Foreign firms are welcome to invest in the privatization efforts of the Ethiopian government. In some instances, however, the government advocates joint ventures with Ethiopian private concerns as the preferred path to privatization. Foreign firms are not permitted to invest in the following areas: domestic banking and insurance; air transport services; rail transport; road and water transport; forwarding and shipping; non-courier postal services; import and export trade; retail; printing; cinemas; and small service establishments. Investment in telecommunications and defense require partnership with the government. Telecommunications has been opened to foreign investment in regulation, though not yet in practice.

Ethiopia's investment proclamation allows all foreign investors, to freely remit dividends and profits, principal and interest on foreign loans, and fees related to technology transfer. Foreign investors may also remit proceeds from the sale or liquidation of assets, from the transfer of shares or of partial ownership of an enterprise, and funds required for debt service or other international payments. Expatriate employees may remit 100 percent of their salaries. U.S. businesses represented in Ethiopia do not encounter difficulties in the repatriation of dividends. There are no discriminatory or excessively onerous visa, residence, or work permit requirements for foreign investors. Foreign investors do not face unfavorable tax treatment, denial of licenses, or discriminatory import or export policies. There are no local content requirements. A number of recent provisions, however, such as new supertaxes, additional banking regulations, and investment disputes have been born out of Ethiopia's confrontation with Eritrea and the need for hard currency.

Ethiopia works hard to combat corruption through social pressure, cultural norms, and legal restrictions. Corruption has not been a significant barrier or hindrance to investment or trade in Ethiopia.

EUROPEAN UNION

TRADE SUMMARY

The European Union (EU) and the United States share the largest two-way trade and investment relationship in the world. In 1999, the U.S. trade deficit with the EU was $43.7 billion, an increase of $16.8 billion from the U.S. trade deficit of $26.9 billion in 1998. U.S. merchandise exports to the 15 Member States of the EU were more than $151.6 billion, an increase of 1.5 percent from the level of U.S. exports to the EU in 1998. U.S. imports from the EU were just under $195.4 billion, an increase of almost 10.8 percent from the level of imports in 1998. The stock of U.S. foreign direct investment in the EU amounted to almost $433.7 billion in 1998, a greater than 16 percent rise from 1997.

IMPORT POLICIES

Import and Distribution of Bananas

Over the course of the 20th Century, U.S. companies developed the business of distributing Latin American bananas in most of Western Europe. Since the late 1980s, Latin American countries and the United States have urged the EU to implement its internal market arrangements for bananas in a non-discriminatory manner. A group of Latin American countries twice brought GATT dispute settlement proceedings against EU banana measures, and both times GATT panels found that the EU's banana rules were GATT-inconsistent (1993, 1994). However, the EU chose not to implement those GATT panel findings, and proceeded to extend and compound unfair and discriminatory trade barriers.

In 1993, the EU adopted a new EU-wide banana regime that took almost half of U.S. companies' business away and gave it to competing French, British, Irish, German and other European firms. In response, the United States and four Latin American countries initiated WTO dispute settlement proceedings to challenge the EU's discriminatory banana regime. A WTO panel and, subsequently, the WTO appellate body agreed that the EU's banana regime was inconsistent with the EU's obligations under the GATT and GATS.

The EU agreed to implement the WTO reports' recommendations and rulings within the "reasonable period of time" provided in WTO rules, which was determined in arbitration to end on January 1, 1999. In January 1999, however, the EU implemented a modified regime that perpetuated the WTO violations identified by the panel and the Appellate Body. As a result, the United States sought WTO authorization to suspend concessions (i.e., retaliate) with respect to certain products from the EU, the value of which is equivalent to the nullification or impairment (i.e., economic harm) sustained by the United States. The EU exercised its right to request arbitration concerning the amount of the suspension and on April 6, 1999, the arbitrators determined the level of suspension to be $191.4 million per year. On April 19, 1999, the DSB authorized the United States to suspend such concessions, and the United States proceeded to impose 100 percent *ad valorem* duties on a list of EU products with an annual trade value of $191.4 million. Discussions with the EU to resolve this matter are continuing.

EU Implementation of Uruguay Round Grain Tariff Commitments

During the Uruguay Round, the United States obtained a tariff concession from the EU establishing a ceiling on the duty that could be charged on grain. However, the EU subsequently established a reference price system for grain imports which deprived U.S. exporters of the significant duty reductions that they expected to receive on high-value grains, such as malting barley and packaged rice. The United States held unproductive consultations with the EU under WTO dispute settlement procedures in September 1995 and requested a WTO Panel later that month. The United States and the EU subsequently reached an agreement under which the EU committed to establish a cumulative recovery system (CRS) for duty underpayments and overpayments on brown rice, and a side commitment to establish a system that would permit imports of a limited amount of malting barley at 50 percent or less of the duty that would otherwise be charged. After the threat of further WTO action, the EU implemented these concessions in mid-1997.

Although the CRS system expired in 1998, some refunds remain outstanding. The United States and EU are working to resolve this issue. If it is not resolved, the United States is prepared to take WTO action. A replacement system went into effect in 1999 and was agreed to as an interim solution based on a higher reference price. Discussions of further reform of the rice regime are currently underway in the EU.

Spanish and Portuguese Corn Tariff-Rate Quotas

Historically, annual EU corn imports have been approximately three million metric tons, with over 500,000 metric tons imported by the Northern European corn millers and the rest by Spain and Portugal under reduced duty quotas. The Spanish and Portuguese Tariff-Rate Quotas (TRQs) for corn and sorghum were created as a result of the 1987 U.S.-EU Enlargement Agreement, which provides compensation to the United States for trade losses from the accession of Spain and Portugal to the EU. The TRQs ensure minimum annual Spanish purchases of two million metric tons of corn and 300,000 metric tons of sorghum (minus Spanish imports of certain non-grain feed ingredients – NGFI's). The import requirement, while falling short of Spain's pre-EU accession level of corn and sorghum imports, provides some compensation for the replacement of Spain's 20 percent pre-accession bound tariff with the EU's pre-Uruguay Round variable levy system. Additionally, as part of the Blair House oilseeds settlement, there is a separate 500,000 metric ton TRQ for corn imported into Portugal. These TRQs are both administered by the EU on an MFN basis, but historically have been supplied mostly by the United States. However, U.S. corn exports to the EU have been effectively stopped recently due to the breakdown in the EU's regulatory system for approving new varieties of commodities using modern biotechnological techniques (see below).

The European Commission has been under intense pressure from maize millers in northern member states to make the Spanish and Portuguese corn and sorghum TRQ available on an EU-wide basis. They believe it contradicts the principles of a free EU internal market laid out in the Treaty of Rome, and therefore have requested that the Commission either "communitize" the quota or make flint corn ineligible for the TRQ. If the EU were to "communitize" the quotas, imports of corn by northern EU Members States which had previously taken place outside of the Spain/Portugal TRQs would then be counted against the TRQs. As a result, overall EU corn imports would drop by an amount roughly equal to historical imports of corn by northern EU Member States. This amount has recently ranged from 500,000 metric tons to one million metric tons. However, removing flint corn from the TRQ while raising the abatement for flint corn would preserve the original intent of the quota. The United States is currently discussing this issue with the EC Commission.

Restrictions Affecting U.S. Wine Exports

The United States and the EU have an active two-way trade in wine, although EU exports to the United States are roughly 10 times the size of U.S. exports to the EU. Since the mid-1980s, U.S. wines have been permitted entry to EU markets by means of a series of annual extensions to temporary exemptions from EU wine making regulations. These regulations require imported wines to be produced with only those oenological practices (i.e., wine making practices) which are authorized for the production of EU wines. Without these "derogations" or the EU's acceptance of U.S. winemaking practices, the majority of U.S. wines would be immediately barred from entering the EU.

U.S.-EU wine negotiations were successfully launched in 1999 when, in response to U.S. insistence, the EC Council in December 1998 approved an extension of the existing derogations for U.S. wine making practices for five years or until an agreement is reached, whichever comes first. EC Commission and United States' negotiators met three times in 1999, gaining valuable information about each other's regulatory systems for wine that will help them achieve a bilateral agreement. Negotiations will continue in 2000 with the next meeting planned for mid-April. The United States continues to be concerned about the EU's requirements for the review and approval of wine making practices, and has questioned the EU's export subsidies and subsidies to its grape growers and wine producers. A major EU concern is the use of semi-generic names on some U.S. wines. Other issues include tariffs, approval procedures for labels, the use of certain terms on labels, and import certification. The United States will continue in the negotiations to press the EU to give U.S. wine makers equitable access to the EU wine market.

In addition, the United States has questioned the EU's Regulation 881/98 on traditional expressions, which the EU proposes to implement in August 2000 after delaying the implementation of the rule several times. Traditional expressions are, for the most part, adjectives used with certain other expressions (often geographical indications) to identify descriptive attributes of wine or liqueur. These terms are granted trademark protection in the EU, although (1) third country industry does not have a means to apply directly for such protection and (2) in many cases the terms are highly generic (e.g., "ruby" and "tawny" are protected "traditional terms"). The United States does not recognize the concept of traditional terms, nor is this subject covered under TRIPS. The United States requested more information from the EU about this proposed regulation in the WTO TBT Committee in October 1999.

Market Access Restrictions for U.S. Pharmaceuticals

U.S. pharmaceutical companies have difficulty with consistent market access throughout the EU due to price, volume and access controls placed on medicines by national governments. The pharmaceutical industry sees these controls as undermining the value of patents, distorting competition among medicines and across national markets, limiting access by patients to innovative products, and diminishing the contribution of Europeans to research and development.

While the EU's single market ensures that pharmaceuticals, like other goods, can move freely across borders among EU countries, Member State public health authorities impose their own strict price controls on pharmaceuticals. As a result, since controlled prices vary greatly from one country to another, middlemen engage in parallel trading, profiting at pharmaceutical companies' expense by buying drugs in countries where the price is lower and selling them in Member States where the price is set at a higher level. This undermines pharmaceutical companies' ability to recoup their research and development costs.

Austria: Some U.S. pharmaceutical companies have complained about restricted access to the Austrian market. A U.S. firm seeking to market a product in Austria must first obtain the approval by the Austrian Social Insurance Holding Organization (Hauptverband der Sozialversicherungsträger). According to critics, the non-transparent procedures by which the Hauptverband approves drugs for reimbursement under Austrian health insurance regulations has perpetuated a closed market system favoring established suppliers. Pharmaceuticals not approved by the Hauptverband have higher out-of-pocket costs for Austrian patients and therefore suffer a competitive disadvantage vis-a-vis approved products. One U.S. pharmaceutical firm has raised Austria's practices with the European Commission as a possible violation of the EU Transparency Directive.

Allegedly to fulfill its obligations under the Transparency Directive, the Hauptverband designed a contract that sets out its approval procedures in general terms. By signing the contract, a firm agrees to be bound by the decisions of the Hauptverband, effectively waiving its rights of appeal under the provisions of the Transparency Directive. Most pharmaceutical suppliers in Austria have signed the contract, though a number of major U.S. firms have not. Non-signatories are concerned that they might experience discrimination by the Hauptverband.

Belgium: In Belgium, there are significant delays in providing market authorization and approval of pricing and reimbursement for new pharmaceutical products. According to industry sources, the current average duration for these processes is more than 1075 days, in contrast with EU requirements of a maximum of 390 days for the entire process. (Directives 65/65, 93/39 for marketing authorization, Directive 89/105 for transparency/pricing and reimbursement). An industry survey shows that the mean delay for price and reimbursement exceeds 476 days, well in excess of the 180 days required by the EU. The lengthy process to obtain marketing approval in Belgium shortens considerably the period of patent protection. Under the centralized European procedure, mandatory for new products, the supplementary protection certificate period depends on the date of first approval. U.S. companies are disproportionately affected by procedural delays as they are among the most active in developing and bringing to market innovative new products. In July 1999, a new government coalition came to power in Belgium, which acknowledged the problems in the market authorization and approval of pricing and reimbursement of new pharmaceutical products. It has appointed a special commissioner whose task it is to speed up the Belgian implementation of EU Directives.

Pharmaceuticals in Belgium are also under strict price controls. There is a price freeze on reimbursable products and a required price reduction on drugs on the market for fifteen years. A six-percent turnover tax is charged on all sales of pharmaceutical products. Control of prices for reimbursed and non-reimbursed products affect not only in-country sales, but export sales to third markets for which the Belgian price is the reference price.

Italy: U.S. pharmaceutical companies have complained that unnecessary delays in clinical trials slow down regulatory approvals and the introduction of medicinal specialties to the market. National Health Service-funded pharmaceutical specialties which have received centralized approval from European Medicinal Evaluation Agency or obtained marketing authorizations through mutual recognition are subject to prices negotiated between the Ministry of Health and the distributor or manufacturer. Companies assert that since these price negotiations are lengthy, they lose the competitive advantage gained through fast-track regulatory approvals.

Spain: An amendment to the Spanish Law on Medications adopted as part of the appropriations legislation on December 29, 1999, is expected to have a significant impact on the parallel import market for pharmaceutical products in the EU. It changes the language on government pricing policy to refer explicitly to prices set on products destined for sale in "national territory," whereas before the law referred to pricing of products produced in Spain. U.S. pharmaceutical manufacturers in Spain hope the Government will implement this major change quickly because it means that companies which for years had complained about their products being sold as parallel imports in other Member States at higher prices than the selling price in Spain, could themselves set higher prices for that portion of their production sold outside the country.

STANDARDS, TESTING, LABELING AND CERTIFICATION

EU Member States still have widely differing standards, testing and certification procedures in place for some products. These differences may serve as barriers to the free movement of these products within the EU and can cause lengthy delays in sales due to the need to have products tested and certified to account for differing national requirements. Nonetheless, the advent of the EU's "new approach," which streamlines technical harmonization and the development of standards for certain product groups, based on "essential" health and safety requirements, generally points toward the harmonization of laws, regulations, standards, testing, quality and certification procedures within the EU. The European standardization process, however, remains generally closed to U.S. stakeholders' direct participation.

Standardization

Standardization continues to play an increasingly significant role in U.S.-EU trade relations. The U.S. Department of Commerce anticipates that EU legislation covering regulated products will eventually be applicable to half of all U.S. exports to Europe. Given the large volume of this trade, EU legislation and standardization work in the regulated areas is of considerable importance. Although there has been some progress with respect to the EU's implementation of various legislation, a number of problems related to this evolving EU-wide legislative environment have caused concerns to U.S. exporters. These include lags in the development of EU standards; lags in the drafting of harmonized legislation for regulated areas; inconsistent application and interpretation by EU Member States of the legislation that is in place; overlap among Directives dealing with specific product areas; grey areas between the scope of various Directives; unclear marking and labeling requirements for regulated products before they can be placed on the market; and a frequent tendency to rely on design-based, rather than performance-based, standards. Such problems can impede U.S. exports to the EU.

Mutual Recognition Agreements

The EU is implementing a harmonized approach to testing and certification as well as providing for the mutual recognition within the EU of national laboratories designated by Member States to test and certify a substantial number of "regulated" products. The EU encourages mutual recognition agreements between private sector parties for the testing and certification of non-regulated products. One difficulty for U.S. exporters is that only "notified bodies" located in Europe are empowered to grant final product approvals of regulated products. While there are some laboratories in the United States which can test regulated products under subcontract to a notified body, the limited number of such labs means that such subcontracting procedures are unlikely to provide sufficient access for U.S. exporters. Moreover, these labs cannot issue the final product approval but must send test reports to their European affiliate for final review and approval, which delays the process and adds costs for U.S. exporters.

The United States and the EU have negotiated a Mutual Recognition Agreement (MRA) for several important sectors as a means of facilitating trade, while maintaining our current high levels of health, safety and environmental protection. MRAs permit U.S. exporters to test and certify their products to the requirements of the EU in the United States, and vice versa. The U.S.-EU MRA entered into force on December 1, 1998. The MRA provides for transition phases ranging from 18 months to three years, depending on the specific sector.

Under the Transatlantic Economic Partnership (TEP), the United States and EU aim in 2000 to negotiate additional annexes to the U.S.-EU MRA for marine safety equipment and possibly other sectors. U.S. and EU officials also plan enhanced regulatory cooperation in the fields of calibration services, telecommunications equipment, and cosmetics. In the area of services, the United States and EU will begin negotiations in 2000 on Mutual Recognition Agreements for insurance, architects and engineers.

Agri-Biotechnology Approval Process

The EU's lengthy and highly unpredictable approval process for products made from modern biotechnology has adversely affected U.S. exports of corn and threatens to affect an even broader range of products in 2000. Biotechnology continues to be a political rather than scientific issue in several Member States which retain an active role in the EU approval process. Prospects for improvement appear dim at this time, with a majority of EU Member

States adhering to an effective moratorium on approving product applications, with indications that this might last at least until Directive 90/220 has been revised and implemented. Approval of biotechnology products, including seeds and grains, for environmental release and commercialization is governed by Directive 90/220, which is the subject of internal EU executive and parliamentary debate as it undergoes revision, with implementation not expected before mid-2002. This revised legislation is expected to be the "template" for revision of "Novel Food" (processed food) legislation and new legislation covering feeds and seeds. While the current draft amended 90/220 does provide some needed clarity, it remains extremely vague regarding the definitions such as monitoring "traceability," labeling requirements, what information industry is expected to provide, *et cetera*. Lack of clarity also fosters concerns that EU Member States will not implement the new legislation uniformly.

With the exception of several carnation varieties, no product has been approved since April 1998. Several Member States have defied final EU approvals, banning biotechnology products or suspending approvals without presenting any scientific justification. Austria and Luxembourg have imposed marketing bans on some biotechnology products, which run counter to EU Regulations. France, Portugal, and Germany have suspended approvals for planting certain biotechnology products. Several products have been under review for over three years, as compared to an average six to nine month process in Canada, Japan and the United States. U.S. exports of corn to Spain and Portugal have stopped.

Labeling

In May 1997, the EU adopted the "Novel Foods Regulation", which governs food safety assessments and labeling for processed foods containing biotechnology products. The Regulation requires labeling of all novel processed foods and food ingredients, including those made from modern biotechnology. No implementation details were included in the Novel Foods regulation, including testing thresholds or enforcement.

In September 1998, an EU regulation provided for labeling of foods processed from certain Bt-corn and herbicide-tolerant soybeans became effective. First proposed a year earlier, the regulation called for subsequent development of a threshold for incidental commingling, testing method and list of exempted products. On January 11, 2000, the Commission published a Regulation providing a one percent labeling threshold for "adventitious" or accidental commingling for approved varieties of corn and soy made by modern biotechnology. It is expected that this threshold will be eventually adopted as the basis for labeling of other foods containing ingredients made with modern biotechnology. Some European food processors have switched to non-U.S. soybeans to avoid confusing labeling regulations for biotechnology products. Most European officials, including those that are pro-biotechnology, have come to believe that labeling of all biotechnology products, regardless of the health risk, is necessary to ensure consumer acceptance.

Ban on Beef from Cattle Treated with Growth Promoting Hormones

For over 10 years, the EU has banned imports of beef from cattle produced with hormonal growth promoters. The United States launched a formal WTO dispute settlement procedure in May 1996 challenging the EU ban. The WTO Appellate Body upheld the original WTO Panel finding that this ban is inconsistent with WTO Agreement on Sanitary and Phytosanitary (SPS) measures, and called for the EU to comply with its WTO/SPS obligations. The Appellate Body confirmed the earlier Panel finding that the EU ban was imposed and maintained without evidence of health risks posed by eating beef from cattle treated with growth promoters, and despite scientific evidence showing such meat to be safe.

The EU announced in March 1998 that it would implement the Appellate Body finding. Because the EU did not comply with the rulings and recommendations of the DSB by May 13, 1999, the final date of its compliance period as set by arbitration, the United States sought WTO authorization to suspend concessions (i.e., retaliate) with respect to certain products of the EU. The value of the retaliation represents an estimate of the annual harm to U.S. exports resulting from the EU's failure to lift its ban on imports of U.S. meat. The EU exercised its right to request arbitration concerning the amount of the suspension. On July 12, 1999, the arbitrators determined the level of suspension to be $116.8 million per year. On July 26, 1999, the DSB authorized the United States to suspend such concessions, and the United States proceeded to impose 100 percent *ad valorem* duties on a list of EU products with an annual trade value of $116.8 million. Discussions with the EC to resolve this matter are continuing.

Non-hormone Treated Cattle (NHTC) Program

In April and June 1999, the EU audited the U.S. Hormone Free Cattle Program and found trace amounts of U.S.-approved synthetic hormones in about 12 percent of a "non-treated" product shipment. Consequently, the EU threatened to cut off U.S. "non-treated" beef. In September, the U.S. Department of Agriculture's Food Safety Inspection Service (FSIS) announced an improved program – the NHTC, which requires that each phase of production receives an independent third party audit before FSIS will certify NHTC beef and veal for export to the EU. FSIS began issuing export certificates on "non-hormone treated cattle" on September 24, 1999. The EU audited the NHTC program in November 1999 and in January 2000 – and threatened to suspend trade unless the program was again strengthened. Discussions with the EC to resolve this matter are continuing, with EU indications that the new FSIS program appears acceptable.

Poultry Regulations

The EU continues to refuse considering the use of anti-microbial treatments in poultry production. As a result, U.S. poultry exports to the EU have been blocked since April 1, 1997, representing a loss of $50 million annually to U.S. poultry exporters. In October 1998, the EU published an opinion on anti-microbial treatments, which recommends that anti-microbial treatment should only be used as part of an overall strategy for pathogen control throughout the whole production chain. Although some forms of treatment such as tri-sodium phosphate (TSP) and lactic acid were accepted, the use of chlorinated water, the primary means employed in the United States to assure safety of poultry products from microbial contamination, was rejected by the study. Legislation permitting the use of TSP and lactic acid has not been drafted so far. Any legislation will require EU Parliament co-decision and will likely take 18 months or more to be adopted.

Specified Risk Materials Ban

On July 30, 1997, the European Union adopted a ban on the use of Specified Risk Materials (SRMs) for use in food and feed and medical, pharmaceutical, cosmetics and other industrial products. Specified risk material is defined as (a) the skull, including the brains, eyes, tonsils and spinal cord of cattle, sheep, and goats aged over 12 months, and (b) the spleens of sheep and goats. This measure results from EU concerns over the transmission of BSE, or bovine spongiform encephalopathy, commonly known as "mad cow" disease. The ban, originally scheduled to go into effect on January 1, 1998, was subsequently deferred several times, most recently to June 30, 2000. The most recent delay was so that the Commission could take into account the outcome of the International Epizootics Office (OIE) meeting in May 2000 – the conclusions from which will be the scientific and legal basis for permanent EU rules on SRMs. The OIE will be classifying countries into different categories of BSE risk.

The legislation, as it stands now, would prohibit the use of the vertebral column of cattle, sheep, and goats for the production of mechanically recovered/separated meat, and allows for a derogation for the feeding of fur animals.

Industry sources estimate that the potential trade effect of the ban could exceed $20 billion if all products currently covered are ultimately covered by the ban. Beyond the direct trade impact of the ban which is potentially significant, the SRM ban fails to account for available scientific information and advice relating to the control of bovine spongiform encephalopathy (BSE) and other transmissible spongiform encephalopathies (TSE) in products of animal origin. For example, products of the United States and other trading partners, which have no evidence of BSE, are currently affected.

Gelatin Regulation

In October 1999, the EU passed a Directive laying down requirements for manufacturing establishments producing gelatin for human consumption, which is due to be implemented on June 1, 2000. The Directive sets requirements for manufacturing establishments in regard to authorization and registration, inspection and hygiene, as well as control measures. Also covered are the raw materials permitted and the treatments they must undergo before being used in the manufacture of gelatin. In order to guarantee traceability of raw materials registration is required for tanneries and collection centers, which would imply listing for imports from third countries. The United States believes some provisions of the Directive are overly restrictive, and will unnecessarily hinder trade without improving public health protection. In addition, the Directive does not adequately distinguish among raw materials which present different risk potential.

EU Approval of Third Country Establishments Exporting Animal Products

The implementation of a 1992 EU Directive, requiring that practically all animal products imported in the EU have to be sourced from third country establishments approved by the European Commission, has effectively resulted in trade losses for U.S. companies. The approval process entails that competent third country authorities compile for each product category a list of establishments and guarantee that these establishments meet EU animal and public health requirements. This list is submitted to the Commission services for approval. All amendments to the existing list, including additions, deletions, and name changes also have to be submitted to the Commission. The Commission, however, has not devoted the necessary resources to process submitted lists in a timely manner. As a result, companies with export opportunities have had to wait for months before being added to an approved list and have thus been cut off from the European market. This problem has been especially acute in the dairy sector, but additional problems are now arising as the Directive has been further implemented to cover important U.S. export products such as animal casings and pet food. A commitment to expedite changes to the list was made by the EU under the Veterinary Equivalency Agreement.

Veterinary Equivalency

The United States and the European Commission signed the Veterinary Equivalency Agreement in July 1999 after over four years of often contentious discussions. The agreement establishes a framework for the exporting country to make an objective demonstration to the importing country that its sanitary measures achieve the importing country's appropriate level of protection when such measures differ. By establishing clear criteria for reaching a determination of equivalence, the agreement will facilitate trade in live animals and animal products. The first meeting of the Joint Management Committee established under the agreement will be held in Summer 2000 to discuss ways of implementing the agreement's provisions. When fully implemented, the agreement will establish the terms of trade for nearly all animal products, including dairy products, pet food, fishery and egg products, between the United States and the EU, representing over $3 billion annually.

Waste Management

European Commission officials are working on draft proposals for a Directive on waste from electrical and electronic equipment (WEEE) and a Directive on batteries. The United States supports the drafts' objectives to reduce waste and the environmental impact of discarded products. The Administration has expressed concerns, however, about the adverse impact on trade from the current proposals' ban on certain materials used in products for which viable substitutes may not exist; and with the provisions regarding producers' retroactive responsibility for collection and recycling of end-of-life products. For batteries, the U.S. Government has urged the Commission to seriously consider the industry's draft voluntary agreement for increased collection and recycling of nickel-cadmium batteries, which the Commission's draft proposes to ban due to the cadmium content. The draft Directives could be voted on by the Commission in early 2000. If adopted, the proposals would then move to the Council and European Parliament for comment and approval. U.S. and Commission waste experts have begun an informal dialogue to discuss these and other waste issues. The U.S. Government will continue to monitor closely these proposals.

Belgium: In June 1999, the Belgian Government submitted to the European Commission a plan to implement the EU's 1991 Battery Directive. The Belgian plan includes a ban on most cadmium-containing batteries, effective 2008. The plan was reviewed by several statutory committees (Federal Council for Sustainable Development, Central Council for Economic Policy, High Council for Public Health, Council for Consumer Affairs) during the second half of 1999. Work on the drafting of the implementing regulations has been suspended pending the completion in September 2000 of a risk assessment study on the production, uses and recycling of nickel-cadmium batteries.

Packaging Labeling Requirements

In 1996, the Commission proposed a Directive establishing marking requirements, indicating recyclability and/or reusability, for packaging. Due to the differences that exist between EU marking requirements and those used by the United States and the International Organization for Standardization (ISO), the United States is concerned with the additional costs and complications both U.S. and EU firms will face. The United States is also concerned with Article 4 of the proposed Directive, which would prohibit the application of other marks to indicate recyclable or reusable packaging. This may require some companies to create new molds solely for use in the European market. Discussions underway in the ISO may resolve potential technical problems, especially since the Commission has indicated a willingness to review the proposed Directive in light of an eventual ISO agreement.

Metric Labeling

The 1980 Directive adopted to harmonize systems of measurement throughout the European Union according to the international metric system will mandate metric-only labeling on most products entering the EU. An exception is made in a few specific areas such as air and sea transport in all Member States, distances and draught beer in the United Kingdom and Ireland. Exporters, both European and American, have publicly voiced their objections, citing the costs of complying with conflicting EU metric-only and U.S. mandatory dual labeling requirements. In February 1999, the European Commission proposed to amend the Directive by postponing its implementation date by 10 years, thus extending until 2009 the transitional period during which labeling of measurement in Europe can be indicated in both metric and American units. This amendment was approved by both the EU Council of Ministers and the European Parliament at the end of December 1999.

New Aircraft Certification

The United States continues to be concerned by the possibility that European aircraft certification standards are being applied so as to impede delivery of qualified aircraft into Europe. Processes and procedures currently employed by the European Joint Aviation Authorities (JAA) appear cumbersome and arbitrary, and in any event cannot be uniformly enforced. For example, France continues to insist on an exception to the JAA's decision on certification of Boeing's new model 737 aircraft that limits the seat density of aircraft sold to carriers located in France. The JAA decision itself took an inordinately long time, during which additional conditions were imposed progressively on the U.S. firm. The United States desires a transparent, equitable process for aircraft certification that is applied consistently on both sides of the Atlantic according to the relevant bilateral airworthiness agreements.

Hushkit or New Engine Modified and Recertificated Aircraft

In 1997, pressure on EU airport authorities to reduce noise levels resulted in a Commission effort to develop an EU-wide noise standard. When it became clear that it would be politically impossible to agree on such a standard due to the high costs it would impose on EU manufacturers and airlines, the Commission and Member States developed an alternative proposal. The current proposal effectively passes these costs to U.S. and other non-EU air carriers and to U.S. manufacturers of noise reduction technology (hushkits) and new engines for older U.S. aircraft. The Commission has provided no scientific analysis demonstrating that the Regulation would actually reduce noise at European airports. The proposed Regulation establishes a design standard that restricts the operation of aircraft which otherwise fully comply with the performance-based standard adopted by the International Civil Aviation Organization (ICAO) to which the EU Member States agreed. The Regulation would restrict the operation of aircraft that have been modified with hushkits, no matter how quiet, or refitted with new engines that do not have a 3:0 or greater "bypass ratio". Bypass ratio is not a reliable indicator of aircraft noise, but this distinction would still permit the operation of EU-produced engines, which compete with those restricted by the Regulation, that have a "bypass ratio" of 3.1:1.

The United States has repeatedly urged the European Commission to revoke or indefinitely suspend the hushkits regulation and to work within ICAO on a new multilaterally agreed standard. On March 14, 2000, the United States asked ICAO to resolve this dispute pursuant to Article 84 of the 1944 Convention on International Civil Aviation (Chicago Convention).

Acceleration of the Phase-outs of HCFCs

The European Commission adopted a proposal in July 1998 to amend EU Regulation 3093/94 on substances that deplete the ozone layer. The United States Government expressed strong concerns with early drafts, which included phase-outs of some hydrochlorofluorocarbons (HCFCs) by 2000 or 2001, and would have disadvantaged U.S. producers without yielding appreciable environmental benefits. The final Commission draft included a January 1, 2003 phase-out date for HCFCs used in refrigerator foam – similar to U.S. law – thereby protecting the export to the EU of U.S. refrigeration equipment while maintaining environmental commitments established by the Montreal Protocol. The Council agreed to the 2003 date in adopting its Common Position in late December 1998 and the Parliament failed to muster enough support behind an attempt to accelerate the date. Therefore, the 2003 date will be adopted once the text is finalized later in 2000, after the Council and Parliament reconcile differences over other parts of the Regulation in what is termed a "conciliation procedure."

The proposal, however, continues to unfairly disadvantage the air conditioning industry, which must phase out its use of HCFCs by 2001, while similarly manufactured heat pump systems enjoy a 2004 deadline. The 2001 date was in the original Commission draft and was accepted by the Council in its Common Position. Parliamentarians could not be convinced to adjust the date to 2004, and confirmed the 2001 date in late 1999. Since both the Council and Parliament agree on the 2001 date, it will not be an issue within the conciliation procedure. The U.S. Government will monitor this proposal as it proceeds through the final stages of the legislative process.

Sweden/Finland: Effective May 1999, Sweden imposed a unilateral ban on the use of HCFCs used in refrigerator foam insulation, which effectively prevents U.S. manufacturers from shipping U.S.-made refrigerators and freezers to Sweden in the near term. Finland established a similar HCFC ban effective January 1, 2000. As these bans on HCFCs used in foam insulation are in advance of the EU-wide phase-out date of January 2003, the United States has raised concerns with the Swedish and Finnish governments regarding the unilateral bans' possible inconsistency with EU internal market provisions.

Low Frequency Emissions

The EU is developing a revised Electromagnetic Compatibility (EMC) Directive which, among other elements, would impose unnecessarily restrictive limits on low frequency emissions (LFE) from electrical and electronic equipment effective January 1, 2001. LFE, also known as power harmonics, are signals that are fed back into electric lines from electronically controlled equipment, and which degrade or distort the capability of electricity lines. Implementation of the EU's proposed limits could require U.S. companies to redesign products for the EU market at a cost of billions of dollars. U.S. industry asserts that there is no scientific justification for the European standards limiting LFE, and that alternative approaches for mitigating the effects of LFE on power networks with a lower overall cost to society should be examined first. The United States has requested that the EU suspend the LFE requirements in the EMC directive until appropriate scientific studies are conducted and work on an acceptable international standard is completed.

Triple Superphosphate Fertilizer

EU legislation (EC Directive 76/116) requires Triple Superphosphate (TSP) – a phosphate-based fertilizer used to enhance soil fertility and to increase crop yields – to meet a standard of 93 percent water solubility in order to be marketed as "EC-Type fertilizer." Scientific studies done to date on typical crops cultivated in Europe show that water solubility rates of 90 percent or higher are not necessary to gain the agronomic benefits associated with adding TSP to the soil. While, in theory, TSP of any origin can be imported and sold in the EU, the inability to market the TSP as "EC-Type" restricts its marketability, depresses its price, and has the effect of unfairly discriminating against countries that cannot meet the 93 percent water solubility requirement. EU imports of "non-EC-Type" TSP have been virtually eliminated. The U.S. fertilizer industry, which accounts for 20 percent of total world TSP exports, has been working with the European Commission and European industry in an effort to amend the water solubility requirements to reflect current scientific and agronomic studies. The United States has requested a justification for this standard in light of scientific evidence and trade rules.

Member State Practices

Some EU Member States have their own national practices regarding standards, testing, labeling, and certification. A brief discussion of the national practices of concern to the United States follows:

Finland: Finland has national standards for navigation lights that are not covered by the EU recreational craft Directive. As a result, U.S. recreational craft exporters risk being found not in compliance with the Finnish navigation lights Regulation, despite the fact that boats bear a CE mark and are a sector subject to the U.S.-EU MRA. However, a new international standard on navigation lights is under development in the

International Organization for Standardization (ISO). The U.S. Government has requested that Finland suspend enforcement of its national standards for navigation lights until a long-term solution based on an international harmonized standard has been reached. In February 2000, Finland announced it would suspend its navigational lights regulation for U.S. recreational craft bearing the CE-mark.

Greece: Greek testing methods for Karnal Bunt disease in U.S. wheat have served as a *de facto* ban on imports and transshipment of wheat for the last three years due to a high incidence of false positive results. The Ministry of Agriculture has recently agreed to procedures that will allow a resumption of transshipments through Greek ports to neighboring countries.

Italy: Italy's interpretation of EU sanitary and phytosanitary requirements has caused, or threatened to cause, problems for the following U.S. agricultural exports: processed meat products, wood products, poultry products, game meat, ingredients for animal feed, and seafood. In most cases, problems are limited to clarifying and satisfying import certification requirements that differ slightly from other EU countries. In addition, Italian imports of bull semen are restricted because of qualitative import standards for bull semen which favor domestic animals as well as high testing and registration fees.

GOVERNMENT PROCUREMENT

Discrimination in the Utilities Sector

In 1990, in an effort to open government procurement markets within the EU, the EU adopted a Utilities Directive covering purchases in the water, transportation, energy, and telecommunications sectors. The Directive, which went into effect in January 1993, requires open, objective bidding procedures (a benefit for U.S. firms) but discriminates against non-EU bids absent an international or bilateral agreement. The Directive's discriminatory provisions were waived for the heavy electrical sector in a Memorandum of Understanding (MOU) between the United States and the EU, signed in May 1993 (though the restrictions remained in effect in the telecommunications sector).

On April 15, 1994, the United States and the EU concluded a procurement agreement that expanded upon the 1993 MOU. The 1994 agreement extended non-discriminatory treatment to over $100 billion of procurement on each side, including all goods procurement by all EU subcentral governments, as well as to selected procurement by 37 U.S. states and seven U.S. cities. Much of the 1994 agreement is implemented through the WTO Government Procurement Agreement, which took effect on January 1, 1996.

Member State Practices

Some EU Member States have their own national practices regarding government procurement. A brief discussion of some of the national practices of particular concern to the United States follows:

Austria: While the Austrian Government adheres to the WTO Government Procurement Agreement and does not have "buy national" laws, some major contracts are negotiated by invitation, and limited tenders and offset agreements are common in defense contracts. However, some U.S. firms have experienced a strong pro-EU bias in awarding government tenders.

Denmark: The Danish Government, its institutions, and entities owned by it are obligated to apply environmental and energy criteria on an equal footing with price, quality and delivery terms in their procurement of goods and services in a manner consistent with EU procurement rules. In practice, this will likely mean specification of products bearing the EU "eco-label" or products produced by firms with a satisfactory "ecoaudit." The environmental/ energy requirement is likely also to spread to procurement by lower level governmental entities. The trend toward specification of environmentally certified products in government procurement raises concerns, given broader U.S. concerns with the EU eco-labeling scheme.

Germany: In April 1996, the United States Trade Representative identified Germany under Title VII of the Omnibus Trade and Competitiveness Act of 1988 for discrimination in the heavy electrical sector. USTR suspended the imposition of the sanctions available under Title VII on October 1, 1996, following a decision by the German cabinet to address U.S. concerns and reform German procurement regulations by providing for court-based review of bid challenges, in line with EU requirements. In May 1998, the German Government passed a law incorporating the new procurement Regulations, which combine administrative and judicial review, into existing German competition law. The law was approved by parliament and became effective on January 1, 1999. The first substantive test of the reformed law in a German court in August 1999 involved a challenge to the bidding process for a major airport project. In a landmark decision, the court not only rescinded the bidding process, but also questioned practices that could lead to a conflict of interest. The court ruling unleashed a wave of resignations by politicians from public enterprises involved in tender processes and has dramatically increased public awareness of the issue.

Greece: Greek laws and Regulations concerning government procurement nominally guarantee non-discriminatory treatment of foreign suppliers. Officially, Greece also adheres to EU procurement policy, and Greece is a member of WTO Government Procurement Agreement. Nevertheless, many of the following problems still exist: occasional sole-sourcing (justified as extensions of previous contracts), loosely written specifications which are subject to varying interpretations, and preferences for technologies offered by longtime, traditional suppliers. It is also a widely held belief that firms from other EU Member States have an automatic advantage over non-EU contenders in winning Greek Government tenders. It has been noted that U.S. companies submitting joint proposals with European companies are more likely to succeed in winning a contract. Greece continues to insist on offset agreements as a condition for purchase of defense items.

In December 1996, the Greek parliament passed legislation that allows public utilities in the energy, water, transport, and telecommunications sectors to sign “term agreements” with local industry for procurement. “Term agreements” are contracts to which Greek suppliers are given significant preference in order to support the national manufacturing base. This was made possible as a result of Greece’s receipt of an extension until January 1, 1998 to implement the EU Utilities Directive. Actually, before expiration of the extension, numerous term agreements worth billions of dollars were signed by Greek public utilities with Greek suppliers. Some of these term agreements are of three to five-year durations, with an option of extending for another three years, thus excluding U.S. suppliers from vital sectors of government procurement for several years. The European Commission has been examining the expedited procedures by which these contracts were approved.

Italy: Italy’s fragmented, often non-transparent government procurement practices and previous problems with corruption have created obstacles to U.S. firms’ participation in Italian government procurement. Italy has made some progress in making its procurement laws and regulations more transparent, and has updated its government procurement code to implement EU Directives. The pressure to reduce government expenditures while increasing efficiency is resulting in increased use of competitive procurement procedures and somewhat greater emphasis on best value rather than automatic reliance on traditional suppliers.

EXPORT SUBSIDIES

Government Support for Airbus

Airbus Industrie is a consortium of four European companies that collectively produce Airbus aircraft. The members of the Airbus consortium are Aérospatiale Matra SA of France, BAe Systems Plc of the United Kingdom, DaimlerChrysler Aerospace AG of Germany, and Construcciones Aeronauticas SA of Spain. The French, German, and Spanish partners are merging their operations to form the European Aeronautic, Defense and Space Company (EADS), which will be the third-largest aerospace company in the world. After the merger, EADS will account for 80 percent of Airbus, and BAe Systems will account for the remaining 20 percent.

Since the inception of Airbus in 1967, the Airbus member governments have provided massive subsidies to their respective member companies to aid in the development, production and marketing of the Airbus family of large civil aircraft. These subsidies have enabled Airbus to garner, according to Airbus' CEO, "a 55 percent market share in 1999, after almost 50 percent in 1998." He also stated that Airbus "is now established on a par with its competitor." The Airbus partner governments have borne 75 to 100 percent of the development costs for all major lines of Airbus aircraft and provided other forms of support, including equity infusions, debt forgiveness, debt rollovers and marketing assistance. They have also provided funds to support the development of derivative versions of earlier Airbus aircraft models, such as the A330-200 and the A340-500/600. Some loans for Airbus programs, repayable from royalties on aircraft sold, have been effectively forgiven because projected sales did not materialize.

The Airbus governments continue to subsidize their member companies. The British government recently announced a commitment of £530 million to underwrite BAe System's participation in the development of a new Airbus project, the A3XX "superjumbo" aircraft. The French, German and Spanish governments are considering whether to extend A3XX funding to their producers as well. The United States believes that government support of Airbus raises serious concerns about member State adherence to their bilateral and multilateral obligations in this sector.

Finally, the EADS partners and BAe Systems are negotiating to pool their Airbus interests to create a unified Airbus company. The United States would be extremely concerned if the transaction were structured to forgive a portion of the indebtedness already incurred by the consortium members, and will monitor this process closely.

Government Support for Airbus Suppliers

Belgium: The Government of Belgium and Belgian regional authorities are reported to subsidize Belgian aircraft component manufacturers, which supply parts to Airbus Industry. According to available information, the subsidy is provided in a foreign exchange rate guarantee program under which payments are made to a consortium of Belgian companies, Belairbus, which is an "associate member" of Airbus. The Government of Belgium and Belgian regional authorities provide payments to the Belairbus companies to cover the difference between actual (i.e., marketplace) foreign exchange rates and a guaranteed rate. The specific level at which the guaranteed exchange rate was established has varied by Airbus aircraft programs as well as by the number of aircraft in each program.

The Belgian program appears similar to a foreign exchange rate guarantee program provided by the German Government for its Airbus partner company and its suppliers. Following a GATT subsidies code complaint by the United States, the German program was found to be a prohibited exports subsidy by a subsidies code panel. The EU blocked the report, but the program was subsequently dismantled. Although the Belgians claim that their program is being phased out, the United States has not obtained any evidence that this is effectively the case.

The United States has undertaken consultations with the EU in the context of the bilateral aircraft agreement on the Belgian dual exchange rate program. The United States has also posed questions to the EU under provisions of the WTO Agreement on Subsidies and

Countervailing Measures which permit member countries to seek and obtain information on the nature of a practice maintained by another member and to clarify why it may not have been notified to the WTO as a subsidy. The United States has also raised questions about this program in the context of the Agreement on Trade in Civil Aircraft. The EU failed to answer adequately the U.S. questions, and further steps to resolve our concerns about this practice are under consideration.

Government Shipbuilding Industry Support

Member States of the EU provide subsidies and other forms of aid to their shipbuilding and ship repair industries. Forms of aid have included subsidized restructuring of domestic shipbuilding industries, direct subsidies for operations and investment, indirect subsidies, home credit schemes, subsidized export credits and practices associated with public ownership of yards.

In June 1989, the Shipbuilders Council of America (SCA) filed a Section 301 petition, seeking elimination of subsidies and trade distorting measures for the commercial shipbuilding and ship repair industry. In response, USTR undertook to negotiate a multilateral agreement in the OECD to eliminate all subsidies for shipbuilding by OECD member countries. An agreement was signed in 1994 by South Korea, Japan, Norway, the United States and the EU and could enter into force only after ratification by all signatories. The initial ratification deadline of January 1, 1996 was later extended to June 15, 1996 in order to accommodate the ratification procedures and time lines for certain signatories. The EU ratified the agreement and adopted implementing legislation in December 1995. All other signatories, except the United States, were able to ratify the agreement by the extended deadline. Although the United States has not yet ratified the agreement, the Administration supports and continues to push for ratification.

Until June 1998, EU aid to shipbuilding was governed by the Seventh Council Directive, which was adopted in 1990. Under the Seventh Directive, the Commission set annual ceilings for subsidies for shipbuilding and ship conversions (but not ship repair). Although the EU would have liked to see the OECD agreement implemented, on June 29, 1998, it adopted a Council Regulation establishing new rules on aid to shipbuilding because the Seventh Directive was due to expire at the end of 1998. According to the Regulation, operating aid, whose ceiling is dictated by the Seventh Directive (nine percent for shipbuilding contracts with a contract value before aid of more than ECU 10 million and 4.5 percent in all other cases), will be phased out by December 31, 2000. The shift away from operating aid to other forms of support (such as aid for restructuring, research and development and environmental protection, types of aid already covered by existing Community guidelines), is an attempt by the Commission to subject shipbuilding to the same state aid rules faced by other sectors. The Regulation aims to uphold the integrity of the common market by establishing a level shipbuilding playing field within the EU.

Member State Tax Practices

In November 1997, the EU initiated WTO dispute settlement proceedings against the "Foreign Sales Corporation" (FSC) provisions of the U.S. Internal Revenue Code, alleging that these provisions constitute a prohibited subsidy inconsistent with U.S. obligations under the WTO Subsidies and Agriculture Agreements. In October 1999, a WTO panel found the FSC to be a prohibited export subsidy, a ruling which was upheld by the WTO Appellate Body in February of this year. The FSC was enacted in 1984 to conform U.S. tax law to an Understanding which had been agreed by the GATT Council in 1981. That Understanding set forth certain principles to reconcile both U.S. and European tax systems with international trade rules that had characterized each system as having features giving rise to illegal export subsidies. The EU's complaint against the FSC, and the subsequent dispute settlement ruling that effectively nullifies the 1981 Understanding, suggest that European tax practices merit fresh examination in order to reassess their consistency with multilateral obligations.

In May 1998, the United States instituted its own WTO dispute settlement consultations against six separate tax measures maintained by five EU member states which we believed were inconsistent with WTO subsidy rules. The tax practices included in the U.S. dispute settlement consultation requests are as follows:

France:

Deduction for start-up expenses: As an exception to the general territoriality principle of French income tax law, a French company may deduct, temporarily, certain start-up expenses of its foreign operations through a tax-deductible reserve account. One of the conditions for obtaining this special deduction is that the foreign branch or subsidiary derive more than 50 percent of its turnover from the sale of products manufactured by the French parent or a corporate group of which the parent is a member.

Reserve for medium-term credit risk: A French company may establish a special reserve equal to 10 percent of its receivable position at year end for medium-term export credit risks.

Netherlands:

A provision of Dutch tax law establishes a special "export reserve," apparently designed for small- and medium-sized businesses. An eligible firm may obtain a reserve of five percent of export turnover up to fl 100,000 and two percent of export turnover between fl 100,000 and 200,000. The reserve can be formed irrespective of the country to which merchandise is exported, and may be formed as soon as goods are delivered on account to foreign customers.

Greece:

Greek exporters of any product are entitled to an annual tax deduction at the following rates: two percent on export sales up to Drs 750 million; one percent on export sales between Drs 750 million and 3 billion; and 0.5 percent on export sales above Drs 3 billion.

Ireland:

Section 39 of the Finance Act 1980, which was specifically approved by the EC, provides special tax relief for "special trading houses," which are companies that act as an access mechanism for Irish-manufactured products in foreign markets. The trading house assumes all international marketing responsibility for product manufacturers, and qualifies for a 10 percent corporate tax rate in respect of its trading income from the export sale of goods. The standard rate of corporation tax is 36 percent.

Belgium:

Belgian corporate taxpayers receive a special tax exemption for recruiting personnel with export-related functions.

Spain:

In 1996, certain U.S. specialty steel companies requested that the United States seek WTO dispute settlement consultations with the EU with respect to a provision of Spanish tax law which permits deductions from corporate income tax for 25 percent of the value of foreign investments that are "directly related to exporting goods and services." The companies alleged that the Spanish specialty steel producer, Acerinox, has benefitted from these tax concessions in exporting semi-finished stainless steel feedstock to its subsidiaries in the United States and elsewhere.

The United States had previously posed questions about this program, and expressed concerns to EU officials about its compatibility with WTO subsidy rules, including the prohibition of export subsidies for non-agricultural goods. In July 1997, the competition authorities of the European Commission announced the initiation of a formal investigation to determine the compatibility of the tax provision with the EU's state aids rules in force for coal and steel products. In a communication published on October 31, 1997 in the Official Journal of the European Communities, the competition authorities issued a preliminary finding that the tax scheme appears to qualify as state aid that is inconsistent with the applicable state aids rules. In response to subsequent U.S. inquiries, the Commission has explained that the internal state aid investigation "has been a particularly complicated case because of the number of interested parties involved, and because of the need to analyze the [Spanish] . . . tax exemption in the context of similar aid schemes linked to foreign investment granted by other Member States of the Community."

Although we recognize that the use of this Spanish tax provision may have contributed to the expansion of Acerinox's facility in Kentucky, and brought about economic development benefits for that region, the Administration remains interested in the ultimate disposition of these practices in the EU. We recently have renewed our inquiries about the status of the European Commission's investigation, and will continue to closely monitor developments.

No conclusions have been reached as to whether to seek the establishment of dispute settlement panels to review each of the above measures. In some cases, the Member State in question has expressed an intention to eliminate or modify the practices, or the measure may only be of temporary duration. For example, following the U.S. action, the Irish government announced in June 1998 its intention to seek parliamentary approval for the termination of the special trading house scheme "at the earliest opportunity." As of January 2000, however, the Irish Government has still not introduced legislation to remove the provision, citing other priorities and a lack of administrative resources. While the scheme is due to expire in any case on December 31, 2000, Irish Government officials have told the United States they still intend to "actively" withdraw the provision, probably during the first half of 2000. We intend to renew our consideration of these practices to determine whether further action is warranted.

INTELLECTUAL PROPERTY RIGHTS PROTECTION

The EU and its Member States support strong protection for intellectual property rights. The Member States are members of all the relevant WIPO conventions, and they and the EU regularly join with the United States in encouraging other countries, primarily developing ones, to sign up to and fully enforce such IPR standards as those in the WTO Agreement on Trade-Related Aspects of Intellectual Property Rights (TRIPS). However, there are a few Member States with whom the United States has raised concerns either through Special 301 or WTO Dispute Settlement, about failure to fully implement the TRIPS Agreement.

The U.S.-EU Transatlantic Economic Partnership (TEP) initiative, initiated at the May 1998 U.S.-EU Summit, identifies intellectual property as an area where multilateral and bilateral cooperation can be intensified and extended. The TEP action plan for multilateral cooperation addresses cooperation on TRIPS implementation and WIPO treaty ratification, accession to the Trademark Law Treaty, resolution of domain name trademark conflicts, and measures to fight optical media piracy. On the bilateral side, a number of issues of interest to both the United States and the EU, including patent and design protection, are to be addressed in the short- and long-term. Both the United States and the EU have undertaken steps to reduce costs of processing patents.

Industrial Designs

In June 1999, the European Commission put forward an amended proposal for a Council Regulation on the European Community Design. Under the proposed Regulation, once a design had been registered with the Office for Harmonization (which already handles applications for the registration of the Community Trademarks), it would qualify for protection in all fifteen EU Member States. National registration of designs, under rules harmonized by Directive 98/71/EC (Directive on Design Protection), will co-exist with the Community Design.

The proposed Regulation on the European Community Design would:

- define what constitutes a design;
- establish criteria for protection (a design would have to be new and have an individual character);
- fix the duration of protection (5 to 25 years);
- fix the scope of protection (the designer would have the exclusive right to use the design and prevent any third party from using it);
- establish the limits to the design right (e.g., it would not normally cover interconnection between components); and
- establish rules on the nullity of the registration of a design.

A provision in Directive 98/71/EC known as the "repair clause" has been hotly debated since the Directive's appearance due to diverging Member State and industry views over design protection of spare auto parts. U.S. firms also have expressed different opinions on the issue, with U.S. auto manufacturers favoring strong protection for spare car body parts, and insurance companies and spare parts manufacturers preferring more flexibility in the Directive. In the end, the EU decided to remove protection for spare parts from the Directive pending further study, but to leave open the possibility of replacing it in a future amendment. The proposed Regulation on the European Community Design also excludes the registration and protection of designs of spare components of complex products, such as visible car spare parts.

Trademarks

Registration of trademarks with the European Community trademark office (Office for Harmonization in the Internal Market, or OHIM) began in 1996. OHIM, located in Alicante, Spain issues a single Community trademark which is valid in all 15 EU Member States.

Trademark Exhaustion: The Trademark exhaustion principle limits a trademark owner's ability to resort to remedies against importers/distributors of trademarked goods outside channels authorized by the trademark owner. The current EU regime supports the principle of "Community exhaustion," which allows resale of trademarked goods within the fifteen Member States once the trademark owner licenses their sale in any EU country.

In 1998 a European Court of Justice ruling (in *Silhouette v. Hartlauer*) upheld the legality of Community trademark exhaustion within the EU. The European Commission has defended the principle by maintaining that Community exhaustion heightens competition within the internal market. However, Member State opinion remains divided and at the insistence of the U.K. and Sweden, the Commission began a study into the economic impact of Community exhaustion in the Member States. European discount chains prefer, and have actively lobbied for, a system of "international exhaustion," which limits the trademark owner's right to control distribution of goods once he/she licenses them for sale anywhere in the world. The Commission's study indicated mixed results of changing to international exhaustion, with minimal impact for certain sectors (alcoholic drinks, confectionary), whereas impact may be significant for others (consumer electronics, footwear and domestic appliances). The Commission held hearings on the study in April 1999 with Member States and interested parties airing mixed views. The Commission plans to continue to consult with Member States and other parties before deciding how to proceed.

Madrid Protocol: The World Intellectual Property Organization's (WIPO) Madrid Protocol, negotiated in 1989, provides for an international trademark registration system permitting trademark owners to register in member countries by filing a standardized application. The European Community has not joined the Madrid Protocol although Member States have. The United States has not acceded because it objects to voting provisions in the protocol that would allow the EU a vote upon accession in addition to the votes of its Member States. Given the use of consensus decision-making procedures in WIPO and in the precursor Madrid Agreement, the United States has proposed an informal "gentlemen's agreement" that would establish voting procedures to address U.S. concerns about the EU vote in the Madrid Protocol. The United States and EU have found a workable compromise which should pave the way for U.S. accession to the Madrid Protocol.

Utility Models: In 1997 the European Commission proposed a Directive on utility models to harmonize a level of protection in the Member States for industrial applications lower than that granted for patents. Under the Directive, protection would apply to "any inventions susceptible to industrial application, which are new and involve an inventive step" for a maximum of 10 years. Utility model protection may also provide temporary protection pending granting of a patent. Business groups have criticized the Directive as being unclear and ambiguous, noting that implementation may do more harm than good by introducing additional business costs. It is unlikely the Directive will reach adoption in the near term. However, both European and U.S. industries are united in disagreeing with the Commission that harmonization of this type is needed in Europe. The European Commission presented an amended proposal in June 1999, incorporating many of the European Parliament's March 1999 proposed amendments including a clearer definition of inventive activity distinguishing the utility model from the patent.

Geographical Indications: U.S. industry has expressed concern about the 1992 EU Regulation on "Protection of Geographical Indications and Designations of Origin for Agricultural Products and Foodstuffs" as amended by a 1997 Regulation. Some believe it does not achieve a balance between protection for legitimate trademarks and legitimate geographical indicators. In practice, the Regulation could bring registered trademarks in conflict with registered geographical indicators. In addition, third country applicants do not appear to have the same access as EU parties to the provisions of the Regulation covering registration and other elements. For these reasons, the United States requested formal WTO consultations with the EU in 1999.

Spain: After a protracted battle in the courts, a major U.S. manufacturer of sporting goods lost the right to use its trademark name in the Spanish market as a result of a Supreme Court decision handed down in September 1999, which reversed Lower Court decisions that had upheld that right against infringement by a competitor. The company has filed an appeal with the Constitutional Court, but the Court has not yet decided whether to hear the case. However, if it does, it would have to find constitutional grounds for doing so, since it is barred from reviewing the merits of the case.

Patents

Patent filing and maintenance fees in the EU and its Member States are extraordinarily expensive relative to other countries. Fees associated with the filing, issuance and maintenance of a patent over its life far exceed those in the United States. In an effort to introduce more reasonable costs, the European Patent Office (EPO) reduced fees for filing by 20 percent in 1997.

European Community Patent: The European Commission consultation process on a European Community Patent (one that would harmonize patent issuance in EU Member States) has yielded a number of conclusions in a June 1997 Commission Green Paper. The paper acknowledges a consensus on the need for a harmonized patent system among EU Member States, and proposes that such a system supplement – not replace – patents issued by the European Patent Office (EPO) in Munich (with a wider membership than the fifteen Member States) and national patent offices. In addition, the Commission believes the cost of an EC patent shouldn't be more than a U.S. or Japanese patent and that EU law on patentability of computer programs and software related inventions must be brought into line with the United States and Japan.

A series of concrete measures to improve the framework for obtaining patent protection in the EU are outlined in a policy Communication adopted by the European Commission in February 1999. These measures include a proposal for a Regulation to establish a unitary EU patent valid throughout the EU, a proposal for a Directive on patent protection of inventions related to computer programs, an interpretative Communication on freedom of establishment and freedom to provide services for patent agents, and a pilot action to support efforts by national patent offices to promote innovation. The Communication reflects the results of consultations with the European Parliament and a range of interested parties on the basis of the 1997 Green Paper on patents.

Ireland: As part of promised comprehensive copyright legislation, the Irish Government is committed to addressing non-TRIPS conforming provisions of Irish patent law. Ireland's patent law, as it currently stands, fails to meet TRIPS obligations in at least two respects: (1) the compulsory licensing provisions of the 1992 patent law are inconsistent with the "working" requirement prohibition of TRIPS article 27.1 and the general compulsory licensing provisions of article 31; and (2) compulsory licensing conditions provided for in the 1964 patent law, which continues to apply in some applications processed after December 20, 1991, do not conform to the non-discrimination requirement of TRIPS article 27.1.

Patenting of Biotechnological Inventions

On June 16, 1998, after years of debate, the European Council adopted a Directive on legal protection of biotechnological inventions. The Directive harmonizes EU Member State rules on patent protection for biotechnological inventions. Member States must bring their national laws into compliance with the Directive by July 30, 2000. The Directive excludes plant and animal varieties from patentability and, although a positive development for U.S. firms, will not provide the same level of patent protection that is provided in the United States to biotechnological inventions. In addition, the Directive is not binding on the European Patent Office.

Copyrights

In April 1998, the European Commission proposed a Directive on the "Harmonization of Certain Aspects of Copyright and Related Rights in the Information Society". The Directive would require Member States to implement harmonized Regulations on the protection of copyrights and is seen as a first step in granting copyright protection for works in digital form. Although the Directive was proposed following a lengthy consultation process, its provisions are controversial, especially a mandatory exception for private copying and for temporary reproductions that are "integral" to a technological process and have no separate economic significance.

An amended proposal put forward by the Commission in May 1999 includes a majority but not all of the changes sought by the European Parliament. It would continue to require Member States to provide network operators with an exception from the reproduction right for certain technical acts of reproduction and recognize that Member States may provide rightholders with fair compensation for private copying by analog as well as digital means, in accordance with their legal traditions and practices. The Council is debating these issues and expects to deliver the directive to the European Parliament for second reading by mid-2000.

Copyright Protection for Databases: By January 1, 1998, Member States were required to transpose into national law the 1996 EU Directive on the legal protection of databases. A new "sui generis" right extends copyright protection for fifteen years to the contents of a database, whether or not the material is otherwise eligible for copyright protection. However, this right is available to non-EU creators of databases only on the basis of reciprocity. The U.S. business community, while supportive of protection for databases as essential to a sound legal framework for Europe's information society, remains concerned about the impact the reciprocity provisions of the Directive will have on U.S. publishers of databases. Scientists worry that the Directive will make access to databases prohibitively expensive although the Directive permits Member States to allow exemptions for groups accessing data for research or education.

In July 1999, the European Commission decided to refer Greece, Ireland, Luxembourg and Portugal to the European Court of Justice for failure to implement the 1996 Directive on the legal protection of databases. It also decided to refer Ireland and Portugal to the Court for failure to adhere to international conventions concerning copyrights and related rights.

Member State Practices

Some EU Member States have their own special practices regarding intellectual property protection and enforcement that do not necessarily comply with international obligations. A brief discussion of those which are of concern to the United States follows:

Austria: Under Austrian copyright law, "tourist establishments" (hotels, inns, bed and breakfast establishments, etc.) may show cinematographic works or other audiovisual works, including videos, to their guests. While the license fee to the copyright owners is mandatory, Austrian law does not require prior authorization by the copyright holder. The United States questions the consistency of this provision with Austria's obligations under the Berne Convention and the TRIPS Agreement. Following bilateral U.S.-Austrian talks in 1997, the Austrian Arbitration Commission determined the rates to be paid for such public showings. Austria considers this step sufficient compensation for the interests of the copyright holders and in compliance with both the Berne Convention and the TRIPS Agreement. The United States expressed reservations to this position.

Austrian copyright law also requires that a license fee be paid on imports of home video cassettes and broadcasting transmissions. Of these fees, 51 percent are paid into a fund dedicated to social and cultural projects. In the U.S. view, the copyright owners should receive the revenues generated from these fees and any deductions for cultural purposes should be held to a minimum.

Belgium/France: Belgium and France collect levies on blank tapes and recording equipment to compensate right holders for the private, home copying of their works and to provide a source of funding for local productions. These levies are distributed by national collecting societies to the various categories of right holders according to statutory provisions. National treatment is apparently denied to some U.S. right holders, however, and the United States motion picture and recording industries have not been able to collect their rightful share of these proceeds.

Denmark: Denmark's intellectual property laws are generally adequate. However, certain problems exist. Denmark was named on the 1998 Special 301 "Watch List" because enforcement is made difficult by the fact that the Danish Government does not make available provisional relief on an *ex parte* basis to prevent ongoing infringement or preserve evidence in the context of civil litigation, in apparent violation of the TRIPS Agreement. The availability of such relief is particularly important to the United States software industry because of the ease with which the evidence of infringing use can be eliminated if the infringers are forewarned of the right holder's interest. In response, the Danish Government has set up a committee to find out which legislative changes are needed in Danish copyright laws and other related legislation to meet its TRIPS obligations.

U.S. authors do not receive royalties from Denmark for photocopying of their works used in Danish schools and universities, because the Danish collecting agency, Copydan, will not accept the validity of "en bloc" powers of attorney issued by U.S. publisher and author organizations. Copydan maintains that it will pay only to a U.S. collecting agency built on a model similar to its own. This issue is being pursued at present on an informal basis with the Danish Government.

Finland: The United States has expressed concerns regarding Finland's ability to provide provisional relief in civil enforcement proceedings brought to redress IPR violations. Under TRIPS, each country's courts must have the authority to order a search of suspected copyright infringers' premises in order to determine whether infringement of IPR is taking place and to preserve evidence. Courts must be able to order such searches without notice to the suspected infringers (i.e., on an *ex parte* basis) whenever there is a risk of evidence being destroyed. Furthermore, searchers must be able to seize software licenses at the time of a raid. Finland is working to achieve compliance with its TRIPS obligations related to *ex parte* searches. Draft legislation to that effect is slated to be forwarded to the Finnish Parliament in March 2000.

Greece: Greece has been on the Special 301 "Priority Watch List" since 1994. Just prior to an out-of-cycle review in December 1996, the Greek government submitted an "action plan" laying out the steps it would take by April 1997 to reduce audio-visual piracy. While some of these steps were taken, the Greek Government lagged behind severely in licensing television stations in accordance with the provisions of the 1995 media law; the process, which only got underway after extremely long delays, is still ongoing. As a result of slow movement in many areas of concern to U.S. companies, the U.S. Government launched a WTO dispute settlement challenge under TRIPS in April 1998. Estimated levels of television piracy in Greece have fallen significantly since the initiation of these consultations, and the first criminal convictions for television piracy have also been issued in Greece during this time. Consultations under WTO auspices are continuing.

Two other significant IPR problems are the lack of effective protection of copyrighted software and the absence of protection of trademarked products in the apparel sector. Although Greek trademark legislation is fully harmonized with that of the EU, claims by U.S. companies of counterfeiting appear to be on the increase.

Ireland: Ireland is a member of the World Intellectual Property Organization and a party to the TRIPS Agreement. Following intensive negotiations with the U.S. Government in 1997, the Irish Government committed to enacting new copyright legislation by December 31, 1998, to bring Ireland's laws into line with its obligations under the TRIPS Agreement. Dublin also agreed to enact a new smaller "break-out" copyright bill in advance of comprehensive legislation, which would address the U.S. Government's most pressing concerns with regard to Irish copyright protection. This break-out bill was enacted in June 1998 and, among other provisions, strengthened the presumption of copyright ownership and increased penalties for copyright violation.

In late 1998, the Irish Government informed the United States that because of longer than anticipated delays in drafting the comprehensive legislation, as well as the time needed to consult with interested "stakeholders" such as the U.S.-based software and entertainment industries, it would not be able to introduce the legislation in the Irish parliament until spring 1999. The legislation was passed by the upper house of the Irish parliament in October 1999, but approval in the lower house, the Dail, is still pending as of January 2000. The Irish Government has informed the United States that it is confident the bill will be enacted in the Dail by March 2000. In light of the Irish commitment to introduce new copyright legislation, USTR has suspended WTO dispute settlement proceedings brought against Ireland in 1997. However, an Irish failure to introduce the legislation in accordance with its commitments may affect the U.S. Government's 2000 Special 301 review of

Ireland's intellectual property right protection regime.

Examples of TRIPS inconsistencies in current Irish law which the Government is committed to addressing in comprehensive reform legislation include absence of a rental right for sound recordings, absence of "anti-bootlegging" provisions, and low criminal penalties which fail to deter piracy, all of which have contributed to high levels of piracy in Ireland. (Industry sources estimate that up to 60-65 percent of PC software used in Ireland is pirated.)

Italy: In 1998, the U.S. Trade Representative placed Italy on the "Priority Watch List" under the Special 301 provision of the United States Trade Act of 1988, due to national TV broadcast quotas in excess of the EU norm, and to a lengthy delay in passage of national legislation to address ongoing serious deficiencies in protection of copyright for sound recordings, computer software and film videos. In October 1996, the Italian Government introduced anti-piracy legislation in Parliament that would impose administrative penalties and increase criminal sanctions. The bill is still awaiting final Parliamentary approval. The United States will continue to monitor developments in this area closely.

Portugal: Portugal's laws on the protection of intellectual property do not provide adequate protection for test data submitted to regulatory authorities for marketing approval of certain products (including pharmaceuticals) as required by the TRIPS Agreement. Portugal is currently in the process of updating several articles of its existing legislation, including the section which covers the protection of test data. The United States has informed Portugal of its concerns in this regard and will monitor the development and implementation of changes to the legislation.

Spain: In 1999, Spain was placed on the Special 301 "Watch List" because of the continuing high level of business software piracy. The U.S. Trade Representative found that "illegal copying of business application software for the internal use remains pervasive, and continues to account for the majority of losses in industry in Spain stemming from piracy." In addition, the Special 301 review found that despite earnest efforts by Spanish Government officials to educate the judiciary about the importance of intellectual property protection, both civil and criminal court proceedings continued to move so slowly as to dilute the impact of improved police enforcement. However, in other areas (videos and audiocassettes) Spain maintains a sound record of low incidence of piracy.

Sweden: A conflict continues to exist between the Swedish Constitution's guarantee of freedom of information and the rights of copyright holders of unpublished works. In December 1999 the Government presented a proposal designed to correct this situation to Sweden's parliament and the legislative process is now underway.

SERVICES BARRIERS

Data Privacy

The EU Data Protection Directive went into effect in October, 1998. However, nine EU Member States missed the deadline and by January 2000, five – France, Luxembourg, the Netherlands, Germany, and Ireland – had still not transposed the Directive into national law. The Commission has taken these Member States to the European Court of Justice. The Directive seeks to protect individual privacy with regard to the storage, processing and transmission of personal data, while still permitting the free flow of data within the EU. It allows transmission of data to third countries if they are deemed by the EU to provide an adequate level of protection, or if the recipient can provide other forms of guarantee (e.g., a contract) that ensures adequate protection. U.S. firms are concerned about lack of clarity in the definition of adequate protection and the potential for cumbersome requirements to execute a data transfer.

The United States and the European Commission have been developing a "safe harbor" arrangement that would allow U.S.

organizations to comply with the European Directive and ensure that data flows are not interrupted. On March 14, 2000, the Department of Commerce and the EC announced that they had reached a tentative conclusion to the dialogue. The arrangement bridges the differences between the EU and U.S. approaches to privacy protection and ensures adequate privacy protection for EU citizens' personal information. Under the safe harbor arrangement, U.S. companies would be able to decide voluntarily to participate in the safe harbor and do so by self-certifying to the Department of Commerce. The United States will be consulting with other government agencies and the public, while the EC will seek approval from the EU member states and the EU Parliament.

Broadcast Directive and Motion Picture Quotas

In 1989, the EU issued the Broadcast Directive which included a provision requiring that a majority of entertainment broadcast transmission time be reserved for European origin programs "where practicable" and "by appropriate means." By the end of 1993, all EU Member States had enacted legislation implementing the Broadcast Directive.

The process begun by the Commission in 1993 to revise the Broadcast Directive in an effort to strengthen quotas was concluded in April 1997 through a conciliation committee that resolved differences between the European Parliament and the Council. By the time an agreement was reached on a revised Directive, the divisive issue of strengthening European content quotas and expansion of the Directive's scope to new services had fallen by the wayside despite the Parliament's protectionist line. The United States continues to monitor developments with respect to the Broadcast Directive.

Several countries have specific legislation that hinders the free flow of some programming. A summary of some of the more salient restrictive national practices follows:

France: The language of the EU Broadcast Directive was introduced into French legislation in 1992. France, however, chose to specify a percentage of European programming (60 percent) and French programming (40 percent) which exceeded the requirements of the Broadcast Directive. Moreover, the 60 percent European/40 percent French quotas apply to both the 24-hour day and to prime time slots. (The definition of prime time differs from network to network according to a yearly assessment by France's broadcasting authority, the "Conseil Supérieur de l'Audiovisuel," or CSA.) The prime time rules in particular limit the access of U.S. programs to the lucrative French prime time market. France's broadcasting quotas were approved by the European Commission and became effective in July 1992.

In addition, the United States continues to be concerned about the French radio broadcast quota (40 percent of songs on almost all French private and public radio stations must be Francophone) which entered into force on January 1, 1996. The measure has the effect of limiting the broadcast share of American music.

Italy: In 1998, the Italian Parliament passed Italian Government-sponsored legislation including a provision to make Italy's national TV broadcast quota stricter than the EU Broadcast Directive. The Italian law exceeds the EU Directive by making 51 percent European content mandatory during prime time, and by excluding talk shows from the programming that may be counted towards fulfilling the quota. Also in 1998, the Italian Government issued a regulation requiring all multiplex movie theaters of more than 1300 seats to reserve 15-20 percent of their seats, distributed over no fewer than three screens, to showing EU films on a "stable" basis. In 1999, the Government introduced antitrust legislation to limit concentration in ownership of movie theaters and in film distribution – including more lenient treatment for distributors that provide a majority of "made in EU" films to theaters.

Portugal: In July 1998, Portugal passed new television legislation containing language from the EU Broadcast Directive. The new legislation modifies and strengthens the existing quotas for Portuguese language, European, and independent productions. The new law, however, in accordance with the EU Broadcast Directive, also includes provisions for flexible application of the quotas. In practice, available Portuguese and European programming is insufficient for broadcasters' needs and, consequently, the quotas have not been strictly enforced by private broadcasters – even though a substantial increase can be progressively detected through the successive reports provided every two years by Portugal to the European Commission.

Spain: In May 1999, the Spanish Parliament adopted new legislation that incorporates the revised EU Broadcast Directive and revises the 1994 Spanish law on television broadcasting. The new law explicitly requires television operators to reserve 51 percent of their annual broadcast time to European audiovisual works. The three-tiered system established for dubbing licenses for feature length films under the 1994 law ended in June 1999. In January 2000, the Administration sent new draft film legislation to the Parliament, which calls for a gradual elimination of screen quotas over a period of five years. At present Spanish movie theaters must show at a minimum one day of European films for every three days of films from third countries. The growing strength of the Spanish film industry in the past two years, as measured by numbers of films produced and their success at the box office, has prompted the current Administration to liberalize the film law further.

In January 1998, the regional government of Catalunya adopted a Law on Linguistic Policy, which calls for both dubbing and screen quotas in order to increase the number of films being shown in the Catalan language. Due to strong industry opposition and the start of negotiations with film distributors and exhibitors to resolve their differences, the Catalan government decided to suspend implementation of this law until July 2000. U.S. companies remain concerned about the precedent that would be set for linguistic minorities in other regions of Spain if the Catalan law goes into effect.

Computer Reservation Services

U.S. computer reservation systems (CRS) companies have faced problems in the EU market, since several Member State markets are dominated by a CRS owned by that State's flag air carrier. Past cases have eventually been resolved after U.S. Government intervention or recourse to national administrative and court systems.

Acting on a complaint filed in 1996, the U.S. Department of Justice asked the EU competition authority to investigate a range of anti-competitive practices by a European firm. This was the first case under the positive comity provision of the 1991 U.S.-EU Antitrust Cooperation Agreement. The EU investigation absolved two of the EU partner firms in 1999, but issued a statement of objections to a third. The U.S. firm and the EU firm are seeking a solution. In a separate proceeding, the European Commission imposed a fine against the European company for violations of the EU CRS Code of Conduct following a complaint from a U.S. firm. This was the only instance of an EU firm receiving a negative decision since the inception of the Code of Conduct.

Sweden: There is concern about how Swedish data protection regulations apply to American CRS operations in that country. One U.S.-owned CRS firm complains that Sweden is the only EU Member State in which it has not either already received or will soon receive data protection-related permits for its operations. The Swedish argument is based on the concern about levels of data privacy protection in the United States and on passenger notification issues. Resolution of the matter is being sought in the Swedish court system and under the U.S.-Swedish bilateral aviation agreement. A decision is not expected before mid-2000.

Airport Ground Handling

In October 1996, the EU issued a Directive to liberalize the market to provide ground-handling services at EU airports above a certain size by January 1, 1998. While generally welcoming this move, U.S. airline companies and ground-handling service providers remain concerned that airports can apply for exemptions to continue to have a monopoly service provider through January 1, 2002, and can also limit the number of firms which can provide certain services on the airport tarmac (ramp, fuel, baggage and mail/freight handling) either for themselves or for other carriers. To some extent, these potential barriers are offset by more liberal provisions in the bilateral air services agreements which the United States concluded with individual EU Member States.

Ireland: U.S. airlines serving Ireland may provide their own ground handling services, but are prohibited from providing similar services to other airlines, unless they have a legal presence within the EU. The bilateral U.S.-Ireland aviation agreement places some restrictions on aviation services between the United States and Ireland. Under the agreement, for every North Atlantic flight to or from Dublin airport, a corresponding flight or stop must be made at Shannon airport on Ireland's west coast, making service to Ireland unprofitable for some U.S. airlines. U.S. carriers complain that the "Shannon requirement" affects the profitability of their operations in Ireland, although this has not stopped U.S. carriers from introducing new service between Ireland and the United States in 1999. Recent statements from Irish Government ministers suggest that Government opposition to further liberalization of air services between Ireland and the United States may soften over the coming years.

Postal Services

U.S. express package service providers remain concerned that the prevalence of postal monopolies in many EU countries restricts their market access and subjects them to unequal competitive conditions. Proposals to liberalize postal services have made little headway in the face of entrenched Member State opposition.

Germany: The European Commission in 1999 agreed to investigate a complaint by a U.S. firm against Deutsche Post (DP) for illegal usage of state aid funds and abuse of dominant market position. The U.S. firm believes DP to have engaged in predatory pricing, unfair cross-subsidization of services, and using profits from excessive prices in the letter market to finance acquisitions and investments to strengthen even further its market position vis-à-vis private sector express delivery services. The Commission has had to exercise particular care in its formal investigation of this case, pending since 1994, because of its political ramifications and the DP initial public offering planned for the second half of 2000. The U.S. firm fears that further delay in ruling on this case will only exacerbate the unfair competitive situation it alleges.

Exemptions from Most-Favored-Nation Treatment

In January 1995, the EU notified the WTO of its intent to present a new draft General Agreement on Trade in Services (GATS) schedule of commitments, with accompanying list of MFN exemptions, to reflect the enlargement of the EU to include Austria, Finland, and Sweden. Two years later, in January 1997, the EU presented the draft document, which was discussed for the first time at a meeting of the WTO working party examining the consistency of the enlarged EU with Article V of the GATS (Article V applies to the services aspects of economic integration agreements). At that meeting, the United States and other countries raised legal concerns that the draft expands to the three new Member States a number of MFN exemptions contained in the already existing EU-12 GATS MFN exemption list, thereby creating new opportunities for the three new Member States to discriminate against service providers of non-EU countries. The United States will seek to ensure that EU enlargement in the services area is consistent with the EU's WTO obligations.

Auditing Services

Greece: The transition period for de-monopolization of the Greek audit industry officially ended on July 1, 1997. Numerous attempts to reserve a portion of the market for the former state audit monopoly during the transition period (1994-97) were blocked by the European Commission and peer review in the OECD. In November 1997, the government issued a presidential decree which effectively undermines the competitiveness of the multinational auditing firms. The decree established minimum fees for audits, and restrictions on utilization of different types of personnel in audits. It also prohibited auditing firms from doing multiple tasks for a client, thus raising the cost of audit work. The Greek Government has defended these regulations as necessary to ensure quality and objectivity of audits. In practical effect, the decree constitutes a step back from deregulation of the industry.

Shipping Restrictions

Spain: In 1992, the EU established a calendar for liberalizing cabotage restrictions, but only to vessels registered in a member country. The 1992 agreement among the EU member countries on the Common Cabotage Regime is to be implemented during a transition period from 1993 to 2004. While cabotage within peninsular Spain was previously liberalized, the EU allowed Spain to restrict merchant navigation to and within the Balearic Islands, the Canary Islands and Ceuta and Melilla to Spanish flag merchant vessels until January 1, 1999. The Spanish Government has begun to liberalize merchant navigation for these routes.

Telecommunications Market Access

Since the late eighties, there has been a general trend toward increased competition and openness in the European telecommunications sector. Liberalization has been driven primarily by the desire to create a single European market in telecommunications and the globalization of the telecommunications sector. The negotiation of the WTO Basic Telecommunications Agreement provided additional impetus for liberalization and ensured the extension of benefits to third countries, including the United States. Under the WTO Agreement, eleven EU Member States made commitments to provide market access and national treatment for voice telephony services as of February 5, 1998, the date the agreement entered into force. Four Member States had later phase-in dates: Spain (December 1, 1998); Ireland and Portugal (January 1, 2000); and Greece (January 1, 2003). France, Italy and Spain retain some limits on foreign investment in the sector. The EU and its Member States also adopted the pro-competitive regulatory principles set forth in the Reference Paper associated with the WTO Basic Telecommunications Agreement.

The European Commission is currently engaged in an extensive review of EU legislation related to communications infrastructure and associated services and has invited public comment until mid-February 2000. In general, the review proposes streamlining and consolidating legislation while adapting it to changed circumstances such as convergence of technologies and growing competitiveness in the sector. Legislative proposals are expected in Spring 2000 but adoption and implementation will not likely occur for several years. In the interim, the Commission has proposed greater use of non-binding mechanisms to try to promote pro-competitive policies in Member States (e.g., leased line tariff recommendation, see below).

The European Commission monitors and reports regularly on implementation of the current regulatory framework by the Member States. Key areas include independence and effectiveness of National Regulatory Authorities (NRAs), interconnection and access for new entrants, and licensing.

The most recent report, the Fifth Implementation Report of November 1999, shows that with the exception of the Data Protection Directive (see discussion in separate section), the vast majority of Member States have substantially transposed most of the framework's provisions into national law. However, effectiveness of application continues to vary considerably. As of November 1999, the Commission had 87 infringement proceedings underway to enforce Member State compliance with EU telecommunications legislation.

National Regulators

Per the Commission report, telecommunications regulatory bodies have been established in all Member States but in some cases – Belgium, Portugal, Sweden, and Luxembourg – independence of the regulator is potentially compromised by linkages between the oversight of the incumbent carrier and the regulator. While independence is important, other factors such as authority to reach binding decisions, speed of decision making, and human resources have a strong impact on effectiveness. For example, new entrants have suggested that the NRAs in Germany, U.K., Spain and Sweden have been unwilling to exert their full authority; in Belgium and Luxembourg they may simply lack the authority. The length of time required to reach decisions and cumbersome procedures are often pointed to as giving an advantage to the incumbent who can get a head start while the process plays out.

Interconnection

The Fifth Implementation Report states that the "reluctance, or lack of empowerment, of regulators to intervene in a forceful, timely and effective manner" is the most pressing problem facing new entrants seeking to conclude interconnection agreements with incumbent operators. EU legislation requires that operators with significant market power in a relevant market meet all reasonable requests for interconnection based on principles of cost-orientation, transparency, and non-discrimination. Sweden and the U.K. are the only two Member States where the process functions fully as envisioned. The situation in Denmark, Italy and Portugal, where assurance of fair terms by the NRA has been a problem, has improved during 1999; it remains problematic in Belgium and, to some extent, in Finland.

Information about costs as well as technical information about the infrastructure is often difficult to obtain for new entrants. For example, the Commission notes that obtaining information about the availability of points of interconnection and infrastructure capacity has been difficult in Belgium, Germany, Greece, Ireland, the Netherlands, Austria and Finland. In addition, in several Member States (Germany, Spain, Belgium), requirements related to encouraging investment in infrastructure to avoid overloading may be disproportionate. Lack of transparency related to cost has been highlighted by U.S. businesses as a particular problem in Germany.

In an effort to address some of these issues in a timely manner, the Commission in November 1999 released a Recommendation (non-binding) on leased line tariffs. The document recommends price ceilings for short distance leased lines of 64 kilobit, 2 megabit and 34 megabit capacity circuits based on the prices in the three lowest cost Member States. The Recommendation also calls on Member States to implement complementary measures such as unbundling the local loop, encouraging rapid deployment of new broadband technologies, and allocating spectrum for wireless local loops.

Licensing

According to the Fifth Implementation Report, national licensing regimes vary considerably but the majority are transparent and non-discriminatory. Exceptions to this general judgement include Italy and France. In Italy, the process tends to be lengthy and confusing. In France, authority for licensing is split between the NRA and another ministry, also leading to delay and non-transparency. The 1999 Review recommends further streamlining and harmonization, including making greater use of general licenses (specific authorization reserved for assignment of radio spectrum and numbers) and restricting and harmonizing the range of conditions that can be attached to a license (in France, for example, a research and development condition is levied and cited by some as a barrier to entry).

In Germany, the cost of obtaining a license is several times higher than in any other European country and is cited by U.S. businesses as a barrier to entry. The issue is being litigated in the German courts but a recent ruling overturned a preliminary injunction against the charges. The case could take years to resolve definitively or might simply be dropped if the plaintiff decides the costs outweigh the chances of a favorable outcome. Both scenarios prolong the incumbent's advantage.

A more general licensing issue of considerable concern for the United States is market access for third generation wireless communications (3G). The Commission has mandated that Member States license 3G "pursuant to European standards for UMTS approved or developed by ETSI." European Commission officials have responded to U.S. Government expressions of concern with reassurances of openness to all 3G standards endorsed by the International Telecommunications Union (ITU) and an interpretation that the mandate means only that each Member State must grant one license to a Universal Mobile Telecommunications Services (UMTS) carrier so as to assure European roaming. However, no formal change has been made to the mandate and it is not assured that the European Telecommunications Standards Institute (ETSI) will indeed embrace all ITU-endorsed standards. Member States have, for the most part, not yet made 3G licensing decisions and the United States is concerned that there will be a strong bias in the rules toward a single European (UMTS) standard.

Specific Member State Practices

Belgium: The Belgian regulator, the Belgian Institute for Postal Services and Telecommunications (BIPT), is supervised by the Minister of Telecommunications, who is also responsible for the Belgian government's 51 percent shareholding in Belgacom, the former monopoly telecommunications supplier. The new Belgian government has announced its intention to further privatize Belgacom, which would remove the current conflict of interest over the fact that it is judge and party in national telecommunications disputes. Further privatization of the Belgian telecommunications sector would strengthen BIPT's ability to provide more pro-competitive regulation. Furthermore, since Belgium currently lacks a properly functioning competition council, newly established telecommunications companies find it difficult to prove before Belgian courts any "abuse of dominant market position" (which has to be determined by the competition council), for example in areas such as interconnection and cross subsidization of services by the incumbent. It remains to be seen how a newly legislated interconnect chamber will resolve disputes raised by new entrants with the incumbent.

Germany: The competitors to Deutsche Telekom (DT) operated in considerable contractual uncertainty throughout 1999, after DT canceled existing interconnection agreements in December 1998. On December 23, 1999, the German telecommunications regulatory agency (RegTP) finally approved new interconnection tariffs. These tariffs will remain valid until February 28, 2001. Competitors largely welcomed these rates, but noted that RegTP had still not ruled on a number of other important rate-related issues. In particular, DT has sought to impose numerous additional – and, in the new entrants' view, arbitrary and unsubstantiated – charges for carrying competitors' traffic.

Meanwhile, USTR continued its investigation, begun in early 1999, against the German Government under Section 1377 of the Omnibus Trade and Competitiveness Act, despite resolution of the specific case in question. Several new entrants reported that DT was not providing interconnection in a timely fashion, on terms, conditions and cost-oriented rates that are transparent and reasonable. U.S. carriers also charged that Germany's proposed fee structure for national licenses is exorbitant and far exceeds those in the United States and in similar EU markets. Two telecommunications associations filed formal complaints concerning these fees as part of USTR's annual review of telecommunications trade agreements under Section 1377. In one industry report on Foreign

Trade Barriers submitted to USTR, Germany was listed as a country that lacks full or satisfactory implementation of commitments under the WTO Basic Telecommunications Agreement.

Italy: In recent years, the Italian Government has undertaken a liberalization of the telecommunications sector, including privatization of the former parastatal monopoly Telecom Italia (formerly STET); creation of an independent communications authority; and allowing both fixed-line and mobile competitors to challenge the former monopoly (which Olivetti acquired in a hostile takeover in 1999). Since the EU's January 1, 1998 deadline for full liberalization of its telecommunications sector, Italy has issued more than 40 fixed-line licenses, including to new entrants with U.S. participation. Concerns remain regarding upcoming licensing and frequency allocation for "third generation" mobile carriers, and regulatory due process, transparency and even-handedness in general. However, the Italian market is much more open to services exports in this sector than it was prior to implementation of EU telecommunications legislation.

United Kingdom: The telecommunications regulator, OFTEL, in November 1999 granted British Telecom an exclusive right to supply DSL (digital subscriber line) services from March 1, 2000 to no later than July 1, 2001. BT agreed to begin technical work and industry consultations to prepare its network to accommodate competing DSL suppliers. DSL is a technology designed to provide access to the Internet and other broadband networks over local telephone networks, at much higher capacity and faster speed than currently available through modem, ISDN and other technologies suitable for residential and small business use. Covad, a competing supplier of DSL services in the United States and elsewhere, in January 2000 filed a formal complaint under Section 1377 of the 1988 Trade Act regarding the period of exclusivity granted to BT. Covad alleged the grant of exclusivity to be in violation of the U.K.'s commitments under the WTO Agreement on Basic Telecommunications.

Legal Services

Austria: To provide legal advice on foreign and international law, the establishment of a commercial presence is required as well as joining the Austrian Provincial Bar Association. Only an Austrian national can join the bar association.

Belgium: In order to be licensed to practice Belgian law, one must be a graduate of a Belgian university five year course of study. There is some provision for recognition of U.S. education which usually results in two or three years of part time study at a Belgian university to get the Belgian degree.

Denmark: Foreign lawyers in Denmark cannot offer advice to international clients on international issues without being a member of the local bar, face restrictions on whom the foreign lawyer or law firm may advise and also face restrictions on the use of the original business name from its home country.

Foreign legal consultants are restricted in their ability to advertise, including restrictions on the use of letterhead or signs on office doors. These restrictions are not applied to attorneys licensed to practice Danish law. There are restrictions on the ability of foreign lawyers to associate with Danish lawyers. Foreign attorneys may hire Danish attorneys in private firms but foreign attorneys who are appointed as attorneys by Denmark cannot own a Danish firm. Also foreign attorneys who do not also have appointment as Danish attorneys cannot be partners in a Danish legal firm. To be an attorney in Denmark, a person must be a Danish legal school graduate and a clerk in a law firm for three years.

Finland: Foreigners from non-EU countries cannot become members of the Finnish Bar Association and get the higher law profession title of "Asianajaja." This does not, however, prevent persons from practicing domestic or international law (including EU law) using the lower level title of "Lakimies" or "Jurisiti." A Finn must pass a test and have five years of legal experience before becoming an "Asianajaja." The title gives added prestige and helps solicit clients, but is not essential to practice law.

France: There is a nationality requirement to qualify as an "avocat." Non-EU firms are not permitted to establish branch offices in France under their own names. Also, foreign lawyers and firms are not permitted to form partnerships with or hire French lawyers.

Germany: Foreign lawyers cannot automatically come to Germany to practice German law in Germany, though they can be accredited to practice the law of their country in Germany. In order to be admitted to the German Bar to practice German law, it is estimated that a minimum of three years of study and another three or four years of internship after law school would be necessary prior to taking the German Federal Bar examination.

Italy: There is a citizenship requirement for admission to the Italian bar. In addition, U.S. lawyers cannot offer advice on foreign and international law without being licensed in the practice of Italian law.

United Kingdom: To become a barrister, a litigator may be required to pass a one year diploma in law offered by certain polytechnics in London, complete a one year practical course at the Inns of Court School of Law in London after joining one of the four Inns of Court, and complete a one-year "pupilage" with a barrister in chambers. To become a solicitor, a New York lawyer, for example, may be required to pass a one-year diploma in law offered by certain polytechnics in London, complete a one-year course for the solicitors' final examination and pass the examination, and complete a two year "articled clerkship" with a solicitor or firm of solicitors.

Accounting Service

Austria: Citizenship is required to obtain a professional certification. Foreign accountants are not permitted to form a partnership with local firms. There are problems with using the international firm's name.

Denmark: Foreign accountants cannot form partnerships with Danish accountants and hold majority shares in accounting firms without special authorization of Danish authorities. There is a scope of practice limitation. A public accountant is not permitted to act as a liquidator or to arrange for a composition with creditors for a client.

France: There is a nationality requirement for establishment, which can be waived at the discretion of the French authorities. However, an applicant for such a permit must have lived in France for at least five years.

INVESTMENT BARRIERS

The EU's competency in investment issues is evolving and it has a growing role in defining the way in which U.S. investments in EU Member States are treated. Still in many instances Member State practices are of more direct relevance to U.S. firms. Under the 1993 Maastricht Treaty, free movement of capital became an EU responsibility and capital controls between both EU Member States and Member States and third countries were lifted. However, a few Member State barriers existing on December 31, 1993 remain in effect, but EU law can now supersede these. Right of establishment issues, particularly with regard to third countries, are a shared competence between the EU and the Member States. Direct branches of non-EU financial service institutions remain subject to individual member country authorization and regulation. EU Member States negotiate their own bilateral investment protection and taxation treaties, and generally retain responsibility for their investment regimes. In general, the EU supports the notion of national treatment for foreign investors, and EU law, with a few exceptions, requires that any company established under the laws of one Member State must, as a "Community undertaking," receive national treatment in all Member States, regardless of its ultimate ownership. However, some restrictions on U.S. investment do exist under EU law and others have been proposed.

Ownership Restrictions and Reciprocity Provisions

Under EU law the right to provide aviation transport services within the EU is reserved to firms majority-owned and controlled by EU nationals. The right to provide maritime transport services within certain EU Member States is also restricted. EU banking, insurance and investment services Directives include "reciprocal" national treatment clauses, under which financial services firms from a third country may be denied the right to establish a new business in the EU if the EU determines that the investor's home country denies national treatment to EU service providers. U.S. firms' right to national treatment in this area was reinforced by the EU's GATS commitments. In the EU Hydrocarbons Directive, the notion of reciprocity may have been taken further to require "mirror-image" reciprocal treatment, under which an investor may be denied a license if its home country does not permit EU investors to engage in activities under circumstances "comparable" to those in the EU. It should be noted, however, that thus far no U.S.-owned firms have been affected by these reciprocity provisions

Member State Practices

Austria: Austria's 1993 Banking Act (as amended) presents a number of market entry obstacles to U.S. banks. While European Economic Area Member States' banks may operate branches on the basis of their home country license, banks from outside the EEA must obtain an Austrian license to operate in Austria. However, if such a non-EEA bank has already obtained a license in another EEA country for the operation of a subsidiary, it does not need a license to establish branch offices in Austria. In addition, as of December 31, 1998, limits for single large loan exposures and open foreign exchange positions decreased considerably for branches and subsidiaries of banks from non-EU countries. As of that date, the capital of their parent company may no longer be included in the capital base used to calculate loan and foreign exchange position limits.

France: There are no general screening or prior approval requirements for non-EU foreign investment. Notification requirements apply to foreign investments, EU and non-EU, that affect national defense, public safety, or public health. The government is able to exert influence over privatized firms through "golden share" provisions. France continues to apply reciprocity requirements to non-EU investments in a number of sectors. For the purpose of applying these requirements, the French Government generally determines a firm's residency based on the residency of its ultimate owners rather than on the basis of the firm's place of establishment or incorporation.

Greece: Both local content and export performance are elements which are seriously taken into consideration by Greek authorities in evaluating applications for tax and investment incentives. However, they are not mandatory prerequisites for approving investments. Greece, which currently restricts foreign and domestic private investment in public utilities (with the exception of cellular telephony and energy from renewable sources, e.g. wind and solar), has deregulation plans for telecommunications and energy. As regards telecommunications, Greece has been granted a derogation until January 1, 2001 to open its voice telephony and respective networks to other EU competitors. In the energy field, the Greek energy market will be gradually deregulated, starting in February 2001. U.S. and other non-EU investors receive less advantageous treatment than domestic or other EU investors in the banking, mining, maritime and air transport sectors, and in broadcasting.

Portugal: Most foreign investments in Portugal are only subject to *post facto* registration. However, Portugal retains the discretion to limit foreign investment in state-owned companies being privatized on a case-by-case basis. To date, this prerogative has not been exercised.

ELECTRONIC COMMERCE

Electronic commerce (e-commerce) is not yet as widely used in Europe as in the United States but considerable growth is expected in the next few years as more Europeans are connected to the Internet (currently just 12 percent have Internet at their homes) and confidence in electronic commerce increases. European legislative and programmatic work intensified in this field in 1999.

In November 1999, EU institutions finalized a Directive on electronic signatures. The Directive sets out a framework for legal recognition of electronic signatures and includes mechanisms for cooperation with non-EU countries on the basis of mutual recognition. Although the Directive does not mandate any particular technology for electronic signatures, there is scope for a more restrictive approach to emerge through the implementation process in the Member States. This process will need to be monitored carefully to ensure that new barriers are not created.

The EU is also nearing agreement on a Directive addressing the legal aspects related to electronic commerce. This Directive is designed to ensure that electronic commerce benefits from the internal market principles of free movement of services and freedom of establishment. It covers only providers established in the EU. The proposed Directive would establish harmonized rules in a number of areas such as liability of intermediaries (e.g., Internet service providers), transparency provisions for commercial communications, and electronic contracts. It would not, however, supersede the Brussels or Rome Conventions (see below) and would leave scope, on a case by case basis, for national authorities to impose restriction on provision of electronic commerce from another member for certain specified purposes, including protection of public health and consumer protection.

The ongoing work on revisions of the Brussels (1968) and Rome (1980) Conventions covering jurisdiction and applicable law respectively has attracted considerable attention and controversy. Each contains a special regime for consumer contracts, which give the consumer recourse to his/her own courts and laws under certain conditions, one of which is that the seller has directed activities at the consumer. The proposed revision of the Brussels Convention makes clear that an electronic commerce website accessible to the consumer in his/her state would constitute a directed activity. This has attracted heavy criticism from the business community which claims such an approach unreasonably exposes all electronic commerce providers to litigation in all 15 Member States and will impede the development of electronic commerce growth in Europe. Consumer advocates argue in favor of the interpretation on the basis that the consumer is the weaker party and must, as a last resort, have access to his/her own courts.

Taxation of Electronic Commerce

In a June 1998 discussion paper and a June 1999 working paper, the European Commission outlined an approach to the taxation of electronic commerce. Its main principles include that no new taxes or additional taxes should be imposed on electronic commerce; rather existing taxes should be adapted and applied. In each European country, a domestic value added tax (VAT), which is a consumption tax and is distinct from an import duty, is payable on deliveries of goods and the provision of services. The Commission has said it considers electronic commerce transactions that do not involve the delivery of physical goods to be provision of a services subject to VAT. In this regard, the VAT would apply to services which are consumed within the EU, regardless of whether the services are supplied from inside or outside the EU. Where services are provided from within the EU to be consumed outside the EU, the services would not be subject to VAT. Although the European Commission has not yet released a formal proposal in this area, U.S.-based businesses have expressed concern over the implications of applying VAT to electronic commerce, particularly with regard to the levying and collection of VAT on any services supplied to the EU.

U.S. service suppliers have been concerned about changes to the EU 6th VAT Directive which provide for the levying of VAT on telecommunications and online services provided by offshore suppliers (i.e., companies not established or with their principal place of business elsewhere than in the EU). Suppliers of these services in the EU now are presumed to be established in at least one EU member state and are required to apply and collect the rate of VAT of that state on all services they supply to the EU. In its schedule of commitments in the General Agreement on Trade in Services (GATS), the EU has undertaken obligations to provide national treatment to value-added telecommunications services. This model could be adopted elsewhere.

OTHER BARRIERS

Canned Fruit

The U.S. cling peach industry alleges that EU programs give a competitive advantage to the EU canned fruit industry and have permitted EU canned peaches (primarily from Greece) to displace U.S. canned peaches in the United States and in third country markets. Damage to the interests of the U.S. canned peach industry caused by EU programs is a long-standing issue. Since Greece joined the EU in 1981 and began receiving EU subsidies for canned peaches, the U.S. canned peach industry has lost significant market share to Greece in third countries, most recently in Japan and Mexico. In response, the California Canning Peach Association filed a Section 301 petition. As a result, USTR took the case to a GATT panel and won a favorable decision in 1984. This decision facilitated the negotiation of the U.S.-EU Canned Fruit Agreement (CFA) in 1985. Although the CFA brought some discipline to processing subsidies, there is significant fraud and abuse which undermines the discipline imposed by the Agreement.

In order to better understand the extent and nature of the program affecting peach processing in the EU and to coordinate action to encourage reform of the EU regime, the United States organized a coalition with five other canned peach producing countries (Argentina, Australia, Brazil, Chile and South Africa) and held informal consultations with the European Commission in February 1997. As a result of these consultations, the EU subsequently provided the United States with additional data concerning their support programs for peach growers and processors. The United States then joined with 13 other countries in challenging the EC on its canned peach regime at the March 1998 meeting of the WTO Committee on Agriculture (COA). Informal consultations were held again in June 1998, at which the EU was pressed for information about the 1996 reform of its subsidy regime. In January 1999, USDA's Economic Research Service released a report which analyzed the factors underlying the competitive positions of the U.S. and EU canned peach industries and showed that EU subsidies gave the EU industry a competitive advantage.

Based on this information, the canned fruit industries from the coalition countries suggested reforms to the EU canned fruit regime which would make it less trade-distorting. Drawing from these suggestions, the United States and representatives from the governments of Argentina, Australia, and Chile presented a reform proposal to the EU member states in May 1999. At that time, member states were unwilling to support the suggested reforms. The United States will continue to work closely with representatives from the canned fruit industry to develop a strategy for addressing the issue of trade-distorting domestic support in the EU fruit and vegetable regimes in the WTO agriculture negotiations.

GHANA

TRADE SUMMARY

In 1999, the United States had a $26 million trade surplus with Ghana, a decrease of $52 million from 1998. U.S. merchandise exports were $235 million, a five percent increase from 1998. In 1999, Ghana was the 84th largest export market for the United States. U.S. imports from Ghana totaled $209 million, an increase of nearly 45 percent over that of 1998. The stock of U.S. foreign direct investment in Ghana rose to $321 million in 1998, up 15 percent from 1997. U.S. direct investment in Ghana is predominantly in the mining and fabricated metals sector, but there is also significant U.S. investment in the petroleum, beverages, seafood, telecommunications, energy, chemicals, and wholesale trade sectors.

IMPORT POLICIES

Since it began its structural adjustment program in the early 1980s, the Government of Ghana has progressively eliminated or reduced import quotas and surcharges. Currently, the government is harmonizing tariff rates within the Economic Community of West African States (ECOWAS) trade liberalization program. Since the elimination of Ghana's import licensing regime in 1989, importers are now simply required to sign a declaration that they will comply with the Ghanaian tax code and other laws. Special permits are still required for drugs, mercury, gambling machines, handcuffs, arms and ammunition, and live plants and animals. There is a ban on the importation of automobiles more than 10 years old.

Ghana's tariff structure focuses on capital, intermediate, and consumer goods. Only four *ad valorem* import duties are currently applied: zero percent, five percent, 10 percent, and 25 percent. Additionally, a 10 percent value-added tax is imposed on both imported and domestically produced items. The Government of Ghana also imposes a specific duty of 10 percent to 40 percent on 16 categories of merchandise (including alcoholic and non-alcoholic beverages, tobacco, and textiles) as an alternative to the value-added tax, when the specific duty is higher than the value-added tax. The intention behind these specific duties is to make locally manufactured goods equally competitive with imported goods.

Nevertheless, Ghanaian manufacturers have contended that the country's tariff structure places local producers at a disadvantage vis-a-vis imports from countries that enjoy greater production and marketing economies of scale. They have argued that tariff reductions have lowered the cost of imported raw materials and, thus, increased the competition for local producers. To develop competitive domestic industries with exporting capabilities, the Government of Ghana continues to support domestic private enterprises with financial incentives, tax holidays, and other similar programs.

Depletion of the Bank of Ghana's foreign exchange reserves in 1999, mainly as a result of higher oil import bills and a shortfall in external program assistance, has resulted in a sharp depreciation of the cedi and a shortage of foreign exchange. This was expected to result in a reduction in the level of imports in 1999 and beyond.

STANDARDS, TESTING, LABELING AND CERTIFICATION

Ghana has issued its own standards for most products under the auspices of the Ghana Standards Board (GSP), the government's testing authority, which subscribes to accepted international practices for testing purity and efficiency. In addition, the Board for Food and Drugs enforces its own standards, as well as those of the GSP. Under Ghanaian law, imports must bear markings in English identifying the type of product being imported, the country of origin, the ingredients or components, and the expiration date, if any. Locally manufactured goods are subject to comparable testing, labeling, and certification requirements. Ghana employs the services of four pre-shipment inspection (PSI) agencies that review imports for quality and price. To comply with the WTO Agreement on Customs Valuation, Ghana issued new regulations on January 1, 2000 that directed

Ghanaian Customs to begin using transaction values to assess duties on imports. This change has taken place. Pre-shipment inspection is scheduled to be replaced by destination inspection in April 2000.

Restrictions on U.S. Meat and Poultry Exports

Ghana continues to implement nonscientific barriers restricting market access for U.S. poultry. After recently lifting a ban on all U.S. meat and poultry products, Ghana put in place new regulations that significantly restrict U.S. exports of meat and poultry products by setting excessive and arbitrary fat content levels for meat and poultry imports. Poultry imports must have a fat content of less than 15 percent; beef less than 25 percent; and pork less than 35 percent. These regulations have effectively halted U.S. exports to Ghana of turkey tails, which typically contain at least 30 percent fat. Before the regulations, the United States had been shipping approximately three million pounds of poultry (at a value of $1.5 million), mostly turkey tails, annually to Ghana. These regulations have also had a serious impact on U.S. poultry exports to Nigeria, since Ghana was used as a transshipment point for products ultimately destined for the Nigeria market.

GOVERNMENT PROCUREMENT

Government purchases of equipment and supplies are usually handled by the Ghana Supply Commission (the official purchasing agency) through international bidding and, on occasion, through direct negotiations. Former government import monopolies have been abolished. Some parastatals may continue to import commodities, but they no longer receive government import subsidies to do so. For local businesses, ruling party membership is widely alleged to facilitate the award of government contracts.

Recently, local industry has been demanding increased government support and protection. In response, the government published a directive in August 1999 entitling local suppliers to a 12.5 percent price break on government contracts. Similarly, contractors on government projects must use at least 40 percent local materials, where available.

At its peak, the Government of Ghana controlled more than 300 state-owned enterprises; by the end of 1999, more than 202 of these had been privatized (note: just one enterprise was privatized during 1999). Among those that remain are the Cocoa Purchasing Board and Ghana Telecom. The privatization of a government-owned enterprise is sometimes influenced by political considerations.

EXPORT SUBSIDIES

The government does not grant direct export subsidies, but it does commonly use concessionary credit and tax incentives to promote exports. The export processing zone (EPZ) law, enacted in 1995, offers a tax holiday on profits for the first 10 years of business operation in an EPZ. In subsequent years, the tax rate for EPZ-based companies is eight percent (the same as for non-EPZ exporting companies). This compares with 35 percent for non-exporting companies.

INTELLECTUAL PROPERTY RIGHTS PROTECTION

Ghana is a member of the Universal Copyright Convention, the World Intellectual Property Organization, and the English-speaking African Regional Industrial Property Organization. It is also signatory to the WTO Agreement on Trade-Related Aspects of Intellectual Property Rights (TRIPS). The Government of Ghana has made an effort to meet its January 1, 2000 deadline for the implementation of TRIPS. Changes to appropriate legislation have been identified and amendments drafted for Cabinet approval and onward submission to Parliament. The Government of Ghana has requested assistance from the WTO and other sources to implement and enforce TRIPS-consistent policies.

Holders of intellectual property rights may access local courts to redress grievances, although few trademark, patent, and copyright infringement cases have been filed in recent years. Patent registration in Ghana does not present a serious problem for foreign rights holders. Registration fees vary according to the nature of the patent, but local and foreign applicants pay the same rate.

Infringement of intellectual property rights has not had a significant impact on U.S. exports to Ghana. Ghana is not a popular location for imitation designer apparel or watches. In cases where trademarks have been falsely used, the disparity in price and quality is usually readily apparent. Bootlegging computer software does take place, but there is no data available to accurately measure this practice. Pirating videotapes is a local practice that may affect U.S. exports, but the evidence suggests that this is not done on a large scale. There is no significant export market for books, cassettes, or videotapes pirated in Ghana.

SERVICES BARRIERS

The investment code excludes foreign investors from participating in the following subsectors: petty trading, taxi operation, car rental services for fleets of fewer than 10 vehicles, lotteries (excluding soccer pools), and the operation of beauty salons and barber shops.

In WTO negotiations on basic telecommunications services, Ghana made a commitment to liberalize its basic telecommunications services, subject to foreign firms entering into joint ventures with Ghanaian nationals. Ghana also adopted the telecommunications reference paper on regulatory principles. However, progress has been slow and a duopoly continues to exist for the provision of domestic and international services. The National Communications Authority was formed to regulate and liberalize the market, but it has yet to be staffed by qualified personnel. In the meantime, complaints of uncompetitive practices by the main national telecommunications operator continue to mount.

In the financial services negotiations, Ghana made a commitment to allow 60 percent foreign ownership in terms of commercial presence. Ghana requires a high paid-in capital requirement for foreign firms, but allows them to provide a full range of services.

Ghana has no barriers to electronic commerce.

INVESTMENT BARRIERS

The 1994 investment code guarantees the repatriation of capital, loan repayments, dividends, and licensing fees. It also provides guarantees against expropriation or forced sale and sets forth dispute arbitration procedures. Foreign investors are not subject to differential treatment with respect to taxes, foreign exchange, credit, or the importation of equipment and materials. The new investment code eliminates the need for investment project approval by the Ghana Investment Promotion Center (GIPC). Separate legislation covers investments in mining and petroleum and is applied equally to foreign and domestic investors. Registration, essentially for statistical purposes, is normally accomplished within five working days. Investment incentives are no longer subject to official discretion, since they have been incorporated into the corporate tax and customs codes. Incentives include zero-rating import tariffs for plant and equipment, and generous tax incentives.

Immigrant quotas for businesses, though relaxed, remain in effect. U.S. and other foreign firms in Ghana are required to adhere to Ghanaian labor laws, which contain restrictions on the number of expatriates employed. Wage rates in the metals and mining sectors are substantially higher than in other industries in the Ghanaian economy.

The high cost of local financing (with short-term interest rates currently between 30-40 percent) has been a significant disincentive for local traders and investors. Such high interest rates and a lack of liquidity in the financial system have constrained industrial growth and inhibited the expansion of most Ghanaian businesses from their current micro-scale operations. While the legalization of foreign exchange bureaus has made foreign currency readily available, the persistent depreciation of the cedi, which was about 40 percent in 1999, has made imported raw materials and equipment that much more expensive. Domestic inflation declined slightly from 15 percent in 1998 to about 13 percent at the end of November 1999. The Bank of Ghana continues to pursue a tight monetary policy in an effort to contain inflationary pressures.

The residual effects of a highly regulated economy and lack of transparency in government operations create an element of risk for potential investors. In addition, bureaucratic inertia within government ministries is sometimes a problem and administrative approvals often take longer than they should. Entrenched local interests sometimes have the ability to derail or delay new entrants to the Ghanaian market, and securing government approvals may sometimes depend on an applicant's contacts. The Government of Ghana recognizes corruption as a serious problem and has undertaken measures to address it.

GUATEMALA

TRADE SUMMARY

In 1999, the U.S. trade deficit with Guatemala was $454 million, an increase of $323 million from the U.S. trade deficit of $131 million in 1998. U.S. merchandise exports to Guatemala were $1.8 billion, a decrease of $129 million over 1998. Guatemala was the United States' 42nd largest export market in 1999. U.S. imports from Guatemala were $2.3 billion in 1999, an increase of $194 million from the level of imports in 1998. The stock of U.S. foreign direct investment in Guatemala amounted to $429 million in 1998. U.S. direct investment is concentrated in manufacturing, agriculture, and finance.

IMPORT POLICIES

Guatemala is a member of the Central American Common Market (CACM), which also includes Costa Rica, El Salvador, Nicaragua and Honduras. CACM members are working towards the full implementation of a Common External Tariff (CET) and with few exceptions, there are no tariffs on capital goods originating within the CACM and a maximum tariff of 15 percent on other goods originating within the CACM. Guatemala's tariffs on goods from outside the CACM range from zero to 28 percent.

In October 1996 Guatemala announced a new poultry import policy that expanded its annual Tariff-Rate Quota (TRQ) from 3600 metric tons to 7000 metric tons with an in-quota tariff of 15 percent. This import policy exceeds Guatemala's negotiated WTO obligations for poultry imports. However, the Government of Guatemala continues to use reference prices. For tariff purposes, poultry parts are valued at $.56 per pound, irrespective of actual invoice price. The use of this valuation effectively doubles the tariff on poultry imports. The Government of Guatemala has committed to implement the WTO Customs Valuation Agreement, which does not permit the use of arbitrarily-established prices in determining customs valuation, by July 21, 2000.

STANDARDS, TESTING, LABELING AND CERTIFICATION

Under Guatemalan law, food products sold in the domestic market must be tested, registered and carry labels in Spanish. The law requires that every size or form of product sold be registered separately, even if the product content is of identical composition. Personnel trained and available to carry out this process are in short supply. Importers complain that the product registration and testing process, though not otherwise overly burdensome, is time consuming. Products are often damaged during the process and are susceptible to pilferage while awaiting completion of the tests and registration. Enforcement of the product registration and labeling requirement has been irregular, but is becoming more strict.

GOVERNMENT PROCUREMENT

Though the Government Procurement Law requires all government purchases over $160,000 to be submitted for public competitive bidding to no fewer than five bidders, most government contracts are awarded without following prescribed procedures. Foreign suppliers must meet pre-qualification requirements and submit bids through locally registered representatives, a bureaucratic process which can place foreign bidders at a competitive disadvantage. Guatemala is not a signatory of the WTO Government Procurement Agreement .

INTELLECTUAL PROPERTY RIGHTS PROTECTION

Guatemala's protection of intellectual property and the enforcement of existing laws and regulations is inadequate. Pursuant to Section 182 of the Omnibus Trade and Competitiveness Act of 1988 (Special 301), Guatemala was placed on the Watch List in 1992 and remained there through 1998 because of its failure to solve copyright protection deficiencies, improve enforcement, and dismantle market access barriers. In 1999, Guatemala was elevated to the Priority Watch List. Guatemala's continuing failure to protect and enforce its laws shows an indifference to its international obligations and bilateral commitments.

Copyrights

Guatemala passed a new Copyright Law in 1998 that protects computer software programs. However, the law fails to authorize government prosecution of copyright crimes. Instead, private copyright owners are forced to initiate private civil or criminal actions to protect their rights. Although the software industry has successfully brought some civil actions against resellers of pirated software, distribution and use of illegally copied software – including by government agencies – is commonplace.

In 1992, the Government of Guatemala passed a law authorizing the establishment of a regulatory agency to police the cable television industry. However, the regulatory entity has not been established and regulation of this industry is insufficient to protect U.S. rights holders. Piracy of signals by cable system operators continues, though the unauthorized transmission of premium channels has diminished. Local broadcast channels occasionally re-transmit premium or pay-per-view events. A new law to regulate the cable television industry was drafted in July 1997, but there has been no action taken in the legislature. A report prepared by the International Intellectual Property Alliance (IIPA) estimates that copyright infringements in Guatemala cost U.S. firms $24.5 million in 1998. Industry sources estimate that 85 percent of software continues to be pirated.

Patents

Guatemala's patent law (153-85) is out of date and deficient in several areas. For example, it limits protection to only 15 years (10 years for food, beverages, medicines, and agrochemicals) and requires mandatory local manufacturing of the patented product. Enforcement of the law is limited. A number of subject areas are not patentable, including mathematical methods, living organisms, commercial plans, and chemical compounds or compositions. Guatemala does not patent protection for pharmaceutical and agricultural products, nor does it appear to provide in the alternative a mailbox mechanism and exclusive marketing rights, as required by the TRIPS agreement.

Trademarks

Guatemala's law provides insufficient protection for owners of well-known trademarks. Exclusive rights are granted on a first-to-file basis, thus permitting third parties to register and gain exclusive use of internationally known trademarks. Applications by non-rights holders to register internet domain names based on registered trademarks or well-known or famous names are regularly approved by the local registrar. Sales of counterfeit clothing and other merchandise are common in Guatemala.

SERVICES BARRIERS

Guatemala still has not submitted an acceptance to the Fourth Protocol to the General Agreement on Trade in Services, which was necessary to bring its commitments on basic telecommunications services into effect. Instead, Guatemala proposed unilaterally to modify its commitments, pledged in the 1997 WTO Basic Telecommunications Agreement, by deleting the words "cost-oriented" and "reasonable" from the interconnection obligations contained in the WTO reference paper on the pro-competitive regulatory principles. The United States seeks action by Guatemala to accept the Fourth Protocol and its earlier, more complete proposed commitments. Majority foreign ownership in telecommunications services is not permitted. International traffic must be routed through the facilities of an enterprise licensed by the Guatemalan Superintendency of Telecommunications. Commercial radio or television stations must have at least 75 percent Guatemalan ownership, although this requirement is not strictly enforced.

INVESTMENT BARRIERS

Guatemala generally provides foreign investors with national treatment, though its complex and confusing laws, regulations and red tape can sometimes be discouraging. The new

Investment Law passed in 1998 addresses some of these issues, including providing for national treatment for foreign investors. However, restrictions on foreign investment remain in several sectors of the economy, including auditing, insurance, mineral exploration, forestry and the media.

GULF COOPERATION COUNCIL

TRADE SUMMARY

This section of the report analyzes the trade policies of the six member states (Bahrain, Kuwait, Oman, Qatar, Saudi Arabia, and the United Arab Emirates (UAE)) of the Gulf Cooperation Council (GCC).

In 1999, the U.S. trade surplus with the GCC was $1.1 billion, a decrease of nearly $5.4 billion from the U.S. trade surplus in 1998. U.S. merchandise exports to the GCC were $12.2 billion, a decrease of $3.2 billion, 20 percent, from the level of U.S. exports to the GCC in 1998. U.S. imports from the GCC were $11.1 billion in 1999, a $2.2 billion increase (25.3 percent) from the level of imports in 1998.

Recent figures indicate U.S. foreign direct investment (FDI) in Saudi Arabia had reached $4.2 billion in 1998. U.S. FDI in the UAE was $710 million in 1998, up 25.2 percent from that in 1997. In the GCC as a whole, U.S. FDI is largely concentrated in the petroleum extraction, petrochemical, and manufacturing sectors.

OVERVIEW

The GCC is an economic and political policy-coordinating forum for its members. Since it cannot impose trade policies upon its member states, each is free to pass and enforce its own trade laws. However, there has been growing cooperation among GCC members on certain issues, such as intra-GCC investments, standards-setting, and intellectual property protection. More recently, the GCC agreed that a customs union would come into force by March 2005.

The United States favors strengthening regional integration efforts among GCC members, as well as enhancing U.S.-GCC economic and commercial ties. To this end, the U.S. Government engages in high-level economic policy talks with GCC members through the U.S.-GCC Economic Dialogue. The most recent meeting of the U.S.-GCC Economic Dialogue took place in October 1999 in Abu Dhabi.

IMPORT POLICIES

Tariffs

The GCC leadership has been considering for several years the establishment of a unified tariff structure. At the November 1999 Summit, the GCC Council announced that such a customs union would come into force in March 2005 with tariff rates at 5.5 percent for exempted and basic commodities and 7.5 percent for other commodities. However, several ancillary issues, most notably how the GCC states will apportion the tariff revenues, remain to be resolved.

Currently, some GCC countries maintain tariffs of 15-20 percent on products similar to those produced locally. Saudi Arabia maintains a 12 percent tariff on most products, but this can reach as high as 20 percent for certain protected industries. Oman maintains a maximum five percent tariff on most imported consumer products, including automobiles. However, tariffs on tobacco, pork, and alcohol products can reach 100 percent in countries where importation of such products is permitted. As of January 1, 2000, Oman restored customs duties to 1998 levels, rescinding a 1999 decision to raise customs duties on many categories of imported luxury goods to 15 percent. The UAE, which is the regional commercial hub and has traditionally depended on foreign trade, has continued to push for lower tariff rates throughout the GCC. As a transitional step, Bahrain cut tariffs on most foodstuffs and essential consumer goods as of this year.

Of the GCC countries, Bahrain, Kuwait, Qatar, and the UAE are members of the WTO. All four of these countries entered the GATT and WTO under simplified procedures, based on the United Kingdom's previous application to the GATT 1947 on their behalf. A GATT observer since 1986, Saudi Arabia applied for WTO membership in April 1993. Negotiations for the terms of Saudi Arabia's accession are well under way. Similarly, Oman became an observer to the WTO in April 1995 and submitted its formal application for WTO accession in 1996. Oman is expected to complete negotiations on its WTO accession package and accede to the WTO this year, following the introduction of new WTO-related legislation and approval by WTO members.

Import Licensing

Except in Bahrain, varying degrees of licensing procedures are enforced to protect domestic industries or limit trade to nationals of GCC countries. In Saudi Arabia, the importation of certain articles is either prohibited or requires special approval from competent authorities. Specifically, the importation of alcohol, firearms, illegal drugs, and pork products are prohibited, and imports of agriculture seeds, live animals, fresh and frozen meat, books, periodicals, movies, tapes, religious books and tapes, chemicals and harmful materials, pharmaceutical products, wireless equipment, horses, products containing alcohol, and natural asphalt require special approval. Kuwait prohibits the importation of alcohol, firearms, and pork products. In the UAE, only firms with the appropriate trade license can engage in importation, and only UAE nationals can get such a license. In Oman, companies that import goods must be registered with the Ministry of Commerce and Industry. Importation of certain classes of goods, such as alcohol, firearms, narcotics, and explosives require a special license, and media imports are subject to censorship.

Documentation Requirements

All GCC countries impose complicated, costly, and time-consuming import documentation requirements. For example, certain documents must be authenticated by the National U.S.-Arab Chamber of Commerce (or, in the case of U.S. goods destined for Saudi Arabia, by the U.S.-Saudi Business Council) and by the diplomatic mission of the importing country. In Oman, with the exception of food products, this authentication procedure is not required if the importing company has an existing agency agreement with the U.S. exporter. In 1996, Oman began the process of simplifying customs clearance documentation to expedite the flow of goods and promote its ports and airports. For example, Arab League boycott-certification is no longer required. However, only Omani nationals are permitted to submit documents to clear shipments through customs. Since July 1998, the UAE has required that documentation for all imported products must be authenticated by the UAE Embassy in the country of origin. There is an established fee schedule for this authentication. Without the validation in the country of origin, customs authorities will apply the fee schedule when the goods arrive in the UAE.

STANDARDS, TESTING, LABELING AND CERTIFICATION

The United States is increasingly concerned about certain restrictive GCC standards. In particular, shelf life standards are set at arbitrary levels that restrict imports of a variety of food products of interest to U.S. suppliers. Because of their geographical proximity, European suppliers are less affected by the shortened shelf-life periods.

The situation has deteriorated in recent years, as shelf life durations for a variety of food products have been shortened, in some cases by half, as GCC countries begin to strictly enforce Gulf Standard 150/1993, Part I. GCC shelf-life standards appear to violate the WTO SPS agreement as they are arbitrary and do not appear to be consistent with any science-based approach. Their removal could significantly increase U.S. food exports to the region. In the context of its accession to the WTO, Oman agreed to revise its shelf-life requirements program to meet the substantive requirements of the SPS Agreement. Specifically, Oman intends to eliminate mandatory shelf-life standards for "shelf-stable foods" upon accession. Oman also agreed to establish regulations and procedures in line with international norms for "highly perishable refrigerated" food products and to gradually replace remaining shelf-life requirements on these products with a scientific regulatory framework by December 31, 2000.

In Saudi Arabia, the Saudi Arabian Standards Organization (SASO) imposes shelf life requirements on food products. Over the past few years, SASO has shortened shelf life durations for baby foods, eggs, stuffed cookies, chilled meats, and some snack foods – all products of interest to U.S. exporters. Some have claimed that SASO has shortened shelf life standards to protect Saudi Arabia's expanding food processing industry; Saudi Arabia has become self-sufficient in egg production, produces an increasing share of milk and poultry products, and is growing in importance as a biscuit and cookie producer.

In 1990, the United States entered into a highly successful arrangement with SASO to encourage cooperation in the development of standards. SASO's work frequently leads to the creation of regional GCC standards. The U.S.-SASO partnership, which includes a U.S. technical advisor in Riyadh funded by the U.S. Government, has led to greater transparency in the Saudi system and has increased opportunities for American exporters to comment on draft Saudi standards. SASO has already adopted ISO 9000 as approved standards for Saudi Arabia and acts as an accreditation body through the Quality Assurance Department. The 1993 NIST-SASO MOU was renewed in July 1997 for another three years. More recently in 1996, the United States National Institute of Standards and Technology (NIST) and the GCC countries concluded a memorandum of understanding (MOU) on standards, metrology, and technical assistance programs at the economic dialogue meeting in Bahrain.

In October 1995, Saudi Arabia initiated a pre-shipment certification program to monitor and control the quality of certain products imported into the country. The International Conformity Certification Program (ICCP) currently applies to 76 regulated consumer product lines. The ICCP is managed by Intertek Testing Services (ITS), which inspects and tests, on behalf of SASO, shipments bound for Saudi Arabia. The United States and many other exporting countries have questioned the manner in which the ICCP has been implemented. Problems include the lack of transparency, *ad valorem* fees, and favorable national treatment of local products manufactured in the Gulf Region. Recently though, shipments valued at less than five thousand dollars have been exempted from compliance with ICCP regulations and in September 1998, Saudi Arabia's Ministry of Commerce removed all food and agricultural products from the ICCP.

Standards and labeling issues are also a problem in many of the GCC countries. For example, telecommunications and computer equipment standards tend to lag behind market developments, which often results in government tenders that specify purchase of obsolete and more costly items. That said, the GCC plans to implement a system for registering companies that comply with international standard ISO 9000. The central accreditation organization will be the Gulf Standards and Metrology Organization (GSMO) for the GCC countries. An agency in each of the six countries will inspect factories, make recommendations, and issue registrations. The GSMO is negotiating with the EU to put the program in place, and the EU is sending experts to help the GCC in technical and training aspects of the program and to set up mutual recognition systems for certification and quality control mechanisms. In January 1998, a GCC standardization official reported that the GSMO had approved approximately 1000 unified standards for the GCC countries to date.

GOVERNMENT PROCUREMENT

Most GCC countries maintain preferential "buy national" policies and/or offset provisions requiring that a portion of major (and usually military) government tenders be subcontracted to local firms. Several GCC states actively support the creation of offset companies in diverse fields as part of defense procurement.

More specifically, Kuwaiti Government procurement policies specify the use of local products when available and prescribe a 10 percent price advantage for local firms in government tenders. However, this local firm price advantage is not commonly applied in government tenders. Kuwait's offset program requires that foreign firms awarded government contracts with a single or cumulative value in any one fiscal year (July 1 to June 30) of one million Kuwaiti dinars ($3.3 million) or more, invest 30 percent of the contract value in an approved project in Kuwait or an agreed third country. In 1997, Kuwait began applying the offset requirement to nonmilitary contracts as well. Until then, the scope of the offset requirement had been limited to military sales. This expanded coverage is a negative development that could represent a significant new barrier to expanded U.S. exports to Kuwait. Kuwait is not a signatory to the WTO Agreement on Government Procurement.

Saudi Arabian Government contracts on project implementation and procurement are regulated by several royal decrees that strongly favor GCC nationals. However, most defense contracts are negotiated outside these regulations. Under a 1983 decree, for example, contractors must subcontract 30 percent of the value of the contract, including support service, to majority-owned Saudi firms. An exemption is granted in instances where no Saudi company can provide goods and services to fulfill the obligation. In addition, Article 1(d) of the tender regulations requires that Saudi individuals and establishments have preference over all other entities in government dealings. The same regulations also accord preference to "mixed" entities as long as Saudi nationals hold at least 51 percent of the mixed entities' capital. Article 1(e) gives preference to products of Saudi origin that satisfy the requirements of the procurement, even when the product specifications are inferior to those of a foreign counterpart. Saudi Arabia also gives priority in government purchasing programs to GCC products. These items receive up to a 10 percent price preference over non-GCC products in all government contracts contested by foreign contractors.

Oman provides a 10 percent price preference to tenders that use high local content in goods or services. Additionally, the government considers quality of product or service and support as well as cost in evaluating bids. For most major tenders, Oman typically notifies firms either already registered in Oman or preselected by project consultants. Bidders' costs soar when some award decisions are delayed, in some instances for years, or when bidding is reopened with modified specifications and typically short deadlines. Oman is known to have an offset program only with the United Kingdom, although the investment can originate from any country. Offsets are not standard adjuncts to government contracts and have not been associated with any U.S. defense transactions, whether commercial or foreign military sales. In the context of its accession to the WTO, Oman has agreed to initiate negotiations to join the WTO Agreement on Government Procurement when it joins the WTO.

The UAE does not require that a portion of any government tender be subcontracted to local firms, but there is a 10 percent price preference for local firms on procurement and tenders. The UAE requires a company to be registered in order to be invited to receive government tender documents. To be registered, a company must have 51 percent UAE ownership. However, these rules do not apply on major project awards or defense contracts where there is no local company able to provide the goods or services required. Set up in 1990, the UAE's offset program required defense contractors with contracts worth more than $10 million to establish joint venture projects that yield profits equivalent to 60 percent of their contract value within a specified period (usually seven years). There are also reports – as well as anecdotal evidence – that indicate that defense contractors can sometimes satisfy their offsets obligations through an up-front, lump-sum payment directly to the UAE Offsets Group. The projects must be commercially viable joint ventures with local business partners, and are designed to further the UAE objective of diversifying its economy away from oil. To date, more than 30 projects have been launched, including, inter alia, a hospital, an imaging and geological information facility, a leasing company, a cooling system manufacturing company, an aquiculture enterprise, Berlitz Abu Dhabi – a language instruction center, and a firefighting equipment production facility. The UAE is not a signatory to the WTO Agreement on Government Procurement.

Qatar gives preferential treatment to contractors that include high local content in bids for government tenders. As a rule, bids must be submitted through local Qatari agents, but there are exceptions. For example, government procurement of defense equipment does not require use of local agents. However, local agents are often used and have been very useful in securing contracts. Qatar gives a 10 percent price preference to local firms and a five percent price preference to GCC firms in all government procurement. Qatar is not a signatory to the WTO Agreement on Government Procurement.

In Bahrain, foreign firms are required to have a local agent or a local partner before bidding on a government contract. Construction companies bidding on government construction projects must be registered with the Ministry of Works and Agriculture. The government makes major purchasing decisions through the tendering process with invitations being issued to selected, prequalified firms. Firms do not need to prequalify for smaller contracts. Bahrain is not a signatory to the WTO Agreement on Government Procurement.

EXPORT SUBSIDIES

While there is no GCC-wide export subsidy program, certain member states have programs to support local industries that may, in effect, equate to export subsidies.

Saudi Arabia contends that it has no export subsidy programs for industrial production. However, the costs for establishing productive facilities in the industrial cities in Saudi Arabia are artificially low: land is available at little or no cost, and low interest loans are available from the Saudi industrial development fund. Because input prices are relatively low in Saudi Arabia, investment in the production of petroleum and related downstream products is comparatively attractive. The Saudi Government contends that low input prices reflect Saudi Arabia's low costs for domestic oil production.

Saudi Arabia began a substantial reduction in wheat production subsidies in 1993. The Grain Silos and Flour Mills Organization (GSFMO) controls wheat production by assigning production quotas to each of the country's grain farmers. Farmers can only receive government support prices within preassigned quotas. GSFMO production quotas in 2000 remain at 1.8 metric tons. This conforms with current policy to produce for domestic needs. Production support prices remain $400 per metric ton, a level still well above world prices.

The Oman Development Bank (ODB) provides export payment guarantees, at below local market rates, protecting Oman's relatively few non-petroleum exporters from payment problems on transactions, subject to ODB approval of buyer and country risk. The Omani Ministry of Commerce and Industry also offers soft loans to projects in the industrial, tourism, health, education, and service-related sectors. Formerly interest-free, these loans now charge about four percent interest. However, in 1999, due to budgetary constraints, the Omani government temporarily suspended the soft loan program and encouraged private sector investors to turn to commercial banks for financing. In the context of its WTO accession, Oman reported that a newly established Export Credit Guarantee Agency (ECGA) issues guarantees to commercial banks for providing financing to exporters against the risks of nonpayment and that there is no interest subsidy involved.

Kuwait offers industrial subsidies similar to those of other GCC states. The Industrial Bank of Kuwait offers below market rate loans to local industry. Land is also provided at low cost, and imports of machinery and other goods are exempted from customs duties. Industries also benefit from low-cost utilities.

Bahrain has phased out most industrial subsidies for export industries. The government permits the duty-free importation of raw material inputs for incorporation into products for export and the duty-free importation of equipment and machinery for newly established export industries. All industries in Bahrain, including export and foreign-owned firms, benefit from low-cost utilities.

INTELLECTUAL PROPERTY RIGHTS PROTECTION

GCC states have made some progress in recent years in adopting laws and regulations protecting intellectual property. However, most of these laws are not yet consistent with the WTO Agreement on Trade-Related Aspects of Intellectual Property Rights (TRIPS Agreement) and all of the GCC countries – except Bahrain – were identified in last year's Special 301 review. The GCC Secretariat has declared the protection of intellectual property rights (IPR) to be a priority and is working to strengthen GCC laws in the six member states, particularly in patent protection. In this respect, the GCC has issued a unified patent law whose ultimate purpose is to create a patent system for all member states. The GCC patent office, headquartered in Riyadh, began accepting patent applications in October 1998, but has not yet issued any patents. According to GCC patent regulations, once a patent is registered with the GCC patent office, all GCC member states automatically afford its owner protection. The GCC recently adopted amendments to the law, drafted in consultation with the World Intellectual Property Organization. However, the full force and effect of the amendments are not yet known. Although all GCC states have trademark laws, some are not effectively enforced. The GCC has also indicated an interest in creating common trademark and copyright laws and regimes. However, no progress has been made so far.

The GCC countries are in various stages of acceding to international intellectual property conventions. All GCC states are members of the World Intellectual Property Organization (WIPO) and, except Saudi Arabia and Oman, are members of the World Trade Organization (WTO). Despite the progress to date, IPR protection problems continue throughout the region, particularly with enforcement. Pirated video cassettes, computer software, and sound recordings are available to varying degrees. Counterfeit products such as clothing, auto parts, and household products are also widely available.

Saudi Arabia

As part of its effort to gain membership in the World Trade Organization, Saudi Arabia has embarked on a wholesale revision of its intellectual property laws to bring them into conformity with the TRIPS Agreement. Saudi Arabia is working with the World Intellectual Property Organization to comply with its obligations under the Agreement. The United States has provided substantial input on these issues in bilateral meetings concerning Saudi Arabia's WTO accession.

Saudi Arabia enacted copyright and patent laws in 1989. The United States has raised a number of concerns about the copyright law, including the fact that U.S. sound recordings are not clearly protected. Saudi Arabia asserts that through its accession to the Universal Copyright Convention, it is obliged to protect U.S. and other non-GCC member works. However, the United States has asked Saudi Arabia to provide greater certainty on this issue, preferably through amending its legislation.

While Saudi Arabia's patent law provides a generally adequate legal basis for protection, its patent term and compulsory licensing provisions are not yet consistent with the provisions of the TRIPS Agreement. The functions of the Saudi patent office also need to be substantially improved as the office has issued only 26 patents and has a backlog of more than 7,000 applications. The office has recently streamlined its procedures in an effort to expedite consideration of applications. Once it is fully functional, the recently established GCC patent office may also serve to ameliorate the backlog situation.

Saudi Arabia has made significant progress on copyright enforcement in the video and sound recordings market, particularly in clearing shelves in retail stores of pirated video and music cassettes. However, much of the pirated video and audio material has reportedly gone "underground" in Saudi Arabia, requiring new enforcement initiatives. Although Saudi Arabia has made some progress in discouraging the sale and use of pirated software, U.S. software manufacturers are still seeking greater Saudi government enforcement action against software copiers and end-users of unauthorized software.

The United Arab Emirates

The UAE enacted copyright, trademark, and patent laws in 1992. The government is now working to amend the patent law to bring it into compliance with its obligations under the TRIPS Agreement, but progress has been slow. The current UAE patent law protects pharmaceutical processes but not products. Due to confusion surrounding interpretation of protection for foreign works in the law, several recent court cases have resulted in acquittals for UAE companies charged with violating UAE federal copyright and trademark laws.

The UAE Government has cracked down on piracy of audiovisual works and sound recordings. As a result, shops in the UAE do not carry pirated audio/video works and sound recordings. Modern movie theaters have opened since September 1994 and show western movies obtained from licensed distributors. Pirated video products enter the country from neighboring Oman, but are not generally available in shops registered and licensed by government authorities.

The central government is also committed to countering computer software piracy, which is widespread. In 1996, the UAE recorded the largest drop in software piracy worldwide. As a result, in mid-1997, international software manufacturers honored the Minister of Information and Culture for his commitment to combating software piracy. Recent press reports have provided extensive coverage of UAE raids on suspect entities, and have detailed UAE seizures of pirated goods. Large quantities of pirated goods have been destroyed and press coverage has been prominent. In early 1999, U.S. motion picture and business software associations recommended removing the UAE from the Special 301 Watch List.

Bahrain

Bahrain was removed from the Special 301 Watch List in 1999 in recognition of its greatly enhanced IPR protection. The government has made dramatic progress in reducing copyright piracy, patent and trademark protection has always been strong, and there continue to be no reports of significant violations of U.S. patents and trademarks in Bahrain. The government's copyright enforcement campaign – based on inspections, closures, and improved public awareness – began in late 1997 against the video industry, followed by the audio and software industries, with impressive results. The commercial pirated video and audio markets are nearly gone. The government plans to amend the copyright law by June 2000 to bring it into full compliance with its obligations under the TRIPS Agreement.

Kuwait

Kuwait became a member of the World Intellectual Property Organization in April 1998, but has not yet signed the Berne Convention for the Protection of Literary and Artistic Works (copyright) or the Paris Convention for the Protection of Industrial Property (patent and trademark). The National Assembly approved a copyright law in December 1999, and the Kuwaiti government has pledged to submit several amendments to the National Assembly in order to make the law fully compliant with its obligations under the TRIPS Agreement.

Kuwait has patent and trademark laws on the books, but only the trademark law is in effect. The patent law was passed in 1962 and is not consistent with the TRIPS Agreement. Enforcement of the trademark law is reasonably effective, but foreign trademark holders complain that the registration and renewal process is burdensome and costly. While the

National Assembly vetoed government patent and trademark decrees in December 1999, identical laws are pending before the National Assembly. Passage is expected during the first quarter of 2000. Absent patent protection, pharmaceutical products have depended on Kuwait's strict drug registration criteria for protection against pirated-copies. In December 1998, the Ministry of Health issued a decree, which took effect June 1, 1999, barring the registration in Kuwait of unauthorized copies of drugs still under patent in their country of origin.

Qatar

Although Qatar's copyright law officially took effect on October 20, 1996, government reorganizations led to some uncertainty as to the status of the Copyright Bureau and consequently to any progress in enforcing this law. In January 1999, the Copyright Bureau, originally established under the now defunct Ministry of Information, was officially re-instituted at the Ministry of Finance, Economy and Commerce, with the Minister granted full enforcement authority. Some progress in enforcement of the copyright law has been recorded during 1999.

Qatar has no independent patent law or patent office, but has announced that it will adhere to the patent law adopted by the GCC in November 1999. Establishment of a GCC patent office is being coordinated with the other GCC countries. The Ministry of Public Health requires registration of all pharmaceutical products imported into the country and will not register pirated copies of products patented in other countries. The Ministry of Public Health enforced this policy during 1999. However, U.S. industry has raised concerns regarding adherence to this policy. Qatar provides protection for trademarks registered with the Office of Commercial Registration in the Ministry of Finance, Economy and Commerce.

Oman

Oman issued a copyright protection law in 1996, and in 1999 enacted decrees banning the local sale of pirated video cassettes, sound recordings, and computer software. Enforcement of the copyright protection decree by the Ministry of Commerce and Industry and Royal Oman Police has been effective, as once-plentiful pirated video and audio tapes and computer software have disappeared from local vendors' shelves. In the context of WTO accession, Oman has indicated that it will use the GCC Patent Office and GCC Patent Law to establish a domestic patent system, rather than adopt national legislation. In adopting the GCC law and regulations, Oman will amend those provisions not in conformity with the TRIPS Agreement. The Ministry of Health says it verifies patent compliance when reviewing new import applications for pharmaceuticals. However, U.S. industry has raised concerns about this verification process. As a precondition of WTO accession, Oman is expected in early 2000 to introduce amended copyright and patent legislation and expanded enforcement laws that will be fully compliant with the TRIPS Agreement.

SERVICES BARRIERS

Insurance

Most GCC countries discriminate against foreign insurance companies, generally by restricting foreign participation in the onshore market (as in Kuwait), or by requiring operation through a local sponsor (as in Saudi Arabia and Oman). (Note, however, that a sponsorship requirement is not uniquely applied to insurance firms.) Moreover, in Oman, in the insurance sector, as in all services except banking, foreign ownership may not exceed 49 percent. As part of its WTO accession package, Oman is expected to introduce legislation no later than January 2001 allowing majority foreign ownership of up to 70 percent in most services sectors. Oman also will be phasing in commitments over a period of years to allow 100 percent foreign ownership for key sectors, including telecommunications services and many financial services.

Foreign insurance companies can establish a presence in the UAE by operating a branch or representative office. This option allows 100 percent foreign ownership, but, in general, limits business activities to offshore operations. Qatar currently bans the establishment of new insurance companies, and there is no indication the ban will be lifted soon. In December 1996, Bahrain issued a decree amending the country's insurance law to allow foreign companies to open life insurance businesses.

The companies are being allowed to enter the life insurance sector because of a lack of local experience in the field. Prior to the new law, companies could establish only representative offices in Bahrain. Saudi Arabia has allowed insurance companies to operate in the Kingdom, but there is no insurance law governing the sector. The government has considered a regulatory framework for insurance, but the timetable for the adoption and implementation of such regulation is uncertain. The central bank has assumed *de facto* jurisdiction over companies selling whole life insurance and similar investment products, requiring them to come under the control of financial institutions who are already subject to central bank regulation.

Banking

Banking activity in the GCC countries is subject to a variety of restrictions. Saudi regulations require that Saudi nationals own 60 percent of any bank. However, the Saudi Government has decided to allow GCC banks to open branches in the Kingdom. In Kuwait, foreigners are permitted to own up to 40 percent of Kuwaiti banks. Bahrain continues as a regional financial services hub and continues to issue new licenses to banks (12 in 1998), focusing on promoting the Islamic, offshore, and investment banking sectors. The traditional commercial banking sector remains saturated.

While Oman, Qatar, and the UAE have laws permitting foreign banks to operate, these countries have barred new non-GCC banks from establishing operations on the grounds that their countries are "over-banked." Despite 1997 GCC initiatives to facilitate GCC-based banks operating branches in other GCC states, no new foreign banks have begun operating in the UAE in the last few years. In the UAE, foreign banks may open representative offices. Oman does not permit representative offices. The UAE and Oman do not permit offshore banking. Qatar places some restrictions on foreign banks operating in the country. For example, only foreign banks established in Qatar before 1970 may receive central bank approval to open branch offices. Since 1998, two foreign banks have opened several branches.

Shipping

Kuwait has prevented foreign shipping lines access to government project cargo by granting the United Arab Shipping Company the right of first refusal on all such cargoes. However, Kuwait no longer applies this requirement to shipments from U.S. ports. Bahrain continues to favor the United Arab Shipping Company – in which Bahrain is a shareholder – on cargo contracts for government projects. Saudi Arabia gives preferences to national carriers for up to 40 percent of government cargoes. Under these rules, the Saudi national shipping company and United Arab Shipping Company receive preferences.

INVESTMENT BARRIERS

Foreign equity is limited to 49 percent in Kuwait, Qatar, and the UAE, although the UAE has exempted the Jebel Ali and other free zones from this barrier. Products entering the UAE from the free zone are treated as foreign products. The 49 percent limit on foreign equity in Qatar can be overcome by the issuance of an emiri decree.

Oman provides national tax treatment for joint venture firms with no more than 49 percent foreign direct investment. Corporate tax rates have dropped from 50 percent to no more than 25 percent for majority foreign-owned investments with a minimum one percent of Omani equity participation. Oman is reviewing and modifying its laws and procedures to help attract increased foreign investment. Majority foreign-owned investments are eligible for tax holidays of up to 10 years, a benefit also enjoyed by Omani firms. The tax holiday waives corporate income tax as well as customs duties on goods imported for business purposes.

Kuwait currently maintains restrictions on foreign investment, including limits on foreign ownership (a maximum of 49 percent in general and 40 percent in the banking sector) and discriminatory taxation policies. The national assembly, in December 1999, vetoed a government decree that would have allowed majority foreign ownership of Kuwaiti companies, in some circumstances up to 100 percent foreign ownership, and tax holidays for up to 10 years for new investors. The assembly based their action on the grounds that the decree violated the constitution since it was not of an urgent nature. An identical draft law has been approved by the assembly's economic and finance committee but final approval may be delayed as it is being linked to a controversial draft law that would charge employers for hiring expatriate workers. A free trade zone, in which many of the current restrictions do not apply, was launched in March 1999 and officially inaugurated in November 1999.

While Saudi Arabia maintains no legal restrictions on the share of foreign ownership, under current policy, wholly foreign-owned investment contracts are rare. Moreover, Saudi Government incentives such as tax holidays and Saudi Industrial Development Fund lending are normally not available unless there is at least 25 percent Saudi ownership. The foreign capital investment regulation requires that foreign investment be made consistent with the nation's development priorities and that investments include some technology transfer. Foreigners may not invest in joint ventures engaged solely in advertising, trading, distribution or marketing. Foreign equity is taxed at a maximum rate of 45 percent of profits. Saudis are not subject to a tax on profits, although they do pay a wealth tax ("zakat"). Saudi Arabia is currently considering a major revision of its foreign investment code, which may significantly change its investment and taxation regimes.

Bahrain permits 100 percent foreign equity ownership of direct investments by GCC nationals, and is considering extending this to all foreign investors. The United States and Bahrain signed a Bilateral Investment Treaty (BIT) in September 1999. Once ratified by both sides, the BIT will provide additional benefits and protection to U.S. investors in Bahrain, such as the better of national or most-favored-nation treatment, the right to make financial transfers freely and without delay, international law standards for expropriation and compensation cases, and access to international arbitration. Oman currently permits 100 percent foreign ownership on a case-by-case basis as well, with approval of the Council of Ministers. However, new WTO-related legislation expected to be introduced in 2000 will delegate this approval to the Minister of Commerce and Industry, expediting the application process.

Only GCC nationals are permitted to invest in local real estate throughout the GCC, except Saudi Arabia. Bahrain may permit all foreign nationals to own land later this year. Foreign investment in publicly traded Saudi Arabian companies is possible through mutual funds listed in Saudi Arabia or in the United Kingdom. In Bahrain, expatriate residents with more than one year's residence may purchase stocks in some publicly traded companies under certain circumstances. While foreigners are prohibited from purchasing shares of individual companies on the UAE stock exchange, they are permitted to purchase a limited number of shares of certain mutual funds. Qatar allowed foreign nationals to participate directly in the first public offering of shares of the privatized telecommunication company Q-Tel. Foreign nationals may invest in other publicly offered companies indirectly through local investment firms. In Oman, foreigners of all nationalities are permitted to purchase shares on the Muscat Securities Market (MSM). As of year-end 1998, approximately 14.4 percent of the MSM's total market capitalization was foreign-owned.

ELECTRONIC COMMERCE

Electronic commerce is in its nascent stages of development in GCC countries. In the UAE, the Government of the Emirate of Dubai has announced plans to establish an Internet city/free zone. All of the GCC countries try to restrict or discourage local access to websites that offer pornographic or other materials offensive to Islamic values.

OTHER BARRIERS

Agent and Distributor Rules

In the GCC countries, U.S. firms may find that compliance with U.S. law presents special challenges when selecting a local agent. Termination of agency agreements can be difficult in all the GCC countries and may involve considerable financial losses to the foreign supplier.

Saudi law requires that in-country distributors be licensed by the Ministry of Commerce. Only Saudi citizens can obtain licenses. However, a recent GCC decision may broaden this to include GCC citizens. Direct sales are possible except in the case of sales to government agencies, where a "service agent" is required.

The UAE permits two types of commercial entities to import and distribute products. One is a 100 percent UAE-owned business and the other is a limited liability company in which foreign ownership of up to 49 percent of equity is permitted. All UAE commercial agents must be registered with the Ministry of Economy and Commerce. U.S. exporters seeking UAE-wide coverage must appoint a separate agent for each of the seven emirates or appoint a master agent with offices or sub-offices in each emirate. Once chosen, agents/distributors have exclusive rights and are extremely difficult to replace without their agreement.

Since September 1996, Oman registers nonexclusive agency agreements. Since 1993, Oman has permitted an importer to bring in goods without paying a commission to a registered agent, provided that the goods are imported through an Omani port or airport. However, in practice, it is difficult for a foreign firm to sell directly to the government without an Omani agent scouting for and bidding on tender opportunities. In addition, termination of an agency agreement can be difficult, as a supplier may not unilaterally terminate an agency agreement without a justifiable breach of the agency agreement by the agent.

Local agents are currently required in all sales transactions in Kuwait.

Bahrain's revised Agency Law, implemented in 1998, eliminated the sole agent requirement, capped agent commissions at five percent, and provided for the phasing out of commissions entirely by 2003.

Corporate Tax Policies

Saudi Arabia and Kuwait tax foreign companies, but not domestic entities. Additionally, several GCC countries tax royalties as if they were 100 percent profit and maintain a variety of other tax policies considered unfair to foreign companies. For example, the UAE imposes a 20 percent income tax on foreign banks. No tax is levied on domestic banks. Emirate governments in the UAE seek to attract foreign operations to UAE free zones by offering a number of incentives, including tax breaks and exemptions. Since 1999, Oman provides national tax treatment to joint venture firms with no more than 49 percent direct foreign investment, i.e., a maximum rate of 12 percent tax on net profits. The Omani branch of a foreign firm is regarded as an Omani firm for purposes of computing the 51 percent Omani ownership of the joint venture. Taxes were reduced from a maximum rate of 50 percent to 25 percent for other categories of joint ventures. These rates do not apply to foreign petroleum companies, which pay royalties according to their concession agreement. Oman now levies a 10 percent tax on services performed offshore for Omani firms.

In Saudi Arabia, foreign investors may receive incentives, including a 10-year tax holiday, for approved agricultural and manufacturing projects with a minimum 25 percent Saudi participation. However, foreign equity investors in a joint venture are taxed at a maximum of 45 percent of profits. Saudi Arabians are not taxed on income. Major revisions in foreign investment and related corporate taxation rules are under consideration. Qatar levies corporate income taxes at rates from five to thirty-five percent of net profits. All Qatari-owned firms continue to benefit from a blanket exemption from corporate taxes under authority granted to the Minister of Finance, who may grant a tax holiday of up to five years for new investment by foreign firms. An emiri decree can extend the tax holiday for foreign firms for up to 10 years. Kuwait currently imposes a maximum income tax rate of 55 percent on foreign firms doing business in Kuwait. Kuwaiti corporations are not subject to income tax, but are subject to a mandatory five percent "zakat" contribution. Kuwait has announced plans to lower the maximum tax rate to 30 percent, but implementing legislation has not yet been submitted to the national assembly. Bahrain has no personal or corporate taxation, except on oil company profits.

Procedural and Financial Irregularities

Procedural and financial irregularities can be significant barriers to trade in GCC countries. Such irregularities have resulted in lost opportunities for U.S. suppliers of goods and services and have forced some U.S. businesses out of some markets. Disregard of irregularities may subject U.S. citizens or companies to prosecution under the Foreign Corrupt Practices Act (FCPA).

In August 1996, Kuwait passed Law Number 25, requiring disclosure of all commissions and other payments made in relation to securing a government contract valued at 100,000 Kuwaiti dinars or more (approximately $335,000). It is hoped that Law 25 will increase transparency in the government's procurement practices, but the jury is still out regarding its effectiveness.

On September 30, 1994, the GCC announced that it would end its adherence to the secondary and tertiary aspects of the Arab League boycott of Israel, eliminating a significant trade barrier to U.S. firms. In January 1996, Oman and Israel signed an agreement to open trade missions in the other country. In April 1996, Qatar and Israel agreed to exchange trade representation offices. Israel opened its office in May 1996. In March 1996, the GCC reiterated its commitment to end the secondary and tertiary boycott, and recognized the "total dismantling of the Arab boycott of Israel as a necessary step in advancing the peace process and promoting regional cooperation in the Middle East and North Africa." Although all GCC states are complying with these stated plans, some commercial documentation continues to contain boycott language, requiring U.S. companies to notify the U.S. Office of Anti-boycott Compliance when they receive such documentation. Since the adoption of these policies, the incidence of boycott language in commercial documentation is decreasing.

Kuwait no longer applies a secondary boycott of firms doing business with Israel and has taken steps to eliminate all direct references to the boycott of Israel in its commercial documents. Kuwait still applies a primary boycott of goods and services produced in Israel.

Recent data indicate that the number of prohibited boycott requests in the UAE continues to decline (less than 16 percent in 1999). It is believed that these cases stem from bureaucratic and administrative inefficiencies rather than from a desire to circumvent UAE government/GCC policy to cease secondary/tertiary boycott application. The U.S. Embassy continues to work closely with the UAE Government to eliminate prohibited boycott requests.

Oman no longer enforces compliance with the boycott. Although the Omani trade representative was recalled in late 1996 and not replaced until late in 1999, Oman and Israel maintain trade offices in each other's country, with an Israeli representative resident in Muscat.

Omani customs processes Israeli-origin shipments entering with Israeli customs documentation. Likewise, Israeli immigration stamps in third country passports are not an issue. Telecommunications links and mail flow normally. However, Omani firms have shied from carrying any identifiably Israeli consumer products. Normal commercial ties await more favorable developments in the Middle East peace process throughout the GCC.

HONDURAS

TRADE SUMMARY

In 1999, the U.S. trade deficit with Honduras was $344 million, an increase of $122 million from 1998. U.S. merchandise exports to Honduras were $2.4 billion, an increase of $47 million over 1998. Honduras was the United States' 38th largest export market in 1999. U.S. imports from Honduras in 1999 were $2.7 billion, an increase of $168 million from the 1998 level. The stock of U.S. foreign direct investment (FDI) in Honduras in 1998 was $186 million, concentrated largely in the manufacturing and service sectors.

IMPORT POLICIES

Tariffs

Honduras is a member of the Central American Common Market (CACM), which also includes Costa Rica, El Salvador, Guatemala and Nicaragua. CACM members are working toward the full implementation of a Common External Tariff (CET) of zero to 15 percent for most products. With the exception of a limited number of items (e.g., coffee, sugar, corn flour, alcoholic beverages), there are no duties for products traded among CACM members. However, due to recent tension between Honduras and Nicaragua over their Caribbean maritime boundary, the Government of Nicaragua imposed an extraordinary 35 percent tariff on Honduran products in December 1999. To date, the Honduran Government has not retaliated. The Central American Court has instructed Nicaragua to lift the sanctions.

According to the 1997 Tariff Law, Honduras reduced its tariffs to one percent on capital goods, medicines and agricultural inputs, and on raw materials and inputs produced outside of the region. Tariffs on final goods were reduced to 17 percent on December 31, 1999. Honduras intends to reduce its extra-regional tariffs for other goods (intermediate and finished) over the next several years to between zero and 17 percent.

Non-tariff Measures

Honduras currently implements a price band mechanism for yellow corn, sorghum and corn meal. This price band is calculated from a time series built on international prices for the prior 60 months for the product in question. The 15 highest and lowest prices are eliminated, with the remaining highs and lows establishing the price band. Imports entering with values within the defined band are assessed a 20 percent tariff. Imports entering with prices above the band are assessed lower duties, according to a predetermined schedule; those imports priced below the band are assessed a higher tariff.

The Government of Honduras also has seasonal import restrictions to protect local farmers during the main harvest. From September to January, the minimum allowable duty is 20 percent for corn and 15 percent for all other products. From February to August, duties are set according to predetermined duty tables for each commodity. Additionally, the Government, farmer groups and importers have agreed to a quasi-tariff-rate quota in which the price band will be in effect until local grain supplies are exhausted, after which a one percent duty will be applied to imports. These policies limit access of U.S. agricultural products.

Honduras committed to comply with its obligations under the WTO Customs Valuation Agreement by January 1, 2000, with very limited reservations (none of which are for agricultural products). This agreement prohibits the use of arbitrary or reference pricing.

STANDARDS, TESTING, LABELING AND CERTIFICATION

Although Honduras has eliminated all import licensing requirements, imports of certain U.S. agricultural products continue to be blocked or limited by phytosanitary or zoosanitary restrictions. Restrictive zoosanitary requirements have blocked U.S. poultry imports for several years. Frequent changes in sanitary and phytosanitary requirements are seldom reported to the WTO as required and create a great deal of uncertainty among U.S. suppliers and Honduran importers.

Honduran law requires that all processed food products be accompanied by a translation into Spanish whenever the label is in another language. In addition, these products must be registered at the Division of Food Control in the Ministry of Public Health. Although these laws are inconsistently enforced, though they may discourage some suppliers.

Some import restrictions, based mainly on phytosanitary, public health, public morale and national security grounds, remain. Restrictions are imposed on firearms and ammunition, toxic chemicals, pornographic material and narcotics. Other import restrictions are applied to chicken, meat and cosmetics.

GOVERNMENT PROCUREMENT

Under Honduran contracting law, all public works contracts over $14,000 must be offered through open competitive bidding. To participate in public tenders, foreign firms are required to act through a local agent. Firms acting in this capacity must be at least 51 percent Honduran-owned, unless the procurement is classified as linked to a national emergency. In theory, foreign firms are given national treatment for public bids. In practice, U.S. firms complain about the mismanagement and lack of transparency in Honduran Government tenders. These deficiencies are particularly evident in the public bidding for telecommunications, pharmaceutical and energy contracts. Honduras is not a signatory of the WTO Agreement on Government Procurement.

INTELLECTUAL PROPERTY RIGHTS PROTECTION

In 1998, Honduras was placed on the Special 301 "Watch List" for its failure to afford adequate protection to intellectual property rights. On April 20, 1998, USTR suspended a portion of Honduras' GSP and CBI benefits because of the failure of the Government of Honduras to take action to curtail broadcast television piracy. These benefits were restored on June 30, 1998, following Government moves to suspend and fine the offending stations. The Government continues to monitor television stations for broadcast piracy, and no further complaints have been received.

January 1, 2000, was the deadline for Honduras to comply with its WTO obligations under the Trade-Related Aspects of Intellectual Property Rights (TRIPS). Two new laws to correct deficiencies in previous legislation on copyrights, patents and trademarks were passed in December 1999. The Ministry of Industry, the National Telecommunications Commission and the Prosecutor General's Office will have enforcement responsibilities for the new legislation.

Honduras and the United States initialed a Bilateral IPR Agreement in March 1999. Honduras became a member of the World Intellectual Property Organization (WIPO) in 1983 and ratified the TRIPS Agreement in 1994.

Copyrights

In December 1999, the Honduran Congress passed a new copyright law intended to bring Honduras into compliance with its TRIPS obligations. This law was published in the Official Gazette on January 15, 2000. The updated law adds more than 20 different criminal offenses related to copyright infringement and establishes fines and suspension of services which can be levied against offenders. The piracy of books, sound and video recordings, compact discs, and computer software is still widespread in Honduras; the new law will be important in the Government's effort to reduce these copyright practices.

Patents and Trademarks

Honduras ratified the Paris Convention for the Protection of Industrial Property in 1994. The Honduran Congress passed a new Industrial Property Law in December 1999, which covers both trademarks and patents. This law was published in the Official Gazette on February 5, 2000. Modifications to the Patent Law of 1993 now include patent protection for pharmaceuticals, extending the term of protection from 17 to 20 years to meet international standards. The term for cancellation of trademarks for lack of use has been extended from one year to three years. The illegitimate registration of well-known trademarks has been a persistent problem in Honduras. Efforts to negotiate a TRIPS-compliant Central American Patent and Trademark Treaty have been unsuccessful. Therefore, each country will undertake to meet its TRIPS commitments individually. Draft legislation (the Law to Protect Integrated Circuit Schemes) is pending before Congress, with passage expected in early 2000.

INVESTMENT BARRIERS

The 1992 Investment Law removed foreign ownership restrictions in most sectors. Companies that wish to engage in agriculture, commercial fishing, forestry or local transportation must be majority-owned by Hondurans.

In addition, special Government authorization is required for foreign investment in the following sectors: forestry, telecommunications, basic health, air transport, fishing and aquaculture, mining, insurance, financial services, private education and agricultural and agro-industrial activities exceeding land tenancy limits established by law.

Foreigners are barred from ownership of small businesses with equity of less than 150,000 lempiras (about $11,000). Foreign ownership of land within 40 kilometers of the coast and border is constitutionally prohibited, though some exceptions are provided for tourism investments. A proposed constitutional amendment to modify these prohibitions was dropped in 1999 due to opposition by minority groups living along the Caribbean coast. Honduran law mandates that 90 percent of employees and 80 percent of the payroll must be Honduran for all investments.

In the last two months of 1998, Congress passed legislation reforming the mining code; opening up concessional operation of airports, seaports and highways; providing incentives for renewable energy projects; allowing some foreign tourism development in coastal areas; and allowing unrestricted sale of agricultural land regardless of size. Congress earlier passed a law authorizing the sale of 51 percent of the state-owned telephone company (Hondutel) to a foreign partner and the auctioning of “Band B” cellular service. A bill authorizing privatization of the National Electric Company’s distribution system has been introduced in Congress. The privatization of the telephone company and the concession of airport operations is expected to be completed by mid-2000. Implementation of other incentive laws discussed above has been slow.

SERVICES BARRIERS

Honduran law limits participation in local transportation, insurance, radio and television stations (and distributorships) to Honduran nationals. Foreigners are prohibited from holding seats on Honduras’ two stock exchanges. Honduran professional bodies heavily regulate the licensing of foreigners to practice law, medicine, engineering, accounting and other professions.

HONG KONG

TRADE SUMMARY

In 1999, the U.S. trade surplus with Hong Kong amounted to $2.1 billion, down slightly from last year's $2.4 billion. U.S. imports from Hong Kong were $10.5 billion and exports were $12.6 billion, making Hong Kong the United States' 13th largest export market in 1999. The stock of foreign investment in Hong Kong rose to $20.8 billion in 1998, up from $19.3 billion in 1997. U.S. direct investment in Hong Kong is concentrated in the services and financial sectors.

OVERVIEW

On July 1, 1997, Hong Kong became a Special Administrative Region (SAR) of the People's Republic of China (PRC). Under the policy of "one country, two systems," Hong Kong is to enjoy a high degree of autonomy from the PRC in managing its trade, financial, social, legal, and other internal matters for 50 years.

Although the PRC has assumed responsibility for conducting foreign affairs and defense matters for the SAR, Hong Kong remains a separate customs territory with all of its previous border and customs arrangements. As a separate customs territory with autonomy in the conduct of its economic, trade, and financial policies, Hong Kong retains independent membership in economic organizations such as the World Trade Organization and APEC.

After slumping badly in 1998, Hong Kong's economy showed signs of recovery in the second half of 1999. The Government pegged year-end growth at 1.8 percent, up from original flat projections for 1999. The Government recorded a modest fiscal deficit of $4.6 billion for 1999 and projects a slightly smaller deficit for 2000. Over the long term, Hong Kong enjoys a number of economic advantages, including accumulated personal wealth from several earlier years of unprecedented growth, massive fiscal and foreign exchange reserves, virtually no public debt, a strong legal system, and a strong and rigorously-enforced anti-corruption regime. Growing competition for Hong Kong's historic role as an entrepot to the Chinese mainland and the need for restructuring of Hong Kong's advanced, high-cost, service-based economy will pose continued challenges in the years ahead, but Hong Kong is well positioned to benefit from China's WTO accession, the opening of the mainland market, and Asia's economic recovery.

INTELLECTUAL PROPERTY RIGHTS PROTECTION

Hong Kong has made significant progress over the past year in addressing the problem of copyright piracy, including creation of a new anti-piracy task force in the Customs Department that allowed a stepped-up pace of enforcement. As a result of this enforcement effort, piracy-related arrests in 1999 reached 2,701, up from 1,645 the year before. The Hong Kong courts have also begun imposing longer jail terms for violations of Hong Kong's copyright ordinance. A first-ever conviction for hard disk loading piracy has helped to discourage the previously widespread practice of retailers bundling unlicensed software with new computers. Despite Customs' success in breaking up several underground distribution and manufacturing syndicates, however, considerable amounts of pirated product remain available at the retail level throughout Hong Kong. The Legislative Council's January 2000 reclassification of piracy under Hong Kong's organized and serious crimes ordinance will provide additional tools for Customs' effort against pirate networks. However, greater efforts are needed to end criminal corporate end user software piracy. In addition, U.S. officials have encouraged Hong Kong authorities to ensure that Hong Kong's very large optical disc production capacity is used only for legitimate products. Hong Kong's recent efforts to increase liaison with mainland copyright licensing officials should help in this regard.

SERVICES BARRIERS

Opening telecommunications markets in Hong Kong was the subject of intense debate in 1998 and early 1999. Substantial liberalization has been achieved resulting in a market that produced dramatic reductions in consumer long-distance rates. In May 1999, the Government extended the current moratorium on additional fixed line service providers through December 2002. That decision will prolong the current arrangement in which a dominant local operator handles most residential and retail services while three recent entrants battle over the corporate market. On January 18, 2000, the Government issued five new licenses for local fixed wireless services and 12 new licenses for satellite-based external facilities. A subsequent announcement was expected to allow additional cable based external facilities. If implemented without bias towards existing providers, this opening should produce a further expansion of telecommunications services and a reduction in consumer costs.

ELECTRONIC COMMERCE

Hong Kong places great importance on its role as an info-technology and electronic commerce hub. An electronic transactions bill providing a legal framework for electronic commerce is currently pending before the Legislative Council and Government departments are being urged to offer their services to the public over the Internet. Hong Kong also is encouraging software and content developers to use the SAR as a base for operations throughout Asia.

HUNGARY

TRADE SUMMARY

The U.S. trade deficit with Hungary was $1.4 billion in 1999, an increase of $304 million from 1998. U.S. exports to Hungary were $503 million in 1999, an increase of $21 million (4.3 percent) from the previous year. Hungary was the United States' 64th largest export market in 1999. U.S. imports from Hungary were $1.9 billion in 1999, an increase of $324 million (or 21 percent) from the same period in 1998. The stock of U.S. foreign direct investment in 1998 was $1.4 billion, a 14 percent increase from 1997.

IMPORT POLICIES

Hungary's current trade policies are shaped primarily by its World Trade Organization (WTO) commitments and – increasingly – by the likelihood that Hungary will become a full member of the European Union (EU) within several years. Hungary has concluded a number of preferential trade agreements, including its Association Agreement with the EU and free trade agreements with the European Free Trade Area (EFTA) countries and the Central European Free Trade Agreement (CEFTA) countries. In accordance with its commitments in the Uruguay Round, Hungary's average most-favored-nation (MFN) import duties have been cut from 13.6 percent in 1991 to 8 percent in 1998.

Hungary has eliminated almost all of its import license requirements. Currently, almost 96 percent (by value) of products can be imported without an import license. A license is required to import precious metals, military goods, and certain pharmaceutical products. The progressive implementation of Uruguay Round agreements has generally improved U.S. market access to Hungary. Under these agreements, Hungary must eliminate import quotas on textiles, clothing, and other industrial products by 2004. In 2000, Hungary is scheduled to end the practice under the Customs Duty Law of 1995 of barring the importation of used cars more than six years old. After January 1, 2000, the determining factor for used car imports will be adherence to EU environmental standards, to be determined by emissions testing and inspection. This should make it easier to import some older U.S. models.

Under Hungary's Association Agreement with the EU, tariffs on industrial products from the EU will be completely phased out by the end of 2001. Also, these preferential trade agreements provide for reduced tariffs rates on some non-industrial products on a selective basis. U.S. products, which are subject to Hungary's MFN rates, often encounter a significant tariff differential when competing against EU products, which enter duty-free or at preferential rates. Several U.S. exporters (e.g., of aircraft, autos, electrical generating equipment, small engines, chocolate and non-chocolate confections, distilled spirits, wine, commercial laundry equipment, and soda ash) have expressed concern over the tariff preferences provided to the EU by Hungary because of the growing disparity with MFN rates. Hungary applies a high MFN duty of 68 percent *ad valorem* on imported alcoholic beverages and 33-72 percent *ad valorem* MFN duties on chocolate and confectionery products.

Hungary's MFN rates on industrial products are generally higher than the EU's common external tariff (CXT) rates, and so joining the EU, which would require Hungary to adopt the EU's CXT rates, would benefit U.S. exporters of industrial products. Adopting the CXT would likely have a negative impact on some U.S. agriculture exports where the EU's CXT rates often exceed Hungary's MFN rates. The United States has been urging Hungary to reduce its high MFN tariff rates down to the EU's CXT levels prior to EU accession. The United States and Hungary are engaged in discussions on how to address this tariff differential problem. There is currently a tariff waiver (valid until the end of 2000) on the leasing or purchase of aircraft by Malev Hungarian Airlines (majority government-owned). Malev's fleet of large passenger jets currently consists of leased Boeing aircraft that are due to be replaced in a few years.

Under the Pan-European Cumulation system and Pan-European Free Trade Zone, effective in Hungary since July 1, 1997, customs duties on the imported content of goods subsequently exported under preferential trade agreements are no longer refunded. However, content from any member state can accumulate to qualify for preferential treatment. Duties and fees on re-exported content are no longer refunded as of July 1, 1997 for non-EU importers. This change has adversely affected certain U.S. industries (e.g., lumber and veneer producers). Firms exporting from Hungary with inputs from non-WTO members (such as Russia) were faced with greater costs and additional customs fees. Fees imposed on goods coming from non-WTO states are scheduled to be eliminated beginning in 2000. U.S. firms producing for export from Hungary using imports (e.g. auto parts manufacturers) have complained that the refund of the customs duties and fees due them on these "imports for re-export" have been slow in coming, resulting in the tying up of large sums of money.

STANDARDS, TESTING, LABELING AND CERTIFICATION

Importers must file a customs document with a product declaration and present Hungarian certified documentation from the Commercial Quality Control Institute upon importation. This permit may be replaced by other national certification and testing agency documents, such as those of the National Institute for Drugs. Some Hungarian standards are reciprocal with those of recognized U.S. standards.

Hungarian import regulations limit and delay imports of breeding animals, livestock semen, planting seeds, and new plant varieties. In 1998, United States and other exporters of bovine semen secured modification of restrictive practices and fees on imports affecting a potential market of $1 million per year for U.S. firms.

In 1998, Hungary adopted legislation governing genetically modified organisms (GMOs) in agriculture. These laws, in line with EU law, impose import restrictions that primarily affect new plant varieties. The Ministry of Agriculture requires a multi-year registration procedure and final approval for field trials rests with a mixed committee, which includes both scientists and environmentalists. Although the market for seed imports is relatively small (estimated $18 million in 1998), U.S. firms in Hungary produce seed and plant stock for other markets. U.S. industry estimates that full liberalization of the GMO policy could mean additional U.S. exports in the $10-25 million range.

GOVERNMENT PROCUREMENT

Foreign access to government-funded construction and service or supply contracts is regulated by the 1995 Act on Public Procurement, which improved transparency. Tenders must be invited for the purchase of goods worth over 10 million Hungarian forints and for the purchase of services worth over five million Hungarian forints (as of January 2000, 250 forints equals one dollar). However, bids with more than 50 percent Hungarian content are considered equal to majority-foreign bids that are up to 10 percent lower in price. Purchases deemed to be related to state security, as well as purchases of gas, oil, and electricity, remain exempt from these regulations. Some U.S. firms have taken legal action against non-transparent and procedural irregularities in government tenders.

Although Hungary is not yet a signatory to the WTO Agreement on Government Procurement (GPA), it was a co-sponsor, along with the United States and Korea, of a proposed agreement on Transparency in Government Procurement Initiative submitted to the WTO Secretariat in 1999. Hungary has the status of an observer to the WTO's GPA, and it would have to become a signatory in order to join the EU.

EXPORT SUBSIDIES

While Hungary's agricultural export subsidies remain in excess of its original Uruguay Round commitments, the Hungarian government is gradually phasing out excess subsidies. The Hungarian Government has undertaken not to use subsidies to penetrate new export markets, in accordance with an October 1997 agreement with the United States and other petitioning members of the WTO. Fellow CEFTA member states contend, however, that Hungary's agricultural subsidies are still too high, citing the examples of grains and pork.

INTELLECTUAL PROPERTY RIGHTS PROTECTION

Hungary's intellectual property rights (IPR) laws are adequate in most respects. However, criminal enforcement, particularly in connection with copyright piracy, needs to be strengthened substantially. Piracy of audiovisual works and computer programs has decreased, but remains a serious problem.

In addition, Hungary's protection of patents needs to be improved. Hungarian patent protection was strengthened following the conclusion of the U.S.-Hungary bilateral agreement on IPR protection in 1993. Under this agreement, Hungary agreed to grant patents on pharmaceutical products, unlike the previous law in which patents were granted only on processes for producing pharmaceuticals. The bilateral IPR agreement provides transitional pipeline protection for U.S. pharmaceutical products otherwise ineligible for new product patents in Hungary, enjoyment of patent rights regardless of whether patented products are imported or locally produced, and limitations on the use of compulsory licenses.

The limited protection for confidential test data submitted to obtain marketing approval of pharmaceuticals raises concerns that Hungary may not be meeting its obligations under Article 39.3 of the TRIPS Agreement. The Hungarian Government recognizes that it will have to adopt strict data exclusivity rules in order to become a member of the EU, but it has requested a five-year transition period to do so. Current Hungarian patent law does not explicitly recognize the importation of a patented product as meeting the "working the patent" requirements in the law, which could open the door for compulsory licensing of a patent where a product is not locally produced.

Persistent problems in the Hungarian judicial system continue to hinder protection of patent rights. In 1997, the Hungarian government strengthened access injunctions and attempted to reduce the backlog of court cases. However, this action did not affect ongoing IPR disputes, including a long-standing patent infringement suit by a large U.S. pharmaceutical firm. U.S. interests have not been able to obtain injunctive relief prohibiting the marketing of products that the courts have deemed to be infringing. The lack of relevant technical expertise in the courts can result in patent infringement cases taking three or more years to reach conclusion. Penalties awarded in such cases are considered too low to act as effective deterrents.

Hungarian copyright laws largely conform to international standards, but piracy is a serious problem. Video and cable television piracy is widespread; local television and cable companies regularly transmit programs without authorization. The Motion Picture Association (MPA) estimates that 55 percent of videotapes circulating in 1998 were pirated (down from 85 percent in 1993), and that in 1999 the level of unauthorized programming is 45 percent and the level of pay television signal theft is at 60 percent. The MPA calculates that the U.S. motion picture industry suffered $22 million in lost revenues in 1999 due to audiovisual piracy in Hungary.

Hungary's copyright laws were strengthened during 1999 by the passage of the Copyright Act, which entered into force on September 1, 1999. This law amended the 1994 Act on Enforcement of Judicial Decisions, streamlining the procedure for the enforcement of judicial decisions in all copyright infringement cases. Judges continue to be trained on copyright issues, and programs for judges and prosecutors on copyright and related rights have been established.

The Copyright Act, however, does not expressly provide for civil *ex parte* searches, though the Hungarians assert that such procedures are available under the Civil Procedure Act. The U.S. software industry is now testing whether these alternative procedures provide an adequate means for obtaining civil *ex parte* searches.

In May 1993, Hungary added stiff penalties for copyright infringement to its penal code. Since then, piracy of audiovisual works and transmissions has been driven underground. The 1999 Copyright Act permits compulsory licensing by cable and pay service operators of any film or program received in Hungary, so long as a fee is paid to the state copyright agency. U.S. film producers, although entitled to a share of these fees, report that they did not receive any revenues in 1999.

On the software side, the Business Software Alliance has estimated that 57 percent of the software used in Hungary is unlicensed, with a $38 million loss of revenues due to piracy in 1998. The Budapest Police created an Economic Crime Department in February 1998. They have investigated a number of high-profile cases and some have been brought to court, but the resulting jail terms and fines have been small, amounting only to payment of the value of the pirated software. Employers can now exercise all economic rights with respect to software created by employees, and all economic rights concerning software will be fully transferable.

SERVICES BARRIERS

Public television is required to fill 70 percent of its airtime with European production, of which at least 51 percent must be Hungarian, excluding advertising, news, sports, game and quiz shows. Hungarian film quotas in the 15 to 20 percent range apply to public television. These quotas in practice are not seen as cutting actual U.S. market share but they are more restrictive than required for EU membership. For private broadcasters, the 1995 Media Law reserves 15 percent of program time for Hungarian programs, excluding films. In selling licenses for two private national television frequencies in 1997, the National Radio and Television Board (ORTT) mandated a European quota of 50 percent of total annual program time, excluding advertisements, news, sports, and game shows (Hungarian content quotas apply as well). However, U.S. feature films and television productions retain a strong presence, especially in prime time. A revision to the 1995 Media Law is on the schedule for debate in parliament in early 2000. The new law is intended to harmonize Hungary’s broadcast regime with EU directives on content and quotas (over 50 percent of both public and private TV broadcasting will have to be European programming).

Sales of U.S. air and ground services in Hungary are limited; the United States and Hungary do not have a bilateral “Open Skies” civil aviation agreement. Talks are currently underway concerning the plan for Budapest’s international airport, Ferihegy, and the future of Malev, the national airline. A $250,000 grant from the U.S. Trade Development Agency is financing a feasibility study, to be completed before the end of 2000, of the development of Ferihegy into a regional hub. The Hungarian Government is looking for a “strategic partner” for Malev, and wants it to join a worldwide alliance, which may provide the opening necessary for an Open Skies agreement.

Under legislation passed in 1998, Hungary introduced restrictions on foreign lawyers and law firms, including requiring foreign legal practitioners to associate with a Hungarian lawyer or law firm. This has produced so-called “cooperative agreements” between Hungarian and American firms in order to provide clients both Hungarian and international legal advice. A person cannot provide foreign legal consultancy services nor legal advice on foreign or international law without being licensed in the practice of Hungarian law.

Audits must be conducted by a Hungarian-certified accountant. This individual may work for a foreign-owned firm. There is a nationality requirement for licensing of architects and engineers.

Foreign nationals may be licensed as architects and engineers, but they must first have their degrees examined for equivalence by Hungarian authorities. They may be required to sit for qualifying exams in some cases. They must then be registered legally and join the local chamber of architects and engineers. Audits must be conducted by Hungarian-certified accountants. Such individuals may work for foreign firms.

A 1998 decree restricts distribution of products by direct selling. This decree prohibits the direct selling of certain products, such an therapeutic substances not classified as pharmaceutical products and foodstuffs. It also imposes a requirement that distributors obtain a vocational training degree. This impedes access to the Hungarian market for U.S. direct sellers.

In the telecommunications sector, Hungary has committed to allow unlimited competition by the end of 2002 as part of the WTO Basic Telecommunications Services Agreement. The awarding of monopoly telephone concessions (including to U.S.-owned firms) during privatization has delayed the introduction of full competition until the end of 2002. The privatization of MATAV, the Hungarian telecommunications company, was completed in March 1999. MATAV has a monopoly on long distance and international public switched service until the end of 2001, and the local telephone operators have monopoly rights for local services until November 2002.

INVESTMENT BARRIERS

Hungary's commitment to privatization of large state enterprises has made it a leading recipient of foreign direct investment (especially U.S.) in Central Europe. Hungary has progressively reduced state ownership in "strategic" enterprises from 50 percent to 25 percent to a single golden share, with veto rights in some cases. The privatization of the Hungarian national airline, Malev, is currently under consideration, with the State Privatization and Holding Company planning to maintain a "25 percent plus one share" stake for the Hungarian Government.

Under the Media Law, a broadcaster must be at least 26 percent Hungarian-owned, and no entity – foreign or domestic – may hold in excess of 49 percent of the company. Further, the Media Law prohibits a person or firm holding a controlling interest (25 percent or more) in both a national newspaper and a national broadcaster. Similar restrictions limit cross-ownership in regional newspapers.

Government delays in approving energy price increases have repeatedly prevented U.S. and other foreign firms from realizing the eight-percent returns guaranteed in energy privatization contracts. In December 1999, the Hungarian government announced gasoline and electricity price increases effective January 2000, but the issue will remain unresolved until foreign investors and the government agree on a new regulatory framework and pricing mechanisms for the energy sector. Gasoline and energy prices were raised at the end of 1999, but still lag behind expectations by foreign investors in the sector. Natural gas, 75 percent of which is imported from Russia, is due to rise in price in June 2000. Complete liberalization of the natural gas market is now expected before Hungary's accession to the EU, possibly as early as 2002.

Since 1994, Hungary has offered targeted tax incentives for investment (replacing blanket incentives) based on export promotion, reinvestment of profits, and job creation in areas of high unemployment. More recent tax incentives target investment to depressed areas of the country, chiefly the northeastern Hajdu-Bihar, Nograd, Borsod-Abauj-Zemplen and Szabolcs-Szatmar-Bereg counties. In 1998, the government implemented a ten-year corporate tax break to companies investing at least Hungarian forints 10 billion ($40 million), creating 500 or more jobs. If the investment takes place in an economically depressed region, the minimum investment is Hungarian forints three billion ($12 million). Recent tax incentives targeting investment to depressed areas of the country require the creation of more than 100 jobs. There is now also a provision for a five year, 50 percent corporate tax break for investments of more than Hungarian forints one billion ($4 million).

OTHER BARRIERS

Although bribery does not appear to be any worse than in other parts of Europe, transparency remains an issue in business dealings. Some U.S. firms complain of inappropriate influences in government tenders.

The U.S. distilled spirits industry contends that Hungary's excise taxes discriminate against imported whiskey, vodka, rum and liqueurs in favor of domestically produced fruit brandies and eaux de vie, in violation of GATT Article III, paragraph 2. Hungary raised excise taxes on all alcoholic beverages in 1999, but continued to apply higher excise taxes to the types of liquors imported from abroad (whiskey, vodka, rum) than on the locally produced varieties (liquors derived from fruits). The U.S. Government has been consulting with the Hungarian Government on ways to improve market access for U.S. distilled spirits producers.

Many firms operating in Hungary are caught unaware by shifts in government policy due to insufficient government consultation with business interests. In other cases, the exceptional autonomy of the judicial system and of the National Radio and Television Board (both products of Hungary's transition to democracy) sometimes leads to decisions inconsistent with an overall government policy of promoting economic openness. In addition, complaints have been registered with the U.S. Government concerning inconsistent implementation of customs regulations and procedures when exporting to Hungary.

Privatization and the entry into the Hungarian market by multinational companies have greatly increased competition in many sectors. Some key infrastructure sector monopolies (broadcast transmitter Antenna Hungaria, electricity wholesaler MVM, state railways MAV, and Malev airlines), however, remain state-owned and receive special consideration from the Hungarian government.

INDIA

TRADE SUMMARY

In 1999, the U.S. trade deficit with India was $5.4 billion, an increase of $696 million from the U.S. trade deficit of $4.7 billion in 1998. U.S. merchandise exports to India were $3.7 billion, an increase of $163 million (4.6 percent) from the level of U.S. exports to India in 1998. India was the United States' 29th largest export market in 1999. U.S. imports from India were $9.1 billion in 1999, an increase of $859 million (10.4 percent) from the level of imports in 1998. The stock of U.S. foreign direct investment (FDI) in India in 1998 was $1.5 billion, a decrease of 5.3 percent from the level of U.S. FDI in 1997. U.S. FDI in India is concentrated largely in the banking, manufacturing and financial services sectors, but a substantial portion of new investment approvals are in infrastructure projects.

IMPORT POLICIES

In June 1991, the then newly elected Government recognized that India's budget deficit, balance of payments problems, and structural imbalances would require re-evaluation of past economic policies and structural adjustment assistance from international financial institutions. As part of its economic reform since that time, the Indian Government has taken consistent steps towards a more open and transparent trade regime, leading to a significant increase in Indo-U.S. trade and investment. With substantial additional liberalization, U.S.-India trade could become quite significant.

The Indian Government maintains a ceiling tariff rate (with a few exceptions) of 40 percent. Since the 1998/99 budget, a special additional duty of four percent has been imposed on all imports except for imports by exporters and trading houses. Extra duties of two percent and three percent imposed since 1997 were removed in February 1999 in the 1999/2000 budget. However, under the 1999/2000 budget, customs duty rates of 0 percent, 10 percent, 20 percent, and 30 percent were replaced by higher rates of 15 percent, 25 percent, and 35 percent, respectively. Unbound duty-free goods now face a five percent tariff and most items were assessed an additional 10 percent surcharge on the basic customs duty. Thus, for example, a five percent duty would be assessed at 5.5 percent, and a 35 percent duty would be assessed at 38.5 percent.

On February 29, the Vajapyee government introduced its 2000/2001 budget proposal. Many aspects of the proposal have been provisionally implemented, while others must be approved by the Lok Sabha (lower house of Parliament). The budget lowers the peak tariff from 40 percent to 35 percent – reducing the number of tariff rates from five to four – but retained the 10 percent surcharge on the basic customs duty and the additional four percent duty. These extra charges are applied more broadly than in the previous fiscal year. The four tariff rates are 5 percent, 15 percent, 25 percent, and 35 percent. Most products being removed from quantitative restrictions as a result of the U.S.-India dispute settlement agreement (described later in this chapter) will face the peak 35 percent tariff. Customs tariffs were reduced on certain selected products, including computers, mother boards, and floppy disks (from 20 to 15 percent); special capital goods for the manufacturer of semiconductors and integrated circuits (from 15 to 5 percent); microprocessors for computers, memory storage devices, CD-ROMs, integrated circuits and microassemblies and data graphic displays for color monitors for computers (from 5 to zero percent); specified raw materials for the manufacture of optical fibers (from 15 to 5 percent); cellular telephones (from 25 to 5 percent); cellular telephone battery packs (from 40 to 15 percent); cinematographic cameras and related equipment (from 49 to 25 percent); color positive film in jumbo rolls and color negative films in certain sizes (from 15 to 5 percent); platinum and non-industrial diamonds (from 40 to 15 percent); crude oil (from 20 to 15 percent); and certain petroleum products (from 30 to 25 percent). Customs duties on a number of products covered under India's textile agreements with the United States and the European Union will be subject for the first time to the higher of *ad valorem* or specific rates which could have a severely negative impact on U.S. exports.

In the recent past, India has selectively lowered tariffs on some capital goods and semi-manufactured inputs to help Indian manufacturers. They have steadily reduced the import- weighted tariff from 87 percent to the 1997/98 level of 23 percent. (This does not include the additional four percent duty assessed in June 1998.) For the first time since the start of economic liberalization in 1991, the Government of India's budgets of 1998/99 and 1999/00 failed to reduce the maximum and imported weighted average of tariffs. Despite reforms, Indian tariffs are still among the highest in the world, especially for goods that can be produced domestically.

India maintains a variety of additional charges on imports, allegedly the equivalent of domestic taxes on local goods (the so-called countervailing duties), further raising the cost of imports as they enter the stream of domestic commerce. For example, the increased cost of imported soda ash is estimated to be 70 percent, including a basic tariff rate of 35 percent with additional countervailing duties and special additional duty. Industry reports that countervailing duties and infrastructure taxes for sugar and gum range from 59-70 percent. High effective rates also affect chocolate and confectionery products (89 percent); raisins (46 percent); mayonnaise (68 percent); peanut butter (44 percent); appliances (40-89 percent); raisins (128 percent); camera parts and accessories (53.8 percent); and toys and sporting goods (32-54 percent). Exorbitant effective rates of 253 percent are assessed on distilled spirits imports and 110 percent on still and sparkling wines, plus additional duties of $0.25 per liter for wines. U.S. producers also allege that the 40 percent excise tax on carbonated soft drinks represents a *de facto* discriminatory government policy because the carbonated soft drink market is supplied predominantly by foreign invested producers.

The 2000/01 budget replaced the three-tier (8 percent-16 percent-24 percent) countervailing duty (excise tax) regime with a 16 percent central value added tax (CENVAT). Thus, for some products, the additional tax was doubled and some duty drawbacks have been withdrawn, resulting in higher charges. Furthermore, exceptions and additions to the 16 percent rate actually result in six different applied rates (zero percent, 8 percent, 16 percent, 24 percent, 32 percent, and 40 percent).

Progress made thus far in tariff reduction has helped U.S. producers, but further reductions of basic tariff rates and elimination of additional duties would benefit a wide range of U.S. exports. The United States has asked for a change to a specific (per kilogram) duty on pistachios, where underinvoicing by competing suppliers creates unfair competition and limits U.S. market access. Other industries that might benefit from reduced tariff rates include (current basic tariff rates in parenthesis): fertilizers (0-35 percent); wood products (0-35 percent); agricultural chemicals (35 percent); jewelry (40 percent); precious metal findings (40 percent); soda ash (35 percent); camera components (25 percent); instant print film (15 percent); paper and paper board (35 percent); ferrous waste and scrap (35 percent); computers, office machinery, and spares (0-40 percent); motorcycles (75 percent); completely built up (CBU) motor vehicles, completely knocked down (CKD) and semi-knocked down (SKD) motor vehicle kits, and automotive parts and components (40 percent); air conditioners and refrigeration equipment (40 percent); heavy equipment spares (25-40 percent); medical equipment components (25 percent); copper waste and scrap (35 percent); hand tools (25 percent); cling peaches (40 percent); canned peaches and fruit cocktails (40 percent); citrus fruits (40 percent); sweet cherries (40 percent); vegetable juice (40 percent); still and sparkling wines (100 percent); distilled spirits (230 percent); carbonated soft drinks (40 percent); corn oil (30 percent); peanut butter (53 percent); pistachios (40 percent); salad dressing (40 percent), canned soup (40 percent), and textiles and apparel (20-40 percent).

For many years India maintained a virtual embargo on oranges, lemons, and grapefruit, except for the hotel trade. In March 1999, India lifted restrictions for Mandarin oranges (tangerines and satsumas), Clementines, lemons, and grapefruit, but it continued to deny market access to Navel and Valencia oranges.

In the Uruguay Round, India undertook a two-tiered commitment on industrial products, binding tariffs on items in excess of 40 percent at a rate of 40 percent and binding items with tariffs below 40 percent at 25 percent, although some industrial goods (e.g., automobiles) and all consumer products were excluded from India's offer. As a consequence, India's scope of bindings on industrial goods will increase substantially from 12 percent of imports to 68 percent once all reductions are implemented. The majority of these bindings exceed current Indian applied rates of duty. In agriculture, Uruguay Round tariff bindings are higher than applied rates in important sectors, ranging from 100 to 300 percent.

As a result of the Uruguay Round, India committed to reduce and bind its tariffs on textile and apparel products. By January 1, 2000, Indian tariffs were to be reduced to levels no higher than 20 percent for fibers, yarns, industrial fabrics, and home furnishings; and 35 percent for apparel fabrics; and 40 percent for apparel. The GOI, however, has not announced any reductions to date. In addition to high tariffs, India maintains a significant number of import prohibitions in the textile sector (see below), and India remains one of the most heavily protected markets in the world from the standpoint of potential U.S. exporters.

Import Licensing

In addition to high tariff rates, U.S. industries must deal with India's import licensing regime. The regime has been liberalized, but still limits market access for U.S. goods which would be competitive in a more open trading environment. Importers of theatrical films must obtain a certificate from the Central Board of Film Certification, stating that the film is suitable for import according to guidelines laid down by the Government. U.S. industry maintains that this constitutes a re-censorship "quality check" obstacle. In addition, the Indian Government imposes a requirement to pay a fee for certification.

A special import license is available for vehicle knock-down kit imports after a manufacturer signs a Memorandum of Understanding (MOU) with the Director General of Foreign Trade, covering plans on investment, capacity, local content, value of CKD imports and export earnings. Some commodity imports must be channeled ("canalized") through public sector companies, although several "canalized" items have been fully or partially decontrolled recently. Currently, the main "canalized" items are petroleum products, bulk agricultural products (such as grains), and certain pharmaceutical products.

India's import policy is administered by means of a negative list. The negative list is divided into three categories: (1) banned or prohibited items (e.g., tallow, fat, and oils of animal origin); (2) restricted items which require an import license; and (3) "canalized" items importable only by government trading monopolies (such as bulk agricultural commodities) and subject to cabinet approval regarding timing and quantity. In October 1995, the Indian Government published for the first time a correlation between its negative list of import restrictions and India's Harmonized Tariff Schedule (HTS) import classification scheme. This document, entitled "Export and Import Policy Aligned on ITC (HS) Classification" has helped to instill a degree of transparency, consistency and clarity to the importation of goods into India.

India has liberalized many restrictions on the importation of capital goods. The importation of all second-hand capital goods by actual users is permitted without license, provided the goods have a residual life of five years. In March 1993, India abolished the two-tiered exchange rate regime, moving to a single market-determined exchange rate for trade transactions and inward remittances. The rupee is convertible on current account transactions, with indicative limits remaining on foreign exchange for travel and tourism. Capital account transactions for foreign investors, both portfolio and direct, are fully convertible. However, Indian firms and individuals remain subject to capital account restrictions.

India has committed to remove many apparel, fabric, and yarn imports from the restricted licensing list as a result of the United States-India Market Access Agreement for Textiles and Clothing of January 1, 1995. Under the Agreement, India provides "unrestricted" access for fibers, yarns, and industrial fabrics.

Balance of Payments Justification for Restrictive Import Licensing

The United States and India reached agreement on December 28, 1999 on a timetable to lift quantitative restrictions (QRs) on imports of over 1,429 agricultural, textile, and consumer products, following a WTO ruling that these restrictions were no longer justified under the balance of payments provisions of GATT Article XVIII:B. India had invoked these justifications for over 50 years. These QR restrictions represent significant barriers to doing business in India and removal of balance of payments restrictions represents a significant liberalization of the Indian economy, affecting a wide range of U.S. industries. Under the December 28 agreement, India will lift at least 715 restrictions by April 1, 2000, and the rest by April 1, 2001. This advances by two years the timetable India previously agreed with the EU, Japan, and other trading partners.

Customs Procedures

In December 1998, the Government of India fixed a minimum import price for certain imported steel products. These prices were fixed for imported hot-rolled steel coils, cold rolled steel coils, hot-rolled sheets, tin-plates, electrical sheets, and alloy steel bars and rods. Under the India minimum reference price valuation regime, importations of, for example, prime hot-rolled steel coils is allowed only if the minimum c.i.f. customs value is $302 per ton. The U.S. Government is reviewing this action with regard to its consistency with India's obligations under the WTO Agreement on Customs Valuation. Minimum prices on steel were withdrawn on January 1, 2000, for primary products, but not for secondary merchandise. Minimum prices for primary products were reimposed on February 26, 2000, after a Calcutta High Court on that date ordered a stay of the Indian Government's decision to withdraw minimum prices for those products. The Indian Government has appealed the High Court's stay order to the Indian Supreme Court.

The opening of India's trade regime has reduced tariff levels, but it has not eased some of the most burdensome aspects of customs procedures. Documentation requirements, including ex-factory bills of sale, are extensive and delays frequent. There have also been private sector reports of misclassification and incorrect valuation of goods for the purposes of duty assessment, in addition to corruption. The Indian Customs Service would also benefit from a significant streamlining of its procedures for moving products from the border into the stream of domestic commerce.

STANDARDS, TESTING, LABELING AND CERTIFICATION

Indian standards generally follow international norms and do not constitute a significant barrier to trade. Requirements established under India's food safety laws are often outdated or more stringent than international norms, but enforcement has been weak. Opponents of foreign investment have tried to apply these laws selectively to U.S. firms (e.g., KFC), however these attempts have not withstood judicial scrutiny. Where differences exist, India is seeking to harmonize national standards with international norms. No distinctions are made between imported and domestically produced goods, except in the case of some bulk grains. Excessively restrictive plant protection rules have been introduced on soybeans. A return to more reasonable measures is being discussed by Indian and American agricultural officials.

Sanitary and Phytosanitary (SPS) Restrictions

India applies a range of SPS measures which have not been demonstrated as based on science and therefore, do not conform to international standards or the WTO SPS Agreement. India's SPS requirements are restrictive and lack transparency. For example, many of India's quarantine pests are already present in India, while others do not pose a significant level of risk. These requirements are a major hindrance to U.S. agricultural exports to India, particularly for wheat and soybeans.

GOVERNMENT PROCUREMENT

Indian Government procurement practices and procedures are neither transparent nor standardized, and discriminate against foreign suppliers, but they are improving under the influence of fiscal stringency. Specific price and quality preferences for local suppliers were largely abolished in June 1992, and recipients of preferential treatment are now supposedly limited to the small-scale industrial and handicrafts sectors, which represent a very small share of total government procurement. Despite the easing of policy requirements to discriminate, local suppliers are favored in most contracts where their prices and quality are acceptable. Reports persist that government-owned companies cash performance bonds of foreign companies even when there has been no dispute over performance.

A second area of discrimination affecting U.S. suppliers is the prohibition of defense procurement through agents. Most U.S. firms do not have enough business in India to justify the high cost of resident representation. Another problem area involves the fact that some major government entities routinely use foreign bids to pressure domestic producers to lower their prices, permitting the local bidder to resubmit tenders when a foreign contractor has underbid them. For just one large project (e.g., power projects), this could cost U.S. contractors hundreds of millions of dollars in lost opportunities. When foreign financing is involved, principal government agencies tend to follow multilateral development bank requirements for international tenders. However, in other purchases, current procurement practices usually result in discrimination against foreign suppliers when goods or services of comparable quality and price are available locally. India is not a signatory to the WTO Agreement on Government Procurement.

EXPORT SUBSIDIES

Export earnings are exempt from income and trade taxes, and exporters may enjoy a variety of tariff incentives and promotional import licensing schemes, some of which carry export requirements. Export promotion measures include duty exemptions or concessional tariffs on raw material and capital inputs, and access to special import licenses for restricted inputs. These subsidies have caused concern for U.S. industries, particularly the agrochemical sector. According to industry representatives, since no corporate taxes are levied on income generated from exports by Indian companies, this enables them to price goods below international competitive levels while maintaining a constant profit margin. Commercial banks also provide export financing on concessional terms. The 2000/01 budget phases out the tax exemption on export income over five years in equal steps. Parliament had not passed the budget at time of publication, and there is pressure on Finance Minister Sinha from exporters to repeal this provision.

INTELLECTUAL PROPERTY RIGHTS PROTECTION

Based on past practices, India was identified in April 1991 as a "priority foreign country" under the "Special 301" provision of the 1988 Trade Act, and a Section 301 investigation was initiated on May 26, 1991. In February 1992, following a nine-month investigation under "Special 301," the USTR determined that India's denial of adequate and effective intellectual property protection was unreasonable and burdens or restricts U.S. commerce, especially in the area of patent protection.

In April 1992, the President suspended duty-free privileges under the Generalized System of Preferences (GSP) for $60 million in trade from India. This suspension applied principally to pharmaceuticals, chemicals, and related products. Benefits on certain chemicals, added to GSP in June 1992, were withheld from India, increasing the trade for which GSP is suspended to approximately $80 million. Significant revisions to India's copyright law in May 1994 led to the downgrading of India as "priority foreign country" to the "Priority Watch List," a designation under which India has remained since 1995.

Patents

India's patent protection is weak and has adverse effects on U.S. pharmaceutical and chemical firms. India's patent act prohibits patents for any invention intended for use or capable of being used as a food, medicine, or drug, or relating to substances prepared or produced by chemical processes. Many U.S.-invented drugs are widely reproduced in India since product patent protection is not available. U.S. agrochemical industries have joined other industries' concern with respect to India's inadequate intellectual property protection. As a result, industries have withheld marketing and production of produce compounds in India. U.S. industry estimates that export sales losses, as a result, range from $5-25 million.

Under existing law, processes for making such substances are patentable, but the patent term for these processes is limited to the shorter of five years from patent grant or seven years from patent application filing. This is usually less than the time needed to obtain regulatory approval to market the product. Where available, product patents expire 14 years from the date of patent filing. India also fails to protect biotechnological inventions, methods of agriculture and horticulture, and processes for treatment of humans, animals, or plants. Indian policy guidelines normally limit recurring royalty payments, including patent licensing payments, to eight percent of the selling price (net of certain taxes and purchases). Royalties and lump sum payments are taxed at a 30 percent rate.

Many of these barriers must be removed as India undertakes its Uruguay Round obligations on Trade-Related Aspects of Intellectual Property Rights (TRIPS). The Indian Government has announced its intention to conform fully to the IPR-related requirements of the Uruguay Round. As a first step, the government promulgated in late 1994 a temporary ordinance, and introduced in early 1995 patent legislation consistent with India's TRIPS obligations relating to the "mailbox" provisions. The patents bill failed to pass in the Upper House of Parliament in 1995. In November 1996, the WTO Dispute Settlement Body established a panel at the request of the United States to review India's failure to meet these TRIPS obligations. The final panel report on this case was issued in August 1997, and ruled that India had failed to meet its obligations under the TRIPS agreement. Following an appeal by India, the WTO's appellate body ruled in favor of the United States in December 1997. Patent legislation, including "mailbox" provisions designed to meet India's initial set of TRIPS obligations was introduced and passed in the Upper House of Parliament in December 1998 and the Lower House of Parliament in March 1999 in advance of the April 19, 1999 deadline established by the WTO dispute settlement process.

India has so far failed to meet its January 1, 2000 deadline for a second set of TRIPS obligations including further amendments to its Patent Bill. A Joint Parliamentary Committee is reviewing the Patent Amendments Bill, which was introduced in Parliament in December 1999. Passage of the bill is expected in July 2000 at the earliest. Enactment of this Bill would be an important step forward. However, certain provisions of the Bill appear to be TRIPS inconsistent.

Aside from failing to meet its immediate obligations, the Indian Government has announced its intention to take full advantage of the transition period permitted developing countries under TRIPS before implementing full patent protection for pharmaceutical and agricultural chemical products. The United States continues to press for passage of a TRIPS compliant regime and to urge accelerated implementation of the TRIPS patent provisions. A small, but growing, domestic constituency, made up of some Indian pharmaceutical companies, technology firms and educational/research institutions, favors an improved patent regime, including full product patent protection. India's decision in August 1998 to join the Paris Convention and the Patent Cooperation Treaty, which took effect in December 1998, is a sign of improved IPR protection.

Copyrights

Under pressure from its own domestic industry, India implemented a strengthened copyright law in May 1995, placing it on par with international standards for copyright protection. However, piracy of copyrighted materials (particularly popular fiction works and certain textbooks), remains a problem for U.S. and Indian producers. Video, record, tape, and software piracy are also widespread, but enforcement has improved. Indian copyright law has undergone a series of changes over the last 10 years to provide stronger remedies against piracy and to protect computer software. In 1994, Parliament passed a comprehensive amendment to the 1957 Copyright Act. India's law now provides: rental rights for video cassettes; protection for works transmitted by satellite, cable, or other means of simultaneous communication; collective administration of rights; and limiting judicial discretion with respect to the level of penalties imposed on copyright pirates. However, there is no statutory presumption of copyright ownership and the defendant's "actual knowledge" of infringement must be proven. In December 1999, as part of its TRIPS obligations, the Indian Government passed an amendment to the Copyrights Act, 1957, increasing the period of protection of performers' rights from 25 to 50 years, and extending the provisions of the Act to broadcasts and performances made in other countries on a reciprocal basis.

Indian copyright law offers strong protection, but the Indian Constitution gives enforcement responsibility to the state governments. Classification of copyright and trademark infringements as "cognizable offenses" has expanded police search and seizures authority, while the formation of appellate boards has speeded prosecution. The amended law also provides for new minimum criminal penalties, including a mandatory minimum jail term, that U.S. industry believes will go far in controlling piracy, if implemented. Other steps to improve copyright enforcement include: the establishment of a copyright enforcement advisory council, including a judiciary commissioner, with responsibility for policy development and coordination; the initiation of a program for training police officers and prosecutors concerned with enforcement of copyright laws; and the compilation of data on copyright offenses on a nationwide basis to assist in enforcement and application of penalties. However, because of backlogs in the court system and documentary and other procedural requirements, few cases have been prosecuted recently. While a significant number of police raids have been planned and executed, the law requires that in order to seize allegedly infringing equipment, the police must witness its use in an infringing act.

Cable piracy continues to be a significant problem, with estimates of tens of thousands of illegal systems in operation in India at this time. Copyrighted U.S. product is transmitted over this medium without authorization, often using pirated video cassettes as source materials. This widespread copyright infringement has a significant detrimental effect on all motion picture market segments – theatrical, home video and television – in India. For instance, pirated videos are available in major cities before their local theatrical release. Industry representatives estimate annual losses to the U.S. motion picture industry due to audiovisual piracy to be $66 million. A bill to regulate the cable industry was submitted to Parliament in 1993, but has been sent back to the Ministry of Information for revision with no further progress in this area since that time. U.S. industry estimates that annual losses by the U.S. motion picture industries due to India's import authorization policies and remittance restrictions are estimated to be $5-$10 million.

Trademarks

The Government of India has committed to upgrading its trademark regime, including according national treatment for the use of trademarks owned by foreign proprietors, providing statutory protection of service marks, and clarifying the conditions under which the cancellation of a mark due to non-use is justified. In May 1995, the Government of India introduced in Parliament a trademark bill that passed the lower house. However, opposition in the upper house of Parliament stalled discussion of the legislation, which was finally passed in December 1999. Protection of foreign marks in India is still difficult, although enforcement is improving. Guidelines for foreign joint ventures have prohibited the use of "foreign" trademarks on goods produced for the domestic market (although several well-known U.S. firms were authorized in October 1991 to use their own brand names). The required registration of a trademark license (described by U.S. industry as highly bureaucratic and time-consuming) has routinely been refused on such grounds as "not in the public interest," "will not promote domestic industry," or for "balance of payments reasons." The Foreign Exchange Regulation Act (FERA) restricts the use of trademarks by foreign firms unless they invest in India or supply technology.

In an infringement suit, trademark owners must prove they have used their mark to avoid a counterclaim for registration cancellation due to non-use. Such proof can be difficult, given India's policy of discouraging foreign trademark use. Companies denied the right to import and sell products in India are often unable to demonstrate use of registered trademarks through local sale. Consequently, trademarks on restricted foreign goods are exposed to the risk of cancellation for non-use. The new Trademark Act provides protection for service marks for the first time. Trademarks for several single ingredient drugs cannot be registered. There have been several cases where unauthorized Indian firms have used U.S. trademarks for marketing Indian goods. However, the Indian courts have upheld trademark owner rights in infringement cases.

SERVICES BARRIERS

Indian Government entities run many major service industries either partially or entirely. However, both foreign and domestic private firms play a large role in advertising, accounting, car rental, and a wide range of consulting services. There is growing awareness of India's potential as a major services exporter and increasing demand for a more open services market.

Insurance

Prior to 2000, all insurance companies were government-owned, except for a number of private sector firms which provide reinsurance brokerage services. Foreign insurance companies had no direct access to the domestic insurance market except for surplus lines, some reinsurance, and some marine cargo insurance. A government-appointed committee recommended in 1994 that the insurance sector be opened up to private sector competition, both domestic and foreign. In December 1996, the Finance Minister introduced the Insurance Regulatory Authority (IRA) bill in Parliament. On December 7, 1999, the Indian Parliament passed the Insurance Regulatory and Development Authority (IRDA) Bill that ended a Government monopoly and established an Insurance Regulator. The law opened India's insurance market to private and foreign participation with a limit on foreign equity in domestic companies of 26 percent of paid-up capital. Priority will be given to health insurance and funds collected from policyholders as premiums must be invested in either infrastructure projects or the social sector. In the WTO financial services negotiations that concluded in December 1997, India bound the limited range of insurance lines then open to foreign participation. In addition, India committed to Most-Favored-Nation (MFN) treatment effective January 1999 for the financial services sectors, dropping a previous MFN exemption.

Banking

Most Indian banks are government-owned and entry of foreign banks remains highly regulated. The Reserve Bank of India issued in January 1993 guidelines under which new private sector banks may be established. Approval has been granted for operation of 25 new foreign banks or bank branches since June 1993. Foreign bank branches and representative offices are permitted based upon reciprocity and India's estimated or perceived need for financial services. As a result, access for foreign banks has traditionally been quite limited. Five U.S. banks now have a total of 16 branches in India. They operate under restrictive conditions including tight limitations on their ability to add sub-branches. Operating ratios are determined based on the foreign branch's local capital, rather than global capital of the parent institution. India's commitments under the 1997 WTO Financial Services Agreement provides for a greater role for foreign banks starting in January, 1999. Foreign banks are to be allowed to open twelve new branches annually (up from the present commitment of eight per year). In addition, foreign financial services companies, including banks, are to be allowed to provide equity venture capital in India, up to 51 percent of a company's total equity. However, India did not agree to grant national treatment to foreign companies investing seeking to invest in the financial services sector, nor did it make any commitments on cross-border banking.

Securities

Foreign securities firms have established majority-owned joint ventures in India. Through registered brokers, foreign institutional investors (FII), such as foreign pension funds, mutual funds, and investment trusts, are permitted to invest in Indian primary and secondary markets. However, FII holdings of issued capital in individual firms are limited; total aggregate holdings by FIIs cannot exceed 24 percent of issued capital (the limit can be raised to 30 percent with the approval of the Board of Directors of the company concerned), and holdings by a single FII are limited to 10 percent of issued capital. Foreign securities firms may now purchase seats on major Indian stock exchanges, subject to the approval of a regulatory authority. In the 1998/99 budget, FII investments were allowed for the first time in the debt securities of unlisted Indian companies. Prior clearance from the Reserve Bank of India is no longer required for Indian companies for inward remittance of foreign exchange and for the issuance of shares to foreign investors.

Motion Pictures

U.S. motion picture industries have expressed concern with the proposed Broadcast Bill of January 1997, which would tighten limitations on broadcasting. According to industry representatives, the bill contains several protectionist provisions which act to limit foreign interests in local broadcasting (including a 20 percent equity cap on foreign investment). The draft bill would establish a regulatory framework for direct-to-home (DTH) services, including satellite and cable television programming, and replace the existing Cable Act of 1995. The bill is currently pending review by the Parliament.

In the past, restrictions imposed on the motion picture industry were quite burdensome, costing an estimated $80-300 million, according to industry estimates. The United States pressed for removal of these restrictions, and received commitments from the Government of India in February 1992 that addressed most industry concerns. Beginning in August 1992, the Indian Government began implementation of its commitments, introducing a number of significant changes in film import policy. The Government of India has carried out its commitments in good faith. However, some issues of concern remain. For example, the pre-censorship "quality check" procedures entail fees, and some Indian states apply high entertainment taxes, amounting to 100 percent of the price of admittance in certain cases.

High taxes not only constitute a significant disincentive to much needed construction of cinemas and theaters in India, but impede free and open trade. U.S. industry emphasizes that the pre-censorship certification is in itself a form of censorship. U.S. companies also have experienced difficulty in importing film/video publicity materials. More significant, however, are concerns regarding the $6 million annual ceiling applied to remittances by all foreign film producers for balance-of-payments reasons. In addition, India has continued to use a 1956 cabinet resolution to bar any foreign ownership of the media, preventing the approval even of joint ventures.

Accounting

Only graduates of an Indian university can qualify as professional accountants in India. Foreign accounting firms can practice in India, if their home country provides reciprocity to Indian firms. Internationally recognized firm names may not be used, unless they are comprised of the names of proprietors or partners, or a name already in use in India. This limitation applies to all but the two U.S. accounting firms that were established prior to the imposition of this rule. Effective July 1, 1998, the Institute of Chartered Accountants of India (ICAI) banned the use of logos of accounting firms. Financial auditing services may only be provided by firms established as a partnership. However, foreign accountants may not be equity partners.

Construction, Architecture and Engineering

Many construction projects are offered only on a non-convertible rupee payment basis. Only projects financed by international development agencies permit payments in foreign currency. Foreign construction firms are not awarded government contracts unless local firms are unable to perform the work. Foreign firms may only participate through joint ventures with Indian firms.

Legal Services

Foreign lawyers are not allowed to practice law in India's courts. To qualify to practice in India, a candidate must obtain a law degree from an Indian university. The Indian Bar Council has imposed restrictions on the activities of foreign law firms in recent years that have sharply curtailed U.S. participation in the Indian legal services market.

Telecommunications

India has taken partial steps toward introducing private investment and competition in the supply of basic telecommunications services. However, uncertainties regarding interconnection charges new entrants must pay, alleged irregularities in the tendering process, India's weak multilateral commitments in basic telecommunications, and the strong influence the government-owned service provider has heretofore exerted over telecommunications policy have limited the value of the liberalizing steps taken so far.

The national telecommunications policy announced in 1994 allows private participation in the provision of cellular as well as basic and value-added telephone services. Foreign equity in value-added services is limited to 51 percent. For cellular and basic services, the limit is 49 percent. However, as it has been difficult to raise the amounts of money needed to finance the new networks, creative financing arrangements have been allowed in some cases that exceed the formal limit. Private operators can provide services within regional "circles" that roughly correspond to India's states. These operators currently are not permitted to offer domestic long distance or international services significantly restricting the market their networks could serve. Delays in awarding and issuing licenses for both cellular and basic service, as well as the imposition of new rules, limits and restrictions, particularly for basic services, have slowed progress and created an environment that is likely to inhibit rapid growth in India's telecommunications infrastructure. Local production requirements remain an important factor in negotiations to establish service operations.

A new telecommunications policy was released in March 1999. The Indian Government recently decided to allow foreign companies to invest up to 74 percent in Indian registered companies to establish and operate satellite systems. India announced a technology neutral regime in 1999 for cellular services.

India's government-owned corporations, MTNL and VSNL, are the exclusive providers of international long distance service. India has stated that it will review its policy on international long distance in 2004. The Indian Government is expected to accept the Telecommunications Regulatory Authority of India (TRAI) recommendations on the opening up of the domestic long distance service market in 2000.

In February 2000, the Indian Government said it would split the powers of the TRAI and set up a separate appellate authority, which would hear appeals against TRAI orders as well as disputes between service providers. Industry representatives have welcomed the ordinance, which they hope will make the regulatory framework more transparent and consistent. Licensing authority, however, remains with the Department of Telecommunications and not the regulator.

India created the National Task Force on Information Technology and Software Development. Appointed in 1998, the Task Force drafted India's National Informatics Policy. As a result, on November 7, 1998, competitors to VSNL were granted licenses to operate ISPs (Internet Service Providers). Competition in this market will generate lower prices for consumers and increased opportunity for U.S. equipment suppliers.

India has recently been working on legislation that would regulate aspects of the broadcasting industry. The draft broadcasting bill is intended to regulate all television and radio delivery services: terrestrial broadcast television, cable services, and satellite (including direct-to-home, or DTH) services. A recent version of the bill would restrict foreign equity investment (to 20 percent), require local incorporation, require local uplink of satellite signals, and require local licensing of programs and channels. The bill is also likely to contain cross-media ownership restrictions, spectrum auctions, and program standards. As such, the bill will have a negative impact on the commercial development of India's satellite and cable industries and the ability of foreign companies to access the Indian market, both for delivery of communications services and for program access.

INVESTMENT BARRIERS

The new industrial policy announced in July 1991 marked a major shift, relaxing or eliminating many restrictions on investment and simplifying the investment approval process. However, many of these changes were instituted by executive orders and have not yet received legislative sanction through parliament. The United States and India still have not negotiated a bilateral investment treaty, although an updated agreement covering operations of the Overseas Private Investment Corporation (OPIC), was signed in November 1997. The new agreement modernizes and replaces the arrangements that had governed OPIC operations since 1957. OPIC operations resumed in November 1998 following the partial lifting of sanctions imposed on India after its nuclear tests in May 1998.

Equity Restrictions

The complicated and burdensome Foreign Exchange Regulation Act has been amended to increase access for foreign investment in India. Automatic approval is granted by the Reserve Bank of India for equity investments of up to 51 percent in 48 industries. The Indian Government has also authorized existing foreign companies to increase equity holdings to 51 percent. The government now allows automatic approval by the Reserve Bank of India of equity investments of up to 74 percent in eight categories including mining services, electricity generation and transmission, and construction of roads, bridges, ports, harbors, and runways. All sectors of the Indian economy are now open to foreign investment, except those with security concerns, such as defense, railways, and atomic energy. Government approval is still necessary for majority foreign participation in the passenger car sector. Proposals for foreign equity participation exceeding 51 percent (74 percent in the case of eight industries) and projects considered to be "politically sensitive" are considered by the Foreign Investment Promotion Board (FIPB). Through 1994, the FIPB had approved almost all the requests made for higher foreign ownership and for other "exceptional" cases, but still reserved the right to deny requests for increased equity stakes. However, foreign firms report that increases in foreign equity, especially to 100 percent foreign ownership, have become more difficult to obtain since 1994. On February 2, 2000, the Indian Cabinet announced its decision to allow automatic approval for more foreign investments and to review industry-specific equity limits. However, the broadening of automatic approval applies only to new investment and does not apply to foreign companies that already have an existing venture in India or to foreign companies acquiring stakes in existing Indian companies.

Industries have expressed concern with the Indian Government's stringent and non-transparent regulations and procedures governing local share holding. Current price control regulations have undermined incentives to increase equity holdings in India. Some companies report forced renegotiation of contracts in the power sector to accommodate government changes at the state and central levels. They report that this practice makes India an expensive, complicated, and frustrating environment in which to do business.

Trade-Related Investment Measures

On November 25, 1997, India's Cabinet Committee on Economic Affairs (CCEA) approved and announced new rules applicable to all existing and new foreign auto investments in India. Under the new policy, new and existing joint venture companies seeking to import CKD and SKD kits or automotive components must sign a memorandum of understanding (MOU) with the Government of India imposing the following requirements: $50 million minimum equity investment in joint ventures with majority foreign ownership; local content requirements; export obligations; and foreign exchange balancing. Concern has been expressed that the new policy may violate India's commitments under the WTO Trade-Related Investment Measure (TRIMS) Agreement, in part on the ground that the policy appears to adopt measures that the TRIMS Agreement Annex explicitly prohibits. On July 20, 1999, the United States held formal consultations with India under Article 4 of the WTO Dispute Settlement Understanding with respect to these measures, and is currently evaluating next steps to address those concerns. Indian press reports indicate that the Indian Government will eliminate the MOU and foreign exchange balancing requirements for foreign auto investments when quantitative restrictions are phased out on April 1, 2001, but will maintain local content and export requirements on such investment after that date.

India has also notified to the WTO other measures that are inconsistent with its obligations under the WTO TRIMS Agreement. The measures deal with local content and "dividend balancing" requirements affecting pharmaceutical products and consumer products in general. Proper notification allowed developing-country WTO Members to maintain such measures for a five-year transitional period after entry into force of the WTO. India has failed to eliminate these measures before the January 1, 2000 deadline. The United States is working in the WTO to ensure that WTO Members meet these obligations.

ANTI-COMPETITIVE PRACTICES

Both state-owned and private Indian firms engage in most types of anti-competitive practices with little or no fear of reaction from government overseers or action from a clogged court system. India suffers from a slow bureaucracy and regulatory bodies that reportedly apply monopoly and fair trade regulations selectively. These practices are not viewed as major hindrances to the sale of U.S. products and services at this time. U.S. firms are more concerned with addressing such basic issues as market access, corruption, arbitrary or capricious behavior on the part of their partners or government agencies, and procurement discrimination from both public and private institutions.

ELECTRONIC COMMERCE

In November 1998, Internet services were opened up to the private sector for the first time. Private operators can set up gateways for international connectivity. Foreign equity of up to 49 percent is permitted, and there is no limit on the number of licenses to be issued in a given area. The Indian Government is currently developing a policy regarding electronic commerce. In order to develop electronic commerce, India will have to change the Indian Telegraphic Act of 1885 which does not allow encrypted information to be transmitted over telephone lines. In addition to amending this act, India also plans to make amendments to the Copyright Act of 1957 in order to make circumvention of technological measures like encryption an offense. The Cyber bill was introduced in the Indian Parliament in December 1999, to provide a legal framework for electronic commerce.

OTHER BARRIERS

India has an unpublished policy that favors counter-trade. The Indian Minerals and Metals Trading Corporation is the major counter-trade body, although the State Trading Corporation also handles a small amount of counter-trade. Private companies are encouraged to use counter-trade. Global tenders usually include a clause stating that, all other factors being equal, preference will be given to companies willing to agree to counter-trade. The exact nature of offsetting exports is unspecified as is the export destination. However, the Indian Government does try to eliminate the use of re-exports in counter-trade. India's Drug Policy is an issue of concern for U.S. industries. The policy imposes a stringent price control regime which adversely affects U.S. companies from a commercial standpoint. There is no system allowing for automatic adjustment of prices to offset cost fluctuations. With the lack of effective intellectual property protection coupled with a rigid pricing system, U.S. industries face extreme obstacles to maintaining viable businesses in India. Industries most significantly affected are pharmaceutical companies placing the best and latest innovative drugs out on the Indian market. Industry representatives have expressed interest in the Government of India adopting free pricing measures.

INDONESIA

TRADE SUMMARY

In 1999, the U.S. trade deficit with Indonesia was approximately $7.6 billion, an increase of $528 million from the U.S. trade deficit of just over $7.0 billion in 1998. U.S. merchandise exports to Indonesia were approximately $1.9 billion, a decrease of $352 million (15.4 percent) from the level of U.S. exports to Indonesia in 1998. Indonesia was the United States' 39th largest export market in 1999. U.S. imports from Indonesia were $9.5 billion in 1999, an increase of $176 million (1.9 percent) from the level of imports in 1998. The stock of U.S. foreign direct investment (FDI) in Indonesia in 1999 was about $6.9 billion, an increase of 4.0 percent from the level of U.S. FDI in 1998. U.S. FDI in Indonesia is concentrated largely in the petroleum, manufacturing and financial sectors.

OVERVIEW

After two years of economic and political turmoil, conditions in Indonesia began to stabilize in 1999. According to U.S. Embassy reporting, real gross domestic product (GDP), which fell by 13.2 percent in 1998, grew by approximately 0.10 percent in 1999. Indonesia still faces daunting economic problems with a non-functioning banking system and massive corporate debt overhang. A number of positive political developments in 1999 created preconditions for restoring economic growth. These included a peaceful and credible general election in June 1999 followed by the open and transparent selection of a new president in October 1999. The new government of President Abdurrahman Wahid has pledged to accelerate economic reforms, including liberalization of its trade regime and efforts to address widespread corruption. However, the Indonesian government's commitment to implementing these reforms remains to be demonstrated through concrete action.

Early in the economic crisis, the government of Indonesia turned to the International Monetary Fund (IMF) for assistance. Since late 1997, IMF-motivated economic reform programs have been the focus of internal restructuring and reform. However, implementation of these reforms has been erratic. In September 1999, the IMF suspended payments to Indonesia until the government demonstrated that it had investigated seriously a campaign finance scandal involving a wide range of political elites with ties to the ruling Golkar party. At the same time, controversy surrounded the alleged improper conduct of senior officials of the Indonesian Bank Restructuring Agency (IBRA), which is charged with restoring Indonesia's devastated banking sector to health. With a new government in place and the belated release of an independent audit of the scandal in November 1999, the IMF began negotiations on a new Memorandum on Economic and Financial Policies ("MEFP"), which was signed on January 20, 2000.

The MEFP establishes a range of additional economic reforms to address the challenges to long-term stabilization facing Indonesia. During the three-year term of the program, the Indonesian government is to undertake specific actions in four broad areas: macroeconomic reform; bank and corporate restructuring; rebuilding economic institutions; and improved natural resource management. These commitments, if implemented as planned, could help to further liberalize the Indonesian market and address a range of concerns identified by U.S. companies.

Major concerns recently articulated by U.S. industry include: the absence of a transparent and predictable regulatory environment, including with respect to the issuance of licenses and administrative rules; and arbitrary and inconsistent interpretation and enforcement of laws by governmental authorities and entities, including with respect to intellectual property protection. Other problems include widespread corruption and an ineffective judicial system which frustrates the effective enforcement of contracts and intellectual property rights. Commercial dealings in Indonesia are impaired by a host of uncertainties, including: an underdeveloped legal system that makes negotiation of credit facility documents difficult; laws that only provide for guarantees and not security interest to property; non-existent credit reporting; and underdeveloped capital markets.

IMPORT POLICIES

As of January 1999, 59.4 percent of Indonesia's tariff lines were assessed import duties ranging between zero and five percent. Following tariff rate reductions on 232 tariff lines, Indonesia's average unweighted tariff is 8.9 percent in 1999, compared to 20 percent in 1994. As part of the January 1998 IMF program, Indonesia committed to reduce tariffs and eliminate all existing non-tariff barriers, except those established for health or safety reasons, by the end of the program period in November 2001. In the MEFP, Indonesia committed to establish by the end of 2003 a three-tier tariff structure (zero, five and ten percent) for all goods, except automobiles and alcoholic beverages.

In the Uruguay Round market access negotiations, Indonesia committed to bind 94.6 percent of its tariff schedule and most tariffs are bound at 40 percent. Products for which tariff bindings exceed 40 percent include automobiles, iron, steel, and some chemical products. Indonesia has committed to remove import surcharges on items bound in the Uruguay Round by the year 2005. In accordance with the WTO Agreement on Agriculture, Indonesia agreed to eliminate non-tariff barriers on agricultural products, and replace them with tariffs. Agricultural products are subject to the general 40 percent tariff binding; although products that are not covered by this binding are amongst the most sensitive and heavily protected sectors. Local content regulations on dairy products were eliminated on February 1, 1998.

Indonesia appears to have complied with the July 1998 ruling by the WTO Appellate Body which found certain Indonesian practices and policies affecting the automotive sector to be inconsistent with WTO rules (see "Automotive Policies" below). In June 1999, the Indonesian government announced a new national automotive policy that reduces and rationalizes tariff levels on automobiles and automobile kits, and removes restrictions on the volume and types of motor vehicles that can be imported.

Quantitative Restrictions

Prior to the conclusion of Indonesia's initial stabilization program with the IMF in 1997, the sole importer and distributor of major bulk food commodities, such as wheat, rice, sugar, and soybeans, was the National Logistics Agency (BULOG), a state trading entity. Prices for these commodities were often higher than world market prices, despite being heavily subsidized. Pursuant to IMF-mandated reforms, effective September 1998, the role of BULOG was sharply curtailed. BULOG's major remaining responsibility is to maintain the country's rice stabilization program. However, in late 1999, the government further minimized BULOG's role by removing and replacing its temporary monopoly over importation on imports of rice with a temporary tariff of 430 Rupiah per kilogram (which corresponds to an effective tariff rate of 30 percent, based on January 2000 exchange rates). Under the MEFP, the government is committed to reviewing this tariff after six months. In conjunction with the minimization of BULOG's authority and role, private companies have been permitted to import rice, wheat, wheat flour, soybeans, garlic, and sugar. The government removed all tariffs on these items, with the exception of most forms of sugar for which tariffs have been reduced to the 20-25 percent range.

In the MEFP, Indonesia reaffirmed its commitment to phase out all quantitative import restrictions (except those established by international agreement) by November 2001. Remaining quantitative restrictions apply to wines and distilled spirits, of which the majority of imports are allocated for duty-free stores. This system substantially limits the availability of wine and spirits offered for sale in the domestic market.

Import Licensing

The government continues to reduce the number of products subject to import restrictions and special licensing requirements. For example, approximately 160 tariff lines are subject to import licensing restrictions, which is a concrete reduction from 261 tariff lines in 1994, and 1,112 tariff lines in 1990. However, U.S. companies remain concerned over Indonesia's license and quota system which appears to operate as a *de facto* import ban on motorcycles, and results in strict limits on the importation of other products, such as wine and films.

For imported goods that continue to be regulated, import licenses for specific categories of products are allocated to certain types of importers, as follows (the number of tariff lines within a product category for which licenses are required are reflected in parentheses): "registered importers" are eligible to seek licenses to import alcoholic beverages (27 lines) and hand tools (6 lines); "producing importers" are eligible to seek licenses to import artificial sweeteners (3 lines), propylene granules (2 lines), engines and pumps (5 lines), tractors (3 lines), knocked-down electronic keyboards (1 line), and scrap materials (57 lines); Pertamina, the state oil company, alone may import lube oil (3 lines); and PT Dahana, a state-affiliated company, alone may import explosives (4 lines).

STANDARDS, TESTING, LABELING AND CERTIFICATION

A May 1990 decree requires that the Ministry of Health respond to applications to register new, foreign pharmaceuticals within one year of receipt of an application. In practice, however, the registration process takes much longer. Foreign pharmaceutical firms have complained that the pace of registration approvals slowed considerably during 1999 due to administrative backlogs at the Ministry. Infringing pharmaceutical products sometimes become available in the local market before legitimate products are registered and approved for sale.

Revised maximum pesticide residues (MRLS) for all food commodities were announced in August 1996. While these MRLS appear to be consistent with Codex Alimentarius standards, Indonesia's implementation of proposed shipment-by-shipment certification procedures could prove to be administratively burdensome. U.S. industry reports that every four years all foods, including distilled spirits, must undergo a costly, complex, and non-transparent certification review managed by the Ministry of Health. New food labeling regulations were issued in July 1999 and will take effect July 2000. These regulations require all foods to be labeled in the Indonesian language and to bear an expiration date.

GOVERNMENT PROCUREMENT

Indonesia is not a party to the WTO Government Procurement Agreement. The current Indonesian law on government procurement was enacted in 1994. Most large government contracts are financed by bilateral or multilateral donors, each of which imposes its own procurement requirements. For large, government-funded projects, international competitive bidding practices must be followed. The government seeks concessional financing for most procurement projects, which includes a 2.5 percent interest rate, a 25-year repayment period, and a seven-year grace period. Since the fall of the Soeharto government in May 1998, there have been a number of investigations of possible procurement and contracting irregularities in response to domestic demands to eradicate corruption, collusion, and nepotism. In late 1999, pursuant to IMF-mandated reforms, the Indonesian government undertook audits of the state-owned electricity company (PLN), the state oil and gas company (Pertamina), and the State Logistics Agency (BULOG). Irregularities in procurement procedures were identified as major problems, and these organizations will be audited again during 2000. The audit effort will gradually be expanded to encompass other major state enterprises.

Foreign firms bidding on high value government-sponsored construction or procurement projects are periodically asked to purchase and export the equivalent value in selected Indonesian products. Government departments, institutes, and corporations are expected to utilize domestic goods and services to the maximum extent feasible, with the exception of foreign aid-financed goods and services procurement projects. State-owned enterprises that publicly offer shares through the stock exchange are exempted from government procurement regulations. Pertamina regulates the imports of all materials for use by the oil and gas sector.

In January 1998, the Indonesian government issued a presidential decree regulating cooperation between the government and the private sector in the provision and/or management of new infrastructure projects. The decree requires that infrastructure projects, including independent power projects, be publicly tendered on a competitive basis rather than negotiated with a single preferred company. The decree also requires the legitimate use of intellectual property in projects.

EXPORT SUBSIDIES

Since 1992, the Indonesian government has offered rediscount facilities for "special exporters." The program had previously been restricted to certain industries; however, in January 1999, its coverage was extended to qualifying exporters from any industry. Exporters may sell their export letters of credit or other instruments to the central bank, Bank Indonesia (BI), through foreign exchange banks. BI rediscounts the export drafts at the SIBOR rate for special exporters, and one percent above SIBOR for general exporters. The program lapsed in 1999 amidst administrative disagreements between Bank Indonesia and the Ministry of Finance, and has not been renewed. The government also maintains several credit programs that provide subsidized loans, primarily to agriculture and small and medium businesses. The entire structure of subsidized credits is undergoing significant change as economic reforms proceed.

Manufacturing companies which export 65 percent of their production for export may apply for restitution of import duties paid on inputs that are subsequently re-exported in a finished form. Duty exemptions may also be granted for capital equipment, machinery, and raw materials needed for the initial investment. Companies located in bonded or export-processing zones pay no duty until the portion of production destined for the domestic market is released, at which time duty is owed only on that portion.

INTELLECTUAL PROPERTY RIGHTS PROTECTION

Under the "Special 301" provisions of the 1988 Omnibus Trade and Competitiveness Act, the U.S. Trade Representative raised Indonesia to the "Priority Watch List" in 1996, from the "Watch List" where it had been since 1989. Indonesia remained on the "Priority Watch List" through 1999. Intellectual property rights (IPR) laws in effect as of the end of 1999 do not appear to be fully compliant with the WTO Agreement on Trade-Related Aspects of Intellectual Property Rights (TRIPS). The Indonesian government prepared draft legislation in the areas of trade secrets, industrial design and integrated circuits, as well as amendments to existing patent, trademark and copyright laws, in order to meet the January 1, 2000 deadline for TRIPS compliance. The Indonesian Parliament did not act on these proposals in 1999; however, the Indonesian government resubmitted the legislation to Parliament in February 2000.

IPR protection shortcomings mentioned by industry include: rampant software, audio, and video disk piracy; pharmaceutical patent infringement; apparel trademark counterfeiting; an inconsistent and ineffective IPR enforcement regime; and an ineffective legal/judicial system. The Indonesian government has on several occasions responded to U.S. companies that raise specific complaints about IPR infringement, however the judicial process and remedies cannot be relied upon to enforce intellectual property rights or to deter future violations. The lack of effective IPR protections and enforcement serves as a considerable disincentive for foreign investment in high technology projects in Indonesia. Indonesia is a member of the World Intellectual Property Organization (WIPO) and has acceded to numerous international conventions on intellectual property. These include the Paris Convention for the Protection of Industrial Property; the Berne Convention for the Protection of Literary and Artistic Works (with a reservation on Article 33), the WIPO Copyright Treaty, the Patent Cooperation Treaty; the Trademark Law Treaty, the Nice Agreement for the International Classification of Unclassified Goods and Services, and the Strasbourg Agreement Concerning the International Patent Classification.

Copyrights

In 1997, Indonesia enacted amendments to its copyright law that brought it into closer conformity with international standards for copyright protection. The law presently includes provisions which establish a rental right in the areas of audiovisual, cinematographic, and computer software, which are protected as literary works. The law also accords licensing rights, new protections for neighboring rights in sound recordings, and rights of producers of phonograms. It also increased the term of protection for many copyrighted works to 50 years, as required by the TRIPS Agreement. A bilateral copyright agreement between the United States and Indonesia that entered into force in August 1989 extended national treatment for copyright protection to works created by citizens of each country.

The Indonesian government periodically steps up enforcement efforts against copyright piracy and consults with copyright holders and associations in order to prioritize its efforts. Nevertheless, Indonesia's overall record for copyright enforcement is poor. Since 1996, piracy of video compact disks (VCDs) in Indonesia has been rampant, which has disrupted the market for cinemas and for the sale and rental of legitimate products. Periodic raids result in the seizure of sizable amounts of pirate optical disk (OD) products; many of which were detected and seized as they were about to be exported. However, none of these cases resulted in meaningful penalties on pirates, or even permanent impoundment of equipment used to manufacture pirated products. With the increased political turmoil in the second half of 1999, IPR enforcement once again took a back seat with law enforcement authorities that were consumed with civil unrest and the maintenance of public order. According to U.S. industry estimates, total annual losses from copyright piracy in Indonesia during 1999 exceeded $170 million.

Patents

Indonesia's first patent law went into effect on August 1, 1991. The amended law, enacted in 1997, improved patent protection in key respects. The term of protection has been extended to 20 years with a possible two-year extension. The amendments provided that a patent is subject to cancellation only in the event the patent holder fails to pay annual fees within specified periods. Unauthorized use of a product or process invention that is the subject of a pending application constitutes patent infringement. Indonesia provides product patent protection for foods and beverages.

Some aspects of Indonesia's patent law confer rights which are not required by the TRIPS Agreement. For example, the definition of the term "patent examiner" was expanded to include examiners in other industrial property offices. This could facilitate work-sharing in the search and examination process. Also, the exclusion from patentability for plant and animal varieties was rescinded. The Indonesian government is now drafting a specific law to protect animal and plant varieties.

Unfortunately, some of the problems in the previous law which were not corrected by the 1997 amendment have presented new problems. Importation still does not appear to satisfy the requirement that a patent holder must "work" or exploit the invention domestically. The right to prevent importation of products made by patented processes is available only if the process is also worked in Indonesia. The rules on content of voluntary patent licenses appear to be more restrictive than is permitted by the TRIPS Agreement. Moreover, government use of patented inventions is an additional concern. Inventions that are contrary to Indonesian laws and regulations are excluded from patentability, and the standard for excluding inventions contrary to the public interest appears to be inconsistent with TRIPS requirements.

Trademarks

The April 1993 trademark law provides for determination of trademark rights by priority of registration, rather than by priority of commercial use. The law provides for protection of well-known marks, but offers no administrative procedures or legal basis by which legitimate owners of well-known marks can cancel pre-existing registrations. Currently, the only avenue for challenging existing trademark registrations in Indonesia is to bring a court challenge, which is an unreliable and burdensome undertaking which must be initiated within five years from the date of the disputed registration. U.S. companies have found it difficult to protect their well-known marks, since judicial and administrative processes can be very time-consuming and unreliable. Injunctive relief is not provided, even when a lower court invalidates false trademark registrations.

The 1997 amendments to the trademark law enhanced protection by providing for administrative cancellation of registrations competing with well-known marks. However, as a practical matter, rights-holders continue to have difficulty enforcing this provision, either administratively or judicially.

New Technologies and Trade Secrets

Biotechnology and integrated circuit layout designs are not protected under current Indonesian law; however, the government has prepared and presented to the parliament legislation concerning trade secrets, industrial designs, and integrated circuits. Action on the legislation is expected in early 2000.

SERVICES BARRIERS

Despite relaxation of some restrictions, particularly in the financial sector, services trade barriers to entry continue to exist in many sectors. Foreign accounting firms must operate through technical assistance arrangements with local firms, and citizenship is a requirement for licensing as an accountant. Foreign agents and auditors may act only as consultants and cannot sign audit reports. Foreign law firms cannot establish a legal practice in Indonesia. Indonesian citizenship, as well as graduation from an Indonesian legal facility or other recognized institution, is required for admittance to the bar. Foreign consulting engineers can operate only by forming a joint venture with local partners in Indonesia.

Distribution

Indonesia has been gradually liberalizing the distribution services sector, and its agreement with the IMF calls for elimination of restrictions on trade in the domestic market. In February 1998, restrictive marketing arrangements for cement, paper, cloves and other spices, and plywood were eliminated. Indonesia is also opening the wholesale and retail trade sectors to foreign investment. In September 1998, the government issued a decree eliminating the former 49 percent ceiling on foreign equity and allowing up to 100 percent foreign equity in the distribution and retail sectors.

The state oil and gas company, Pertamina, controls all refining, distribution and marketing of final products to consumers. The Indonesian government, however, has committed to deregulate the downstream sector in 2000.

Indonesia's Hardwood Plywood Marketing Board (APKINDO) was abolished as a marketing cartel on February 1, 1998. There are no longer any restrictions on pricing, product mix or shipping arrangements, which could result in increased opportunities to U.S. exporters of panel products.

Financial Services

In the December 1997 WTO Financial Services Agreement, Indonesia committed to allow 100 percent foreign ownership for non-bank financial companies that are publicly listed, including insurance and securities firms. The government also guaranteed the access of existing financial services firms in its market. Restrictions on joint venture banks, where the foreign ownership limit was 85 percent, were retained in the WTO offer. Multi-finance companies with foreign partners are required to deposit 100 percent more paid-in capital than domestically owned multi-finance companies. However, in November 1998, amendments to the 1992 banking law were enacted which allow 100 percent foreign ownership of Indonesian banks. All insurance policies in Indonesia must be purchased from either a domestic or joint venture company. The only exceptions to this requirement are where specific coverage is unavailable in Indonesia or where the insured is a wholly foreign owned entity.

Banking

As of January 2000, the Indonesian government had completed recapitalization of most private banks, but only one of the four remaining state-owned banks. That institution, Bank Mandiri, was formed through the merger of four of the largest failed state-owned banks. The government has stated that it will re-privatize IBRA-controlled Bank Central Asia sometime in the first half of 2000. The government allowed banks to begin selling their recapitalization bonds in February 2000. Restrictions on branching and sub-branching for joint venture banks and foreign branches were lifted in 1998.

Securities

In 1998, the government removed restrictions on foreign ownership of securities firms, pursuant to Indonesia's commitments under the WTO Financial Services Agreement.

Audio-Visual

Indonesia prohibits foreign film and videotape distributors from establishing branches or subsidiaries. Under the Film Law, provision of importation and distribution services is reserved to 100 percent Indonesian-owned companies. Importation and in-country distribution of U.S. films must be handled through a single organization, the European and American Film Importers' Association (AIFEA). Duties, taxes, licensing, and other necessary payments also act as barriers to the film industry. In October 1999, the government abolished the Ministry of Information, which had previously regulated market access for foreign motion pictures. Some of the functions of the former ministry will be vested in a sub-cabinet agency; however, as of January 2000, it is unclear how regulatory responsibility for films will ultimately be redistributed.

Telecommunications Services

Indonesia's commitments under the WTO Basic Telecommunications Agreement were modest. The government committed to a maximum foreign investment limit of 35 percent for telecommunications services companies, but did adopt the WTO Reference Paper on pro-competitive regulatory principles.

Indonesia's new telecommunications law will take effect on September 8, 2000, and will permit local and foreign companies to enter Indonesia's telecommunications sector when PT Indosat and Satelindo lose exclusive rights for international calling service in 2004; and when PT Telkom loses its monopoly over domestic long distance service in 2005 and local fixed line service in 2010. Potential investors may enter those markets earlier by purchasing market entry rights from Telkom, Indosat or Satelindo.

INVESTMENT BARRIERS

The Indonesian government is interested in attracting and increasing foreign investment in the country, which it hopes to accomplish by reducing burdensome bureaucratic procedures and other requirements on foreign investors. Indonesian law provides for both 100 percent direct foreign investment projects and joint ventures with a minimum Indonesian equity of five percent. In 1998, the government opened several previously restricted sectors to foreign investment, including harbors, electricity generation, telecommunications, shipping, airlines, railways, roads, and water supply. Some sectors remain restricted or closed to foreign investment and are implemented through a "negative list." The most recent version of the negative list was issued in July 1998 and includes television and radio broadcasting, theatrical exhibition, and both film and video distribution.

Foreign capital investment is primarily governed by the Foreign Capital Investment Law, as well as by presidential and ministerial decrees. The Capital Investment Coordinating Board (BKPM) and other relevant agencies must approve all proposed foreign-manufacturing investments in Indonesia. Obtaining the required permits, however, can be cumbersome and time-consuming, as BKMP lacks centralized authority to issue such permits, requiring investors to deal with considerable red tape. For example, investment in petroleum extraction, mining, forestry, and banking is covered by specific laws and regulations which are administered by various specialized technical agencies, rather than BKMP. Joint ventures with a majority Indonesian share, or in which Indonesians own 45 percent of shares with at least 20 percent of total stock sold through the Indonesian stock market, are treated as domestic companies for certain purposes. This arrangement provides the ability to borrow short-term working capital in Rupiah from state banks.

In 1996, the Indonesian government issued a regulation under which tax exemptions may be provided to certain companies. This "tax holiday" was originally conceived of as a way to attract large investments, which Indonesia believed it was losing to other countries in the region maintaining more attractive tax incentives. The program was never fully implemented, however, and the government is in the process of revising its investment incentive regime. In the MEFP, the Indonesian government committed to rationalizing its policies toward tax holidays and tax-free zones, and to eliminate "unnecessary" exemptions to the value-added tax (VAT).

The former Administration's attempt to nullify government contracts with the foreign-backed independent power producers (IPPs) have been a concern since the beginning of the economic crisis. The previous government demonstrated little willingness or ability to have PLN (the state-owned power company) to renegotiate its contracts in good faith. The new government of President Wahid has taken concrete steps to resolve these disputes. Investors view these cases as an important sign of how FDI will be treated. Their successful resolution is important to establishing an attractive investment climate.

Trade-Related Investment Measures

In 1995, pursuant to the WTO Agreement on Trade-Related Investment Measures (TRIMS), Indonesia notified the maintenance of local content requirements to promote investment in a several sectors, including the fresh milk and cream, utility boiler equipment, and soybean cake industries. Proper notification allowed developing-country WTO members to maintain such measures for a five-year transitional period, ending January 1, 2000. Indonesia eliminated measures applicable to soybean cake in 1996 and to dairy products in 1998. However, as of late February 2000, Indonesia had not completed steps necessary to rescind TRIMS affecting boilers despite the January 1, 2000 deadline. The United States is working in the WTO to ensure that WTO members meet these obligations.

Automotive Policies

In 1997, the United States, Japan and the European Union challenged Indonesia's programs to promote a "national car" industry under WTO dispute settlement rules. The WTO dispute settlement panel found that Indonesian local content requirements and subsidies set forth under separate programs promulgated in 1993 and in 1996 violated Articles I and III of the GATT and Article 2 of the Agreement on Trade-Related Investment Measures (TRIMS). In order to comply with the WTO ruling, on June 24, 1999, the Indonesian government announced a major revision of its national automotive policies. The Indonesian government says its new policy is designed to use "market forces" to foster a more efficient and globally competitive Indonesian automotive industry, in particular, a component sector geared to supply both local and foreign manufacturers.

The new policy eliminates tariff and tax incentives for local content from the now defunct 1993 and 1996 "national car" policies. The Indonesian government substantially lowered tariff rates in all market segments for motor vehicles. The maximum tariff has been reduced from 200 to 80 percent. Tariffs on kits imported for assembly, which had ranged from zero to 65 percent, are now a flat 25 percent for all but passenger cars, which are 35, 40 or 50 percent depending on engine size. The tariff schedule for auto components and parts imported for local assembly has also been simplified to a flat rate 15 percent for imported parts for passenger cars and minivans. Like tariffs, luxury taxes have generally been lowered across the board. The Indonesian government has also lifted the previous regulations under which only registered importers or sole agents of foreign automakers could import vehicles. The current policy framework permits any licensed general importer to import automobiles without special permission, and relaxes certain regulations related to bonded warehouse zones for the automotive industry.

It has been reported in late 1999 and early 2000 that the Indonesian government supports, and may be actively working to promote, revival of a national auto policy or other efforts to recoup sunk investment or redeploy assets in PT Timor Putra Nasional, the beneficiary of the former, WTO-inconsistent auto policies. It has also been reported that the government was considering restrictions on the importation of "luxury" vehicles. The United States is concerned by these reports and will continue to scrutinize closely developments in the Indonesian auto sector that could lead to WTO-inconsistent policies or backsliding on WTO or international financial institution-related commitments.

ELECTRONIC COMMERCE

While there has been a proliferation of Internet service providers in recent years, the growth of electronic commerce in Indonesia is still hindered by a number of factors. These include: the limited availability of access to fixed land lines controlled by the monopoly domestic telecommunication provider; a low level of computer ownership, by both business and individuals; and the lack of a regulatory infrastructure to support electronic commerce. In particular, U.S. industry has identified the lack a legal framework for ensuring security of on-line transactions as a major impediment to the growth of electronic commerce.

OTHER BARRIERS

Transparency

A pervasive lack of transparency and corruption are significant problems for companies doing business in Indonesia. Corruption remains a problem for foreign companies doing business in Indonesia. Demands for "facilitation fees" to obtain required permits or licenses, government awards of contracts and concessions based on personal relations, and a legal system that is often perceived as arbitrary are frequently cited problems. Much of the substantial deregulation introduced since late 1997 and popular demands for investigations into corrupt, collusive, and nepotistic practices are aimed at tackling some of the problems which either countenance these problems or which have arisen from them.

The Indonesian government has stepped up its efforts to address these concerns. The most visible action was the passage of Law No. 28/1999 designed to tackle corruption among government officials. This law provides for stiffer penalties for corruption as well as for an independent commission with the power to investigate and audit the wealth of senior government officials including political appointees. The law came into effect in November 1999 and the government was still in the process of forming the independent commissions in January 2000. In the MEFP, the government stated that the Attorney General would establish a joint investigating team to investigate and prosecute corruption within the court system.

ISRAEL

TRADE SUMMARY

The U.S. trade deficit with Israel in 1999 was an estimated $2.2 billion, based on U.S. Department of Commerce statistics, up from $1.7 billion in 1998. U.S. merchandise exports to Israel totaled $7.7 billion, up 10.3 percent over 1998 levels. U.S. imports from Israel were $9.9 billion, up 14.4 percent from 1998. The stock of U.S. foreign direct investment (FDI) in Israel in 1998 was $3.1 billion, an increase of 51.2 percent over 1997 levels. U.S. FDI in Israel is concentrated in the manufacturing sector, although investment in financial services is increasing. More than half of all U.S. FDI is in electronics- related manufacturing.

The United States-Israel Free Trade Area Agreement

The United States-Israel Free Trade Area Agreement (FTAA), implemented on September 1, 1985, called for phased tariff reductions culminating in the complete elimination of duties on non-agricultural products effective January 1, 1995. The agreement eliminates most trade barriers between the United States and Israel, leaving Israel's agricultural sector as the only one where substantial non-tariff barriers and levies remain.

Given the substantial trade barriers remaining in the agricultural sector, the United States and Israel signed a five-year Agricultural Agreement establishing a program of gradual and steady market access liberalization for food and agricultural products

The U.S.-Israel Joint Economic Committee (JEC), created to supervise implementation of the agreement, has proved itself a useful mechanism for addressing a wide range of bilateral trade issues. The JEC last met in Washington in October 1999. The delegations discussed key trade issues, including Israeli intellectual property rights (IPR) protection and barriers to exports of U.S. beef and wine to Israel (discussed below).

IMPORT POLICIES

Tariffs

All remaining duties on United States non-agricultural products were eliminated on January 1, 1995.

Agriculture

Israel maintains extensive restrictions on food and agricultural imports. These include tariff-rate quotas (TRQs), prohibitive levies, and import bans. Quantitative or non-tariff measures (such as TRQs and bans), are permitted under the 1985 FTAA, and by inference, the 1996 Agricultural Agreement, on the basis of agricultural policy considerations or on religious grounds.

According to the 1996 Agricultural Agreement, all U.S. food and agricultural products have access to the Israeli market under one of three different categories: unlimited duty-free access; duty-free TRQs; or preferential tariffs, which are generally set at least 10 percent below Israel's Most-Favored Nation (MFN) rates. Although exports of many U.S. agricultural products to Israel are still restricted by very high tariffs, the 1996 Agreement provides for improved access during each year of the agreement by increasing the TRQs and reducing tariff levels for a significant number of U.S. goods.

Although Israel has agreed to improve transparency in the calculation of levies, progress remains uneven. The principal problem lies in the calculation of domestic costs of production in Israel as the basis for high import levies imposed on imported food and agricultural goods. Another issue is the treatment of certain imports that is apparently inconsistent with Article 6 of the 1985 FTAA. For example, Israel imposes levies on processed food products such as pasta, some modified starches, and processed fish, none of which are subject to agricultural policy considerations as required by Article 6. Despite increased local currency values resulting from a 28-percent depreciation of the shekel between 1996 and 1999, the government has raised reference prices and levies based on agricultural production costs by an average of 20 percent.

U.S. agricultural producers have experienced difficulties with the Israeli TRQ system. U.S. officials have received many complaints about Israeli delays in issuing import licenses and have expressed concern about the lack of timeliness or transparency in the TRQ licensing process.

In 1997, the U.S. and Israeli governments negotiated a TRQ to provide market access for U.S. almonds, but the high ex-TRQ duty rates effectively prohibit additional access when there are shortages in the local Israeli market. According to industry estimates, elimination of this barrier could result in increased sales by U.S. companies of less than $10 million.

Meat Imports

U.S. meat exports to Israel face an especially difficult environment because Israel's "Meat and Meat Products Import Law" effectively prohibits the importation of any meat or meat product not carrying kashrut certificate issued by Israel's Chief Rabbinate. However, Israel does permit domestic production and marketing of non-kosher products such as pork, shellfish, as well as non-kosher beef. On this basis, the import ban on non-kosher meat appears to be a direct violation of the 1995 FTAA, which requires that any religion-based restrictions be implemented in accordance with the principle of national treatment. The U.S. Government has raised this issue during separate consultations following the October 1999 Joint Economic Commission (JEC) meeting and awaits Israel's response. U.S. firms estimate that elimination of this prohibition on non-kosher imports could result in a $10 million increase in sales.

Kosher Certification

The United States-Israel FTAA permits measures relating to prohibitions on religious grounds, "provided that they are applied in accordance with the principle of national treatment." In certain cases, U.S. businesses have complained that the process for granting kosher certificates is discriminatory, and serves to protect domestic products. The process for obtaining kashrut certification is not transparent, as the party seeking certification must pay the "costs" of rabbinical inspection to determine that the ingredients and manufacturing of the product satisfy religious standards. Some businesses claim the fee does not reflect the actual costs of the inspection (in some cases, a percentage of sales has been charged, for example). Moreover, indirect supervision by a rabbi resident in the country of manufacture is permitted in some cases but not in others. Significant problems remain in these sensitive sectors. The United States is pursuing these complaints directly with the government of Israel. Industry estimates that elimination of this barrier could result in an increase in U.S. exports of $10-25 million.

Wine Imports

When the U.S.-Israel Agricultural Agreement was signed in November 1996, a significant preferential tariff became effective for U.S. wines. However, Israel has subsequently made annual reductions to the Most-Favored-Nation tariff rate on wine, sharply eroding the margin of preference for U.S. wines. Following Israel's January 2000 reduction, the $1.50 and $4.00 per liter duty on U.S. wine became higher than that of all other imported wines for the first time since 1996. The result is an incentive for importers to favor non-U.S. wines in Israel's most popular price range. The potential increase from the removal of this barrier is less than $10 million. The U.S. Government raised this issue during the October 1999 JEC meeting and requested that Israel enter into discussions to improve market access for U.S. wine.

TAMA

The Government of Israel uses a system known as "TAMA" to approximate the local wholesale price of a good by adding a fee based on "estimated profits," insurance, and inland freight to the declared value of an import for purposes of calculating purchase taxes. Coefficients for calculation of the TAMA vary from industry to industry and from product to product, but the effect is to establish higher taxes on imports than are applied to domestic products. The Government of Israel claims that without TAMA, an imported good benefits from a lower purchase tax than a comparable domestic product. In 1991, at the urging of the United States, the Government of Israel revised the TAMA calculation system, providing most registered importers with the option to declare the actual wholesale value of their products. Although the new arrangement has been in force since 1991, not a single importer has opted for the new system. Israeli officials claim that the importers are reluctant to use the new system because they have determined that the former TAMA rates are more advantageous. Importers, however, cite a variety of problems with the optional system, including the inability to modify prices once they have been declared. As the new optional TAMA has not operated as anticipated, the U.S. Government continues to seek to eliminate the discriminatory effect of TAMA on U.S. exports. U.S. industries estimate that this could result in a potential increase in U.S. exports of between $10 and $25 million.

Purchase taxes

Purchase taxes of 25 percent to 95 percent are applied to both local and foreign products ranging from automobiles and refrigerators to alcoholic beverages and cigarettes. On many other products, including consumer electronics, building inputs, and office equipment, Israel has reduced or eliminated purchase taxes. However, where there is no local production of the imported good, the purchase tax becomes a duty-equivalent charge. U.S. industries estimate that elimination of the purchase tax could lead to an increase in U.S. exports of between $25 and $100 million.

Wharfage and Port Fees

Until 1995, Israel charged importers 1.5 percent of the import's C.I.F. value for use of ports and stevedores, whereas exporters faced no charges. In effect, imports were subsidizing exports. In 1995, the U.S. Government received a commitment from the Government of Israel to equalize port fees for exporters and importers at 0.6 percent, to take effect by the end of 1996. However, by the end of 1999, the import fee still stood at 1.1 percent and the export fee was 0.2 percent. In 1999, the United States sought equalization of the fees. Israel's Ports and Railways Authority indicated that it plans additional reforms in 2000.

STANDARDS, TESTING, LABELING AND CERTIFICATION

Israel has reduced the burden of some discriminatory measures against importers. In 1990, Israel agreed to harmonize standards treatment, and to apply standards equally to imports and exports. Implementation of this promise has been slow. Enforcement of mandatory standards on domestic producers can be spotty, and in some cases (e.g., refrigerators, auto headlights, plywood, carpets, and labeling for food items), standards, as written or as enforced, enable domestic goods to meet requirements more easily than imports.

In 1999, the Knesset passed a law that provides that Israel can adopt more than one international or major national standard as the Israeli standard for a product. The Commissioner of Standards and the Standards Institution of Israel (SII), which share the major responsibility for developing Israeli standards, are considering how to implement the new law. No funds have been budgeted, however, for a systematic effort to revise Israeli standards to comply with the new government policy. It is hoped that U.S. standards as well as EU standards will be accepted for most products. For example, the United States is working with SII to resume U.S. ladder exports, which were halted when SII adopted EU standards.

GOVERNMENT PROCUREMENT

Israel is a signatory to the WTO Agreement on Government Procurement, which covers most Israeli government entities and government-owned corporations. Open international public tenders are published in the local press. However, government-owned corporations make extensive use of selective tendering procedures.

In accordance with the Israel public tendering law, all international public tenders with a value of at least $100,000 contain requirements for "industrial cooperation" (IC) with Israeli entities in the amount of 35 percent of the value of the total contract. U.S. companies may invest in local industry, co-develop or co-produce, subcontract to local companies, or purchase from Israeli industry to satisfy the IC offset requirement. U.S. suppliers have found the size and nature of their IC proposals to be a decisive factor in tight tender competitions, despite a court decision that prohibits the use of offset proposals in determining award of a bid.

For civilian local currency procurement by the Ministry of Defense (MOD), a U.S.-Israeli Memorandum of Understanding (MOU), extended in December 1997, gives U.S. competitors equal status with domestic suppliers. Despite this MOU, few U.S. companies have been successful in supplying the MOD. U.S. suppliers have expressed concerns about the lack of transparency and apparent lack of justification for excluding U.S. suppliers from MOD tendering opportunities.

INTELLECTUAL PROPERTY RIGHTS PROTECTION

Israel is a member of the World Trade Organization (WTO) and the World Intellectual Property Organization (WIPO), and is a signatory to the Berne convention for the protection of literary and artistic works, the Universal Copyright Convention, the Paris Convention for the Protection of Industrial Property, and the Patent Cooperation Treaty.

In April 1999, USTR announced that Israel would again be placed on the "Special 301" Priority Watch List. In making this announcement, USTR cited a number of concerns, including specific concerns about the inadequacy of Israel's copyright law; high levels of IPR piracy, particularly audio CDs; insufficient police and prosecutorial attention to IPR cases; and proposed amendments to the pharmacists law that would weaken patent protection for pharmaceuticals and sanction the unfair commercial use of test data .

Israel has taken several steps to improve IPR protection, but piracy of intellectual property remains a major problem. The government has established a cabinet-level subcommittee to review IPR issues, and a special unit in the police force dedicated to IPR enforcement is expected to receive more resources that will improve its effectiveness. There are plans to hire and train additional prosecutors to focus on IPR, and Israel has undertaken a number of public awareness efforts. While these are positive developments, enforcement efforts have not risen to the level needed to combat continuing piracy. Losses to U.S. industry are estimated in the range of $160 to $200 million from software, video, and CD/cassette piracy.

Israel passed legislation in December 1999 intended to amend patent, trademark, copyright, and other relevant laws to bring Israel into compliance with its commitments under the Agreement on Trade-Related Aspects of Intellectual Property (TRIPS) by January 1, 2000. These amendments, however, do not provide adequate protection for confidential test data. Copyright amendments are expected to enhance rights of distribution in connection with rental rights and imports of copyrighted materials, but do not make end-user software piracy on a commercial scale a criminal offense. Israel's Ministry of Justice recently announced that it has begun the process of replacing older intellectual property laws with a more modern legislative framework. These reforms would include a new copyright and trademarks law, as well as significant amendments to the patent law.

SERVICES BARRIERS

Telecommunications

Israel's telecommunications sector is being liberalized gradually. Foreign companies participate in joint ventures providing cellular and international telephone service. The government is expected to open domestic telephone service to domestic and foreign competition in 2000. A third cellular licensee was brought to market in 1998, and a fourth cellular license will be tendered in 2000. DBS satellite broadcasts are expected to begin in 2000.

Israel's dominant telecommunications carrier, Bezeq, has maintained a discriminatory interconnection charge on calls to and from the United States and Canada that is higher for North American traffic than for traffic to any other part of the world. When first applied in 1995, the fee was \$.07 per call to or from North America and \$.04 to or from other countries. The fee is declining annually and will be phased out after December 31, 2001.

Other

U.S. attorneys and accountants seeking to practice in Israel face strict testing requirements. Israel's financial services sector generally is open to foreign participation, subject to standard regulatory requirements. One U.S. firm, an armored courier service, has complained that subsidies and tax exemptions have allowed the Israeli Postal Authority to charge a price substantially lower than its private sector competitors. The American firm sought relief through Israel's judicial system, and the case is currently under review in Israeli courts.

INVESTMENT BARRIERS

The Israeli Government actively solicits foreign private investment, including joint ventures, especially in industries involving exports, tourism, telecommunications, and high technology. Foreign firms are accorded national treatment in terms of taxation and labor relations, and are eligible for incentives for designated "approved" investments in priority development zones. There are generally no ownership restrictions, but the foreign entity must be registered in Israel. Profits, dividends, and rents generally can be repatriated without difficulty through a licensed bank.

About 750 major U.S. companies have subsidiaries in Israel, and some 180 Israeli companies have subsidiaries in the United States. Investment in regulated sectors, including banking, insurance, and defense industries, requires prior government approval.

Israel is a member of the International Center for the Settlement of Investment Disputes (ICSID) and a party to the 1958 New York Convention on the Recognition and Enforcement of Foreign Arbitral Awards.

ELECTRONIC COMMERCE

Israel is on the cutting edge of Internet software developments and generally supports U.S. efforts to ensure that electronic transmissions will not be subject to tariffs. U.S. industry has reported no barriers to electronic commerce.

JAPAN

TRADE SUMMARY

The Japanese economy continues to be characterized by low economic growth, weak demand for imports, and excessive over-regulation. Largely as a consequence of the sluggish demand in Japan and strong growth of the U.S. economy, the U.S. goods trade deficit with Japan jumped to $73.9 billion, up 15.5 percent from the 1998 level of $64 billion. U.S. merchandise exports to Japan totaled $57.5 billion, declining 0.6 percent in 1999. In contrast, U.S. imports from Japan climbed 7.9 percent in 1999 to $131.4 billion. The stock of U.S. foreign direct investment in Japan in 1998 was $38.2 billion, an increase of 13.1 percent from 1997 levels. This investment is mainly in the manufacturing, finance, and wholesale sectors.

OVERVIEW

The Clinton Administration attaches top priority to opening Japan's markets to U.S. goods and services. Our multifaceted strategy to achieve this goal has helped boost U.S. exports to Japan by 20 percent over the last seven years. In line with this objective, the United States continues to stress the vital need for implementation of fiscal stimulus and reform of Japan's financial sector, and urges that Japan continue to use all available macroeconomic policy tools, take steps to strengthen its financial system, and implement comprehensive deregulation and market-opening initiatives. Serious actions by Japan in these areas are critical to attaining a self-sustained and robust economic recovery.

To open Japan's market, the United States has pursued a multi-faceted approach which has centered upon: (1) encouraging major structural reform and deregulation to open more sectors of Japan's economy to competition; (2) negotiating new trade agreements; (3) monitoring and enforcing existing trade agreements covering key sectors, including autos and auto parts, insurance, and government procurement; and (4) addressing concerns through regional and multilateral fora.

Our comprehensive approach to the economic relationship with Japan was first outlined in the United States-Japan Framework for a New Economic Partnership ("Framework Agreement"), signed by President Clinton and then-Prime Minister Miyazawa in July 1993. This agreement allowed for the United States and Japan to simultaneously address sector-specific market access barriers, cross-cutting structural issues, and macroeconomic issues in order to make meaningful progress in opening Japan's market. While Japan has reduced its formal tariff rates on imports to very low levels, it maintains a wide range of other market access barriers including non-transparent administrative practices and procedures; discriminatory standards; exclusionary business practices; and a business environment that protects domestic companies and restricts the free flow of competitive foreign goods into its market. An important innovation of the Framework Agreement was its emphasis on objective quantitative and qualitative criteria for monitoring the agreements, which allow both governments to more accurately assess progress under the agreements.

Since 1993, the United States has concluded 38 trade agreements with Japan – including three in 1999 – covering a wide variety of sectors from autos and auto parts, insurance, civil aviation and harbor practices, to agricultural products, entertainment and high technology. These agreements also address broad structural issues, such as distribution, competition policy, and investment. In each case, the agreements offer new sales opportunities to U.S. exporters and to others with competitive products and services to offer, as well as to Japanese producers and consumers. Indeed, U.S. market share has increased substantially since 1993 in a number of sectors, including semiconductors, medical and telecommunications equipment, and auto parts as a result of the significant progress made under these bilateral agreements.

Building on the Framework Agreement, President Clinton and then-Prime Minister Hashimoto initiated in June 1997 the Enhanced Initiative on Deregulation and Competition Policy ("Enhanced Initiative"), which has become the main vehicle for bilateral efforts to promote comprehensive deregulation and strengthen Japan's competition policy. In May 1999, the United States and Japan announced a Second Joint Status Report under the Enhanced Initiative detailing deregulation steps in the telecommunications, housing, financial services, medical devices and pharmaceutical products, and energy sectors. Japan also agreed to implement concrete measures designed to address cross-cutting structural concerns relating to competition policy, distribution, and transparency issues.

In October 1999, the United States provided Japan with a 45-page submission calling for the adoption of bold regulatory reforms to further open Japan's economy and increase market access for U.S. and other foreign firms. Both Governments are seeking to complete a Third Joint Status Report by March 31, 2000 that details an additional set of Japanese deregulatory measures which builds upon the extensive achievements made to date under the first two years of the Initiative.

The United States successfully concluded a new bilateral procurement agreement in July 1999 that calls for open, non-discriminatory, and transparent procurement by the four successor Nippon Telegraph and Telephone (NTT) companies, created upon the restructuring of NTT. Together, these companies constitute Japan's largest telecommunications equipment purchasers. In April 1999, the United States and Japan also issued an investment report highlighting measures to reform Japan's structural and regulatory policies with the aim of creating a more dynamic foreign direct investment climate in Japan.

The United States continued to focus attention in 1999 on the monitoring and enforcement of existing agreements to ensure their complete and successful implementation, urging Japan to make progress on our bilateral agreements including those covering autos and auto parts; insurance; construction; and other government procurement. While Japan's economic slowdown has interrupted progress in many sectors over the past couple of years, the United States remains committed to closely monitoring Japanese implementation of our trade agreements to ensure that U.S. rights under these agreements are enforced. The United States also focused heavily on steel trade policies in 1999. Although steel imports from Japan in 1999 declined by 54 percent from the previous year, the United States continues to monitor Japanese steel import levels closely to ensure that they revert to pre-crisis levels on a sustained basis.

In addition, the United States continued to call on Japan to provide meaningful access to its photographic film and paper sector through its market-opening initiative announced in February 1998. The United States released its second semi-annual film monitoring report in June 1999 reviewing Japan's implementation of formal representations it made to the WTO regarding the openness of its photographic film and paper market. While the report recognized and welcomed some of the pro-competitive measures implemented by Japan, it underscored, among other things, the need for additional progress to open the Japanese photographic film and paper market. The United States plans to issue its next monitoring report in the Spring of 2000.

Throughout 1999, the United States also relied on multilateral and regional fora, including the World Trade Organization (WTO) and the Asia-Pacific Economic Cooperation (APEC) forum, in order to achieve the Administration's market-opening goals. Moreover, the United States continued to invoke the WTO Dispute Settlement Mechanism to address problems related to market access barriers in Japan. In February 1999, the WTO Appellate Body upheld a WTO dispute panel ruling that found in favor of the United States in a case against Japan's unfairly burdensome and discriminatory requirements on varietal testing of fruits exported to Japan. The United States and Japan continue to consult on Japan's implementation of the WTO's rulings and recommendations.

Japan and Deregulation

Despite Japan's recent deregulation efforts, the Japanese economy remains burdened by unnecessary, costly, and excessive regulations that cover about 40 percent of all economic activity in Japan. Excessive regulation in Japan – including price controls, burdensome testing and certification requirements and unconventional standards – restrains economic growth, raises the cost of doing business in Japan, prevents competition from cultivating market-based efficiencies in the private sector, and impedes imports. Over-regulation also raises prices and lowers the cost of living for Japanese consumers. The Government of Japan estimates that if its current deregulation plans are fully implemented, Japan's GDP would grow by an additional 0.9 percent annually during Japanese Fiscal Year (JFY) 1998-2003, while the ratio of Japan's current account surplus to its GDP would fall by 0.9 percent. In January 2000, Japan's Economic Planning Agency released a study which determined that deregulation steps implemented since 1989 in eight key sectors generated roughly $82 billion in savings for Japanese consumers. The study also calculated that deregulation in the domestic telecommunications and electricity sectors alone saved the average Japanese family of four roughly $453 in 1998.

In addition to slowing growth in Japan, government over-regulation lies at the heart of many market access problems faced by U.S. companies doing business in Japan. Some regulations are aimed squarely at imports; others are part of a system that protects the status quo against new market entrants, both foreign and Japanese. The United States has aggressively pushed for the elimination of regulations that impede market access for U.S. firms, and many recent U.S.-Japan trade agreements have addressed issues related to the regulation of Japan's markets.

The U.S.-Japan Enhanced Initiative on Deregulation and Competition Policy

To promote the goals of the Framework Agreement, accelerate the pace of deregulation in Japan, and increase market access for foreign goods and services, on June 19, 1997, President Clinton and then- Prime Minister Hashimoto established the Enhanced Initiative on Deregulation and Competition Policy ("Enhanced Initiative"). The Enhanced Initiative addresses sectoral issues, such as telecommunications, housing, medical devices and pharmaceutical products, financial services, and energy; and cross-cutting structural issues, including competition policy, legal services, distribution, and transparency and other government practices. Under the Initiative, the United States has sought the reform of government laws, regulations, administrative guidance and other measures that impede market access for foreign goods and services in Japan.

During 1999, the second year of the Enhanced Initiative, significant progress was made in eliminating a number of Japan's regulatory barriers. In the Second Joint Status Report issued in May 1999, Japan agreed to a number of important deregulation measures, including decisions to:

< Liberalize the use of flexible telecommunications network arrangements, thus allowing businesses to build out their networks more rapidly and efficiently;

< Recognize the value of innovation and the role of the market to facilitate the introduction of innovative pharmaceuticals into Japan, and develop streamlined and transparent procedures for the prompt creation of new reimbursement categories for new medical devices;

< Enact several financial services-related measures under the "Big Bang" initiative, including the adoption of disclosure standards for non-performing loans similar to those in the United States, the introduction of new investment trust products, and the improvement of fair trading rules in the Securities and Exchange Law;

< Amend its Electric Utility Industry Law to shift from a permit and approval

system to a notification system for construction or upgrading of all power generating facilities;

- Accelerate the introduction of performance-based standards for three-story, multi-family wood housing in urban residential areas from JFY 2000 to May 1, 1999;

- Closely monitor local government implementation of the new Large-Scale Retail Store Location Law to ensure that the Law is not abused or administered inconsistently;

- Further strengthen its investigatory powers with regard to anti-cartel enforcement; and

- Adopt and implement public comment procedures for formulating, amending, or repealing Japanese Government regulations.

In October 1999, the United States provided Japan its "Submission by the Government of the United States to the Government of Japan regarding Deregulation, Competition Policy, and Transparency and other Government Practices in Japan." This submission detailed the deregulation measures the United States is seeking in each of the sectoral and structural areas during the third year of the Enhanced Initiative. U.S. officials urged Japan to adopt these measures at working-level meetings held throughout 1999-2000. In February 2000, the Deputy U.S. Trade Representative and Japan's Deputy Foreign Minister chaired a senior-level meeting to discuss the status of action on these requests and to narrow differences on outstanding issues. Both Governments agreed to aim to issue a Third Joint Status Report by March 31, 2000 that specifies substantive new market-opening measures to further deregulate Japan's economy.

SECTORAL DEREGULATION

Telecommunications

Under the Enhanced Initiative, the United States is seeking regulatory changes to promote competition in Japan's telecommunications sector, allowing U.S., foreign, and Japanese domestic carriers to enter and compete successfully against incumbent Japanese carriers. This sector has long been encumbered by excessive, outdated regulations and controlled by a dominant carrier, Nippon Telegraph and Telephone Corporation (NTT), that exercises market power to deter the entry and development of new competitors. These problems are compounded by the fact that the Ministry of Post and Telecommunications (MPT), which regulates the telecommunications sector, has no firm legal mandate to promote competition, and its many other missions, including promoting local industry and technological development, often conflict with its stated desire to promote a more competitive telecommunications sector. This has led to regulatory decisions that undercut or slow the development of competition in Japan. Japan's telecommunications regulatory framework focuses on whether carriers own or lease lines, not whether they have dominance in the market. This latter approach, called dominant carrier regulation, has been adopted by regulators in the United States and most other competitive markets because it puts competition first in setting policy. Under this approach, regulators promote competition by focusing regulatory oversight on "dominant carriers" – carriers in a position to hold consumers and competitors "hostage" through control over services or underlying facilities – while allowing carriers without such market power to operate with minimal restraint to speed the introduction of new services and technologies.

The United States is strongly urging Japan to adopt a legal framework that establishes the promotion of competition for the benefit of consumers as the clear primary objective of telecommunications regulation and make dominant carrier regulation the key component of this system. The United States has focused particular attention on those areas where U.S. firms have demonstrated strengths and where existing and potential investments stand to bring much-needed growth to this sector through innovative, competitively priced services. Since the Japanese telecommunications and broadcasting services market is worth an estimated $130 billion per year (and has the potential to expand significantly), a more open and accessible Japanese telecommunications market will translate into significant increased opportunities for U.S. service and equipment exporters.

As highlighted in the First and Second Joint Status Reports, Japan has made some progress in addressing certain areas of concern to the United States. Notably, Japan agreed to: (1) introduce a pro-competitive methodology for setting interconnection rates in 2000; (2) promote the reduction of interim interconnection rates, including ensuring that the relationship between retail and interconnection rates does not impair local competition; (3) take steps to ensure that interconnection rates for the dominant wireless carrier (NTT DoCoMo) are cost-oriented and non-discriminatory; (4) increase the flexibility given to carriers to structure and manage their networks; (5) eliminate foreign investment restrictions in cable TV businesses; (6) enact regulatory changes necessary for the introduction of new broadband technologies, such as Digital Subscriber Lines (DSL); (7) allow direct-to-home satellite service providers to offer a significantly expanded number of channels; (8) liberalize rules to allow international telecommunications service providers to use leased lines to bypass the over-priced international settlement system and bring international rates in line with those of competitive markets; (9) eliminate the restrictions on foreign investment in its major international carrier, *Kokusai Denshin Denwa* (KDD); (10) remove the restrictions on using third parties for transit of international telecommunications traffic; (11) complete a study on rights-of-way with the aim of improving access to these scarce resources; and (12) reduce fees and simplify procedures for testing and certifying wireless equipment.

These actions and commitments, which the United States continues to monitor closely, should help address important market access and regulatory barriers. Nevertheless, ensuring effective competition, especially in the local telecommunications markets, will require Japan to demonstrate that it can allow for the operation of an independent regulator more attuned to providing equitable opportunities to new entrants and less biased towards the financial interests of an operator still majority-owned by the Government of Japan.

In its October 1999 deregulation submission, the United States urged Japan to undertake a “Telecommunications Big Bang” in order to fundamentally alter its telecommunications regulatory structure and promote competition in the Japanese market. This would entail the adoption of a system of dominant carrier regulation that would free new entrants from regulatory burdens while safeguarding against anti-competitive practices by dominant carriers. In support of this policy change, the United States has specifically asked Japan to address market access impediments related to a wide range of areas:

Interconnection and Pricing: One of the most significant examples of insufficient safeguards on dominant carriers impeding competition is the high cost and onerous conditions that NTT regional operators are allowed to impose on their competitors. For a typical call, the interconnection rates that these operators charge their competitors to use their network are currently over four to ten times as high as similar rates in the United States, quadruple rates in the U.K., and over two-and-a-half times those of Sweden and France. This occurs because NTT has been allowed to pass along its inefficiencies to its competitors. In addition, MPT has permitted NTT to recover bloated costs for developing and introducing new services such as ISDN by charging these costs to competitors while it subsidizes this service for its retail customers. This classic “price squeeze” behavior – forcing its competitors to lose money if they are to price a competing service at or below NTT's retail rates – ensures that NTT maintains its hold on the market. This also highlights the inherent contradiction of Japan's regulatory regime in that MPT is simultaneously engaged in industrial policy – promotion of ISDN and fiber-to-the-home – while trying to regulate a dominant carrier.

This type of behavior has had a major impact on local competitors, which lose money on many local services and often pay around 70 percent of the revenues they receive from all calls back to NTT in interconnection charges. Compounding this problem, MPT has also allowed NTT regional companies to adopt discriminatory pricing schemes that leverage their virtual monopolies (98 percent of all local subscribers) to ensure that traffic stays on NTT's network. Under these pricing schemes, NTT regional company subscribers cannot get discounts on calls to numbers on competitors' local networks, even if they are in the same area. As most of these discount plans are used for Internet access, they effectively force Internet Service Providers (ISPs) to locate on NTT's network if they want to service NTT's huge customer base. This denies competitors the ability to host ISPs on their own network, a lucrative business, and forces competitors to pay substantial interconnection fees when their subscribers access ISPs on NTT's network. Under these circumstances, not only do competitors lose the ability to host ISPs, but they also are unable to match NTT's flat rate user rates for dial-up Internet services because of the interconnection fees they must pay NTT. Given the growing importance of Internet services in Japan's telecommunications market and the predominance of dial-up services for Internet access for the foreseeable future (see "Electronic Commerce" section of this chapter), MPT's failure to take action against NTT regional companies' pricing schemes will significantly hurt the development of both telecommunications competition and ISPs.

To achieve interconnection rates that promote rather than hinder competition, the United States has strongly requested that Japan adopt a pro-competitive methodology for interconnection fees, known as Long Run Incremental Costing (LRIC). This methodology is being used by regulators of competitive markets throughout North America, Europe and Asia. In the May 1998 First Joint Status Report of the Enhanced Initiative, Japan agreed to implement LRIC in 2000.

The United States has also sought significant reductions in Japan's interconnection rates before LRIC is implemented. Despite assurances by MPT that it would make best efforts to reduce these interim interconnection rates, we remain concerned that the decreases have been minimal. For example, interconnection rates for local switching fell only around six percent for JFY 1998, and the proposal for JFY 1999 envisions only a four percent decline.

New entrants to Japan's telecommunications market have expressed concern about the extremely high and non-transparent interconnection and access rates charged by dominant wireless service provider NTT DoCoMo as well. There is no explanation of how these exorbitant rates are calculated. In addition, DoCoMo has used its market power (servicing over 25 million subscribers) to insist that it be allowed to set prices for both incoming and outgoing calls for its network. This puts new entrants at a severe disadvantage as they are unable to compete on price – one of their most important strategies. As a result, they usually end up paying DoCoMo a much greater per-minute charge for passing calls to DoCoMo than DoCoMo pays them when it passes calls to the new entrants. While MPT promised in April 1999 to ensure that DoCoMo's interconnection rates are cost-oriented and non-discriminatory, the situation has not improved significantly. The United States has asked MPT to take measures to increase the transparency of DoCoMo's interconnection regime, require DoCoMo to allow other carriers to set retail rates, and impose the more stringent interconnection conditions of a "designated carrier" on DoCoMo.

Rights-of-way: New competitors in Japan find it extremely time-consuming and expensive to build competing networks in Japan because of a lack of access to rights-of-way. Specifically, there are no safeguards against NTT and other utilities (with substantial investments in telecommunications firms) denying or delaying access to, or charging exorbitant rates for the use of, their poles, ducts, conduits and other "rights-of-way" facilities. New carriers thus find it extremely difficult, time-consuming, and expensive to obtain rights to use these facilities. Moreover, if new entrants attempt to dig roads to lay their own cables and facilities, they encounter a labyrinth of restrictions that industry sources say makes the construction about ten times more expensive and can result in digging times six times longer than in other major international cities. The United States has proposed that Japan establish pro-competitive rules to ensure non-discriminatory, transparent, timely, and cost-based access for telecommunications carriers and cable TV operators. The Government of Japan set up a study group to address this problem at the request of the United States. However, its recommendation – voluntarily publishing by NTT and electric utilities that control rights-of-way of their application procedures to increase transparency – falls far short of the type of measures that are necessary to promote competition. The United States continues to urge a fundamental decision to require access for new competitors.

Unbundling: Enhanced government oversight to assist new entrants in building their networks also is needed to mandate that the dominant local carrier provide access to elements of the network that other carriers require on an "unbundled" (or separate) basis. Currently, Japan's interconnection guidelines contain only a narrow list of functions that must be "unbundled" for new competitors, and do not require that these unbundled elements be priced in a pro-competitive manner. The United States has requested that Japan expand the list of elements that must be unbundled by a dominant carrier and ensure that new and existing elements are provided on rates, terms, and conditions that are timely, reasonable and non-discriminatory. This mandatory unbundling, to which we are committed in the U.S. market, will greatly assist new carriers in building their networks.

Leased lines: New entrants are constrained from developing competing networks as a result of MPT's refusal to allow new entrants to lease lines from other carriers. While MPT provides several means for these new carriers to use other carriers' facilities, they are required to apply for MPT approval of these arrangements. This adds extra time and expense for new carriers and increases uncertainty in business planning because many of the criteria MPT uses to determine the approval of these requests are non-transparent. The United States has requested that MPT eliminate current restrictions and allow carriers to freely combine owned and leased facilities in their network without the need for government approval.

Other barriers: The United States also has asked Japan to address the complaints of new entrants regarding the difficulty and expense of getting access to space in NTT's buildings needed to interconnect with NTT's network (co-location space), and access to internal wiring in private buildings throughout Japan. Finally, in response to NTT's restructuring into four companies as of July 1, 1999, the United States has urged Japan to strengthen its safeguards against anti-competitive cross-subsidization by the NTT successor companies.

Because several of these issues, notably interconnection costing, discriminatory pricing, unbundling, and the use of leased capacity, relate to Japan's WTO commitments, Japan's efforts to address these areas will come under heavy scrutiny.

Medical Devices and Pharmaceutical Products

Under the 1986 Market-Oriented, Sector-Selective (MOSS) Medical Device and Pharmaceutical agreement, the United States and Japan seek to address regulatory and market access concerns in the medical device and pharmaceutical sectors. The MOSS Med/Pharm working group now also serves as the venue for discussion of medical device and pharmaceutical issues under the Enhanced Initiative, including price reimbursement and regulatory issues which remain the focus of bilateral consultations. The United States and Japan held consultations on Japanese deregulation of medical devices and pharmaceutical products in September 1999 and in January and March 2000 to review implementation of Japan's undertakings under the Enhanced Initiative, and to agree on additional measures designed to improve Japan's regulatory and reimbursement structures.

Despite some improvements, Japan's approval process for medical devices and pharmaceuticals still lag behind those of other industrialized countries. Such delays impose unnecessary cost burdens on both U.S. manufacturers and the Japanese health care system. Under the Enhanced Initiative, Japan has agreed to expedite its regulatory approval for new drugs by reducing the application review process from 18 months to 12 months by April 2000. This welcome change will allow more rapid introduction of new medicines into Japan, a benefit to both Japanese consumers and U.S. manufacturers alike. Japan already has taken steps to implement this undertaking, including reforming its chief advisory council for regulatory approvals, the Central Pharmaceutical Council, to allow for more frequent meetings and direct communication between reviewers and applicants. The United States continues to closely monitor Japan's implementation of this policy and is urging Japan to take specific added measures to improve the new drug application approval process.

As product cycles for medical devices are relatively short, even small delays represent large potential losses to manufacturers. The United States is pursuing improvements in the medical device approval system with particular emphasis on reducing the redundancies between different regulatory bodies in Japan. The United States is encouraged by the plans of the Ministry of Health and Welfare (MHW) to improve the consistency and speed of this process and to clarify the scope of devices that do not require clinical trials, and will closely monitor developments and request further progress. The United States also is urging Japan to reform its biocompatibility testing regime to more closely conform with common international practices.

Japan's longstanding practice of limiting the acceptance of foreign clinical data for pharmaceutical and medical device approvals has imposed unnecessary and unwarranted time and resource burdens on U.S. firms by requiring them to conduct duplicative clinical trials in Japan. Under the Enhanced Initiative, Japan has agreed to greatly expand the acceptance of foreign clinical data in the approval of new medical devices and pharmaceuticals – a measure which will significantly reduce the time and expense U.S. firms must devote to new product testing and approval. The United States welcomes Japan's undertaking to accept all foreign clinical data that meet International Conference on Harmonization (ICH) and Japanese Good Clinical Practice Guidelines and is monitoring its implementation closely while urging Japan to only require additional domestic clinical tests only when there is a clear need under the ICH Guidelines. The United States also is pursuing additional steps designed to broaden Japan's acceptance of foreign clinical data in the reimbursement process for medical devices in order to prevent delays caused by demands for domestic data.

In addition to regulatory barriers, the United States is seeking to address specific market access issues associated with Japan's current reimbursement system and its longstanding practice of revising prices for medical devices and pharmaceuticals. The United States continues to urge Japan to ensure that its reimbursement system is transparent, free from conflicts of interest, and based on objective criteria. Under Japan's national health care insurance system, reimbursement prices for drugs and devices do not always appropriately reward the true benefits of innovative products. The goal of the United States is to promote objectivity and transparency, to ensure that pricing decisions are not made in a seemingly arbitrary manner.

Most U.S. manufactured medical devices on the Japanese market fall under the "by-function" pricing system, which assigns a newly introduced product to a reimbursement category of like products, and prices the new product based on the prices of other products already on the market. The United States is particularly concerned about Japan's plans to reform this system. If implemented as currently drafted, the Japanese restructuring plan for pacemakers, PTCA catheters, and orthopedic implants, which are largely supplied by U.S. manufacturers, would price higher-end products together with lower-end products. By pricing new products equally with older ones, the system would fail to recognize innovation, and has the potential to impede or prevent the introduction of innovative medical devices in Japan. The plan also would result in an additional price reduction this year for many of these newest, most innovative products above and beyond the regularly scheduled biannual price revision. Moreover, Japan's moves toward adopting too few a number of broad "by-function" categories could make it very difficult to justify the creation of new categories. The United States is strongly urging Japan to take steps to prevent such negative outcomes.

In formulating its health care reforms, Japan has agreed to formally recognize the value of innovation so as not to impede or prevent the introduction of innovative products that bring more effective and more cost-effective treatments to patients. As Japan discusses, develops, and implements pharmaceutical reform, including the treatment of innovative products, with the aim of finalizing measures by April 1, 2002, the United States is urging Japan to continue to discuss and study the pharmaceutical pricing system with related parties, including the U.S. industry, with the goals of promoting innovation and increasing the availability of innovative pharmaceutical products.

Lack of transparency in and access to decision-making processes have been longstanding problems in the medical device and pharmaceutical sectors. Under the Enhanced Initiative, Japan agreed to ensure transparency in the consideration of health care policies by allowing foreign pharmaceutical and medical device manufacturers meaningful opportunities to provide their opinions to the relevant councils on an equal basis with Japanese manufacturers. Japan also agreed to provide foreign pharmaceutical and medical device manufacturers, upon their request, with opportunities to exchange views with MHW officials at all levels – an undertaking that to date has been successfully implemented. The United States is encouraging Japan to carefully consider input provided by U.S. industry, as well as to incorporate such input into its final plans.

Finally, the United States is strongly urging Japan to address the structural problems underlying Japan's health care system, such as the lack of volume buying and inadequate hospital specialization, which prevent efficient care delivery, substantially increase costs, and impede the timely introduction of new, innovative, and life-saving medical devices and pharmaceuticals. The United States continues to stress that cutting costs and improving the health care system in Japan will require the elimination of inefficiencies as well as the increased accessibility and use of foreign medical and pharmaceutical products. This will result in significant benefits to Japan's health care system and to Japanese patients.

Housing

The housing experts group established under the Enhanced Initiative met in February and December of 1999 and February 2000. The group promotes improved market access in Japan for foreign suppliers of wood and non-wood building products and systems. Achievement of this objective and increased reliance on performance-based standards by Japan will increase opportunities for American exporters and encourage the construction of higher quality, safer, and more affordable housing in Japan.

U.S. efforts on this front have led to several significant changes. For example, under the Second Joint Status Report, Japan's adoption of public comment procedures will make it easier for U.S. building materials suppliers to participate in the formulation and implementation of revisions to Japan's Building Standard Law, the cornerstone of Japan's national housing policy. Japan also agreed to implement performance-based standards for three-story, multi-family wood housing, and to participate with the U.S. Government in a series of jointly sponsored seminars that will help build the market for U.S.-style building materials and methods.

In the October 1999 deregulation submission to Japan, U.S. housing proposals focused on laws, policies, and procedures that inhibit the development of quality rental housing and resale and renovation markets. Reform of these structural weaknesses would significantly broaden the Japanese housing market and create new commercial opportunities for U.S. suppliers. For example, the United States proposed that Japan overhaul its rental laws to provide landlords with a financial incentive to maintain and improve their properties. Japan responded by amending its Land and Housing Lease Law, eliminating automatic lease renewals and limiting tenant rights to resist eviction or rent increases. These reforms, which took effect on March 1, 2000, should enable Japan to develop a quality housing rental market for the first time, improving housing options for Japanese families and creating enormous opportunities for domestic and foreign builders and suppliers.

As a proportion of its overall housing market, Japan's home resale market is far smaller than that of the United States. The lack of an adequate property appraisal system artificially limits the Japanese housing market by reducing circulation of existing homes. Japan's overemphasis on the chronological age of housing discourages both renovation and resale of the existing housing stock leading Japanese consumers to see renovation as a consumption expenditure rather than an investment in long-term housing value. The United States has proposed that Japan reform its housing appraisal system so that maintenance and renovation are factored into value assessments. The United States also has urged the Japanese Government's Housing Loan Corporation to bring the length of its mortgage terms for high-quality resale housing more closely into line with those offered for new houses.

Moreover, the United States has proposed deregulation of some specific product areas, such as food waste disposers and interior finish products, so that Japanese consumers may finally enjoy functional features in their homes that are commonplace in other highly developed countries. These systems are standard equipment in American homes, and are increasingly common in Europe as well, but are entirely absent in Japan. Use of food waste disposers would help Japan in a number of ways, helping to lower dioxin emissions by curtailing incineration to burn food waste; energy use because incineration is not energy-efficient; the pressure on Japan to find more space for landfills; and the need to devote resources to upgrading incineration plants.

The Ministry of Construction (MOC) claims it has no authority over the connection of these disposers to local sewage lines. However, Ministry officials admitted to U.S. trade negotiators in December 1999 that they urged local authorities to "use caution" in allowing the use of disposers. In addition, many cities and some prefectural governments ban the sale of disposers. At a meeting on March 1, 2000, U.S. industry representatives provided Japan with a number of recent studies documenting the efficacy and environmental friendliness of disposers. The United States will continue to pursue this issue with Japan.

Finally, the United States has advocated additional liberalization in the forest products sector, such as implementation of performance-based building standards for certain four-story wood-frame buildings. Such action could strengthen the current boom in wood-frame housing construction made possible by Japan's liberalization of restrictions against three-story wood-frame buildings in 1999, creating further opportunities for the U.S. forest products industry.

Financial Services

Japanese financial markets traditionally have been both highly segmented and strictly regulated, and as such, have discouraged the introduction of innovative products where foreign firms may enjoy a competitive advantage and otherwise restricted business opportunities for foreign firms. Some of the restrictions that have impeded access include the use of administrative guidance, existence of a *keiretsu* system (interlocking business relationships), lack of transparency, inadequate disclosure, the use of a positive list to define a security, and lengthy processing of applications for new products. Each of these restrictions has hindered the emergence of a fully competitive market for financial services in Japan.

In an effort to eliminate or reduce these barriers, in February 1995, the United States and Japan concluded a comprehensive financial services agreement, "Measures by the Government of Japan and the Government of the United States Regarding Financial Services." This agreement features an extensive package of market-opening actions in the key areas of asset management, corporate securities, and cross-border financial transactions. In the five years since the agreement was signed, Japan has implemented the specific commitments made within the specified time frames. In some instances, the timetable for implementation was accelerated. In a few areas, Japan has taken or announced additional actions for future implementation to improve the liberalization of Japanese financial markets.

Building on the progress from the 1995 agreement, in November 1996, then-Prime Minister Ryutaro Hashimoto announced the "Big Bang" initiative to carry out broad-based deregulation of Japan's financial sector in order to make Tokyo's financial markets comparable to those of New York and London by 2001. This financial reform plan involves major changes, such as allowing broader mutual entry across financial sectors; liberalization of brokerage commissions and foreign exchange transactions; tightened disclosure rules; and further liberalization of asset management regulations. These major changes could create important new business opportunities for U.S. financial services providers. Despite increased concern in Japan about financial sector stability in late 1997 following several prominent financial bankruptcies, the Government of Japan has thus far adhered to its reform schedule, with a few exceptions.

In May 1999, legal restrictions on nonbank financial institutions' use of bond proceeds to fund credit operations were removed. In October, the liberalization of stock brokerage commissions was completed, and restrictions on cross-entry between banking and securities were eliminated, while restrictions on cross-entry among banking, securities, and insurance were eased. Legislation passed in 1999 granted tax-exemptions to non-residents and foreign corporate holders of Japanese government bonds within the Bank of Japan book-entry trading system, and the securities transaction tax and bourse tax were abolished. Japan's accounting practices also continued to improve in 1999 with the introduction of new standards, as of April 1, that include: consolidated accounting procedures; market-to-market accounting for corporate pension assets; and fair-value accounting for marketable financial assets for trading purposes.

The past few years have seen notable changes in Japan's financial sector. Supervision and disclosure have improved. Foreign financial institutions have made important acquisitions in securities brokerage and insurance, and negotiations concluded in February 2000 finalizing the sale of a major nationalized bank to a foreign investment group. Consolidation among Japanese financial institutions has increased in an effort to cut costs and boost competitiveness, while traditional segmentation among various types of financial institutions is gradually being phased out. These changes have expanded opportunities for foreign financial firms in Japan to compete on a clear and level playing field. While supervision and disclosure have improved, it is important that Japan continue to move forward in establishing clear and consistent regulation and supervision of financial institutions, in line with international standards and best practice.

The United States continues to monitor implementation of the agreement and to assess the impact of the actions undertaken using the quantitative and qualitative criteria included in the agreement. At the December 1999 review, the United States emphasized the need for Japan to move forward in establishing clear and consistent regulation and supervision of financial institutions in line with international standards and best practices. The United States also is monitoring Japan's progress under the "Big Bang" initiative to ensure that implementation remains on schedule. In December 1997, Japan also signed the WTO Financial Services Agreement – which entered into force on March 1, 1999 – thereby binding itself to many of the liberalization measures of the bilateral agreement.

Energy

The United States and Japan agreed to establish a working group on energy under the Enhanced Initiative in May 1998. The United States views these discussions as a means of providing input to Japan as it deregulates this key sector, and as a way of supporting the Government of Japan's goal of lowering energy costs – which are among the highest in the world – to internationally comparable levels by 2001. The achievement of Japan's goals largely depend on its ability to attract new entrants into its electricity market – the third largest power market in the world – and to create vigorous competition in this sector.

Throughout 1998, a committee of the Electric Utilities Industry Council (EUIC) – a private sector advisory group to the Agency for Natural Resources and Energy (ANRE), and the Ministry of International Trade and Industry (MITI), its parent ministry – developed plans to liberalize the Japanese power market. The committee's final report in December 1998 called for "partial liberalization" of the power market, with retail sale of electricity to be liberalized for large-scale users served by extra-high voltage networks (of 20,000 volts or higher), which account for approximately 27 percent of total electricity consumption in Japan. While welcoming the liberalization of the electricity sector, the U.S. Government expressed its view that the EUIC proposals would make only modest progress towards Japan's goal of achieving significantly lower energy costs.

During the first year of the energy working group, the United States presented proposals for addressing specific regulations that impede the sale of U.S. equipment and services in the Japanese energy sector, including: (1) regulations for approval and inspection of energy-related equipment under the Electric Utilities Industry Law and High Pressure Gas Law; (2) regulations for increasing the capacity of existing power generating facilities; (3) requirements for certification and approval of stand-by generator sets; and (4) regulations governing the manufacture and installation of self-service gasoline pumps.

The United States urged Japan to: streamline these regulations and certifications procedures; accelerate its efforts to adopt performance-based regulations through greater utilization of voluntary, private-sector standards, where appropriate; accept internationally recognized test data and certifications; and take additional steps to enhance the transparency of its rulemaking and standards development processes. Japan agreed to take concrete steps to address many of the U.S. concerns regarding standards, inspection and certification requirements, and other regulations covering the import of specific types of energy-related equipment, including turbines, compressors, gasoline pumps, and stand-by generator sets.

Japan also agreed to liberalize regulations governing the expansion of existing power generation facilities. The United States is monitoring Japan's implementation of these measures, which will help encourage new entrants and additional investment in the Japanese energy sector and support Japan's efforts to lower energy prices.

In the third year of the Enhanced Initiative, the United States urged Japan to take specific steps critical to the successful transition from a monopoly to a competitive market in the electricity sector. These include: (1) reducing regulatory and other barriers that discourage investment and market entry; (2) implementing appropriate incentives and disciplines for pro-competitive behavior; and (3) providing for full transparency in setting and implementing rules and procedures so that appropriate and fair rules are set and rational business decisions can be made. The United States and Japan discussed these proposals in detail during working group meetings in November 1999, and in January and February 2000. The United States noted that worldwide experience shows unbundling previously vertically-integrated power utilities' operations (as proposed by former MITI Minister Sato when he launched Japan's energy deregulation initiative) into separate generation, transmission, and distribution operations is generally viewed as necessary to encourage competition and achieve significant efficiency gains. The United States also urged Japan to establish sufficient oversight to ensure open and fair access to the transmission system and to ensure full access to information relating to the newly deregulated market, and rates, terms and conditions of access to transmission. The United States provided additional detail on these issues in written public comments submitted to Japan on its various draft reports, regulations, and guidelines.

Japan will implement its partial liberalization of the electricity sector on March 21, 2000 and plans to abolish its antimonopoly exemption of natural monopolies, including electricity and gas, in 2000. The United States will continue to closely follow developments in this sector and to strongly urge Japan to take additional steps to ensure open and fair access to the market.

Natural gas: In May 1999, the Diet passed a law deregulating Japan's natural gas sector, although this sector is not expected to be deregulated until early 2001. MITI and the JFTC have recently drafted proposed fair transactions guidelines on gas trade, on which the United States provided public comments. Later in 2000, study groups will consider how transmission charges for the use of natural gas pipelines should be determined with the aim of having such charges in place by early in 2001. At energy working group meetings in 1999-2000, the United States raised its concerns that gas deregulation has a significant impact on electricity deregulation since new entrant electric power producers are likely to use natural gas as a fuel. In such cases, gas transmission charges, as well as terms and conditions of access to pipelines and to Liquefied Natural Gas Terminals through which all of Japan's gas flows, will be critical.

STRUCTURAL DEREGULATION

Antimonopoly Law and Competition Policy

Under the Enhanced Initiative, the United States has proposed a number of progressive measures in order to strengthen competition policy and generate more effective enforcement of Japan's Antimonopoly Law (AML). The United States believes that further strengthening of AML enforcement and competition policy in Japan is critical to improving market access. Foreign companies continue to face numerous impediments to accessing Japan's distribution channels across a wide range of sectors, including the automotive, flat glass, and photographic film and paper markets. Since October 1999, the United States has focused particular attention on achieving genuine progress in the following AML and competition policy-related issues under the Enhanced Initiative.

Independence of the JFTC: An independent JFTC has been a longstanding and important principle of Japan's antimonopoly enforcement system that the United States strongly believes should be maintained. In this regard, the United States has urged Japan to take additional measures that will ensure the continued independence of the JFTC when it is transferred from an agency within the Prime Minister's Office, to one under the future Ministry of General Affairs (MGA) in 2001 as part of the central government's reorganization. In particular, the future MGA will also be responsible for telecommunications policy, raising the real risk that the JFTC will not be able to act independently in the crucial area of telecommunications, both in enforcement decisions and competition advocacy. The United States has recommended that a Cabinet order be issued to ensure that MPT and MGA will not intervene in the JFTC's application of the AML in the telecommunications area, and that the integrity of the JFTC's personnel system and budget will also be maintained.

Anticartel Enforcement: Bid-rigging and collusive cartel activity continue to be serious problems in Japan. In its October 1999 deregulation submission, the United States has called for more aggressive enforcement actions to combat these activities and has urged Japan to enhance the investigatory burden sharing between the JFTC, the Ministry of Justice, and other relevant government agencies. In addition, the United States has proposed that an advisory council be established to examine methods of strengthening the JFTC's criminal investigation and accusation powers, stronger sanctions for obstructing investigations, and reform of the administrative surcharge system. To better combat bid-rigging, the United States recommended a new initiative to increase National Police Agency and prefectural police department investigations of criminal bid-rigging; enhanced cooperation between the JFTC and other law enforcement agencies charged with investigating potential illegal bid-rigging activities; stiffened punishment of complementary bidders and recoupment from bid-riggers of all overcharges; and other measures to reduce the opportunities for successful bid-rigging activities.

Private Remedies: Under current Japanese law, injured parties lack the right to bring a private injunction action against an alleged violator of the AML. Regarding private actions for monetary damages, since 1947 only 11 private actions for damages have been brought under the AML. This is due, in part, to the fact that the JFTC must first issue a final decision against a firm before a private party can bring a damage action against the same firm. The United States strongly believes that the unfettered availability of injunctive relief and monetary damages to private litigants is an integral part of a comprehensive antimonopoly legal regime. In short, persons directly injured by anti-competitive behavior should be able to seek remedies if they choose to do so.

Moreover, private AML enforcement can help reinforce to Japanese firms the importance of conforming their business practices to the AML, which in turn will keep markets free, open and competitive. A study group established by MITI issued a report in June 1998 that guardedly favored allowing private parties to bring injunction actions. A JFTC advisory council also studying the question of private injunctive relief, as well as reform of the current system of private damage actions issued its final report in October 1999, and in December 1999, the JFTC announced that draft legislation would be submitted to the ordinary Diet session early in 2000. While the United States welcomes this initiative, it is unclear whether the legislation covers injunctions against the most serious of AML violations – monopolization and agreements among competitors to restrain trade. Moreover, the council reached few conclusions on easing impediments to damage actions. The United States therefore strongly urges Japan to enact legislation that will comprehensively address the current limitations on private injunctive relief and action damages.

Promotion of Deregulation by the JFTC: Successful regulatory reform in Japan must be built on a solid foundation of effective competition policy. As the only Japanese agency charged with promoting competition, the JFTC should substantially boost its efforts as an advocate of competition policy and regulatory reform. The United States requested that the JFTC strengthen its monitoring of private sector regulations (*min-min kisei*) that may be used by industry and trade associations to restrict competition or market entry. The United States also proposed that the JFTC actively participate in the process of deregulating Japan's public utilities, both to ensure that maximum deregulation occurs in the electricity and natural gas sectors consistent with sound competition policy, and that anti-competitive conduct by incumbent utilities will be strictly dealt with under the AML. Moreover, the United States recommended that the JFTC take further steps to promote a competitive and efficient distribution sector, for example, by surveying manufacturer-distributor equity and personnel relationships in highly oligopolistic sectors; monitoring closely the process of reviewing plans of retailers to establish large-scale stores; and promoting further AML compliance programs.

Antimonopoly Law Exemptions: In its October 1999 deregulation submission, the United States recommended that Japan repeal the AML §21 exemption for natural monopolies, including gas, electricity, and railroad businesses, electricity and gas, by April 2000. The JFTC has announced that it will submit legislation to eliminate in early 2000 Article 21 of the AML. The United States has sought the removal of this exemption for many years, and will welcome early and full Diet action on the proposed legislation.

Industrial Revitalization Law: Implemented in October 1999, Japan's Industrial Revitalization Law superseded the Business Reform Law which, among other things, authorized Cabinet ministers to consult with the JFTC when firms in industries under their supervision jointly submitted business reform proposals. By deviating from the normal practice of the JFTC's review of joint conduct under the AML, this consultative mechanism inappropriately diminished the independence of the JFTC and could have been construed as an AML exemption. The United States long opposed this aspect of the Business Reform Law, noting that Japan had the opportunity to completely resolve concerns regarding its effect on the JFTC's independence when the Industrial Revitalization Law was enacted. While the most troubling language of the old law was dropped, the Industrial Revitalization Law nevertheless incorporates the concept that when restructuring firms jointly apply for benefits under the Law, the Minister supervising that industry will be the final arbiter of those applications, and is vague regarding the relationship of that Minister to the JFTC's review. In its October 1999 deregulation submission, the United States urged Japan to affirm that the Law in no way supersedes the AML or prejudices the JFTC's independence in enforcing the AML; ensure that the JFTC is notified of, and has the chance to review, all applications, especially joint applications, submitted under the Law; and make all JFTC advice regarding such applications publicly available in so far as possible.

JFTC Staffing & Resources: The JFTC's ability to enforce Japan's AML is hindered by its historically weak stature among Japanese ministries, shortage of personnel, and inadequate investigatory powers. The United States has urged for more than a decade that the JFTC's budget and staff be increased significantly to ensure that it is able to carry out its mandate fully.

In JFY 1999, JFTC staff increased by only nine members from the previous year to a total of 558, of which 260 (seven more than in JFY 1998) are engaged in investigation-related work. There are 63 investigators (an increase of three) in the special investigations department. The United States recommended that the JFTC staff be increased by an extraordinary amount in JFY 2000, or by at least 50 persons. Subsequently, the JFTC, seeking to take advantage of the opportunity created by the government's imminent reorganization, requested an increase in staff of 45 persons. Unfortunately, Japan's draft JFY 2000 budget increases the JFTC's budget by only 2.1 percent and boosts its personnel by only 11, of which eight will be assigned to the investigation bureau. These increases remain too small for the JFTC to adequately enforce competition laws and policies. This is especially true given the potential effects on Japan's competitive environment caused recently by the increase in mergers (up 24.9 percent in 1999), the liberalization of holding companies, the narrowing or elimination of many AML exemptions, and stepped up deregulation that now require the JFTC to police more business behavior. The United States also urged Japan to support active application of AML to proposed mergers and acquisitions, including additional resources for JFTC review of merger plans and increased transparency of the JFTC's review process.

Distribution

Japan's highly regulated, inefficient distribution system is widely recognized as a significant trade and investment barrier. Through the Enhanced Initiative's working group on structural issues, the United States has focused on laws, regulations, and practices that contribute to the abnormally high costs of distribution in Japan, such as slow customs processing and excessive regulatory restrictions in the retail sector (see "Import Policies" section of this chapter). In its October 1999 deregulation submission, the United States urged Japan to implement significant deregulatory measures to address key distribution problems faced by foreign firms.

Regulation of Large-Scale Retail Stores: The Large-Scale Retail Store Law has long been an obstacle to foreign investors and exporters, with its limitations on the establishment, expansion and business operations of large stores in Japan, which are more likely than other retail outlets to handle imported products. By impeding the business operations of large stores, the Law reduced productivity in merchandise retailing by raising costs, discouraged new domestic capital investment, and diminished the selection and quality of goods and services to the detriment of Japanese consumers.

In May 1998, the Diet passed legislation to abolish the Large-Scale Retail Store Law and replace it with the Large-Scale Retail Store Location Law (LSRSLL) on June 1, 2000. The new Law provides that regulation of large stores will no longer be based on supply/demand considerations, but on the degree to which a large store opening or expansion affects the local environment, particularly traffic, noise, parking, and garbage removal. Under the Law, local jurisdictions are not permitted to impose more severe restrictions on new large stores than are allowed under the LSRSLL, nor are they allowed to restrict entry of new large stores on competitive grounds.

While the United States welcomed the abolition of the Large-Scale Retail Store Law, the manner in which the new LSRSLL is implemented will determine whether it affords greater market access for large stores. In June 1999, after soliciting public comments, MITI finalized the new LSRSLL Guideline that provides national standards related to noise, traffic, parking and garbage that must be considered by entities intending to establish or expand a large store. The Guideline also is to be used by local governments in presenting opinions and making recommendations to large stores. In October 1999, again after soliciting public comments, MITI issued a Ministerial Ordinance that clarified the type of information required of large retailers when opening a large store, public briefings to be held to explain store plans, and procedures to be used by large stores and local governments to publicize relevant proceedings.

In the Second Joint Status Report under the Enhanced Initiative, Japan committed to: (1) closely monitor local governments' implementation of the LSRSLL to ensure that the purpose of the Law is not impeded; (2) establish a contact point in MITI to receive and facilitate resolution of complaints regarding the implementation of the Law; and (3) take appropriate measures to facilitate the resolution of complaints regarding application of the Law.

Despite these positive developments, the United States shares the concern of many large retailers in Japan over the possibility for abuse or inconsistent application of the new authority by local governments. To help facilitate smooth implementation of the new Law and increase transparency, the United States in its 1999 deregulation submission urged Japan to: (1) publish the name and address of the contact point within MITI that will receive and facilitate resolution of complaints from parties regarding application of the LSRSLL; (2) ensure that the office of the contact point is fully staffed by June 1, 2000 when the new Law goes into effect; (3) undertake a broad educational campaign to inform local government officials of the content of the Guideline and Ministerial Ordinance, their legal responsibilities and the limitations on their authority under the LSRSLL, and the role of the contact point; and (4) ensure that all necessary measures are taken to remove obstacles that may impede the opening or expansion of large stores or discourage retail investors from planning an orderly expansion of their business during the transition from the current law to the new "Location" Law.

Transparency and Other Government Practices

In recent years, Japan has taken steps toward the development of a more transparent and accountable regulatory system, including through the implementation of an Administrative Procedure Law, the adoption of a Public Comment Procedure and the enactment of an Information Disclosure Law. The United States welcomes these measures. However, it believes that additional steps are necessary to achieve the level of transparency and accountability recognized as essential in the 1999 OECD Review of Regulatory Reform in Japan. The OECD found that: "Lack of transparency in regulatory and administrative processes is a major weakness of Japan's domestic regulatory system. Non-transparency affects all potential market entrants and competitors, who must have adequate information on regulations so that they can base their decisions on accurate assessments of potential costs, risks, and market opportunities, but has disproportionate costs for foreign parties." The OECD concluded that: "Investment, market entry, and innovation should be promoted by increasing the transparency and accountability of regulation."

The United States has urged Japan to introduce a broad regulatory reform program designed to bring greater transparency and accountability to its regulatory system. The underlying premise of the reform program should be that ministries and agencies must justify to the public the rationale for adopting, changing, or continuing new or existing regulations. Regulations should be the exception and not the rule, meaning that regulations that are not directly linked to public policy interests should be abolished or not adopted. The public should be given an effective means of participating in the development and assessment of regulations. The program should encompass both public and private regulations. Foreign firms are disadvantaged by the lack of transparency and accountability in Japan's regulatory system. As a consequence, the United States has long pressed Japan to make its administrative procedures and practices more open and transparent. Under the Enhanced Initiative, the United States has raised specific concerns, including the following:

Introduction of a Rulemaking Process: Japan adopted, as an administrative measure, its first government-wide public comment process, effective April 1, 1999, which requires central government entities to give notice and invite public comments on draft regulations, including Cabinet Orders (*seirei*), ordinances of the Prime Minister's Office *(furei)*, ministerial ordinances (*shorei*) and notifications (*kokuji*), and to administrative guidance issued to multiple persons. Despite this improvement in the transparency of the regulatory process, the United States is concerned that Japan's ministries and agencies often do not allow sufficient time for public comments and in most cases appear to have not given adequate consideration to the public comments received. In order to ensure that the procedures are implemented in a manner that facilitates the greatest possible public participation, the United

States urges Japan to: (1) incorporate the Public Comment Procedure into legislation; (2) conduct a thorough review of the first year of the Public Comment Procedure's implementation, including inviting the public to comment; (3) allow at a minimum a 30-day comment period, and a 60-day comment period to the extent possible; and (4) require all advisory councils (*shingikai, kenkyukai*, *benkyokai* and *kondankai*) to solicit public comments before they finalize reports and recommendations.

Regulatory Impact Analysis: In its review of Japan, the OECD observed that: "Regulatory analysis would help officials understand the consequences of their regulatory decisions, improve the transparency of regulation, and identify more flexible and cost-effective policy instruments, such as economic instruments. Such alternatives are not widely used in Japan." To enhance transparency in its policy-making and administrative management, the United States has urged Japan to introduce a government-wide Regulatory Impact Analysis (RIA) into its review of regulatory changes that will have a significant economic impact. As part of the RIA, the United States has called upon Japan to require its ministries and agencies to: (1) analyze the anticipated costs and benefits (both quantifiable and non-quantifiable) to the public of regulatory proposals and their primary alternatives, as well as an accounting of its impacts on key elements of society; (2) use the best available scientific, technical, and economic data when reviewing proposed regulations; and (3) provide an opportunity for the public to comment on the cost/benefit analyses, as well as on the reasonableness of the assumptions and methodologies used, before the final regulatory changes are made.

Information Disclosure Law: In May 1999, Japan passed an Information Disclosure Law that will for the first time allow any individual or company – domestic or foreign – to request the disclosure of information held by central government ministries and agencies. The new Law becomes effective in 2001. Local governments have long had information disclosure ordinances. Despite urging by the United States, the new Law does not apply to special public corporations (*tokushu hojin*). However, in July 1999, the Government of Japan established an Investigation Committee on Access to Information Held by Public Corporations under the Administrative Reform Promotion Headquarters to study and make recommendations with regard to legislation that will require the disclosure to the public of information by *tokushu hojin*. The Committee is expected to submit its final report in July 2000.

Improvements in Administrative Procedures: Despite provisions of the 1994 Administrative Procedure Law which were designed to make administrative procedures more transparent and fair, U.S. firms have repeatedly complained about the burdensome and unpredictable nature of such procedures in Japan. Under the Enhanced Initiative, the United States has called upon Japan to direct ministries and agencies to: (1) not require applicants to engage in prior consultations, i.e., discussions with the government entity regarding the content, scope or other aspects of a potential application, before formally accepting the application and commencing review of it; (2) where the government entity determines that an application does not contain all necessary information, provide the applicant with a written statement identifying all deficiencies in the application, the information that must be provided, and the legal authority for requesting such information; and (3) upon the request of an applicant, provide the applicant with a written statement of the status of the application and a statement as to when a decision (or disposition) of the application can be expected.

Use of Administrative Guidance: The lack of transparency inherent in Japan's excessive and extensive use of informal directives or "administrative guidance" remains a serious concern to the United States. Despite the 1994 Administrative Procedure Law's (APL) requirements that Japan provide, upon request, and in writing, a copy of administrative guidance to a private party receiving oral guidance from the Government or when it is issued to multiple persons, a Management and

Coordination Agency survey indicates that there have been few instances where this has occurred. Given that according to an OECD report, there have been only 33 public disclosures of administrative guidance despite the APL provisions on written guidance, the United States has urged Japan to take the appropriate actions to require all administrative guidance to be issued in writing, unless there is a specific compelling reason not to do so.

Private Sector Regulations: As Japan removes and relaxes regulations, it is essential that special public corporations *(tokushu hojin*), industry associations and other private sector organizations ("private regulatory organizations") are not allowed to substitute private regulations ("*min-min kisei*") in place of government regulations. In addition, there is a need for greater transparency and monitoring of the role of private regulations in the Japanese economy. Private regulations, including rules on market entry and business operations, approvals, standards, qualifications, inspections, examinations and certification systems, can adversely affect business activities. Under the Enhanced Initiative, the United States has urged Japan to undertake a variety of measures, such as barring government entities from delegating governmental or public policy functions, such as product certifications or approvals, to private sector organizations, unless expressly authorized by a law, Cabinet order, ministerial ordinance or local ordinance.

IMPORT POLICIES

In the Uruguay Round, Japan agreed to "zero for zero" tariff eliminations on pharmaceuticals; paper and printed products; beer, whisky, and brandy; agricultural, medical, and construction equipment; furniture; steel; and toys. Japan also adopted the chemical harmonization initiative. It cut tariffs on copper and aluminum, with the top rate reduced from 12.8 percent to 7.5 percent. Japan is one of the 43 signatories to the 1997 Information Technology Agreement, which eliminates tariffs on the overwhelming majority of covered products by 2000. Japan's remaining high tariffs primarily affect agricultural and food products, including processed food products, wood and wood products, and leather and leather products. Tariffs on white distilled spirits were eliminated as a result of the December 1997 settlement of a WTO dispute. In late 1998, participants to the WTO initiative on pharmaceutical tariffs agreed to expand the product coverage to include new items, such as medicines for breast cancer and AIDS. While the United States, European Union, Canada and other participants met the target date for implementation of July 1, 1999, Japan has yet to implement the initiative.

At the APEC Leaders' meeting in Vancouver, Canada in November 1997, the United States, Japan and 16 other APEC economies endorsed a program of accelerated trade liberalization measures (the Early Voluntary Sectoral Liberalization, or "EVSL," initiative) in nine sectors: environmental goods and services, the energy sector, fish and fish products, toys, forest products, gems and jewelry, medical equipment and instruments, chemicals, and a telecommunications mutual recognition agreement. As the world's second largest economy, Japan's full participation in these initiatives was regarded as vital to ensuring their successful completion in 1998 as directed by APEC Leaders. Facing strong domestic pressure, Japan refused to participate in tariff reductions in the fisheries and forestry products sectors at the November 1998 APEC Leaders' Meeting, thereby blocking APEC's adoption of the policy package. However, it committed with other APEC nations to negotiate tariff reductions in all of the EVSL sectors in the WTO. Although the United States urged Japan to play a constructive role in the Accelerated Tariff Liberalization proposal (as the EVSL initiative became known in the WTO), Japan remained silent on the issue. Its lack of support was instrumental in preventing the formation of a consensus on this issue before the Seattle WTO Ministerial in November 1999.

Distilled Spirits

In July 1996, a WTO Dispute Settlement Panel ruled against Japan in proceedings initiated by the United States, Canada, and the European Union. The panel found that Japan's liquor tax regime discriminated against imported distilled spirits and was therefore inconsistent with Japan's WTO obligations. The United States was forced to seek binding arbitration when it became apparent that Japan did not intend to bring its tax system into WTO compliance within a "reasonable period" as provided for under WTO rules. The arbitration ruling in February 1997 supported the position of the United States. After considerable negotiation, the United States and Japan reached a settlement in December 1997 ensuring that Japan would bring its liquor taxation system into WTO conformity. Japan also agreed to eliminate tariffs on all brown spirits (including whisky and brandy) and on vodka, rum, liqueurs, and gin by April 1, 2002.

Japan is revising its liquor excise tax system in three stages: October 1, 1997; May 1, 1998; and October 1, 2000. Taxation rates for all distilled spirits were brought into WTO conformity by May 1998, with the exception of low-grade *shochu*. At the same time, the liquor tax for imported whiskey and brandy was reduced by 58 percent, while the tax on high-grade *shochu* was raised by 59 percent. The tax on low-grade *shochu* will be harmonized on October 1, 2000.

The U.S. distilled spirits industry reports that, as expected, the change in taxation has had a significant positive impact on exports of U.S. distilled spirits to Japan. In 1998, total exports of U.S. spirits to Japan increased by 23 percent over 1997 and grew faster than exports to other markets. The increase in U.S. distilled spirits exports is even more striking in light of Japan's sluggish economy, which has caused declines in overall U.S. exports to Japan. Growth tailed off during the first three quarters of 1999 for the industry as a whole, dropping almost nine percent on a year-on-year basis, although some segments (e.g., vodka) experienced growth of nearly 200 percent.

The United States will continue to closely monitor Japan's implementation of the settlement to ensure that tax and tariff reductions are eliminated under the agreed schedule, and that no measures are adopted that would undermine the settlement's benefits.

Varietal Testing

U.S. agricultural products such as apples, cherries, walnuts and nectarines have been subject to unnecessary phytosanitary restrictions. Japan has required repeated testing of established quarantine treatments each time a new variety of an already-approved commodity has been presented for export from the United States.

After efforts to resolve the varietal testing issue through bilateral negotiations over many years proved unsuccessful, in October 1997, the United States invoked WTO dispute settlement procedures against Japan. As a result, on March 19, 1999, the WTO Dispute Settlement Body (DSB) adopted panel and Appellate Body findings that Japan's varietal testing requirement was: (1) maintained without sufficient scientific evidence, in violation of Article 2.2 of the WTO Sanitary and Phytosanitary (SPS) Agreement; (2) not based on a risk assessment, in violation of Article 5.1; and (3) inconsistent with Japan's transparency obligations under paragraph one of Annex B, since Japan did not publish its requirements. The United States and Japan have been consulting since that time on Japan's implementation of the DSB's rulings and recommendations.

In addition to the WTO case, the United States last year was concerned with Japan's failure to lift its import ban on five apple varieties and two cherry varieties, despite U.S. Government testing that demonstrated the effectiveness of quarantine methods used by American producers for each variety. The United States discussed its concerns with Japanese officials at senior levels in late 1998 and early 1999. Japan lifted its import ban on these varieties in mid-1999, in time for shipment of the 1999 crop of these U.S. products to Japan.

Fumigation Policies

Japanese plant quarantine regulations require fumigation of imported fresh horticultural products if, upon import inspection, a shipment is found to be infested with live insects, regardless of whether they are considered serious plant pests or are already present in Japan. The fumigation requirement is particularly detrimental to trade in delicate horticultural products, such as lettuce and cut flowers, which generally do not survive the treatment and must be destroyed. In fact, Japanese produce importers report that if the risk of fumigation were eliminated, imports of U.S. lettuce would grow dramatically. Due to the high risk of product loss due to fumigation, sales now typically average less than $5 million per year.

After repeated requests by foreign governments for reform, the Ministry of Agriculture, Forestry, and Fisheries (MAFF) has begun to implement a non-quarantine pest list by partially amending the Plant Quarantine Law to exempt 53 pests and 10 plant diseases from fumigation requirements. While this appears to be an important positive step, the list does not include common insects found on U.S. fresh fruits and vegetables, some of which are known to occur in Japan. The United States will continue to urge Japan in appropriate technical and deregulatory fora to develop a comprehensive list of non-quarantine pests and transparent inspection procedures in an effort to reduce excessive, unnecessary, and trade distorting fumigation.

Fresh Apples – Quarantine Requirements for Fireblight

Japan imposes overly restrictive quarantine restrictions on apples, hampering the ability of U.S. and foreign growers to access the Japanese market. Of particular concern are Japan's requirements that aim to prevent transmission of fireblight, which are enforced without sufficient evidence that apple fruit can transmit the bacteria. Japan's quarantine requirements for fireblight include three mandatory tree-by-tree inspections throughout the growing season and a requirement that all apples shipped to Japan be grown within a 500-meter buffer zone. The requirements significantly raise costs and reduce competitiveness of U.S. apples in Japan.

The United States has provided overwhelming evidence that the theoretical risk of transmitting fireblight through apple fruit is infinitesimally small and continues to urge Japan to eliminate or reduce the buffer zone to no more than 10 meters, and to end the tree-by-tree inspection requirement. Discussions between U.S. and Japanese scientists will continue this year in an effort to resolve this issue.

Fresh Potatoes – Golden Nematode and Potato Wart

Japan bans importation of fresh potatoes from the United States. MAFF officials maintain that the ban is necessary to prevent introduction of golden nematode and potato wart into Japan. The United States has challenged Japan's position, demonstrating that the golden nematode and potato wart disease are not found in the Pacific Northwest, California, and other U.S. potato exporting areas.

The United States has urged Japan to immediately lift the ban on fresh potatoes from areas not infested by the golden nematode and potato wart. In the most recent communication from Japan in July 1999, MAFF repeated its position prohibiting importation and raised new concerns regarding a number of viruses that would necessitate post-entry quarantine of imported potatoes even if approval were granted. The United States will continue to urge Japan to eliminate golden nematode and potato wart from the list of quarantine concerns for fresh potatoes.

Fresh Bell Peppers and Fresh Eggplant – Tobacco Blue Mold

Japan continues to ban imports of fresh bell peppers and fresh eggplant based on concerns over tobacco blue mold (TBM), without any evidence that the fruit of these plants are a host to the disease.

In initial bilateral discussions held in August 1999, the United States emphasized that the fruit of peppers and eggplants are outside any pathway of transmission of TBM. Similar to its initial position to ban all fresh tomatoes due to TBM (a ban which was lifted in 1999), Japan did not address the absence of evidence showing the fruit are a host to the disease and responded that records exist of natural infection. Through discussions in both bilateral and international fora, the United States will continue to press its case that the fruit do not transmit the disease.

Fish Products

Japan maintains nine global and two bilateral import quotas on fish products. U.S. fishery exports to Japan subject to import quotas include: pollock, surimi, pollock roe, herring, cod, mackerel, whiting, squid, and several other fish products. These quota-controlled imports into Japan account for hundreds of millions of dollars in sales annually, approximately one-fourth of total fishery exports to Japan. In the past several years, there has been a downward trend in sales of these import-quota-controlled items, largely due to the economic recession in Japan. During the Uruguay Round, Japan agreed to cut tariffs by about one-third on a number of fishery items, but avoided commitments to modify or eliminate import quotas. While Japan improved its administration of the import quotas on mackerel, jack mackerel and kelp in 1997, the application procedures and the lack of transparency on other fish products still cause concern for U.S. exporters. At the February 1998 session of the annual fishery trade consultations in Tokyo, the United States and Japan discussed problems pertaining to administration of fish import quota categories including the difficulty of separating pollock roe from cod roe under the Cod Roe IQ Category.

Japan also proved unwilling to support the APEC Accelerated Tariff Liberalization initiative (see "Import Policies" section of this chapter), thereby preventing a broader consensus from forming on the phase-out of tariffs on fish and fish products.

General Food Products

During the Uruguay Round, Japan agreed to bind tariffs on all agricultural products and to reduce bound rates by an average of 36 percent during 1995-2000, with a minimum 15 percent reduction on each tariff line. Japan also agreed to gradually reduce tariffs on imports of beef, pork, fresh oranges, cheese, confectionery, vegetable oils, and other items.

However, even after full implementation of the Uruguay Round cuts, a wide range of intermediate and consumer-oriented food and beverage products still face tariffs from between 10 and 40 percent, including beef, fresh oranges, fresh apples, waffles and other bakery products, confectionery, snack foods, ice cream, citrus and other fruit juices and processed tomato products. The import taxes raise food prices for consumers and cost U.S. food and agricultural exporters an estimated $500 million in lost sales every year. The United States will seek significant reductions in Japan's high-tariff regime for high-value foods through the WTO agriculture negotiations.

Japan also agreed in the Uruguay Round to convert all import bans and quotas (except for rice) to tariffs, which would be reduced between 1995 and 2000. Tariff-rate quotas replaced import quotas for wheat, barley, starches, peanuts, and dairy products. Japan retains state trading authority and price stabilization schemes for these products but is currently studying proposals to liberalize imports to a small degree.

The United States is closely monitoring Japan's implementation of the Uruguay Round measures for agriculture (particularly imports and exports of rice) and safeguard measures for beef and pork. Our bilateral efforts have also focused on countering any technical or food safety-related measures, such as product standards and labeling issues, that appear to be unnecessary to protect health, safety or the environment and that could be a disguised form of protectionism.

Import Clearance Procedures

Despite progress in recent years, Japan's import clearance procedures remain slow and cumbersome by industrial country standards, resulting in increased costs for both U.S. exporters and Japanese consumers.

Continuing efforts by the United States and Japan to improve import clearance are being discussed under the Enhanced Initiative, as well as in regular bilateral consultations between customs agencies. These discussions have helped promote changes in Japan's import processing procedures, including establishing a prior classification information system using e-mail; eliminating the requirement to process all air cargo through a separate cargo holding area (Baraki cargo area) 30 kilometers from Tokyo's Narita airport; instituting a computerized customs processing system; and integrating that computer system with inspection authorities from the Ministry of Health and Welfare and the Ministry of Agriculture, Forestry, and Fisheries.

Although these changes have resulted in a reduction in the average time required for customs clearance, problems remain. Average processing times in Japan, for example, remain slow relative to other advanced industrial countries. A June 1999 Japan External Trade Organization (JETRO) survey showed that Japan's release time for ocean-going freight is more than three times as long as other countries surveyed (United States, U.K., Germany, France, and the Netherlands). As for airfreight, Japan's release time was shorter than that of the U.K., but longer than that of the United States and Germany.

In order to address these deficiencies, the U.S. Government and U.S. firms have urged Japan to: (1) facilitate the release of low-risk shipments (i.e., physical examination not required) at the point of arrival without transfer to a bonded area; (2) improve preclearance procedures so that prior to arrival, the customs administration and all other relevant Japanese Government agencies accept and process declarations, determine whether physical examination is required, and immediately notify the importer of the decision; and (3) implement an entry process that would permit a release determination based on a minimal amount of documentation, which would be followed by the complete documentation and then payment of duty.

In addition, user fees remain high. The United States has asked Japan to increase the import *de minimis* value for exemption from 10,000 yen (less than $100) to 30,000 yen in order to improve efficiency and reduce manpower requirements. The United States also has requested that Japan calculate dutiable import values on a "free on board" (FOB) rather than a "cost, insurance, freight" (CIF) basis.

Finally, customs processing hours of operation are too short. A change, from 8:30 AM-5:00 PM to 6:00 AM-10:00 PM hours of operation every day, including Saturdays, Sundays, and holidays, would bring processing hours for cargo in line with processing hours for passenger baggage, greatly benefitting importers and facilitating onward transportation. The U.S. Government and U.S. companies have also requested that Japan establish procedures to effect customs release of cargo 24 hours per day by implementing a surety bond system, bank guarantee, or "round-the-clock" bank clerk.

Given the wide-ranging effect of customs clearance costs and delays on current and potential U.S. exporters, catalog retailers, courier services, and Japan-based enterprises which require the importation of goods and equipment, it is difficult to estimate the dollar effect of streamlining Japanese customs procedures. However, one U.S. courier has estimated that changing the *de minimis* exemption alone would reduce annual duties by tens of billions of yen, while encouraging dramatic increases in orders from Japanese consumers.

Leather

In 1991, Japan liberalized treatment of footwear imports, setting a footwear quota of 2.4 million pairs per year. By JFY 1998, it had raised that quota to roughly 12 million pairs per year. In the Uruguay Round, Japan committed itself to reduce tariffs over an eight-year period on under-quota imports of leather footwear, crust leather and other categories.

The process by which quotas are established by Japan lacks transparency. U.S. industry reports that there is no consultation with leather shoe importers to determine anticipated import levels. Indeed, Japanese authorities make no effort to limit quota allocations to firms that plan to use them. The U.S. Government and U.S. leather and leather footwear industries continue to seek elimination of these quotas.

Above-quota imports of footwear still face stiff market access barriers. Effective January 1, 2000, the above-quota tariff is 37.5 percent or 4,425 yen per pair, whichever is higher. These rates will decline to 30 percent or 4,300 yen, whichever is higher, by 2002. In principle, the over-quota tariff rate will be reduced by 50 percent and the yen minimum alternative rate by 10 percent over the eight-year phase-in period. In practice, however, the yen minimum alternative rate is applied in a manner that negates the effect of the larger tariff rate reduction. Moreover, while above-quota imports grew substantially in JFY 1998, they still totaled only about 5.9 percent of under-quota imports, suggesting that the higher rates for above-quota imports are discouraging additional imports.

Rice

Japan's highly protected rice market has long been a target for liberalization efforts. During the Uruguay Round, Japan agreed to begin to open its domestic rice market and establish a minimum access commitment for rice imports. Japan committed to import 379,000 metric tons in 1995/1996. This quota was to grow to just over 758,000 tons at the end of the Uruguay Round implementation period (2000/2001). Since the Uruguay Round, the United States has been the single largest foreign supplier of rice to the Japanese market, supplying approximately one-half of Japan's total imports.

On April 1, 1999, a new Japanese rice regime went into effect that transformed the existing import quota system into a tariff quota system. Under "tariffication," a specific duty is applied to imports outside of Japanese minimum access rice imports. By adopting a tariff quota system, Japan is allowed to reduce the annual growth rate of its minimum access rice imports to 0.4 percent. Japan therefore imported 644,000 metric tons (milled basis) in 1999, 38,000 tons less than would have been imported under the previous regime.

Despite Japan's Uruguay Round commitments, full market access for American rice has not been achieved. Rice imported by the Japan Food Agency (JFA) under the ordinary tender system rarely reaches end consumers. These imports are either placed into stocks or exported as food aid. U.S. exporters are further prevented from direct contact with Japanese consumers by the JFA's management of the simultaneous-buy-sell (SBS) system. The SBS system was designed to allow Japanese importers and foreign rice exporters to meet the demand of Japanese consumers without interference from the JFA.

Under the current administration of the SBS, however, there is little opportunity for Japanese consumers to choose imported rice. They do not have the ability to purchase rice identifiable as U.S.-origin, because American rice is blended with cheaper, poorer quality rice from other sources, preventing U.S. rice from competing against other imported rice of similar variety and quality. In addition, shipment of imported rice must occur within 60 days of an SBS tender, effectively preventing establishment of a steady 12-month supply to Japanese wholesalers.

The U.S. rice industry has worked assiduously to meet the demands of the Japanese market. In cooperation with its Japanese customers, it has improved its production, handling, and milling techniques for the unique varieties that are produced specifically for Japan's market. To advance this effort, the U.S. rice industry has actively engaged in technical discussions with Japan. The U.S. rice industry also made tremendous efforts to improve its price competitiveness under the SBS tendering system. For JFY 1999, the SBS average purchase price for U.S. rice (84,201 yen per metric ton) was 26 percent lower than the JFY 1998 average purchase price (114,238 yen per metric ton) and the lowest ever offered by the United States under the SBS system. In contrast, the JFY 1999 average SBS mark-up for U.S. rice (189,885 yen per metric ton) was the second highest in nominal terms and the highest in terms of effective *ad valorem* duty rate (226 percent) since introduction of the SBS rice tender system.

The United States held a number of discussions with the Government of Japan to examine the effects of the new tariffication policies on access to Japan's rice market. Through these talks, the United States conveyed its expectation that the U.S. rice industry would achieve continued access to Japan's rice market in line with that of the past four years. At the same time, the United States and Japan agreed to hold periodic consultations on a number of agricultural issues, including access to Japan's rice market. The first such meeting took place September 1999 in Geneva. At that meeting, the United States urged that the Japan Food Agency administer its import system in a transparent manner that would allow U.S. rice exporters to develop effective commercial relationships with end-users in Japan and to give consideration to revising the SBS system so that the market is allowed to function in its normal way and that SBS licenses are not awarded on the basis of JFA profits.

The U.S. market share of Japanese rice imports under Uruguay Round minimum access requirements increased from 47.7 percent in JFY 1998 to 47.9 percent in JFY 1999, in line with U.S. expectations. The United States is closely monitoring Japan's rice purchases and will consider all of its options to respond to Japan's policies in the event that circumstances change.

During JFY 1999, MAFF established a new fund to purchase 170,000 metric tons of excess rice crop and release the same amount of older, government-owned stock as rice for feed-use. The fund subsidized the large price difference between food-use and feed-use rice, which amounts to about 200,000 yen ($1,900) per metric ton. This is not the first time that MAFF has utilized such disposal measures. Previous disposals amounted to 13 million metric tons at a cost of some three trillion yen ($25 billion). This time, the feed disposal volumes are smaller, but the cumulative effect over 30 years sharply reduces feedgrain imports and disrupts the world rice market.

Wood Products and Housing

Japan remains the top U.S. export market for wood products. Exports of U.S. forest products totaled $1.5 billion in calendar year 1999, down three percent from the level in 1998. The sluggish housing market, a sector utilizing a major share of imported wood products, caused this decline.

To expand the market for U.S. wood products in Japan, the United States has urged Japan to remove remaining barriers, such as prescriptive codes and standards in the Building Standard Law, Japan Industrial Standard (JIS), and Japan Agricultural Standard (JAS). These barriers limit the approval and acceptance of imported building materials.

In addition to reform of the regulatory environment, there is much that Japan can do to develop its wood products market, including taking steps to rebuild consumer confidence in order to increase home purchases, continue changes to the tax system to stimulate the new and used home market, reform its land and lease laws, expand the home mortgage system, and eliminate subsidies for its domestic wood products sector.

Another longstanding U.S. objective in Japan has been the elimination of tariffs on value-added wood products. Japan's failure to support the Accelerated Liberalization initiative (see "Import Policies" section of this chapter) precluded agreement on a phase-out of tariffs for wood products (i.e., wood, paper, printed materials, and wooden furniture). The United States will continue to urge Japan to play a constructive role in concluding an agreement in the context of any new WTO negotiations with a view to eliminating wood product tariffs in the 2002-2004 time frame.

Housing has been designated as one of five priority sectors under the Enhanced Initiative. Facilitation of wood-frame construction is a central U.S. objective in housing discussions under the Initiative, and progress in this area is described in detail in the deregulation section of this report. In addition to meetings held in connection with the Enhanced Initiative, the United States and Japan discuss wood product and housing material issues in the Building Experts Committee, the JAS Technical Committee, and the Wood Products Subcommittee.

Marine Craft

Japan's non-transparent system of small craft safety regulation for boats, marine engines, and marine equipment is a serious impediment to market access in this sector. The regulations, which are administered by the Ministry of Transportation and the Japan Craft Inspection Organization, are often vague and subject to arbitrary and inconsistent interpretation. Testing requirements can be expensive, while documentation requirements are non-transparent and burdensome, forcing companies to disclose sensitive proprietary information about product design, material specifications, and manufacturing techniques. Inspection fees are high and unrelated to the costs of conducting the inspections.

This regulatory system unnecessarily increases the costs of U.S. manufacturers, burdens Japanese consumers with higher prices and reduced access to imported boats, motors, and equipment, and provides no increased safety benefits compared with U.S. and European regulations. Japan has in the past expressed its intent to adopt international safety standards for small craft and marine engines, and participates actively on international standards drafting committees. Japan has made little progress, however, in harmonizing its small craft regulations with international practices. The United States will continue to raise its concerns with Japan regarding this issue under the Enhanced Initiative.

STANDARDS, TESTING, LABELING AND CERTIFICATION

Certification-related problems continue to obstruct access to Japan's markets. Although advances in technology continue to make Japan's standards outdated and restrictive, Japanese industry continues to support safety and other standards that are unique to Japan and which restrict competition. In some areas, however, Japan has undertaken to simplify, harmonize, and eliminate restrictive standards in accordance with international practices.

The principal organization that adjudicates standards and certification disputes between foreign firms and the Government of Japan is the Office of Trade and Investment Ombudsman (OTO). In 1994, the OTO came under the Prime Minister's Office and was authorized to recommend actions to appropriate ministries. The OTO has had some modest impact, but still lacks formal enforcement authority.

Biotechnology

Japan has adopted a largely scientific approach in its approval process for genetically modified (GM) foods. To date, MAFF and the Ministry of Health and Welfare (MHW), which regulate biotechnology products, have approved the importation of 29 GM plant varieties, including corn, potatoes, cotton, tomatoes, and soybeans.

While U.S. and Japanese regulatory approaches to assessing the safety of biotech products have been closely aligned, the United States is very concerned by Japan's recent decision to implement mandatory labeling of 24 whole and semi-processed foods made from corn and soybeans beginning April 2001. The United States is concerned that mandatory labeling will discourage consumers from purchasing foods derived through biotechnology by suggesting a health risk when there is none. In fact, in response to the release of MAFF's plans to require labeling, many manufacturers of products to be subject to mandatory labeling have already switched, or have declared they will switch, to non-genetically engineered ingredients.

MAFF has stated that the objective of extending a mandatory labeling requirement to food that has been produced through biotechnology is to provide information to the consumer. The United States has informed MAFF that it is important for consumers to have information on foods that have been genetically engineered, but that alternatives to labeling, such as educational materials and public fora, can collectively provide more meaningful information to consumers on genetic engineering. The United States will continue to consult closely with Japan in both bilateral and multilateral fora to address outstanding issues in this important area.

Dietary Supplements

Dietary supplements (vitamins, minerals, herbs, and non-active ingredients) have traditionally been classified as drugs in Japan. As a result, severe restrictions are imposed on the shape, dosage, and retail format for such supplements. These regulations create excessive costs and difficulties for most foreign supplement firms participating in the Japanese market, thus contributing to the relatively weak presence of U.S. firms. Dietary supplement issues are addressed by the United States through the MOSS/Enhanced Initiative process.

In March 1996, Japan's Office of Trade and Investment Ombudsman (OTO) recommended that products normally distributed and sold abroad as food products should not be regulated as drugs, but be allowed into the market as food products in Japan. However, MHW's actions have yet to realize the spirit of the OTO recommendations.

Under Japan's liberalization process, some herbs, minerals and vitamins have been designated as foods; however, this treatment does not solve the marketing and labeling problems for U.S. industry because as food, such supplements must now adhere to the food additive restrictions of the Food Sanitation Law (FSL). Products containing common excipients used to make tablets that do not appear on the positive list of food additives under FSL still cannot be sold in Japan. Another problem presented by the FSL is that some naturally occurring compounds, such as benzoic acid and sodium benzoic that are found in ginkgo biloba, are also considered food additives. Accordingly, such restrictions make the marketing of such products without major reformulations impossible.

MHW established a study group composed of government, industry, and academic experts to study the treatment of dietary supplements. This body released an interim report in December 1999 for public comment, which was discussed at the January 2000 MOSS/Enhanced Initiative consultations. The report, to be finalized by April 2000, will address all aspects of dietary supplement regulation in Japan and serve as the basis for MHW's adoption of OTO's recommendations. The United States welcomes the use of a public comment period for the interim report and urges Japan to fully implement the OTO recommendations, for example, by creating a mechanism for expedited review and approval of excipients used in pharmaceuticals; allowing minerals, vitamins, and herbs to make nutritional and health benefit claims if there are scientific data and information to support such claims; clearly publishing the criteria by which approvals of herbs, minerals, vitamins, excipients, and nutritional/health benefit claims are judged; and utilizing foreign data and information to evaluate and approve products in Japan without requiring supplemental domestic data.

The United States will continue to engage MHW in the MOSS/Enhanced Initiative process, the OTO, and other fora, to improve market access for U.S. dietary supplements through full and meaningful implementation of the OTO recommendations.

Food Additives

Processed food imports into Japan have at times come into conflict with Japan's standards affecting food additives, even though such additives may be approved as safe in other countries by the Joint FAO/WHO Experts Committee on Food Additives. For example, Japan refuses to allow the importation of light mayonnaise (as well as creamy mustard) containing the food additive potassium sorbate, a food additive evaluated and accepted by numerous national and international standard-setting organizations. Other food products containing this additive, however, are permitted to enter Japan.

Through revisions to its Food Sanitation Law (FSL), Japan is working to harmonize its national regulations to conform with the provisions of the WTO Sanitary and Phytosanitary (SPS) Agreement. Currently, Japan's food additive regulations remain unique, especially the listing of "non-natural" additives designated by MHW pursuant to Article 6 of the FSL. The U.S. Government encourages U.S. firms and industry associations to file applications with MHW for approval of new additives, allowing sufficient time for assessment. The United States has raised Japan's regulation of food additives under the Enhanced Initiative and intends to continue to urge Japan to adopt regulations which both protect consumers and facilitate international food trade.

Pesticides Residue

The Ministry of Health and Welfare continues to establish new residue standards for pesticides, providing full notification – including the opportunity to comment and review – to the WTO. The U.S. Government is providing scientific data pertaining to relevant U.S. and international standards for the chemicals concerned.

While Japan has made progress in establishing pesticide residue standards in harmony with internationally recognized tolerance levels, further work with Japan is necessary to help ensure that non-tariff barriers regarding imported food and agricultural products do not unreasonably restrict trade.

Veterinary Drugs

Japan typically waits for the joint FAO/WHO Codex Alimentarius Commission (Codex) to adopt an international standard before evaluating scientific evidence. However, such a policy results in unnecessary delays in establishing tolerance levels for veterinary drugs in Japan. The practice in Japan of prohibiting detectable residue levels of these drugs, without conducting a risk assessment in a timely manner, may be at odds with Japan's obligations under the WTO SPS Agreement. The United States has urged Japan to undertake evaluation of scientific evidence in order to establish tolerance levels for new veterinary drugs in a timely fashion, and not to delay the process while waiting for the outcome of Codex deliberations, thereby improving the safety review process for veterinary drugs sold in Japan.

GOVERNMENT PROCUREMENT

The United States has concluded bilateral agreements with Japan in six key sectors of the Japanese public sector market: computers, construction, medical technologies products and services, satellites, supercomputers, and telecommunications equipment and services. The aim of these agreements is to improve foreign firms' access to, and expand sales in, Japan's public procurement market. In support of this, the agreements attempt to redress traditional Japanese procurement practices that have historically prevented U.S. and other foreign firms from fully and equally participating in Japan's public sector market. In general, the agreements provide equal access for foreign and domestic suppliers to all public information at all phases of the procurement process; ensure equal opportunity to comment on and participate in the development of specifications; provide for a reduction in the number of sole-sourced procurements; and require an impartial bid protest system.

Computers

U.S. producers of computer goods and services are global leaders in technology and performance and continue to be among the largest and most successful foreign firms in Japan. To address the fact that these firms were notably under-represented in the Japanese public sector market for computers, the United States and Japan concluded a bilateral Computer Agreement in 1992. The agreement, whose aim is to expand government purchases of foreign computer products and services, made procedural improvements in Japan's public sector computer procurement regime, with provisions requiring that: (1) equal access to information and opportunity to participate will be available to all potential bidders; (2) any company that has participated in developing specifications for a procurement will be barred from bidding on that same procurement; (3) sole sourcing will be restricted to exceptional cases justified under the GATT/WTO Agreement on Government Procurement; (4) evaluation of bids will be based upon a range of criteria set forth in the tender documentation; and (5) unfair low bids will be prohibited.

At the annual bilateral review of the agreement held in Tokyo in May 1999, Japan presented JFY 1997 data showing that foreign computer firms held 16.5 percent of the public sector market – a 0.6 percent increase over the previous year. However, this followed a 37 percent plunge in Japanese public procurement of foreign computer goods and services between JFY 1995 and JFY 1996. The United States recognized that there had been some movement in a positive direction, but expressed serious concern that, according to Japanese Government data, the foreign share of the public sector computer market was still roughly equivalent to the share that foreign companies held when the Computer Agreement was concluded. Further, the data presented by Japan continues to compare unfavorably with a fairly consistent foreign market share of more than 30 percent of Japan's private sector computer market. The United States concluded that more work needed to be done by Japan to ensure that the objective of the agreement is achieved.

In 1999, given the continued gap between the U.S. share of the Japanese private and public sector computer markets, as well as the rapid technological advancements in this sector, the United States urged Japan to update and improve the implementation of the Computer Agreement. To this end, the United States proposed that Japan more fully utilize the Internet for public procurements, broaden its use of "overall greatest value method" (OGVM) in bid evaluations, and provide advance information to potential bidders on a larger number of upcoming procurements.

Japan has announced its intention to consolidate central government procurement announcements and documentation on the Internet, and in late 1999, outlined plans to create a formal committee early in 2000 to launch this effort. Japan's eventual goal is to create a single Internet site where all Japanese central government procurement information necessary for bidding for all product categories will be available, and to make bidding on the Internet possible as well. The United States has urged Japan to ensure that the views of foreign computer producers are fully taken into account as Japan proceeds with this initiative.

Construction, Architecture and Engineering

There are two U.S.-Japan public works agreements – the 1991 Major Projects Arrangement (MPA) and the 1994 U.S.-Japan Public Works Agreement, which includes the Action Plan on Reform of the Bidding and Contracting Procedures for Public Works

("Action Plan"). The MPA was designed to improve access to Japan's public works market and includes a list of 40 projects on which international cooperation is encouraged. Under the Action Plan, Japan must use open and competitive procedures on procurements valued at or above the thresholds in the WTO Agreement on Government Procurement (GPA). The United States is seriously disappointed with the continued lack of progress under these agreements. From July 1998 to July 1999, for the second year in a row, foreign design and construction firms won only $50 million in Japanese public work contracts. Since July 1999, foreign firms have been awarded only $40 million in contracts. The U.S. share of Japan's $250 billion public works market has consistently remained well under one percent – a troubling fact given the competitiveness of U.S. firms around the world. Proportionally, Japanese firms earn 12 times as much public construction business in the United States as American firms do in Japan.

Japan's public works market is well known for its closed nature and for the prevalent use of bid-rigging (or "*dango*"), under which companies consult with one another and prearrange a bid winner. In 1999, the JFTC investigated a network of nearly 300 Japanese civil engineering consulting firms involved in pre-determining winners on 2,500 public consulting contracts in Chiba Prefecture. As a result of its investigation, the JFTC prohibited these companies from bidding on public contracts for only two months. The United States has urged the JFTC to take further and stronger action in this area.

Because of the lack of progress in this sector, the United States and Japan met, at the U.S. Government's request, for special out-of-cycle consultations on the agreements in January 1999, and at the Under Secretary level for both the July 1999 annual review and out-of-cycle consultations in January 2000. The United States highlighted those practices which continue to deny full market opportunities to U.S. firms, including: (1) arbitrary restrictions on joint venture formation for large construction projects, including the "three-company joint venture rule" which limits the number of joint venture participants to three; (2) the very low number of design/consulting projects open to foreign firms; and (3) continued use of vague and unreasonable definitive criteria.

In January 2000, the United States expressed its serious disappointment that Japan had not acted on several suggestions made by the Under Secretary in July 1999, noting that some commissioning entities, including the Ministries of Health and Welfare, Post and Telecommunications, and Agriculture, Forestry, and Fisheries have never awarded an Action Plan procurement to a U.S. firm. No progress has been made with the Ministry of Construction (MOC) in liberalizing joint venture requirements for construction projects despite repeated requests from the United States for elimination of the three-company joint venture rule. During the July 1999 annual review, Japan and the United States agreed to the creation of the U.S.-Japan Construction Cooperation Forum, which is designed to facilitate the formation of joint ventures between U.S. and Japanese firms, and to make it possible for U.S. companies to participate more fully in Japan's public works market. The first Forum was held in October 1999, and Japan agreed to hold the second Forum in the Spring of 2000. The United States anticipates that these Forum meetings will lead to more contracts for U.S. firms.

In the design/consulting area, Japan has launched three initiatives since 1998. However, during the January 2000 review, it was clear that the number of design/consulting procurements covered by the Action Plan has not increased despite these initiatives. Of particular concern is the lack of progress in the initiative under which two types of design contracts (basic design and execution design) are combined when determining if the procurement meets the Action Plan threshold. This initiative, in effect, cuts the threshold for coverage in half and allows contracts in separate fiscal years to be combined. The United States believes that, were this initiative fully implemented, there would be a significant increase in the number of design/consulting procurements covered by the Action Plan. The other two initiatives involve contracting out design work and allowing design/consulting firms greater freedom to form joint ventures. The United States also was disappointed that no progress had been made in establishing a mode Program Management/Construction Management (PM/CM) project.

In addition, during the January 2000 review, the United States repeated its concerns regarding Japan's continued use of vague and unreasonable definitive criteria and cited recent design/consulting and construction cases, including MOC-commissioned procurements. The United States urged Japan to define the criteria used in particular procurements so as to maximize, rather than restrict, the number of firms that would be able to participate in the procurement. The United States also is concerned that some commissioning entities, including Japanese prefectural and local governments covered by the WTO GPA, may deliberately calculate the value of procurements such that they fall below the GPA thresholds, and thus do not need to be opened to foreign firms.

Although the 1994 agreement has no expiration date, the mechanism requiring annual meetings between the United States and Japan expires on March 31, 2000, unless the two governments mutually agree to continue the discussions. (The consultative mechanism under the MPA remains in place until all MPA projects are completed.) The United States believes continuation of government-to-government discussions on Action Plan implementation is needed given the continuing problems in this sector.

The United States is monitoring several projects covered by the public works agreements, including the Central Japan International Airport, Kansai International Airport Second Runway Construction, New Kitakyushu International Airport, Haneda Airport, Second Keihan Expressway, Kyushu University Relocation Project, and Kyushu National Museum. During the recent reviews, the United States highlighted these projects, as well as projects funded by Japan's fiscal stimulus packages, as being of particular interest to U.S. firms.

Medical Technology

The United States and Japan concluded the Medical Technology Agreement in November 1994, with the goal of significantly increasing market access and sales of competitive foreign medical products and services in the Japanese public sector procurement market. U.S. firms continue to be the world's largest producers of advanced medical technologies, and this agreement provides an important step forward in enabling them, as well as other foreign firms, to more effectively sell medical technology products and services in Japan's public sector.

The agreement sets out fair and transparent procedures that must be used by governmental entities in procuring major medical equipment and services. It also contains a set of quantitative and qualitative criteria upon which its implementation may be annually assessed, including value and share of contracts awarded to foreign firms by each government entity; number and value of contracts awarded through single tendering; and foreign access to procurement information. A key element of the agreement is the requirement that procurement decisions for central government purchases above a specified threshold (lowered to 385,000 Special Drawing Rights on April 1, 1998) be made on the basis of the "overall greatest value method" (OGVM) of bid evaluation, instead of on the lowest-bid. This is important because U.S. equipment generally is more innovative and offers special features or extraordinary performance, and OGVM permits procurement decisions based not just on initial price, but on a complete assessment of the product's value over its life cycle. This ensures that buyers have the flexibility to select products based on the most favorable combination of price and performance.

Through the MOSS/Enhanced Initiative process, the United States urged Japan to undertake the needed measures to allow prefectural and local governments to use OGVM in bid evaluation. On February 17, 1999, Japan adopted a Cabinet order permitting the use of OGVM in procurements made at the local and prefectural level. This new policy should expand market access in Japan for U.S. exporters and manufacturers of not only highly advanced medical devices, but of a wide-range of high technology products. According to U.S. industry estimates, this measure could represent an increase in U.S. sales to Japan of approximately $500 million – an estimated $100 million of which could come from sales of U.S. medical devices alone.

The most recent annual review of the agreement was held in September 1999. Japan presented data for JFY 1997 which showed that foreign market share rose 4.4 percentage points to 45.6 percent of the market. This occurred despite the fact that overall procurement covered by the agreement fell 29.6 percent between JFY 1996 and JFY 1997 (from over 75 billion yen to 53 billion yen). Foreign/domestic head-to-head competition also increased significantly in JFY 1997 – 14.7 percent of contracts versus seven percent in JFY 1996, showing more dynamic competition occurring in this sector.

While significant progress has been made under this agreement, the United States continues to urge Japan to make further progress by improving transparency in Japan's public procurement process and expanding the use of OGVM at the local and prefectural levels.

Satellites

Under the 1990 U.S.-Japan Satellite Agreement, Japan committed to open non-R&D satellite procurements to foreign satellite makers. As defined in the agreement, "R&D" satellites are those designed and used entirely, or almost entirely, for the purpose of in-space development and/or validation of technologies new to either country, and/or non-commercial scientific research. Satellites designed or used for commercial purposes or for the provision of services on a regular basis expressly do not meet the agreement's criteria defining R&D satellites. Coverage of the agreement includes procurement for broadcast satellites by Nippon Telegraph and Telephone (NTT) and the Japan Broadcasting Corporation (NHK), the government-owned television/radio services.

To date, the agreement has been successful in opening the Japanese Government's procurement market to foreign competition. From 1990 through 1999, U.S. satellite makers – world leaders in this field – won all six contracts (with a combined value exceeding $1 billion) openly bid for under the competitive procedures outlined in the agreement. Given U.S. firms' strength in this area, the United States expects that this success will continue.

The United States continues to carefully monitor Japan's adherence to the terms of the agreement and to ensure that no overly-broad definition of an R&D satellite is used that could unfairly deny U.S. satellite manufacturers access to procurement opportunities.

Supercomputers

The United States and Japan concluded the 1990 U.S.-Japan Supercomputer Agreement in order to ensure fair access for U.S. supercomputer manufacturers to Japan's high-performance computing market. Under the agreement, Japan committed to implement transparent, open, and non-discriminatory competitive procurement procedures for supercomputers in the public sector and to ensure that procuring entities are fully able to procure the supercomputer that best enables them to perform their missions.

Results under the 1990 Supercomputer Agreement generally have been mixed. A significant gap remains between the U.S. share of the competitive Japanese private sector and public sector supercomputer markets. After a notable increase in the U.S. share of Japan's public sector supercomputer market in JFY 1993 and JFY 1994, which brought it close to the U.S. firms' 45-50 percent share of the Japanese private sector supercomputer market, more recent results under the agreement have been much less promising. U.S. firms won only one of eleven procurements in JFY 1995, two of eight procurements in JFY 1996, one of five procurements in JFY 1997, two of fifteen procurements in JFY 1998, and two of nine procurements in the first eight months of JFY 1999. In addition to the discrepancy between the U.S. share of Japan's public and private sector markets, in recent years, the United States raised concerns over the use by certain Japanese public sector entities of inappropriate technical requirements in public supercomputer procurements. The United States will continue to press Japan to ensure that the terms of the bilateral supercomputer agreement are faithfully implemented, including the use of neutral and nondiscriminatory technical requirements.

On April 30, 1999, the United States and Japan agreed in an exchange of letters to increase the threshold governing coverage of the Supercomputer Agreement from five billion floating point operations per second (GIGAFLOPS) to fifty GIGAFLOPS in order to keep pace with the notable advance in technology in this sector. This change went into effect on May 1, 1999.

Telecommunications

NTT Arrangement: On July 1, 1999, concurrent with the restructuring of NTT into a holding company (Nippon Telegraph and Telephone Corporation), two regional companies (NTT East and NTT West), and a long distance/international company (NTT Communications), the United States and Japan reached agreement on a new NTT Procurement Agreement. This agreement replaced the previous NTT Agreement, which was first concluded in 1980 and subsequently renewed six times. Together, the four NTT successor companies continue to be Japan's single largest purchaser of telecommunications equipment, and according to recent statistics, account for about one-third of Japan's $30 billion telecommunication equipment market. As such, the "NTT market" has been and continues to be of keen interest to U.S. and other foreign telecommunications firms.

The new agreement covers the procurement of all four of the NTT successor companies and will remain in force for two years. In terms of substance, the new agreement: (1) ensures continued government oversight of NTT successor companies' procurement; (2) commits both governments to annual reviews to assess progress; (3) requires NTT successor companies to provide data for review by the governments; and (4) sets forth new, streamlined procurement procedures in which the NTT successor companies commit to procure in an open, non-discriminatory, competitive and transparent manner. Reflecting changes brought about by NTT's restructuring and the changing business environment in which domestic and foreign suppliers and the NTT successor companies are now operating, the agreement provides details on how three methods of procurement will operate: (1) the traditional "request for proposal" method; (2) a means by which companies with innovative products can approach NTT directly with proposals; and (3) a means by which NTT will conduct follow-on purchases.

In October 1998, during the last bilateral review of the previous U.S.-Japan NTT Procurement Agreement, NTT reported that overall procurement of foreign products increased from 173 billion yen in JFY 1996 to 185 billion yen in JFY 1997. The fact that overall NTT procurement of goods and services declined in JFY 1997 made that increase all the more significant. The United States believes that this is an indication that the NTT Agreement has been effective in moving closer to its objective of increasing competition and improving the openness, fairness, and transparency of the telecommunications equipment market in Japan. Nonetheless, at this review and in subsequent negotiations related to the new NTT Agreement, the United States expressed its expectation that there will be continued growth in the NTT successor companies' procurement of foreign equipment, and that the foreign share of procurement by NTT successor companies will increase to levels more consistent with those of Japanese private sector telecommunications carriers (which have traditionally been far more open to foreign products) and with telecommunications markets globally. Because the NTT successor companies procure over $10 billion in equipment and services annually and plan to increase procurement of data- and Internet-related technologies, an area in which U.S. companies are particularly strong, improved access to the "NTT market" should result in significant new opportunities for U.S. firms. The first annual review under the new NTT Agreement will be held in the second half of 2000.

Public Sector Procurement Agreement on Telecommunications Products and Services: The objective of the 1994 U.S.-Japan Telecommunications Procurement Agreement is to significantly increase access for foreign telecommunications products and services to Japan's public sector. Pursuant to the agreement, Japan has introduced procedures to eliminate barriers such as: unequal participation in pre-solicitation and specification-drafting for large-scale telecommunications procurements; ambiguous award criteria; and excessive sole sourcing. The agreement also includes quantitative and qualitative criteria for measuring progress such as: (1) annual value and share of purchases of foreign products; (2) annual procurements of foreign products and services by entity; (3) contracts awarded for foreign products and services by entity; (4) annual numbers and values for contracts awarded as a result of single tendering; and (5) new subcontracting opportunities for foreign suppliers.

During the annual review held in May 1999, during which JFY 1997 data was reviewed, the United States expressed serious concern about the continued low foreign share of Japanese Government procurement of telecommunications products and services, which Japanese Government data showed to be 3.9 percent. While foreign firms had achieved a 13 percent market share in JFY 1995, this decreased to 3.5 percent in JFY 1996. While there was a slight increase in JFY 1997, the trend evident in this sector continues to stand in direct contrast to the significant successes that foreign suppliers have had in selling to Japan's private sector, particularly the new competitors to NTT, which purchased 28 percent more foreign goods and services in 1997 than they did in 1996.

During the May review, the United States expressed disappointment over Japanese agencies' over-reliance on and increasing use of sole-source tendering for procurement. Despite the fact that the agreement calls for a reduction in sole-source tendering, the percentage of sole-source tendering in total government telecommunications procurements reached 27 percent in JFY 1997. The Ministry of Posts and Telecommunications, the largest government purchaser of telecommunications equipment and services, sole sourced fully one-third of these procurements. The Ministry of International Trade and Industry also relied heavily on sole sourcing.

Also at the review, the United States expressed serious concern regarding Japan's failure to provide information on procurements made by the Japan Defense Agency, despite the fact that the Agency is explicitly covered under the bilateral agreement. It also questioned the absence of data from Japan Railways. Finally, the United States expressed concern about agencies' use of Japan-specific standards, specifications that appear biased toward a particular local firm, and short timeframes for bids that effectively freeze out foreign suppliers.

The next annual review is scheduled for the Spring of 2000.

INTELLECTUAL PROPERTY RIGHTS PROTECTION

The United States has pursued its intellectual property goals with Japan through a firm policy that has combined close bilateral consultations and negotiated agreements (including two bilateral patent agreements from 1994); effective policy coordination in multilateral and regional fora; and strong action in the WTO when necessary to defend U.S. intellectual property interests in Japan.

The sound recordings dispute of 1996-97, which represented the first intellectual property dispute settlement case at the WTO, was resolved when Japan amended its law to fulfill its obligations in the U.S. favor. The result of this policy has been an increase in the level of protection afforded U.S. intellectual property in Japan, and a greater Japanese role in pushing for stronger worldwide intellectual property protection. Although intellectual property piracy in Japan has dropped and significant improvements have been made to Japan's legal and administrative intellectual property framework, the United States has identified a number of areas where further action by Japan is needed, including: (1) addressing persistent patent-related problems; (2) improving and expanding protection of copyrighted works; (3) expanding protection for well-known trademarks; (4) affording greater protection of trade-secret information; and (5) illuminating and gaining access to non-transparent border enforcement mechanisms. Due to the existence of such concerns, in April 1999, Japan remained on the Special 301 "Watch List" of countries from which the United States seeks stronger intellectual property rights protection.

Patents

The United States has focused particular attention on improving registration access and approvals, and reforming Japan's practice of affording only narrow patent claim interpretation. Japan has taken steps to implement its commitments under two 1994 bilateral patent agreements, which: allow patent applications to the Japan Patent Office (JPO) to be filed in English; permit the correction of translation errors after patent issuance; end dependent patent compulsory licensing (except in cases where anti-competitive practices have been found); end the practice of allowing third parties to oppose a competitor's patent before it is granted and to hear all opposition claims at the same time; and provide a revised accelerated examination system. Notwithstanding these steps, the United States remains concerned with several aspects of Japan's patent administration, including the relatively slow process of patent litigation in Japanese courts, the lack of an effective means to compel compliance with discovery procedures, and the lack of adequate protection for confidential information produced relative to discovery.

A revised patent law passed the Diet in 1999 and went into effect January 1, 2000. This law is designed to make it easier for plaintiffs to prove patent infringement in courts. Key provisions include increasing requirements on alleged violators to justify their actions, obligating alleged violators to cooperate with calculation experts, giving judges discretion over the amount of damages, increasing the penalty in cases where patents were obtained fraudulently, and allowing courts to seek technical advice from the JPO. The United States will monitor closely whether this revision reduces the burden of proof required by Japanese courts that a patentee's process is actually being used, which has been particularly onerous to foreign patent owners.

Starting October 1, 2000, the period between when a patent is applied for and must be pursued by an applicant will decrease from seven to three years. The JPO has set a target of reducing the examination period further to 12 months by the end of 2000. Moreover, a government advisory panel released a report in December 1999 urging the Government of Japan to take measures to boost the number of patent lawyers and expand their scope of permitted services in order to improve the use of intellectual property in Japan. Based on the panel's recommendations, the JPO plans to submit a bill to the Diet in 2000. The United States is encouraged by these steps which, if implemented, would further strengthen the level of patent protection in Japan. We will continue to urge Japan to implement these provisions and enforce its patent laws.

Copyrights

Japan has made progress in combating computer software piracy in recent years, with the "piracy rate," as calculated by U.S. industry, falling from roughly 50 percent (of software in use) in 1994 to roughly 30 percent in 1997. The United

States continues to urge Japan to reduce the piracy rate further. A notable step toward creating an effective deterrent against piracy would be the amendment of Japan's Civil Procedures Act to award punitive damages rather than actual damages, and to provide for more effective procedures for the collection of evidence. In addition, in order to lead the private sector by example, we urge Japan to issue a policy statement clarifying Japan's commitment to use only legitimately produced and licensed software in its government's operations.

In March 1997, Japan amended its copyright law to protect sound recordings produced in the United States and other WTO countries within the past 50 years. This represented the resolution of the first intellectual property dispute settlement case at the WTO, which the United States initiated against Japan in 1996 after Japan failed to provide full "retroactive" protection to pre-existing sound recordings in accordance with the TRIPS (Trade-Related Aspects of Intellectual Property Rights) Agreement. The United States expects similar resolution of piracy over digital networks, including digital music broadcasting services. Japan also has acceded to the World Intellectual Property Organization (WIPO) Copyright Treaty and the Performances and Phonograms Treaty. When ratified, these agreements will provide new protection for producers and performers of material transmitted over the Internet.

In preparation for Japan's ratification of the WIPO Copyright Treaty expected in 2000, the Diet revised some aspects of Japan's copyright law in 1999. Key provisions of the revised law include criminal penalties for producing and distributing devices designed to circumvent copyrights, and for illegally revising copyright management information to make a profit. The United States is concerned that the penalties for copyright circumvention devices will be seldom applied since the law covers only devices whose sole purpose is circumvention. The law also expands the coverage of screening rights from motion pictures to still pictures and sets transfer rights so that the first sale doctrine covers films, books, and CDs.

Some groups in the United States have raised concerns about Japan's practices with respect to the degree of copyright protection accorded to musical compositions. It appears that Japanese authorities are applying inflexible, formalistic rules to the conduct of joint authors at the time of publication that, in certain instances, result in a denial of the full term of copyright protection for their works. This practice raises questions under the Berne Convention.

Trademarks

A number of revisions to Japan's Trademark Law came into force in 1997. The revisions aimed to accelerate the granting of trademark rights, strengthen protection of well-known marks, address problems related to unused trademarks, and simplify trademark registration procedures in order to bring Japan into compliance with the Trademark Law Treaty. These measures also increase penalties for trademark infringement. Regrettably, in spite of the existence of provisions in Japan's Unfair Competition Law designed to afford greater protection to well-known marks, protection of such marks remains weak.

The Diet passed new legislation in 1999 in preparation of ratifying the Madrid Protocol early in 2000. Effective January 1, 2000 Japan began establishing a system to notify the public of trademark applications received. Effective March 14, 2000, once a trademark is issued, rightholders also will be entitled to compensation for damages for the period from application until registration of the trademark. Further, the United States welcomes Japan's improvement in the speed of its trademark registration process, with the time required to register a trademark dropping from 36 months to just over a year.

Trade Secrets

Although Japan amended its Civil Procedures Act to improve the protection of trade secrets in

Japanese courts by excluding court records containing trade secrets from public access, this legislation does not adequately address the problem. Given that Japan's Constitution prohibits closed trials, the owner of a trade secret seeking redress for misappropriation of that secret in a Japanese court is forced to disclose elements of the trade secret in seeking protection. Because of this, and the fact that court discussions of trade secrets remain open to the public with no attendant confidentiality obligation on either the parties or their attorneys, protection of trade secrets in Japan's courts will continue to be considerably weaker than in the courts of the United States and other developed countries. The United States considers this to be unacceptable and continues to urge Japan to undertake further reform in this area.

Border Enforcement

In an effort to bolster Japan's border control measures, the United States has urged Japan to improve its Customs recordation and information submission procedures to make it easier for foreign rights holders to avail themselves of protection from Japan's Customs authorities. Further, insofar as Japan provides ex-officio border enforcement of trademarks and copyrights through the Japan Customs and Tariff Bureau (JCTB), efforts should be made to enhance such enforcement through aggressive interdiction of infringing articles. In addition, the United States is concerned by the 1997 Japan Supreme Court decision to allow parallel imports of patented products and continues to monitor JCTB's implementation of this policy.

SERVICES BARRIERS

Insurance

Japan's private insurance market is one of the largest in the world, with preliminary data indicating that direct net premiums totaled $331 billion in JFY 1998. In addition, there is a large public sector provider of postal life insurance products known as *Kampo,* the National Public Health Insurance System, and a web of mutual aid societies (*Kyosai*) that provide significant amounts of insurance. As in many countries, the supervision of the private insurance market is segmented into the traditional life and non-life (property and casualty) sectors. Moreover, in Japan, there exists a so-called "third sector," covering both life and non-life products (e.g., cancer and supplementary hospitalization insurance, as well as personal accident insurance), which represents just five percent of the total market. Foreign and smaller Japanese companies have traditionally excelled in this small segment of the market, capturing some 40 percent of sales, while their share of the primary sectors historically has been well below five percent.

The United States and Japan have concluded two bilateral insurance agreements under the U.S.-Japan Economic Framework, one in October 1994 and the second in December 1996. The latter agreement became necessary after it became apparent to the United States that Japan intended to allow its insurance subsidiaries to operate in the third sector in a manner contrary to key provisions of the 1994 agreement. Due in large part to these efforts, as well as to the Administration's close monitoring of the implementation of both agreements, deregulation of Japan's insurance market has proceeded, and the once weak presence of foreign firms in the primary sectors has begun to change substantially. While maintaining their strong third sector sales, U.S. and other foreign insurance companies have rapidly expanded their share in the primary sectors in recent years, both through product development and marketing innovations, as well as direct investment.

1994 Insurance Agreement: Implemented just prior to the legislation of extensive reform of Japan's insurance industry, the October 1994 Measures on Insurance commit Japan to take a number of steps to promote deregulation of the industry. These include enhanced transparency and procedural protections; the introduction of streamlined approaches to Japan's product and rate approval system; improved licensing procedures for insurance providers; the initiation of a brokerage system; and a survey of the industry by the Japan Fair Trade Commission (JFTC). Regarding Japan's product approval system, the Government of Japan committed to expediting and simplifying the application review process through such steps as reducing examination requirements and time periods and introducing expedited approval review systems such as "file and use" systems. The United States more recently has offered Japan several suggestions on how the current product approval and notification systems might be improved.

Related to the postal insurance system (*Kampo*), Japan confirmed in the 1994 Agreement that the "*Kampo* Law" authorizes the Ministry of Post and Telecommunications (MPT) to offer 11 basic insurance products, and that the MPT offers a total of 25 variations of these 11 products. Japan further confirmed that Diet approval is required to expand or change the insurance products or riders offered by MPT, except for limited alterations within the scope of the products or riders authorized in the Law. Related to any changes to *Kampo* offerings, Japan committed to ensuring that foreign providers in Japan are accorded meaningful and fair opportunities to be informed of, comment on, and exchange views with MPT officials.

Finally, the 1994 Agreement contains a provision related to "mutual entry" of life insurers into non-life markets and of non-life insurers into life insurance markets, designed to ensure that deregulation of the highly segmented insurance industry does not proceed largely at the expense of foreign and small- and medium-sized Japanese insurers. Specifically, Japan agreed to avoid "radical change" in the third sector until foreign, as well as small- and mid-sized Japanese insurers, were provided a reasonable period to compete in significantly deregulated primary life and non-life sectors.

1996 Insurance Agreement: The "Supplementary Measures" of December 1996 defined the scope and timing of primary sector deregulation to be undertaken by Japan's Ministry of Finance. The agreement also defines the scope of business activities of Japanese insurance subsidiaries in the third sector consistent with the commitment to avoid radical change. In December 1997, Japan agreed to bind these commitments under the WTO Financial Services Agreement.

Specifically, Japan committed under the 1996 agreement to approve applications for automobile insurance containing differentiated rates based on a range of risk criteria, such as age, gender, driving history, geography, and vehicle usage. Japan also agreed to eliminate the authority of rating organizations to set industry-wide rates for automobile and fire insurance. In addition, Japan undertook to expand the list of products to be included under its "notification system," and phase in a reduction in the threshold above which insurers were permitted to offer flexible rates for commercial fire insurance to a seven billion yen ceiling by April 1998.

With respect to the third sector, the 1996 Agreement committed Japan to prohibit or substantially limit Japanese insurers' new subsidiaries from marketing certain third sector products of particular importance to foreign insurers, such as cancer, hospitalization, and personal accident insurance, until foreign firms had sufficient time to establish a presence in the deregulated primary sectors.

The agreement stipulated that, should Japan fully implement all of the primary sector deregulation measures contained in the 1996 Agreement by July 1998, a two-and-one-half year "clock" would begin regarding termination of the measures to avoid radical change in the third sector. The United States and Japan have not yet come to a final, joint decision as to whether or not all of the 1996 primary sector deregulation requirements have been implemented.

The most recent bilateral consultations under the two insurance agreements were held in Washington in April 1999. This was the first formal bilateral consultation involving representatives from the Financial Supervisory Agency (FSA), an independent regulatory body established in June 1998 to oversee and regulate financial services, including insurance. In order to facilitate mutual understanding of current and future plans related to the U.S. and Japanese insurance regulatory systems, the United States included a component for regulator-to-regulator discussions during the April meetings, with representatives from the National Association of Insurance Commissioners participating.

The review included an assessment of Japan's implementation of the provisions of the 1994 and 1996 agreements using data provided by the Government of Japan and objective criteria contained in the 1994 agreement. The United States and Japan also discussed issues related to product approval, resources and technology, the policyholder protection corporations, rating organizations, and administrative and regulatory changes in Japan's insurance sector. The United States reviewed a JFTC survey of the insurance industry published in November 1998, which found the industry – then in the throes of the initial stages of deregulation – largely free of restraints on competition. The United States noted, however, that the survey overlooked the role of "case agents" in the buying practices of employees of *keiretsu* firms, and urged the JFTC to devote sufficient resources toward ensuring that large Japanese insurance firms do not abuse *keiretsu* relationships and refrain from the use of other business practices that impede competition. The United States also urged the JFTC to closely monitor the reformed non-life rating organizations to prevent any revival of cartel-like behavior among member firms.

In addition, the United States raised concerns about potential "radical change" occurring in the third sector, such as sales practices involving Group Personal Accidental insurance, and other sales of certain products by Japanese firms. Finally, the United States noted continued industry apprehension related to the FSA's ability to meet the 90-day turnaround for product approvals mandated in the agreement, and explored whether Japan could make key changes to its product approval system to enable it to operate effectively in the increasingly deregulated insurance environment.

The United States remains concerned about several aspects of Japan's administration of the insurance sector. Foreign firms have frequently encountered a lack of transparency related to important actions taken by Japan in this sector, most recently in December 1999 when it initiated a rapid process to increase the financial resources and authority of the life insurance policyholder protection corporation with minimal consultation with the insurance industry. Similarly, a lack of transparency is evident in the approval process for new insurance products and rates. Foreign insurance providers have noted that the criteria used by the FSA to make product approval decisions are minimal, vague and potentially arbitrary. Firms also have reported that when requested by the FSA to provide additional information to support product applications, FSA officials have been reluctant to provide those requests in writing.

In its October 1999 deregulation submission to Japan under the Enhanced Initiative, the United States included an expanded list of requests related to insurance to address these concerns. Specifically, the United States requested that the FSA undertake further efforts to conduct all communications with the companies it regulates in a fair and transparent manner, as called for in the Administrative Procedures Law (APL); that the Japanese Government significantly increase FSA staff and in-house technical expertise; and that Japan adopt a modernized and a stream-lined product approval system. The United States also expressed serious concerns with potential Japanese plans to expand the role of the government postal insurance system (*Kampo*). The United States pointed out that any expansion of *Kampo* into product lines being offered by private insurers is inconsistent with Japan's goals of deregulation and "Big Bang" market reforms. The United States also expressed concern that *Kampo* falls outside the scope of the Insurance Business Law and is not subject to oversight by the FSA or the JFTC. These items were discussed during a meeting of the deregulation structural working group in November 1999 and February 2000, at which time the United States emphasized that Japan's adoption of these requests would be a key step toward moving forward on our insurance agenda with Japan.

The deregulatory steps taken to date by Japan in accordance with the 1994 and 1996 bilateral Insurance Agreements have yielded important results. Several major U.S. and other foreign insurance companies have entered the market in the past two years, the foreign presence in the market has grown significantly, and rate and product competition have increased. Concerns remain, however, and the United States continues to seek to resolve outstanding issues with Japan, and to insist upon full and faithful implementation of the commitments made under the 1994 and 1996 bilateral Insurance Agreements.

Professional Services

The Administration continues to seek improved access for professional service providers in Japan through our bilateral public works agreements for construction, architectural, and engineering services; under the Enhanced Initiative for legal services; and in the WTO for accounting and auditing services.

The ability of foreign firms and individuals to provide professional services in Japan is hampered by a complex network of legal, regulatory and commercial practice barriers. U.S. professional services providers are highly competitive and the United States expects the export of such services to continue to grow. These services are important, not only as U.S. exports, but as vehicles to facilitate access for U.S. exporters of other services and goods to the Japanese market. Moreover, U.S. services professionals often can contribute valuable expertise gained from broad experience in international markets and stimulate innovations for the economies in which they serve.

Through the WTO Working Party on Professional Services, WTO members have developed disciplines on the regulation of the accountancy sector to make it easier for accountants to provide their services on a cross-border basis or in other countries. The disciplines, adopted by the WTO in December 1998, are scheduled to become effective after the next round of negotiations. The GATS negotiations also provide an opportunity for further negotiation to liberalize accountancy and other professional services.

Accounting and Auditing Services: U.S. providers of accounting and auditing services face a series of regulatory and market access barriers in Japan which impede their ability to serve this important market. In Japan, regulated accounting services may be provided only by individuals qualified as Certified Public Accountants (CPAs) under Japanese law, or by an Audit Corporation (composed of five or more partners who are Japanese CPAs). To become qualified as a CPA in Japan, a foreign accountant must pass a special examination for foreigners in order to obtain a professional certification. This examination was last offered in 1975. CPAs in Japan must also be registered as members of the Japanese Institute of Certified Public Accountants and pay membership fees.

Only individuals who are Japanese CPAs can establish, own, or serve as directors of Audit Corporations. An Audit Corporation may employ foreign CPAs as staff, but foreign CPAs are not allowed to conduct audit activities. Furthermore, an Audit Corporation may engage in a partnership/association relationship with foreign CPAs only if the partnership/association does not provide audit services. Audit Corporations are prohibited from providing tax-related services, although the same individual may perform both functions as long as totally separate offices are maintained. Establishment is required for Audit Corporations, but not for firms supplying accountancy services other than audits.

Branches and subsidiaries of foreign firms, however, are not authorized to provide regulated accounting services. Nor can a foreign firm practice under its internationally recognized name; its official firm name must be in Japanese and is subject to approval by the Japanese Institute of Certified Public Accountants. The

United States will continue to urge Japan to open this restrictive market.

Legal Services: U.S. lawyers have sought greater access to Japan's legal services market and full freedom of association with Japanese lawyers (*bengoshi*) since the 1970s. However, strong opposition from the Japan Federation of Bar Associations (*Nichibenren*) and a reluctant Japanese bureaucracy have largely thwarted this objective.

Since 1987, Japan has allowed foreign lawyers to establish offices and advise on matters concerning the law of their home jurisdictions in Japan as foreign legal consultants (*gaikokuho-jimu-bengoshi* or *gaiben*), subject to restrictions in the Special Measures Law Concerning the Handling of Legal Business by Foreign Lawyers (Law No. 66 of 1986, as amended) (Foreign Lawyers Law). Since this Law was enacted, Japan has liberalized several restrictions on foreign lawyers, including: (1) allowing foreign lawyers to represent parties in international arbitrations in Japan; (2) reducing the experience required to register as a foreign legal consultant from five years to three years; and (3) allowing foreign lawyers to count the time spent practicing the law of the lawyer's home jurisdiction in a third country toward meeting the three-year experience requirement. However, Japan has adamantly refused to remove the most restrictive regulatory hurdle facing foreign lawyers in that country – the ban on hiring or forming partnerships with Japanese lawyers in Japan.

In its October 1999 submission to Japan under the Enhanced Initiative, the United States stressed the need for Japan's legal service infrastructure to be capable of meeting the needs of Japanese and foreign persons and enterprises that are responding to the opportunities created by market liberalization and deregulation. The United States pointed out that Japan's restructuring process, e.g., in the financial services sector, will be seriously impeded if Japan continues to thwart the development of a globally competitive legal services sector in Japan. Both Japanese and foreign persons and enterprises must be able to obtain fully integrated transnational legal services for domestic and cross-border transactions.

Rather than allow Japanese attorneys and foreign lawyers to form full partnerships, as is the common practice in most other countries, Japan in 1995 created, through an amendment to the Foreign Lawyers Law, an arrangement that is unique to Japan – "specified joint enterprises" (*tokutei kyodo jigyo*) between Japanese attorneys and foreign lawyers. Despite an expansion in 1998 of the scope of work that may be undertaken by the enterprises, only a handful of foreign firms have created joint enterprises. Even those that have formed joint enterprises have faced difficulties.

The United States has made the removal of the ban on partnerships and employment a top priority, arguing that Japan should allow foreign lawyers and *bengoshi* to determine on their own the most appropriate form of association that will enable them to best serve their clients' needs. The United States also has stressed that the joint enterprise system does not serve as an adequate substitute for partnerships, nor can the system be adjusted to overcome its inherent defects.

In December 1999, the Government of Japan's Regulatory Reform Committee, in a report approved by the Cabinet, stated that "we cannot find any rational reason to prohibit employment of Japanese lawyers by foreign legal consultants," and recommended that over the short run, Japan should take steps, such as a review of regulations defining the purposes of the designated joint enterprise, to "enable foreign legal consultants and Japanese lawyers to provide legal services for any type of issues based upon a complete and comprehensive cooperative relationship." In spite of this policy directive, the Ministry of Justice in January 2000 only stated that it would "examin[e] if further improvement could be made on the joint enterprise system."

Also in 1999 under the Enhanced Initiative, the United States requested that Japan ensure that foreign lawyers have meaningful opportunities to participate in the development by the *Nichibenren* and mandatory local bar associations of all new or amended rules or regulations that affect them. In particular, the United States recommended that Japan: (1) require the *Nichibenren* and local bars to provide for greater representation and effective participation by foreign lawyers on all *Nichibenren* and local bar committees that consider registration, discipline and all other regulations and issues relevant to foreign lawyers; (2) require the *Nichibenren* and local bars to use public comment procedures before adopting or issuing rules or regulations; (3) reduce the time required for registration by foreign lawyers; and (4) ensure that the *Nichibenren* and local bars do not impose any restrictions on the joint enterprises.

In its October 1999 submission, the United States also requested that Japan allow a foreign lawyer full credit for experience in Japan toward the three-year experience requirement to register as a foreign legal consultant, and not just the one year allowed under current practice. The Ministry of Justice refuses to acknowledge the lack of rational basis for this practice, which renders experience in Japan less valuable than that gained in any other country.

The United States has also sought the removal of restrictions on foreign lawyers providing advice on so-called “third country” law (that is, the law of a country other than the one which is a foreign lawyer’s home jurisdiction). The United States also recommended that Japan increase the number of trainees admitted to the Japanese Supreme Court’s Legal Research and Training Institute to no less than 1,500 trainees annually as soon as possible, but no later than April 1, 2000, and explore alternative ways of obtaining legal qualification outside the Institute. As of the beginning of 2000, the number of trainees had been increased to 1,000 per year, and the Ministry of Justice is considering further increases.

The United States continues to urge Japan to remove the ban on partnerships and employment, make the regulation of foreign lawyers more transparent, and eliminate other unnecessary and unreasonable restrictions on legal services in Japan.

INVESTMENT BARRIERS

Despite its status as the world’s second largest economy, Japan continues to have the lowest inward foreign investment as a proportion of total output of any major OECD nation. In JFY 1998, for example, Japan’s annual inward foreign direct investment (FDI) totaled $10.5 billion, or only 0.27 percent of its GDP. Nonetheless, FDI in Japan is rising rapidly, albeit from a small base, up 89.4 percent in JFY 1998 from the previous year’s level. In the first half of JFY 1999, FDI rose 166 percent as compared to the same period in JFY 1998 to $11.33 billion, boosted by sizeable investments in Japan’s autos and telecommunications sectors. Japan’s outward investment flows continue to dwarf investment into Japan, but the gap between outward-to-inward FDI is narrowing. The ratio averaged 11-to-1 between 1990 and 1996, shrinking to 3.9-to-1 in JFY 1998. Based on figures released by the Ministry of Finance, Japan’s FDI outflow fell 24.5 percent from the previous year to $40.74 billion in JFY 1998. Foreign participation in the field of mergers and acquisitions (M&As) also lags in Japan, as compared to other OECD countries, although there is an upward trend. From January to September of 1999, 826 cases of M&A were recorded, up 22.6 percent from the previous year.

Acknowledging that Japan’s inward investment lags far behind that of other industrialized economies, Japan has taken some actions with the aim of creating a more attractive environment for FDI in Japan. In 1994, Japan established the Japan Investment Council (JIC), chaired by the Prime Minister and charged with promoting measures to improve Japan’s investment climate, coordinating policies of ministries and agencies concerned with investment, and disseminating information on investment-promotion measures. The JIC has released periodically policy statements that encouraged FDI and listed policy recommendations. In April 1999, the JIC produced an Expert Committee Report on "Seven Recommendations for Promoting Foreign Direct Investment in Japan," which included advocating deregulation and additional steps to facilitate M&As.

Although most direct legal restrictions on FDI have been eliminated, bureaucratic obstacles remain, including the occasional discriminatory use of bureaucratic discretion. While Japan's foreign exchange laws currently require only ex-post notification of planned investment in most cases, a number of sectors (e.g. agriculture, mining, forestry, fishing) still require prior notification to government ministries. More than government-related obstacles, however, Japan's low level of inward FDI flows reflects the impact of exclusionary business practices and high market entry costs.

Difficulty in acquiring existing Japanese firms – as well as doubts about whether such firms, once acquired, can continue normal business patterns with other Japanese companies – make investment access through mergers and acquisitions more difficult in Japan than in other countries. However, the pressure of economic restructuring and the surge in M&As to a degree have weakened *keiretsu* relationships. U.S. investors cite the lack of financial transparency and disclosure and differing management techniques among the obstacles to realizing M&As in Japan. Extensive cross-shareholding among allied companies and difficulties foreign firms encounter in hiring employees also inhibit foreign direct investment.

In July 1995, the United States and Japan concluded an arrangement entitled "Policies and Measures Regarding Inward Direct Investment and Buyer-Supplier Relationships" that lays out the inward FDI promotion policies instituted by Japan during the course of the Framework Agreement investment negotiations. The arrangement committed Japan to expand efforts to inform foreign firms about FDI-related financial and tax incentives and broaden lending and eligibility criteria under these programs; make low interest loans and tax incentives under the 1992 Inward Investment Law available to foreign investors; propose measures to improve the climate for foreign participation in M&As; and strengthen the FDI promotion roles of the JIC, Office of Trade and Investment Ombudsman, JETRO, and the Foreign Investment in Japan Development Corporation.

The Inward Investment Law has been extended from May 1996 to May 2006. In addition, MITI has lowered the interest rate charged by the Japan Development Bank to foreign investors in high technology projects. In April 1996, foreign firms' eligibility for tax incentives was extended from the first five years to the first eight years of operation of a foreign firm in Japan. Looked at in their totality, however, Japan's FDI promotion policies are mostly appendages to domestic-oriented investment-promotion programs, and do not appear significant enough to immediately overcome the continuing fact that foreign investment levels in Japan remain low.

After the signing of the Investment Arrangement, the bilateral discussions of the Investment Working Group have focused more broadly on needed changes in the basic operating rules of Japanese markets, in order to encourage policy changes that will help improve Japan's overall environment for foreign (and domestic) investment. More specifically, the United States has urged Japan to consider measures that will assist with three key aspects of improving Japan's direct investment environment, including: (1) developing a more active and efficient market for M&As in order to enhance the productivity of capital in Japan; (2) improving land market liquidity and foreign investors' access to land; and (3) increasing the flexibility of Japan's labor markets.

In July 1998, the Investment Working Group agreed to compile a follow-up report to the 1995 Investment Arrangement, which would focus on needed policy changes in these three areas. As part of that process, in October 1998 the United States offered specific proposals for areas where policy changes appear most likely to lead to significant improvement in Japan's investment environment.

In the area of mergers and acquisitions, U.S. proposals included: allowing consolidated taxation in order to spur investment by lowering the post-tax cost to a parent firm of investing in new risk ventures; taking steps to unwind extensive cross-shareholding in Japan; improving corporate governance practices in order to mitigate senior management emphasis on firm loyalty over shareholder return, which can lead to premature rejection of M&A offers; continuing with financial market deregulation, such as allowing stock-for-stock transactions and easing stock market listing requirements; improving financial data disclosure to assist firms interested in pursuing M&A relationships with other firms; increasing the availability of M&A-related services, including further easing of restrictions governing the accounting and legal professions; and introducing smoother and more flexible bankruptcy procedures to make it easier for a corporation and its assets to be acquired or merged in a "rescue" format.

U.S. proposals addressing land and real estate transactions focused on improving land market liquidity, and included undertaking additional land tax relief measures and steps to further shift the burden of land taxation from acquisition taxes to holding taxes; easing regulations on developing property in central urban districts as well as relaxing restrictions on the conversion of agricultural land; changing leasing rules to allow new investors to make flexible use of acquired property; making systematic disclosure of information on real estate transactions; and making changes to the Special Purpose Corporation (SPC) Law and other related regulations to facilitate the creation of real estate investment trusts (REITs).

Finally, the United States stressed the need to improve labor mobility in Japan, recommending that Japan introduce defined contribution pension plans as a useful way to improve pension portability; deregulate fee-charging employment agencies in order to assist foreign investors in locating needed local talent; liberalize Japan's labor dispatching business in order to help new investors find workers and cut costs, as well as help unemployed workers find work; and ease excessively tight regulations concerning work rules, as well as other bureaucratic procedures which unnecessarily raise costs and lower the efficiency of corporate operations.

At the May 1999 U.S.-Japan Summit, the Investment Working Group presented to the President and Prime Minister the "Report to the President and Prime Minister on the Environment for Foreign Investment in Japan and the United States." The report reviewed key issues and the progress the Government of Japan has made in improving Japan's investment climate. The report also committed the two Governments to continue to exchange information and consult on investment matters.

In the months since the report was submitted, Japan has enacted new and revised legislation which will provide opportunities for foreign investors in the M&A field, including the Industrial Revitalization Law, which provides existing firms undergoing reorganization (both domestic and joint-venture) with tax and credit relief once the firm's business restructuring plan is approved by the Government. A new bankruptcy law (the Civil Reconstruction Law) also may provide investment opportunities as it encourages business reorganization, including spin-offs, rather than forced liquidation of assets. Other legislative changes now provide for stock-for-stock swaps, a major vehicle for M&As, as well as stock options for employees, a key issue for foreign firms wishing to attract high quality employees. In addition, the Government of Japan is preparing legislation on corporate divestiture which will facilitate companies' streamlining efforts. While U.S. businesses have applauded these changes, they continue to urge that Japan's tax regulations be amended to facilitate use of these measures.

In October 1999, the Investment Working Group met to review outstanding issues and evaluate progress made by Japan in improving inward investment flows. Based on these discussions, the United States and Japan held a joint conference on FDI and M&As in Japan on March 1, 2000 with active participation from the private sector and relevant Japanese ministries. An audience of about 560 U.S. and Japanese business representatives provided convergent views and detailed suggestions on the need for Japan to increase corporate governance and regulatory transparency, improve accounting and disclosure standards and improve real estate liquidity and labor mobility as means of facilitating both domestic and foreign investment. Both business communities also called for the early introduction of consolidated corporate taxation to assist in spin-offs and new acquisitions.

ANTI-COMPETITIVE PRACTICES

Anti-competitive practices are a crosscutting issue in U.S.-Japan trade relations. In addition to this section, there is further discussion related to anti-competitive practices and Antimonopoly Law (AML) enforcement in several other sections, particularly under the Enhanced Initiative and Flat Glass.

Exclusionary Business Practices: U.S. firms trying to enter or participate in the Japanese market face a host of exclusionary Japanese business practices that block market access opportunities. These include:

- Anti-competitive private practices – such as bid-rigging, price-fixing, and exclusive dealing arrangements – that violate the AML but often go unpunished;
- Corporate alliances and exclusive buyer-supplier networks, often involving companies belonging to the same business grouping (*keiretsu*);
- Corporate practices that inhibit foreign direct investment and foreign acquisitions of Japanese firms (e.g., non-transparent accounting and financial disclosure, high levels of cross-shareholding among *keiretsu* member firms, low percentage of publicly traded common stock relative to total capital in many companies, and the general absence of external directors); and
- Industry associations and other business organizations that develop and enforce industry-specific rules limiting or regulating, among other things, fees, commissions, rebates, advertising, and labeling for the purpose of maintaining "orderly competition" among their members, and often among non-members.

Exclusionary business practices exact a heavy toll on the Japanese economy. For example, many products and services cost substantially more – often by multiples of two or greater – in Tokyo than in other international cities. By constraining market mechanisms, exclusionary business practices reduce the choices available to businesses and consumers, and raise the cost of goods and services. In addition, by discouraging competitors who seek to break into Japan's market with innovative products and services, the practices impede the development of new domestic industries and technologies. Such practices discourage potential foreign investors, whose market presence and technological innovation would stimulate the economy and provide critical channels for exports and sales by foreign firms.

JFTC's Enforcement Record: A key reason for the prevalence of anti-competitive business practices is the historically weak antitrust enforcement record of the Japan Fair Trade Commission (JFTC). The JFTC routinely has faced domestic criticism for its lack of bureaucratic clout and inability to exercise its enforcement powers aggressively. There have been improvements in recent years due to sustained U.S. efforts under the Structural Impediments Initiative, the U.S.-Japan Framework Agreement, the Enhanced Initiative, and annual bilateral antitrust consultations, which all have combined to help the JFTC muster domestic support for its gradual strengthening. Nonetheless, the JFTC's enforcement efforts fall short of those needed to ensure that Japanese markets are open to competition from U.S. and other foreign firms.

While the JFTC's record in terms of actions taken against, and surcharges collected from, violators of the AML has increased in recent years, the JFTC faces serious constraints in building an effective enforcement program. For example, in 1998 the JFTC took legal measures in 27 cases, and the total amount of administrative surcharges was 3.14 billion yen. Still, these totals remain modest in absolute terms, and Japan recently enacted legislation to expand the number of small- and medium-sized enterprises that will face reduced surcharges should they violate the AML in the future. Further, the JFTC has no flexibility to reduce or eliminate surcharges for companies that come forward to expose illegal activities. The United States has suggested that the JFTC consider adopting a program such as the U.S. Department of Justice's Corporate Amnesty Program that has proven very effective in the uncovering and prosecution of cartels.

Similarly, while the JFTC is not alone among competition agencies in the world that rely heavily on administrative actions instead of criminal penalties, the JFTC's infrequent use of the Antimonopoly Act's criminal provisions undermines its deterrence of cartel behavior. Further, no corporate executive has ever been imprisoned for violating the AML. Still, the JFTC initiated two criminal prosecutions of Antimonopoly Law violations in 1999, the most in any single year.

There are at least two reasons for the limited prosecution of criminal violations. First, the JFTC does not have the types of investigatory powers enjoyed by other Japanese criminal investigating authorities, including the power to conduct compulsory searches and seizures, or to conduct interrogations. This weakness makes it difficult for the JFTC to gather enough evidence to support filing a criminal matter with the Ministry of Justice. Second, if, after receiving a criminal referral from the JFTC, the Ministry of Justice decides that there is not enough evidence to warrant prosecution, it must report its decision of nonprosecution to the Prime Minister's Office. This extraordinary procedural requirement makes Ministry of Justice prosecutors demand that the JFTC support its criminal accusation with highly compelling evidence to ensure that they will never have to make a report of nonprosecution to the Prime Minister's Office. These types of systemic weaknesses make criminal prosecution of executives and firms, e.g. for such activities as cartel behavior, the exception rather than the rule in Japan.

In addition to the problems raised under the Enhanced Initiative concerning JFTC staffing and future reorganization, observers have also raised concerns regarding the JFTC's institutional independence. Nevertheless, recent changes among the line-up of commissioners suggest an effort is being made to address this concern. The current JFTC Chairman is a former public prosecutor and ex-official (Ministry of Justice) who has raised some public expectations of a more activist JFTC enforcement role. In 1999, upon the retirement of a commissioner who had spent most of his career as a bureaucrat at MITI, a professor and former senior director at a major electronics firm was chosen as his successor.

Laws Distorting Competition

The JFTC administers or helps administer a number of laws and regulations that distort competition and often have anti-competitive effects.

Law Against Unjustified Premiums and Misleading Representations: The JFTC imposes overly restrictive limits on the use of premium offers (prizes) and other sales promotion techniques, and thereby discourages even legitimate cash lotteries and product giveaways used in such promotions. Foreign newcomers, who depend on innovative sales techniques to market their company names and products, are significantly impaired by the JFTC's restrictions on premiums. In addition, although the law aims to deter misleading or fraudulent advertising and labeling (itself a worthy policy), the JFTC allows “fair trade associations” (essentially, private trade associations) to set their own promotion, advertising and labeling standards through self-imposed “fair competition codes.” Trade associations can, and often do, use the cover of these codes to set additional standards that are stricter than the JFTC regulations under the Premiums Law. The United States continues to urge Japan to review the necessity of §10-5 of the Premiums and Misrepresentations Law, which provides an exemption for fair trade associations from the AML, with a view towards abolishing that provision.

As of January 2000, there are 48 JFTC-authorized private premium codes. In April 1996, the JFTC incrementally liberalized its rules on premiums and other sales promotions, for example, by raising the maximum value of “open” cash lotteries (not requiring a purchase) to 10 million yen; repealing restrictions on premiums offered by department stores; and eliminating the 50,000 yen ceiling on consumer premiums (while retaining price caps as a percentage of the transaction value). Moreover, over the last two years, the JFTC abolished 24 of 29 industry-specific premium limits. The five industries that remain subject to stricter rules are real estate, household electrical appliances, newspapers, magazines, and hospital management. However, the JFTC changes fall short of the dramatic, pro-competitive liberalization measures requested by the United States in Framework discussions and under the Enhanced Initiative.

Resale Price Maintenance: In April 1997, Japan abolished all product exemptions of the AML, with the prominent exception of copyrighted products (books, magazines, newspapers, and CDs). There is no reason that retail price maintenance should be treated any differently under the AML than any other practice. The JFTC has been considering limiting or eliminating the retail price maintenance exemption for copyrighted products. On January 13, 1998, a study group to the JFTC recommended a phased elimination of this exemption, and the JFTC announced its decision on March 31, 1998, which stated:

< Even though the resale price maintenance exemption should be abolished from the viewpoint of competition policy, the issue should be further examined by carefully considering cultural impacts and influences;

< Until the final decision is made, application of the exemption is limited to books, magazines, newspapers, music CDs, cassettes and records; and

< The relevant industries should therefore make determined efforts to reduce the adverse effects of this system.

Relationship between Government and Industry

Japanese regulators view their role not simply as neutral arbiters of a legal rule-based system, but as active players in guiding the respective industries under their purview. The close government-industry relationship in Japan often works to the disadvantage of foreign firms trying to enter or participate in the Japanese market because the relationship favors domestic firms. Several aspects of the relationship are of particular concern, including:

Private Regulations: The United States has emphasized that as Japan removes and relaxes regulations, it is essential that industry associations and other private sector organizations are not allowed to substitute private sector regulations (so-called “*min-min kisei*”) in their place. Private regulations, including rules on market entry and business operations, approvals, standards, qualifications, inspections, examinations and certification systems can adversely affect business activities. One of the particular concerns raised by the United States under the Enhanced Initiative is the Government of Japan’s formal or informal delegation of governmental or public policy functions, such as industry standard development, product certifications and entry authorizations, to industry associations and other business-related organizations. Unfortunately, these groups are generally not under an obligation to conduct their deliberations in an open, transparent and non-discriminatory manner, or to include foreign firms in their discussions. The United States has asked Japan to refrain from delegating out such government or public policy functions. If there is a demonstrated need for such a delegation of authority, the United States wants to ensure that it is carried out by the associations in an open, transparent and non-discriminatory manner and does not restrict the business activities of firms that are not members of the association.

Informal Management of Industry: Business in Japan is more heavily regulated than in the United States. Much regulation takes place privately and informally through a variety of means: cooperative consultations between a ministry or agency and the affected industry, industry association or other business-related organization; the issuance of "administrative guidance" to companies; and the placement of retired bureaucrats in companies and industry associations through a practice called *amakudari* (literally, "descent from heaven").

ELECTRONIC COMMERCE

As the second largest economy in the world and the nation with the second largest electronics industry in the world after the United States, Japan is an important market for electronic commerce and a key player in international discussions regarding the regulatory framework for global electronic commerce and the Internet. The United States is pleased to see that Japan has, in its policy statements and its regulatory actions to date, endorsed an open, private sector-led and minimally regulated environment for the Internet and electronic commerce. Nonetheless, the development of both the Internet and electronic commerce lags in Japan compared with other developed countries, with only about 11 percent of Japanese homes connected to the Internet in 1999, compared to roughly 37 percent in the United States. While the number of Internet users in Japan is on the rise, the United States continues to work with Japan to ensure robust growth in this critical sector, specifically by targeting the high cost of accessing the Internet in Japan. Such charges, estimated by the OECD to be double that of the United States, New Zealand, and Canada and four times more expensive than in Korea, are a result of the market access barriers to Japan's telecommunications sector (see "Sectoral Deregulation" section of this chapter), and are currently being addressed by the United States and Japan under the Enhanced Initiative.

Following the announcement by President Clinton of the "Framework for Global Electronic Commerce" policy paper in July 1997, the United States entered into discussions with Japan on a range of electronic commerce issues from that paper. In May 1998, at the Birmingham Summit, President Clinton and then-Prime Minister Hashimoto announced the "U.S.-Japan Joint Statement on Electronic Commerce." In the Joint Statement, the United States and Japan agreed that: (1) the private sector should lead in the development of electronic commerce; (2) governments should encourage industry self-regulation; (3) government regulation, where necessary, should be minimal, transparent, and predictable; and (4) regulatory frameworks for electronic commerce should be developed on a global basis, rather than nation by nation.

With respect to several specific policy issues, the Joint Statement noted that: (1) privacy, and the protection of confidential consumer data, should be protected through industry self-regulation, with industries responsible for drafting guidelines, enforcement mechanisms, and recourse methodologies; (2) tariffs should not be imposed on electronic transmissions and the United States and Japan will work toward a global understanding in the WTO to preserve a duty-free environment for electronic transmissions; (3) content should be transmitted freely across national borders in response to a user's request; (4) electronic authentication/electronic signatures will be necessary to enforce contracts on the Internet;

(5) the United States and Japan support the development of a variety of implementation methods and technologies, led by the private sector; and (6) tax treatment of electronic commerce should be addressed through the on-going discussions at the OECD.

These principles were echoed in a June 1998 policy paper issued by the Advanced Information and Telecommunications Society Promotion Headquarters, an advisory group to the Prime Minister. While supporting these general principles, Japan has also been working on specific policy areas, including the planned introduction of a new bill in the Spring of 2000 to give electronic authentication equivalent legal status to traditional handwritten signatures and personal seals. The Ministries of International Trade and Industry, Posts and Telecommunications, and Justice jointly published a draft policy on electronic authentication for comment in November 1999, and the National Police Agency (NPA) published its own draft policy in the same month. In their comments, U.S. industry representatives urged that any policy chosen by Japan contain no government-sanctioned accreditation requirement and that Japan continue to work with other governments to harmonize legal frameworks. Regarding the NPA draft, industry expressed concern that it was overly restrictive and would be counterproductive. The United States will be closely monitoring the progress of this legislation.

The United States will continue to work with Japan on these and other electronic commerce issues (e.g., intellectual property protection on the Internet, consumer protection, and electronic payment systems) and to monitor the development of electronic commerce and the Internet in Japan to ensure that Japanese Government-funded test-bed projects for electronic commerce continue to be fully open to participation by U.S. firms and that standards and technologies for electronic commerce and the Internet remain open and internationally interoperable. The United States will also monitor actions by regulators such as MPT (e.g. regarding licensing requirements and restrictions on new standards and technologies) to ensure that the most liberal regime possible is promoted.

OTHER BARRIERS

Aerospace

Japan is the largest foreign market for U.S. aircraft and aerospace products, and many Japanese firms have entered into long-term and productive relationships with American aerospace firms. Nonetheless, the United States is continuing to closely monitor several aspects of U.S.-Japan aerospace trade.

Among these are the Japan Defense Agency's general preference for licensing foreign technology for production in Japan, which has resulted in lower U.S. defense aerospace exports than would occur in a more market-driven environment. With respect to commercial aerospace, the United States is monitoring MITI's active role in supporting the domestic aerospace industry, funding feasibility studies for new projects and technologies, and the important role it plays in the apportioning of work among the major Japanese aerospace companies. We also are closely watching the role that the Japan Defense Agency plays in the development of defense aerospace projects, which have resulted in a significant transfer of U.S. aerospace technology to Japan and positioned Japan to become a major supplier of parts and components to foreign aircraft assemblers.

With respect to space systems, the United States is monitoring Japan's efforts to develop indigenous systems, which may limit the procurement of proven U.S. technology and products. The United States will continue to push for greater access to areas where Japan's preference for the development of domestic space technologies has been most pronounced, including: space recorders and scientific instruments; sensors for earth resources and astronomical research satellites; and software and ground-based data processing, storage and distribution systems.

The United States will continue to monitor developments to ensure that the Japanese aerospace market remains open and that Japanese Government actions do not discriminate against U.S. aerospace firms.

Autos and Auto Parts

The 1995 U.S.-Japan Automotive Agreement seeks to eliminate market access barriers and significantly expand sales opportunities in this sector. Under the agreement, Japan committed to improve access for foreign vehicle manufacturers, expand opportunities for U.S. original equipment parts manufacturers in Japan and the United States, and eliminate regulations that restrict access for U.S. and other competitive foreign automotive parts suppliers to Japan's repair market. The agreement includes 17 objective criteria by which the United States and Japan are to evaluate progress. Coincident with the conclusion of the agreement, the five major Japanese auto manufacturers announced plans to increase purchases of foreign auto parts in Japan and expand production of vehicles and major components in the United States.

The Administration attaches high priority to vigorous implementation of the Automotive Agreement given this sector's importance to the U.S. economy. To monitor implementation and assess progress achieved under the agreement, an Interagency Enforcement Team, headed by the Office of the U.S. Trade Representative and the Department of Commerce, was established. This team prepares a semi-annual report evaluating progress since the agreement was reached. The sixth and most recent of these reports was issued in June 1999.

Although results in some areas have been satisfactory, the United States remains concerned about the lack of progress toward achieving the agreement's key objectives. The United States conveyed specific concerns to Japan during the fourth annual review of the Automotive Agreement held in Vancouver, British Columbia in October 1999, and its concerns were echoed by representatives from the European Union, Canada, and Australia. The United States called upon Japan to take additional, concrete actions to ensure continuing improvements in market access and sales opportunities in the Japanese automotive market and urged immediate, substantial deregulatory and market-opening action to foster domestic demand-led growth. The United States followed up on these requests during informal meetings held in November 1999.

Vehicles: Sales in Japan of motor vehicles produced by DaimlerChrysler, Ford, and General Motors continued to decline in 1999, with their combined sales falling 19.7 percent as compared to 1998 sales. This decline came on the heels of back-to-back year-on-year declines of 34.5 percent in 1998 and 20 percent in 1997. The drop in DaimlerChrysler, Ford, and General Motors exports in 1999 well-exceeded the 0.31 percent contraction of the overall Japanese auto market in 1999. Structural reforms in the automotive industry have led U.S. companies to alter their sales and distribution strategies in Japan. Nonetheless, foreign access to Japan's automotive distribution network remains a concern as U.S. auto companies work to strengthen their dealership networks.

Auto Parts: Exports of U.S.-made auto parts to Japan fell 11.5 percent in 1999 following a 7.5 percent decline in 1998. In contrast, from 1993 to 1997, exports of U.S.-made parts increased an average of 20 percent per year. Sales to Japan remain low, and concerns are mounting that recent declines in orders for original equipment parts will push these numbers down further still. Moreover, despite large percentage increases, actual U.S. aftermarket parts sales to Japanese auto companies in the U.S. and Japanese auto companies in Japan also remain weak.

These trends in bilateral automotive trade have raised serious concerns about progress under the agreement. To address these concerns, the United States has strongly urged Japan to undertake additional market opening and deregulatory measures in this sector. At the annual review of the Automotive Agreement in October 1999, the United States and Japan discussed proposals made in the previous consultations as well as new proposals for achieving progress in deregulation, competition enhancement, and standards issues. To strengthen dealerships, which are key channels to the automotive distribution system, the United States proposed that Japan streamline new vehicle registration in Japan. Japan also is consulting closely with U.S. Government and industry to revise its import promotion and financial programs offered by MITI, the Japan Export-Import Bank, and the Japan Development Bank to make them more useful to foreign companies. On standards, the United States proposed that U.S.-based testing agencies be allowed to witness test Japanese requirements; that the role of the Ministry of Transport official based in Detroit be expanded; and that Japan review the need for end-of-line inspections.

In addition, the United States proposed: (1) eliminating unnecessary requirements of the "*shaken*" inspection and repair systems to allow more garages, particularly independent garages (which are more inclined to use foreign auto parts), to conduct inspections and repairs; (2) removing additional components from the disassembly repair regulations (critical parts list); (3) allowing mechanics working in specialized garages to be certified in the types of repair conducted by that garage (to allow a progression of expertise and skill in mechanic certification), which would encourage the development of specialized garages created under the agreement to encourage the development of an independent repair market; and (4) reviewing the policies regarding development and implementation of regulations to prevent Japanese trade associations and other vested interests from undermining the intended impact of deregulation. The United States also requested that Japan continue to support JETRO programs aimed at promoting imports of foreign auto parts, and that the Ministry of Transport not re-institute its proposal for establishing an auto parts recall system.

During informal consultations in February 1999, Japan informed the United States that it planned to take action to streamline the new vehicle registration system this year, including establishment of a "one-stop shop" for all new vehicle registration procedures by 2000. Japan also agreed to consult with individual U.S. and other foreign automakers on ways to adapt the import promotion programs it has established to make them more valuable to these companies. On auto parts, Japan agreed to discuss possible deregulation of the *shaken* system and informed the United States of its intention to further liberalize the certified mechanics system by creating another class of special certified mechanics, a move taken in response to U.S. requests.

Meanwhile, Japanese auto manufacturers have made considerable progress in implementing the voluntary global business plans they announced when the Automotive Agreement was signed. They have boosted production of passenger cars, light trucks, and a range of components, including engines and transmissions, in the United States. These increases have led to new sales opportunities for U.S. suppliers, and increased employment opportunities for U.S. workers. In addition, the Japanese automakers in 1999 renewed their commitment to invest in the U.S. market.

The United States will continue to closely monitor Japan's implementation of the Automotive Agreement and to press Japan at all levels to take concrete steps to achieve additional progress under the agreement. The U.S. Government also has begun consulting with U.S. industry, labor groups, and other interested parties to develop a position on what type of follow-on agreement it will seek once the current Automotive Agreement expires at the end of December 2000.

While noting that it shares Japan's environmental objectives in developing new fuel economy regulations, the United States has been discussing ways to ensure that the application and enforcement of such regulations are transparent and non-discriminatory. The United

States and Japan are seeking to reach agreement on these issues in the near future.

Civil Aviation

On March 14, 1998, Transportation Secretary Slater and then-Japanese Transport Minister Fujii signed a Memorandum of Understanding (MOU) which promised to significantly expand civil air services between the United States and Japan and set the stage for further liberalization. The agreement removed all restrictions on the U.S.-Japan services of so-called “incumbent” carriers – United Airlines, Northwest Airlines, and Federal Express for the U.S. side – that operate from any U.S. gateway point to any point in Japan and beyond Japan to third countries, without limitation on the number of flights. It also allowed the United States to designate two additional passenger carriers to serve Japan, one immediately (Trans World Airlines) and another in 2000.

Moreover, U.S. “non-incumbent” combination carriers (carriers that carry both passengers and cargo) now serving Japan – American Airlines, Delta Air Lines and Continental Airlines along with the two newcomers – can add up to 90 more weekly round-trip flights to their current total of 46, nearly tripling access to Japan’s huge aviation market. Non-incumbent all-cargo carriers United Parcel Service and Polar Air Cargo gained new operational flexibility, creating valuable new opportunities to transport cargo to destinations beyond Japan. In 2002, another U.S. all-cargo carrier can enter the market.

The MOU allowed, for the first time, extensive code-sharing between U.S. carriers, U.S. and Japanese carriers, and U.S. and third-country carriers on services between the United States and Japan and beyond Japan. On charters, the MOU provided for each party to use up to 600 charter flights per year beginning January 1, 2000. This will rise to 800 flights per year in 2002. Distribution and pricing provisions of the MOU promote competition, and Japan has guaranteed U.S. carriers fair and equal opportunity to contract with wholesalers and travel agents and set up enterprises to market their services directly to consumers.

According to the MOU, a new round of talks aimed at “Open Skies” is scheduled to begin by January 1, 2001. If these talks do not achieve a fully-liberalized agreement, additional benefits will take effect automatically on January 1, 2002. The Administration is committed to seek further liberalization in line with its global policy of promoting “Open Skies” to minimize government interference in civil aviation, and to provide full and equal opportunities for U.S. and foreign passenger and cargo carriers to compete in each other’s market.

According to U.S. industry estimates, U.S. passengers should enjoy gains of $1.2 billion over four years, measured in terms of additional service in a more competitive market, as a result of the agreement. U.S. carriers are expected to earn additional revenue of just over $4 billion over four years, due in part to an anticipated increase in U.S.-carrier market share. U.S. industry also calculates that U.S. exports of aviation services should rise almost $4 billion over the next four years.

Implementation of the MOU proceeded smoothly in 1999. The economic slowdown in Japan and much of Asia affected U.S. carriers in Japan, though demand for frequencies and slots remained high. The scarcity of slots and inadequate facilities at Narita Airport (see below) was one blemish on the otherwise positive bilateral relationship, as some U.S. carriers complained they were unable to use all the rights granted them by the 1998 MOU because of lack of access to Tokyo’s airport. Cooperative arrangements between U.S. and Japanese carriers expanded, most notably with ANA joining United Airlines’ Star Alliance.

Narita Airport

The problem of scarce slots and inadequate facilities at Narita Airport became more acute in 1999. A longstanding negotiation on facility renovation and construction between a U.S. carrier and the Narita Airport Authority collapsed in August when Airport officials retreated from an informal agreement made earlier in the year. This move by Narita officials further slowed completion of a comprehensive plan, spelled out under the informal 1994 "Master Plan," for renovating the older Narita Terminal used by most U.S. carriers. The airline and the U.S. Government have sought to resolve this dispute and increase the tempo of design and construction to previously-agreed levels. However, the Airport Authority has been reluctant to do so, even though improved facilities at the airport should benefit all parties. Some U.S. carriers have expressed concern that without additional slots and larger facilities at Narita – which compares unfavorably with major U.S. and Asian airports on both accounts – they will not be able to take full advantage of the current liberalized agreement or any future bilateral "Open Skies" agreement.

Direct Marketing

In recent years, direct marketing has become an increasingly popular way to sell housewares, personal care products, and health supplements in Japan at a discount compared to prices in local retail stores and has proved to be an effective means of distributing U.S. exports throughout Japan. Local distributors, who are largely part-time independent workers, such as housewives and older people, also can use direct marketing to supplement their family incomes. MITI regulates these activities through enforcement of consumer protection laws that prohibit fraudulent or misleading sales practices.

A $22 billion Japanese catalog sales market registered a small increase of about one percent in JFY 1998 after having marked a drop in the previous two years. As part of total direct marketing sales, Internet sales direct to consumers (B2C) are still small in terms of total sales (at $650 million in JFY 1998), but have expanded at a very fast-pace. The most successful B2C mall, Rakuten, now has 1,500 tenant shops (in December 1999) reaching monthly sales (total of all tenants) of $7 million. An optimistic industry forecast is a $32 billion market for B2C in 2003.

The Internet is changing the nature of the direct marketing business. Japanese B2C and B2B catalog sales are far behind those of the United States, partly because more personal attention by company sales agents were traditionally demanded by client companies in Japan. However, as Japanese business customers become more price-sensitive and are willing to switch to new suppliers, aided in part by improved online services and a reduction in telecommunication costs, they are more prone to switch to Internet shopping.

Electrical Utilities

The cost of electric power in Japan is the highest in the industrialized world. The United States believes that one of the most effective ways for Japan to reduce costs in this sector would be to introduce genuine competition into non-fuel procurement. Non-fuel procurement is presently valued at approximately $20 billion annually.

In general, many utility companies have made efforts to increase imports and reduce costs. In particular, they have increased the number of registered companies as potential suppliers and improved the level of procurement information accessible in Japanese and English through the Internet. Several utilities are actively participating in the New Orleans Association (NOA), a forum that enhances communication between the electric power firms and U.S. suppliers of non-fuel materials and equipment. However, the degree of effort varies by company and sector. Some firms have significantly improved procedures for international procurement, while others lag behind. Due to the introduction of competition in the power generation market, including liberalization of power wholesaling that started in 1996 (the retail market will undergo partial liberalization in March 2000), thermal power generation sectors are more enthusiastic about procuring materials and equipment globally. However, power transmission and substation sectors are more conservative in introducing new technology and are inclined to continue to procure from traditional domestic suppliers. They are less interested in improving their procurement practices because they continue to be protected by a natural monopoly structure.

Utility companies in Japan have made notable efforts in expanding foreign procurement of telecommunications-related products. All of Japan's electric utility companies and their affiliated telecommunications subsidiaries have actively participated in U.S. Embassy sponsored and organized "Onsen Communication" purchasing seminars since 1994. These informal get-togethers enhance communication between the utilities and U.S. telecommunications equipment suppliers. U.S. firms have been awarded several dozen procurements worth hundreds of millions of dollars as a result of this program.

Foreign firms still face barriers in the standards and specifications used by Japanese utility companies that often discriminate against or otherwise disproportionately affect foreign suppliers. Problems remain in the use of narrow, dimension-based technical standards rather than performance-based technical standards, and requirements that suppliers provide detailed information for spare parts originating from outside sources. Although Government of Japan has moved toward performance-based standards since March 1997, the utilities' procurement methods have remained unchanged partially because procurement manuals need to be revised to reflect the new performance-based standards.

The United States also is seeking greater transparency and fairness in the procurement process. Costly and time-consuming procedures are generally required for a firm to be added to the list of designated suppliers for a particular utility company, including requests that suppliers submit detailed information on proprietary manufacturing processes. Equal access to procurement information also is a problem, and foreign firms often do not learn about procurements until after they have been awarded. In order to expand international procurement to reduce costs, it is important for the electric utilities to publish specifications in English and accept offer sheets, drawings, and explanatory documents, as well as contract sheets all in English.

The 10 regional power companies are annually investing approximately $40 billion, of which approximately 50 percent is being spent for construction work, and the remainder being spent for procurement of non-fuel materials and equipment. The electric power companies' procedures for procurement of construction work are not sufficiently transparent nor do they provide open access to foreign companies. Additionally, Japanese industry sources acknowledge that a percentage of money invested by electric power companies for the construction of power stations is used to foster political support for the industry.

Electric power companies are spending substantial amounts of money from the sale of electricity for research and development. A part of the R&D money is used to cover the expenses for selected university professors' research and overseas trips. Some university professors are invited to participate in MITI advisory council committees to discuss how future electric power supply systems should operate. In order to keep the discussions fair and neutral, those who have received financial support from the electric power companies should be excluded from participating.

Some new U.S. technologies, such as micro gas turbines, are being introduced in Japan. In order to cultivate healthy development of the new technology, Japan should carefully examine and eliminate possible barriers against import of these products.

Flat Glass

Flat glass is a classic example of Japan's resistance to open markets. Despite their extensive experience and success in other countries and many years of active efforts in Japan, U.S. flat glass manufacturers have failed to break the stranglehold of Japan's flat glass oligopoly.

Japan's flat glass industry has been hit hard by Japan's economic recession. Despite fluctuations in Japan's flat glass market over the past 30 years, the market share of the three domestic producers has remained virtually unchanged. They exert tight control of distribution channels in many ways, including majority ownership, equity and financing ties, employee exchanges, and purchasing quotas. At the same time, they change prices, capacity, and product mix in virtual lockstep, thereby maintaining their market shares with little variation. Through mid-1999, Asahi Flat Glass controlled over 40 percent of the market, Nippon Sheet approximately 30 percent, and Central Glass about 20 percent. Imports, including those by U.S. manufacturers, represent the remainder.

In January 1995, the United States and Japan concluded an agreement to open Japan's flat glass market to foreign suppliers. Pursuant to that agreement, Japanese glass distributors publicly stated that they would diversify supply sources to include competitive foreign glass suppliers, and that they would not discriminate among suppliers based on capital affiliation. Japanese glassmakers expressed support for diversifying their *de facto* exclusive distribution networks. The agreement also committed the Government of Japan to encourage the selection of flat glass for public works projects on a non-discriminatory basis and promote the use of insulated and safety glass, where American companies have superior products. An annual survey was undertaken under the agreement to assess the openness of the distribution system.

The agreement has had some important successes. For example, it resulted in Japan's adoption on March 30, 1999 of energy conservation standards for both residential and commercial buildings. These standards will raise the energy efficiency of glass installed in new residential structures by an average of 20 percent, and in commercial structures by 10 percent. The changes will result over time in increased demand for insulated glass, benefitting Japanese and American manufacturers alike. The agreement also prompted Japan to feature American glass in a number of high-profile public works projects.

However, important objectives remain unfulfilled. U.S. and other foreign glass manufacturers still have a minuscule share of Japan's flat glass market, despite the fact that Japanese firms and distributors readily acknowledge the high quality and lower cost of American glass. U.S. firms report that their market share of construction-related flat glass has not increased over the last four years. While MITI has claimed that the United States is the market leader in imported glass, with a steady increase in market share during the same period, their data include not only construction-related flat glass, but also automotive and other specialty glass imports, such as glass for liquid crystal display (LCD). U.S. industry points out that these non-construction-related products are irrelevant to the problems that gave rise to the agreement because they are sold through completely separate distribution systems. Foreign subsidiaries of Japanese manufactueres also supply Japan's flat glass market, and MITI counts these imports from Japanese affiliates abroad in their foreign market share estimates. Because Japanese affiliates overseas have privileged access to their parent companies' distribution systems, their sales to Japan reveal little about the market's openness. In total, foreign companies supply about seven percent of Japan's flat glass market; in most other major industrial markets, including the United States and the EU, the market share of foreign-owned companies (via imports and in-country production) is more than five times the level in Japan.

The domination by domestic flat glass manufacturers of local distributors shows no sign of abating. Indeed, there is evidence that it is on the rise. Manufacturers are using Japan's recession and the resulting tight credit market to strengthen their financial hold on the most important glass distributors. In some cases, they have assigned their own employees to run the distributorships. Moreover, certain Japanese manufacturers appear to be using aggressive pricing strategies to dissuade distributors from handling foreign glass.

When alerted to these activities, the Japanese authorities cite a survey undertaken by the JFTC and published on May 20, 1999 that found no practices in violation of Japan's antitrust laws. Nevertheless, the JFTC noted the dominant position enjoyed by the three domestic firms in the flat glass market, pointed to a number areas of possible serious concern, and stated its intention to continue its surveillance of the industry. On December 21, 1999, the JFTC issued a formal decision against a Japanese auto glass association and a subsidiary of Japan's largest flat glass manufacturer, and issued warnings about the same behavior to three other industry associations. These organizations decided that members should not carry imported auto glass, and enforced that decision through threats of supply disruption for members who did not comply.

The U.S.-Japan Flat Glass Agreement expired on December 31, 1999. In order to address the remaining market access barriers in this sector, the United States and Japan plan to hold government-to-government discussions in March 2000, to be followed by a joint government/industry meeting later in the Spring.

Paper and Paper Products

In April 1992, the United States and Japan signed the "Measures to Increase Market Access for Paper Products," a five-year agreement aimed at substantially increasing access to Japan's market for paper products. The agreement committed the Government of Japan to encourage companies to increase imports of competitive foreign paper products; introduce transparent corporate procurement guidelines; encourage key end-user segments of the Japanese market to use foreign paper; and introduce Antimonopoly Law (AML) compliance programs. Japan also promised to provide assistance to foreign paper suppliers in the form of market information and low-interest loans. The agreement expired in April 1997.

Through 1999, there has been no meaningful increase in Japanese imports of paper and paperboard products, and the level of import penetration for paper and paperboard products in Japan remains the smallest in the industrialized world. A key problem, according to U.S. producers, is weak enforcement of Japan's AML and the existence of exclusionary business practices. U.S. negotiators have discussed competition issues affecting this sector under the Enhanced Initiative's structural issues working group, which takes up AML enforcement and competition policy.

Consumer Photographic Film and Paper

Foreign photographic film and paper manufacturers face a variety of obstacles that restrict access and sales of their products in Japan, the second largest film market in the world. These obstacles have prevented foreign firms from gaining access to the main distribution channels for film.

After an extensive investigation, initiated in response to a petition by Eastman Kodak Co. (Kodak), the USTR in June 1996 made a determination of unreasonable practices by the Government of Japan with respect to the sale and distribution of consumer photographic materials in Japan. The investigation showed that the Government of Japan built, supported, and tolerated a market structure that impedes U.S. exports of consumer photographic materials to Japan, and in which restrictive business practices occur that also obstruct exports of these products to Japan.

To address these concerns, the United States initiated dispute settlement procedures against Japan in the WTO, alleging that Japanese Government measures were inconsistent with the General Agreement on Tariffs and Trade (GATT). The EU and Mexico joined the United States as third parties to the case.

The WTO Panel on film issued its final report on January 30, 1998, and failed to find Japan in violation of its GATT obligations. The United States expressed serious disappointment with the findings, stating that the interim report sidestepped the core issues raised by the United States, particularly the combined effects of the numerous measures Japan imposed to protect its market.

On February 3, 1998, the Administration established an interagency monitoring and enforcement committee to review implementation of formal representations made by Japan to the WTO about efforts to ensure openness to imports of photographic film and paper into Japan. The monitoring and enforcement committee surveyed the Japanese photographic film and paper market and assessed information and data obtained from U.S. and other foreign film manufacturers and the Government of Japan. The committee issued its second semi-annual report in June 1999.

Overall, the report welcomed positive steps taken by Japan to help make its photographic film and paper market more competitive during the September 1998 to April 1999 reporting period. For example, in a move to enforce the Antimonopoly Law (AML) and promote competition policy, the JFTC issued a public warning to Japan's Photosensitive Materials Manufacturers Association, directing it and its members to cease their exchange of production, sales, and inventory data, which the JFTC found to be a potential violation of the AML. During the reporting period, the JFTC also implemented specific changes to improve the transparency of its application of the Premiums Law. This should help to ensure that the law is not improperly used to restrict retail competition. Further, related to distribution, the report noted MITI plans to enhance the quality and efficiency of Japan's distribution system.

Despite these positive moves, the report outlined additional steps for Japan to undertake to ensure that its representations to the WTO are reflected in the Japanese market. The United States continues to receive reports of problematic business practices, such as the disruption in deliveries to retailers who promote competing brands of photographic film and paper by Fuji distributors, and offering of low wholesale film prices only to those retailers who agree to exclusive sales of Fuji film. These allegations warrant further follow-up by the JFTC. Within this context and under the Enhanced Initiative, the United States has urged Japan to establish a strong competition policy framework that provides the JFTC with the resources necessary to actively enforce the AML and advocate competition policy. The June report also noted the important role MITI can play in further opening Japan's distribution system and to prohibit practices that discourage the opening of large stores. As large stores are a key and growing sales channel for foreign firms, including film manufacturers, the implementation of the new Large-Scale Retail Store Location Law (LSRSLL), which will become effective in June 2000, is of great interest to the United States. The U.S. Government continues to work closely with Japan to ensure that the new legal regime is not overly burdensome on large store openers.

The committee will release its next semi-annual film monitoring report in the Spring of 2000. Preliminary data being analyzed by the committee reveal continued access barriers to this part of Japan's market. A 1999 Kodak-commissioned survey assessing trends in the Japanese photographic film and paper market found that Kodak products were available in 44 percent of Japanese stores surveyed. The survey concluded that Kodak products continue to be more likely to be found and to be offered most competitively in non-traditional stores, such as discount stores, supermarkets, and convenience stores. This further emphasizes the importance of U.S. efforts under the Enhanced Initiative and elsewhere to ensure vigorous Japanese efforts to enforce the AML, non-discriminatory implementation of the LSRSLL, and further opening of Japan's distribution channels.

The monitoring and enforcement committee continues to scrutinize closely foreign access to Japan's film market and Japan's efforts to open this market in accordance with its WTO representations.

Sea Transport and Freight

American carriers serving Japanese ports have encountered for many years a restrictive, inefficient and discriminatory system of port transportation services. Following extensive research and deliberation, the Federal Maritime Commission (FMC) determined in February 1997 that Japan maintained unfair port practices and proposed fines against Japanese ocean freight operators. The FMC delayed implementation of the fines after the United States and Japan reached an understanding in April 1997, under which Japan pledged to grant foreign carriers port transport licenses and, at the same time, to reform the prior consultation system, which allocates work on the waterfront and requires carriers to obtain approval for any change in their vessel operations.

Japan's failure to carry out these reforms by July 31, 1997 resulted in FMC implementation of fines on September 4, 1997. The United States and Japan reached an understanding in October 1997, which was recognized in an exchange of letters between Secretary of State Albright and then-Japanese Ambassador Saito. The understanding noted two agreements among the Government of Japan, foreign shipowners, Japanese ship owners and the Japan Harbor Transport Association, in which they committed to improve the prior consultation system, and to establish an alternative method to the system. The Ministry of Transport also agreed to approve foreign carriers' applications for harbor services licenses if those applications satisfied the requirements set out in the April understanding. The United States believes that these actions provide a solid foundation for reform of Japan's port practices. Sanctions were suspended on November 13, 1997. The United States continues to vigorously monitor the agreement to ensure its full implementation.

The Harbor Transport Subcommittee of the Ministry of Transport, which was tasked with preparing recommendations for deregulation, published its final report in June 1999. While encouraged by some aspects of the report – especially the elimination of the supply-demand adjustment requirement – the United States expressed strong concerns about the report's failure to promote real competition on the docks and the addition of new regulations. Key issues of concern include an increase in the minimum manning requirement and the request for "voluntary" contributions by shippers and carriers to the port workers' pension and welfare fund. Though the report does not meet its expectations, the United States will closely monitor the Ministry of Transport's efforts to draft and support deregulation legislation based on the final report. Additionally, the United States will continue to encourage Japan to live up to commitments made in the 1997 Albright-Saito exchange.

Motorcycles

Japan maintains two restrictions on the use of large-class motorcycles that artificially limit the market for large-class motorcycles in Japan, adversely affecting U.S. exports. These restrictions, which are contained in the Road Traffic Law, include the prohibition of tandem riding (i.e., carrying a passenger) on motorways, and the lower speed limit applied to motorcycles and mini-cars vis-à-vis the standard speed limit for other motor vehicles. In March 1994, the United States first appealed to Japan to remove these burdensome restrictions on the grounds that they are unnecessary and, in fact, detract from highway safety.

On the speed limit issue, a large volume of traffic research shows that accident risks are greater for vehicles traveling either faster or slower than the rest of the traffic stream. Thus, by requiring motorcycles to observe a lower speed limit than automobiles, current law increases accident risk. Finally, in March 1999, Japan decided to investigate “whether it is advisable to increase the maximum speed limit on motorways for mini-cars and motorcycles to 100km/hour.” If, after the conclusion of their study (anticipated by late March 2000), Japan determines that there are no particular problems with unifying the speed limit, the United States has requested that Japan put into place procedures to unify the speed limit on Japanese motorways in a timely fashion.

On tandem riding, the United States filed a petition with Japan’s Office of Trade and Investment Ombudsman (OTO) in June 1999 once again seeking to lift the ban on tandem riding of motorcycles on motorways. To support its petition, the United States also presented testimony and evidence at a November 1999 OTO hearing on the issue. This evidence showed that motorways are safer than ordinary roads, and that passenger-carrying motorcycles have a much better safety record than single-rider motorcycles. Thus, because the current law requires motorcycles with passengers to travel on less-safe non-motorway roads, it raises accident risk. The OTO and Government of Japan are currently considering the U.S. petition.

Semiconductors

One area in which the Governments of the United States and Japan have made progress in addressing trade problems is semiconductors. After many years of effort by both Governments as well as their respective semiconductor industries, substantial progress has been achieved in both the level of industry cooperation and market access. Japanese purchases of foreign chips have consistently exceeded 30 percent for several years. The 1996 bilateral semiconductor agreement expired on July 31, 1999 and was replaced by a multilateral Joint Statement on Semiconductors announced by the United States, Japan, Korea, and the European Commission. The new statement is designed to ensure fair and open global trade in semiconductors and includes the essential elements of the 1996 accord, such as regular meetings among governments and between government and industry representatives. The United States will, however, continue to monitor foreign market share in the Japanese market on a quarterly basis, and once a year will report the average foreign share in the Department of Commerce “U.S. Industry and Trade Outlook.”

Steel

The U.S. steel industry endured tremendous hardship in 1998 as a sudden and substantial drop in demand for steel in Japan and the rest of Asia created a huge oversupply, much of which Japanese companies diverted to the U.S. market. Japan was the main source of imports to the U.S. market in 1998. While U.S. imports of steel from Japan in 1999 were down significantly from 1998 levels, the underlying causes of the surge should be addressed to ensure that this is not repeated in the future.

In August 1999, the President announced that the Administration would undertake bilateral initiatives with steel exporting nations, including Japan, to address a broad range of practices that support economically unjustifiable capacity. The United States launched a dialogue with Japan in September 1999. The objectives are to review conditions of steel industries in the two countries, promote market-based trade in a competitive environment, and exchange views on policies affecting the steel industries in the two countries, and on possible approaches to global overcapacity through multilateral fora.

The United States has used the bilateral dialogue to raise its concerns, especially regarding possible obstacles to competition and restructuring in Japan's steel market. Concerns include: relatively low import competition in Japan; relatively high prices in Japan (based on published data); and the use of government policy and laws (such as the Business Reform Law and Industrial Revitalization Law) to support the steel sector on an ongoing basis, without simultaneously requiring restructuring or increased competition.

U.S. steel producers often have expressed concerns that Japanese steel companies may be engaging in anti-competitive practices. With respect to Japan's domestic market, it is alleged that Japan's five integrated producers coordinate output, pricing, and market allocation goals – all with the knowledge of MITI. In addition, it is alleged that Japanese mills have entered into a series of arrangements with foreign counterparts to regulate bilateral steel trade. Furthermore, the United States is concerned by major integrated steel producers' tight control over steel distribution channels in a manner which strongly discourages imports. These alleged practices could explain the fact that the market shares of Japan's five large mills have remained stable over the last three decades. The United States has expressed concerns about these alleged activities to Japanese officials and has urged them to vigorously and effectively deal with any such activities. The United States will continue to actively address any anti-competitive activity, market access barriers, or market distorting trade practices in the steel sector.

KAZAKHSTAN

TRADE SUMMARY

In 1999, the U.S. trade deficit with Kazakhstan was $49 million, a decrease of $17 million from the U.S. trade deficit of $66 million in 1998. U.S. merchandise exports to Kazakhstan were $179 million in 1999, an increase of $76 million (73.5 percent) from the level of U.S. exports to Kazakhstan in 1998. Kazakhstan was the United States' 94th largest export market in 1999. U.S. imports from Kazakhstan were $228 million in 1999, an increase of $59 million (35.3 percent) from the level of imports in 1998. The stock of U.S. foreign direct investment (FDI) in Kazakhstan in 1998 was $2.3 billion, an increase of approximately 61.6 percent from the level of U.S. FDI in 1997. U.S. FDI constitutes about 40 percent of the total FDI in Kazakhstan.

OVERVIEW

Kazakhstan is in the midst of its transition to a market economy. Key reforms underway include completing Kazakhstan's privatization program, creating a viable securities market, implementing pension reform, modifying its trade regime so that Kazakhstan can join the World Trade Organization (WTO), consolidating the banking sector and improving Kazakhstan's investment climate.

Over 100 American firms have established offices in Almaty, Kazakhstan's former capital and largest city. Major U.S. investors include Chevron, ExxonMobil, Philip Morris, Oryx, and AES. The move of the capital to Astana continues to generate personnel changes in government, and a very cumbersome bureaucracy has increased obstacles to doing business in Kazakhstan.

The U.S.-Kazakhstan bilateral trade agreement, which came into force in 1993, grants reciprocal most-favored-nation treatment (now known as "Normal Trade Relations"). A bilateral investment treaty came into force in January 1994. In addition, an avoidance of double taxation treaty came into force in December 1996. U.S. firms have noted that Kazakhstan's implementation of the double taxation treaty has been spotty due to the government's lack of technical expertise to implement the terms of the agreement.

IMPORT POLICIES

CustomsDuties and Taxes

The average weighted import tariff in Kazakhstan is approximately 10 percent. This is largely due to the fact that trade with Russia, Kazakhstan's major trade partner, is duty-free, pursuant to a customs union agreement. In January 1999, in reaction to the August devaluation of the Russian ruble and the consequent influx of inexpensive food products, the government of Kazakhstan temporarily banned the import of a wide range of Russian food products. This ban has now been lifted.

Merchandise from non-CIS countries is subject to a value-added tax (VAT) of 20 percent at the time of importation (VAT destination principle). Goods exported from CIS countries to Kazakhstan are generally also taxed at the time of importation. Goods imported from Russia and Tajikistan, however, are still subject to the VAT at the time of exportation (origin principle). The Russian departure from the world-standardized practice of destination principle continues to cause double taxation problems. In addition, Kazakhstan's customs service levies a 0.2 percent import processing fee, based on the declared value of the item. In July 1998, Kazakhstan made all pharmaceutical imports exempt from the VAT.

Enterprises importing materials used in industrial processing (gas, water, raw materials and materials for industrial processing) are granted a three-month delay in paying VAT taxes.

Article 22 of the 1994 Foreign Investment Law exempts from customs duties property imported by a foreign investor for the purpose of contributing it to the charter fund of a "foreign-shared enterprise" (defined as a Kazakhstani legal entity, such as a limited liability company, in which the foreign investor has an ownership interest). Following the July 1997 changes to the Foreign Investment Law, only equipment and spare parts for this equipment imported for the charter fund are exempt from customs duties.

According to the February 1997 "Law on State Support for Direct Investment," imported goods (equipment, raw and other materials) can qualify for complete or partial exemption of duty by agreement with the state investment committee, if the goods are used as an investment in designated "priority sectors" of the economy. However, there is no absolute right to duty exemptions. Priority sectors include infrastructure, agriculture, tourism, and all imported goods related to activity connected with the construction of the new Kazakhstani capital at Astana. In addition, there is a 1997 government resolution giving duty-free status to materials to be used in the construction of the road from Almaty to Astana.

Certain goods that are imported temporarily are exempt from payment of customs duties and taxes. These include transport vehicles, professional and office equipment, goods imported for demonstration purposes, shipping containers, and advertising materials. Such goods may remain in Kazakhstan for one year, duty-free. With some exceptions, all other goods may be imported temporarily for a period of two years under a partial duty exemption. The amount of duty payable is equivalent to three percent of the duty chargeable for each calendar month. Goods not eligible for full or partial duty exemption are food products, industrial waste, and consumable materials. U.S. firms report that, in some cases, violations of these provisions by importers have led to confiscation of assets.

Kazakhstan formed a customs union with Russia and Belarus in January 1995. The Kyrgyz Republic formally joined in 1997, and Tajikistan joined in 1998. Under the provisions of the customs union, trade between these five countries is free of customs duties, but as of yet they have not established a common customs tariff. The Kyrgyz Republic was the first of the five customs union members to compete its accession to the WTO. Russia, Belarus and Kazakhstan are still negotiating the terms of their WTO membership, and Tajikistan has not yet applied. As they move towards WTO membership, the customs union members will harmonize their trade policies within WTO rules, which should support their economic integration efforts. Some CIS commentators have claimed that the Kyrgyz Republic's WTO accession has complicated the future of the customs union. Membership in the WTO, however, is not incompatible with participation in regional trade agreements, as long as substantially all the trade is covered and other WTO requirements are met. The customs union is, at the same time, developing coordinated customs procedures. This will reduce the cost of the transshipment through the customs union member states of U.S. goods destined for Kazakhstan.

Customs Procedures

In 1999, substantial revisions were made to the Kazakhstan Customs Code. Many of these new provisions were made to meet WTO compliance. Additional new provisions also will bring Kazakhstan's customs regime closer to conformity with the international standard for customs procedures, as defined in the Kyoto Convention. While the new legislation is in effect, implementing regulations are still in the process of being prepared by customs, thus delaying the positive effect of the new codification.

Kazakhstan's customs valuation rules largely conform to the WTO Customs Valuation

Agreement. Despite this codification of WTO-compliant valuation rules, however, a Ministry of State Revenues Order (Order 402 of September 28, 1999) sets conditional prices for certain imported goods. Order 402 is contradictory to the WTO valuation methodology and is also in apparent conflict with the valuation principles of the Kazakhstan Customs Code.

The Kazakhstan tariff nomenclature is patterned after the World Customs Organization's (WCO) harmonized system.

In 1999, the government of Kazakhstan repudiated an exclusive contract to a private vendor for the processing and filing of electronic declarations. This has substantially reduced the cost of filing the customs declaration, which had previously been identified as an added cost of doing business in Kazakhstan. The repudiation of this contract has, however, substantially retarded the development of the automation of customs.

Order 532P, issued at the end of 1999, liberalized certain requirements relating to the storage of goods prior to customs clearance. This order should reduce the burden of a requirement that imported goods be placed in a temporary storage warehouse pending customs clearance.

Poor implementation of regulations relating to pre-arrival and periodic declarations has been an additional cost to businesses. This is due primarily to vague regulations and a lack of understanding of these procedures, both by the customs officers and by the importing community.

U.S. companies have also complained of a requirement that they obtain a "transaction passport" to clear imported goods through customs. This regulation is designed to stem the outflow of capital and money laundering. The state customs department and the national bank of Kazakhstan are requiring importers to show copies of contracts and other documentation to prove the legitimacy and verify pricing on import/export transactions. While this procedure is onerous by U.S. standards, in a cash economy it does provide a control mechanism.

STANDARDS, TESTING, LABELING AND CERTIFICATION

Government observance of old Soviet standards, testing, labeling, and certification requirements is uneven. In November 1996, the U.S. National Institute of Standards and Technology signed a Memorandum of Understanding with the government of Kazakhstan to bring Kazakhstan's metrology methods into conformity with international rules and practices.

The Law on Standardization and the Law on Certification were signed into law by the president on July 16, 1999, with a view to bringing these areas into compliance with international standards and practices. However, paragraph 2 of Article 12 of the Law on Certification requires that all imported products subject to mandatory certification be accompanied by documents identifying the producers, the date of production, the expiration date, storage requirements, the mode of use in both the Kazakh (state) and Russian languages. Pursuant to the Constitution of the Republic of Kazakhstan and the Law of the Republic of Kazakhstan "On Languages," however, the Russian language is the language of international communication and it may be used equally with the state language in Kazakhstan. At present, when products are imported into the Republic of Kazakhstan, they are usually accompanied by appropriate documents in the Russian language. Thus, it could be argued that the requirement for Kazakh language information imposes an additional cost and may constitute a trade barrier. The government of Kazakhstan, however, reportedly will accept placement of Kazakh language stickers on products as compliance with the law. The government is also reportedly prepared to issue a regulation exempting pharmaceutical products from the Kazakh labeling requirement.

GOVERNMENT PROCUREMENT

The Republic of Kazakhstan, with the support of the World Bank, is reforming and harmonizing its system of state procurement. The state procurement agency of the Republic of Kazakhstan was established by presidential decree on December 14, 1998 and the Regulation on State Procurement Agency was approved on March 26, 1999. Under this legal structure, the monitoring functions of the State Procurement Agency were strengthened, control systems were improved and independence in selection of methods of procurement with larger value has been provided. A state procurement bulletin is now published regularly. It contains analytical material and legal acts and regulations, which are expected to improve the transparency and openness of the process of state procurement. The current law, however, still contains provisions whereby domestic producers and small businesses receive preferential treatment during the government procurement process.

U.S.-funded assistance projects are helping Kazakhstan establish a database to assist procurement, according to a USAID contractor and government procurement expert. A regional seminar will be conducted in late March to train procurement officials from all five Central Asian countries in the use of the existing database. If the project is completed and the database becomes fully operational, it could help U.S. exporters communicate their product lists to the Government of Kazakhstan and result in more efficient procurement practices. American businesses continue to report problems, however, in obtaining adequate notice of tender offers. U.S. business representatives still complain that tender offers are not always publicized and that there is no standardized format for publicized tender offers; they appear in different publications, have varying requirements for the submission of bids, and sometimes do not provide adequate time limits to allow U.S. businesses to prepare and submit bids. Moreover, energy companies must comply with local content requirements that were enacted in September of 1999 but have not yet been fully implemented. The wholly state-owned oil enterprise is bound by this local content requirement. Kazakhstan is not yet a signatory of the WTO Agreement on Government Procurement.

INTELLECTUAL PROPERTY RIGHTS PROTECTION

The 1992 bilateral trade agreement between the United States and Kazakhstan incorporates provisions on the protection of intellectual property rights (IPR). Kazakhstan is also in the process of acceding to the WTO. As a result, all of its intellectual property legislation is focused on being compliant with the WTO's Agreement on Trade Related Aspects of Intellectual Property Rights (TRIPS Agreement).

Under the bilateral trade agreement, Kazakhstan agreed to bring its IPR regime up to world standards. Kazakhstan has fulfilled certain of its obligations under the trade agreement, but still has several steps to take.

Kazakhstan is a member of the Berne Convention for the Protection of Literary and Artistic Works, but has not yet made the necessary changes to its copyright law to implement Berne. (Most notably, the copyright law has not been amended to reflect the Berne Article 18 obligation to provide retroactive protection to foreign works still within their term of protection in their country of origin.) The TRIPS Agreement requires that such retroactive protection also apply to sound recordings.

Kazakhstan has yet to join the Geneva Phonograms Convention, although, as of January 2000, legislation ratifying this convention was pending before parliament. Two other intellectual property bills have yet to be passed by parliament: the Law on Commercial Secrets and the Law on Integrated Circuits. Kazakhstan has signed but has not ratified the 1997 WIPO Copyright Treaty (WCT) and the WIPO Performances and Phonograms Treaty (WPPT).

Kazakhstan enacted several new intellectual property rights laws in 1999. On July 16, 1999, Kazakhstan enacted a new law governing patents; on July 26, 1999 a new trademark law was enacted; and the Law Governing Selective Achievements was enacted on July 13, 1999. The current law on copyright dates from June 10, 1996. The copyright law protects software as literary works and databases as compilations.

In July 1999, Kazakhstan amended its Customs Code to provide for the seizure at the border of objects that violate intellectual property rights. Customs rules and regulations are currently being developed to implement these articles of the Customs Code.

Lax enforcement remains a major problem; however, the lack of automation in customs processing impedes efficient operations. Gaps in knowledge and training on the part of those responsible for enforcing intellectual property rights pose another obstacle to enforcement. Public understanding of the principles of authors' rights is low, as is public support for enforcement of intellectual property rights.

Kazakhstan has not yet selected private organization(s) which will be responsible for the collective management of authors' rights. Several groups are vying for the right to license rights and collect royalties on behalf of authors.

INVESTMENT BARRIERS

There is a severe lack of capital in domestic enterprises for servicing loans and to meet equity percentages in joint ventures. In addition, in accordance with the Law on Land, the following types of land plots cannot be held through private ownership: agricultural lands, defense industry lands, specially protected territories, lands of forest and water funds, lands of general use, and uninhabited areas. Foreign firms can obtain leasing rights to land only through a domestic partner and only for a maximum of 99 years. Kazakhstani authorities have often insisted that U.S. firms invest in social programs for local communities.

Foreign insurance companies are limited to operating in Kazakhstan through joint ventures with Kazakhstani companies. The total registered capital of banks with foreign participation cannot be more than 25 percent of the total registered capital of all banks in Kazakhstan.

OTHER BARRIERS

There are other structural barriers in Kazakhstan including a weak system of business law, a shortage of domestic capital to pay for U.S. goods, the lack of an effective judicial process for breach-of-contract resolution, logistical difficulties of serving the Kazakhstani market, and an unwieldy and corrupt government bureaucracy. In addition, there are specific hindrances to U.S. companies that have established business activities in Kazakhstan, including a burdensome tax monitoring system, licensing requirements for numerous simple business activities, and a cumbersome and restrictive work permit system that hinders companies' ability to hire expatriates.

KENYA

TRADE SUMMARY

The United States and Kenya have maintained a fairly stable trading relationship for the past several years. In 1999, the U.S. trade surplus with Kenya totaled $83 million, down from $101 million the previous year. U.S. exports to Kenya totaled $189 million, a decrease of $10 million from 1998. In 1999, Kenya was the 92nd largest export market for the United States. Imports from Kenya totaled $106 million in 1999, an increase of $7 million from 1998. The stock of U.S. foreign investment in Kenya was estimated to be $238 million in 1998.

According to official Government of Kenya statistics, the Kenyan economy grew by 1.8 percent in 1998, down from 2.4 percent in 1997. According to most estimates, the economy performed worse in 1999. The government attributed this third consecutive economic slowdown to a number of factors, including poor infrastructure, high interest rates, a slump in tourism, and labor unrest. But investors pointed to corruption, an uncertain business environment, the high cost of doing business, and the lack of supplier competitiveness as reasons for the poor economic performance. Ineffective and corrupt enforcement of import policies exposes a wide range of businesses to unfair competition. In addition, there is little doubt that the IMF's 1997 decision to suspend the country's Enhanced Structural Adjustment Facility (ESAF) because of the government's poor track record on economic governance has also had a deleterious effect on investment. While the government remains publicly committed to continued trade liberalization and structural reform, issues of governance and the rule of law continue to erode investor confidence.

Despite its economic problems, Kenya has become an increasingly important hub for African trade, as is evidenced by the growing importance of African trading partners to Kenya. Kenya is a member of the newly formed East African Community and remains an active member of the WTO, COMESA, and IGAD. Kenya has been slow to honor its WTO commitments, including its implementation of the WTO Customs Valuation Agreement, TRIPS, and the Financial Services Agreement.

IMPORT POLICIES

The Government of Kenya has exhibited renewed interest in liberalizing trade and restructuring many of its most important industry sectors. In 1993, the government eliminated its export compensation scheme and abolished import licensing, except in certain health, environmental, and security areas. Tariffs are now the government's primary instrument for trade policy. The overall tariff structure has been simplified and though still quite high, many tariffs have been reduced.

In June 1999, the Government of Kenya announced an increase in import duty on all fruits and vegetables from 15 percent to 25 percent as a means of protecting local farmers. Similarly, the duty on textiles was increased from 25 percent to 30 percent. Duties on crude palm oil, vitamins, dyes, essential oils, some steel products, some basic chemicals, unassembled radios, and household refrigerators and washing machines were reduced to 10 percent. Duties on software were reduced from 15 percent to 5 percent (the same as for computer hardware). The Duty on capital equipment imported for investment in a foreign exchange earning business or for an investment worth more than 10 million Kenyan shillings ($140,000 at $1/KS71) was lowered from 10 percent to five percent, as was the duty on specialized cold storage equipment for farm use. The exemption of duty for power generation plants and equipment was extended through December 31, 2000, while specialized cargo handling equipment at the Port of Mombasa was exempted from duty and the VAT.

In addition to customs tariffs and fees, "suspended" (stand-by) duties ranging as high as 70 percent are imposed on some 17 percent of all tariff lines corresponding to the most protected manufacturing and agricultural sectors, including imports of maize, rice, wheat, sugar, and millet. The June 1999 changes also included the imposition of suspended duties of 25 percent on imports of barley and malt. Since 1994, refined oil products have been freely imported, but subjected to high duties to protect the national oil refinery.

In early 1996, the Government of Kenya, citing environmental standards, effectively banned commercial seed imports by requiring that all approved seed be grown in Kenya. Though the ban was later lifted, the government still carefully controls imports of seed corn. The Ministry of Agriculture restricts international seed trade by setting quantitative ceilings on cereal seed imports and subjecting hybrid varieties to a tedious certification process that effectively restricts trade.

Pre-Shipment Inspection

Import shipments with an F.O.B. value of more than $5,000 must undergo pre-shipment inspection (PSI). Shipments originating from the United States are inspected by COTECNA Inspection, a Swiss Firm. In addition to a "Clean Report of Findings" (CRF) certifying that the goods are consistent with the invoice, the inspection agency also furnishes a "valuation certificate" or bill of lading that enables the Government of Kenya to determine the correct duty. The import declaration fee, which includes a PSI fee, is 2.75 percent of the export (F.O.B.) value. If imports fail to obtain an advance inspection, a 15 percent penalty (25 percent for motor vehicles) is applied for local inspection. Goods airlifted by courier services are not subject to PSI if their value does not exceed $10,000.

On January 1, 2000, the Government of Kenya started implementing the WTO Customs Valuation Agreement. Under the agreement, Kenya must use the transaction value (i.e., the invoice value) for customs valuation of goods imported from other WTO signatories. For non-WTO members, Kenya will continue to use its PSI system of valuation.

Other Fees and Charges

In addition to the import declaration fee of 2.75 percent of F.O.B. value, agricultural imports are charged a fee of one percent of C.I.F. value to support the Kenya Plant Health Inspectorate Service (KEPHIS). The Kenyan Bureau of Standards charges an inspection fee of 0.2 percent of C.I.F. value on all imports.

STANDARDS, TESTING, LABELING AND CERTIFICATION

The Kenya Bureau of Standards (KBS), a government regulatory body under the Ministry of Industrial Development, inspects imports to ensure conformity to International Standardization Organization (ISO) and other product standards. KBS is in the process of reviewing all standards, especially those more than 10 years old. About 500 standards still need to be reviewed. KBS also conducts product testing for individual product categories and undertakes certification. Products that do not meet KBS standards are withdrawn from the market and the importer is prosecuted. As of July 1997, the Weights and Measures Act required that a list of twenty different products be labeled with metric measurements and packaged in even units (e.g., 2.5 liters, not 2.51). Shipments in violation of these rules may not be re-exported. KBS levies an inspection fee of 0.2 percent of C.I.F. value.

Certain imported agricultural goods are subject to further inspection by the Kenya Plant Health Inspectorate Service (KEPHIS). KEPHIS regulates the importation and exportation of plant materials and the trade in bio-safety control organisms in accordance with the International Plant Protection Convention (IPPC). The Inspectorate evaluates commercial hybrid grain seeds for a period of three years before the seeds can be released to market. This certification process is tedious and restrictive, and the three-year period needed for the government to approve or reject a variety is a timetable that effectively restricts trade. KEPHIS levies an inspection fee of one percent of C.I.F. value.

GOVERNMENT PROCUREMENT

According to government regulations, goods worth more than $4,000 must be purchased through open competitive tenders. Conflict-of-interest regulations are not enforced, however, and government contracts are frequently awarded to uncompetitive firms with connections to government officials. The award of some of the largest government contracts, including those for an international airport in 1994 and for a presidential jet in 1995, noticeably lacked transparency. Since September 1999, the government has taken measures to make the public procurement process more transparent. These measures have included affording wider publicity to government tenders, establishing an appeals committee, and appointing people from the private sector to the Central Tender Board, the main decision-making agency for large scale government purchases. Kenya is not a signatory to the WTO Agreement on Government Procurement.

EXPORT SUBSIDIES

In 1992, the government enacted a duty/value-added tax remission facility that enables firms in export-processing zones to purchase imported inputs tax free. Some firms in export-processing zones have utilized this facility to sell duty-free goods onto the domestic market and unfairly compete with local producers and other importers.

The government claims that it has discontinued below-market loans to export-oriented businesses. While no general system of preferential financing currently exists, sectoral government development agencies in areas such as tourism and tea are supposed to provide funds at below-market rates to promote investment and exports by Kenyans.

INTELLECTUAL PROPERTY RIGHTS PROTECTION

Kenya is a member of the World Intellectual Property Organization (WIPO) and the African Regional Industrial Property Organization, and is a signatory to both the Paris Convention on the Protection of Industrial Property and the Berne Convention on the Protection of Literary and Artistic Works. Although a unified system for the registration of trademarks and patents from Anglophone Africa was agreed to in 1976, the effort has not been effective due to the lack of coordination and funding. Future protection may be afforded through the African Intellectual Property Organization, but member cooperation and enforcement procedures are untested.

As a member of the WTO, Kenya must implement the agreement on Trade-Related Aspects of Intellectual Property Rights (TRIPS). The government has initiated steps to amend the country's intellectual property laws to bring them into conformity with WIPO guidelines, the TRIPS Agreement, and other international conventions. In 1999, the government presented the Industrial Property and Trademark Acts to Parliament.

The Kenyan Copyright Act protects audio as well as video recordings. Violations are subject to a fine of up to $3,600 or imprisonment for five years, or both. In practice, however, the Office of the Attorney General (which is responsible for copyright matters) and the police seldom enforce the laws. Pirated sound recordings are common, and virtually all videos available in shops are unlicensed. A new Copyright Act, designed to be compliant with WIPO and international standards, has been drafted and circulated to stakeholders.

Kenya was to have joined the Union for the Protection of New Varieties in Plants (UPOV) in 1999. However, the country is not yet a signatory of the UPOV Convention on Plant Variety Protection and its laws do not conform to international regulations.

SERVICES BARRIERS

No explicit barriers exist on the provision of services by U.S. professionals. For example, a U.S. bank prepared the flotation of shares by Kenya Airways and a U.S. life insurance firm is the leader in its industry sector. Nevertheless, foreign companies offering services in construction, engineering, and architecture may face discrimination on tenders for public projects. In addition, new foreign investors with expatriate staff are required to submit plans for the gradual elimination of non-Kenyan employees. In 1999, the government increased fees and security bonds under the Immigration Act by 50 percent to 100 percent in an attempt to discourage the employment of foreign labor. Fees for foreign students were excluded from this increase. The Kenyan bar has declined to admit foreign lawyers for a duration of more than 12 years.

The only privatizations of note since 1995 have been the sale of state-owned tourist facilities and the flotation of shares of state-owned financial institutions on the Nairobi Stock Exchange. The government plans to privatize the Kenya Reinsurance Corporation in CY2000, and is moving to liberalize the telecommunications, power, and transport sectors.

INVESTMENT BARRIERS

With macroeconomic stabilization and gradual economic reform paving a wider road for the private sector, Kenya may succeed in attracting the foreign investment it needs to fuel higher economic growth. Much depends upon whether the government continues sector reform, trade liberalization, and anticorruption measures. So far, tight fiscal policies have brought inflation under control. The financial system has been restructured and measures taken to increase the role of the private sector and establish greater accountability and transparency with respect to financial infractions. A managed floating exchange rate regime has been adopted and companies may now retain foreign exchange earnings and repatriate capital and profits without certification. The government has identified more than 200 parastatals for privatization and another 33 for restructuring. In addition, the government has established an independent anticorruption authority and recognizes the importance of dealing with governance issues. Nevertheless, Kenya suffers from lackluster investor interest caused by the high cost of doing business, lack of supplier competitiveness, an uncertain business environment, and corruption.

Restrictions and Regulatory Practices

The Government of Kenya has placed a number of restrictions on foreign ownership for publicly traded companies and in the areas of financial services and telecommunications. Foreign ownership of firms listed on the Nairobi Stock Exchange cannot exceed 40 percent for corporations and five percent for individuals. Foreign ownership of local telecommunications companies is also restricted to 40 percent. Life insurance companies are required to have at least 33 percent local ownership. Foreign brokerage and fund management firms must be locally registered companies; in which case, fund management firms must be at least 30 percent Kenyan owned and brokerage firms 51 percent.

Internet Service Providers (ISP's) also operate in Nairobi under significant restrictions. As telecommunications companies, foreign ownership of an ISP is restricted to 40 percent. The Communications Commission of Kenya (CCK), the regulatory authority, limits the number of ISP's and prohibits them and other carriers from establishing switches, international gateways, or direct satellite links. This has forced continued dependency on Telkom Kenya and inhibited competition and improvements in customer service. The CCK specifically prohibits ISP's from providing the following services: voice telephony, uploading of telecommunications traffic by satellite, and use of wireless communications. In fact, ISP's must agree, in writing, not to provide Internet protocol telephony through their networks (paging services are excluded from this requirement). ISP's must also provide the CCK with information on what they charge for all services, as well as the names and addresses of their clients. CCK must also type-approve equipment that ISP's provide to clients. These regulatory practices make investing in this area considerably less attractive than it might otherwise be. The CCK regulates telecommunications and radio communications in the country (a role similar to the FCC in the United States), as well as postal services.

Difficulty in obtaining clear title to land, lack of confidence in the speedy and fair resolution of disputes, and requests from officials for illicit payments continue to dampen the country's prospects to attract greater foreign investment.

Technology transfer requirements and foreign exchange controls have been abolished. Local partners are encouraged but not required. Kenyan partners are no longer required for small-scale commercial enterprises.

Infrastructure

The Government of Kenya has been hesitant to open public infrastructure to competition because the state-owned companies that control infrastructure are considered "strategic" enterprises. For this reason, the reform and partial privatization of telecommunications, power, and rail has fallen behind schedule.

Under the Kenya Communications Act of 1998, which became effective in 1999, the Government of Kenya dissolved the Kenya Posts and Telecommunications Corporation (KPTC) on July 1, 1999. KPTC was succeeded by three separate entities: Telkom Kenya (telecommunications), Safaricom (mobile cellular services), and Postal Corporation of Kenya (postal services). As it stands, Telkom will be permitted to maintain its monopoly in segments of the telecommunications market for five years. Two firms have initially been licensed to provide mobile cellular telecommunications. In February 2000, the CCK issued a tender notice for eight regional telecommunications licenses to operate local and regional long-distance services in competition with Telkom Kenya.

At the beginning of 1997, the Kenya Power and Lighting Company (KPLC) was split into two entities: the Kenya Power Company (now renamed the Kenya Electricity Generating Company), responsible for power generation, and KPLC, responsible for electricity distribution. An electricity regulatory board was established in April 1998 to regulate retail tariffs and approve power purchase contracts between KPLC and producers. The government also licensed two independent power producers (IPP's) to sell electricity to the Kenya Electricity Generating Company. Questions were raised with respect to the procedures used in the award of IPP contracts.

The Kenya Railways Corporation has contracted for the maintenance of some of its locomotives to General Electric. The company may be commercialized further along these lines.

ELECTRONIC COMMERCE

Kenya has not yet formulated a policy on electronic commerce. There is, however, a national committee that is charged with handling electronic commerce issues.

REPUBLIC OF KOREA

TRADE SUMMARY

In 1999, the U.S. trade deficit with Korea was $8.3 billion, an increase of $0.9 billion from the $7.4 billion trade deficit in 1998. In 1999, Korea was the United States' 6th largest export market. In 1999, two-way merchandise trade between the United States and Korea totaled $54.3 billion, compared with $40.4 billion for 1998. U.S. exports to Korea in 1999 were nearly $23 billion, a 38.8 percent increase from the 1998 figure of $16.5 billion. U.S. imports from Korea in 1999 were $31.3 billion, a 30.6 percent increase from the 1998 figure of $23.9 billion. The stock of U.S. foreign direct investment in Korea in 1998 was $7.4 billion, a 14.5 percent increase from 1997. U.S. foreign direct investment is mainly concentrated in manufacturing, banking, and services.

OVERVIEW

Korea is one of the United States' major trading partners. Korea has long been known as one of the most difficult markets in, or with, which to do business. While the Korean President has committed to a more open, market-oriented economic policy, and Korea has implemented reforms, particularly in the financial sector, many of its structural reforms, for example in the corporate sector, have yet to be implemented. The Korean Government has made efforts to break the unhealthy linkages between government, banks, and the *chaebol*, which have historically impeded competition and market access, both in Korea and in other markets. These linkages also have resulted in excessive debt, over-capacity and uneconomic investments. Some complacency has set in, as the economy has recovered rapidly from the economic crisis. The July 1999 bankruptcy of the Daewoo Corporation, however, showed the risk of delaying needed reforms while prodding the Korean Government to pursue further economic reform and restructuring. The Korean Government will need to reprivatize the Korean banking sector; Korean *chaebols* will need to complete restructuring; and the Korean financial and corporate sectors will need to adopt international business standards and practices.

The Korean economy recovered rapidly in 1999 from the economic crisis. Economic growth rebounded to about 10 percent after falling by nearly six percent in 1998. Inflation was under control at about one percent and unemployment levels were cut in half from the peak during the economic crisis. Korean imports from the world, which dropped sharply in 1998 because of the economic crisis, grew by 28 percent in 1999 to $119.7 billion, and exports to the world increased by nine percent to $144.2 billion. As such, Korea's global trade surplus narrowed in 1999 to $24.5 billion but continued to be substantial. In 2000, Korea's trade surplus is expected to narrow further to about $12.5 billion.

IMPORT POLICIES

Tariffs and Taxes

Korea bound 91.1 percent of its tariff line items in the Uruguay Round negotiations, and Korea's average tariff was 7.9 percent in 1999. Korea's tariffs on all agricultural products, except rice (HS 1006), are bound, although tariffs on several important fishery products remain unbound. Between 1995 and 2004, Korea will implement its Uruguay Round commitments to lower duties on more than 30 agricultural products of primary interest to U.S. exporters. These products include intermediate and high value items such as vegetable oils and meals, processed potatoes, mixed feeds, feed corn, wheat, fruits, nuts, popcorn, frozen French fries and breakfast cereals.

Under its Uruguay Round commitments, Korea also established tariff-rate quotas (TRQs) that will either provide for minimum access to a previously closed market or maintain pre-Uruguay Round access. (See also "Quantitative Restrictions, TRQs and Import Licensing.") In-quota tariff rates are at zero or low levels, but over-quota tariff rates on some products are prohibitive. Specifically, natural and artificial honey are assigned an over-quota rate of 257 percent; skim and whole milk powder, 198 percent; barley, 342 percent; barley malt, 284 percent; potatoes and potato preparations, over 300 percent; and popcorn, 665 percent.

Duties are still very high on a large number of high value agricultural and fishery products. Korea imposes tariff rates above 40 percent on many products of interest to U.S. suppliers, including shelled walnuts, table grapes, beef, canned peaches and fruit cocktail, pears and a variety of citrus fruits. Products subject to a 30 percent or higher tariff rate include certain meats, most fruits and nuts, many fresh vegetables, starches, peanuts and peanut butter, soups, various vegetable oils, juices, jams, beer and some distilled spirits and dairy products.

Korea is in the process of reducing bound tariffs to zero on most or all products in the following sectors: paper, toys, steel, furniture, semiconductors and farm equipment. Korea is harmonizing its chemical tariffs to final rates of 0, 5.5 or 6.5 percent, depending on the product. From pre-Uruguay Round levels, tariffs on scientific equipment are being reduced by 65 percent. On textile and apparel products, Korea has harmonized and bound most of its tariffs to the following levels: 7.5 percent for man-made fibers, 15 percent for yarns, 30 percent for fabrics and made-up goods and 35 percent for apparel.

U.S. firms in a number of sectors continue to report that the combination of tariffs and value-added taxes for agricultural and manufactured products is often sufficient either to keep imports out of the Korean market or to make their prices uncompetitive. One example is the Korean motor vehicle market. Imported vehicles are subject to a tariff rate of eight percent – more than three times the U.S. tariff. Korea then levies multiple, cumulative high taxes on top of the eight percent applied tariff. Three of these taxes are based on engine size and have a disproportionate impact on imported vehicles. Although Korea eliminated some of its motor vehicle taxes and reduced others under the 1998 Memorandum of Understanding on market access for foreign motor vehicles, the combination of the tariff and engine-displacement-based taxes levied on the duty-paid value of imported cars still results in a mark-up that impedes their competitiveness vis-a-vis their domestic competitors.

Another example of the tariff and *ad valorem* tax problem relates to Western-style distilled spirits, which were previously assessed a much higher excise tax than the traditional, Korean-style spirits. This tax was levied on the duty-paid value of the imported liquor. The Korean Government, however, enacted legislation in December of 1999 that harmonized the tax rate at 72 percent (plus a 30 percent education tax) for all distilled spirits, including *soju*, effective January 1, 2000. This was done to comply with the WTO panel and Appellate Body rulings that the Korean Government's system of tax treatment for distilled spirits discriminated against foreign products.

Korea uses "adjustment tariffs," *i.e.*, raises its tariffs up to higher rates, to protect domestic producers. In 2000, Korea renewed for another year adjustment tariffs on 27 of the 30 items on which tariff adjustments were used in 1999, but reduced the tariff rates for 20 of these items. Among the 27 remaining items, 14 are seafood, including croaker and skate (two fish products of interest to U.S. exporters), six are agricultural and four are textiles. In 1997, Korea agreed, as a condition of its IMF stabilization package, to reduce the number of products subject to tariff adjustments. The U.S. Government has expressed concern about the way in which Korea implemented this commitment, however, because when the Korean Government shifted items back to the general tariff schedule, the tariff rates were maintained at the "adjusted" or increased rates, thereby negating any market access benefit.

In 1999, the U.S. Government discovered a discrepancy between Korea's applied tariff rates on several agriculture items – peanuts, popcorn, potato flour, potato flakes, and wheat and soybean meal – and its WTO bindings and bilateral tariff commitments made in a 1993 U.S.-ROKG Record of Understanding (ROU) and February 1994 exchange of letters. In February of 1999, U.S. Embassy officials in Seoul brought these discrepancies to the attention of the Korean Government. Korean officials acknowledged these discrepancies, and gave indications that they would search for ways to rectify them. Despite letters from high-ranking U.S. officials and subsequent bilateral meetings in which this issue was raised, a discrepancy in the tariff rates on some of these products remains in effect. The U.S. Government will continue to press Korea until its duties on all agriculture products are brought into compliance with Korea's WTO and bilateral commitments.

NON-TARIFF MEASURES

Import Diversification Program

On June 30, 1999, Korea removed the last tranche of 16 product categories from the import diversification program, thereby fulfilling its IMF/OECD commitments by bringing to an end the trade regime that had effectively barred imports of a broad range of consumer and industrial products from Japan, including some U.S. products sourced from Japan. This change in Korea's trade rules has increased foreign access to the Korean market, but also means new competition for U.S. products.

Internal Supports

Korea agreed as part of the Uruguay Round Agreement on Agriculture to reduce its domestic support (Aggregate Measurement of Support, or AMS) for agricultural products by thirteen percent during the implementation period that expires at the end of 2004. Because of the Korean Government's substantial increases in the level of domestic support provided during 1997 and 1998 to its cattle industry, it appears that Korea has violated its Agreement on Agriculture obligations. In each of those years, Korea provided domestic supports to agricultural producers, which in the aggregate, were higher than permitted pursuant to Korea's domestic support reduction commitments. The subject of this excessive level of support has been raised by the United States, Australia, New Zealand and Canada in dispute settlement proceedings in the WTO on Korea's beef import and distribution regime. A panel report in that dispute will be issued in May of 2000. The United States will continue to press Korea to honor its annual domestic support reduction commitments.

QUANTITATIVE RESTRICTIONS, TRQs and IMPORT LICENSING

Quantitative Restrictions

Under a U.S.-Korea 1993 Record of Understanding (ROU) and under Korea's Uruguay Round commitments, the Korean Government committed to liberalize, by January 1, 2001, its quantitative restrictions on the eight remaining items subject to balance-of-payments protection. These items consist mainly of live cattle (dairy and beef) and beef products (HS 0201 and 0202). The U.S. Government had to initiate WTO dispute settlement procedures in 1999 to ensure that Korea would follow through on its obligation to remove these balance-of-payment restrictions, and more broadly, to ensure that Korea adheres to WTO rules in the conduct of its beef import and distribution system. (See also "Beef.")

Korea's quantitative restrictions on rice expire in 2004.

TARIFF-RATE QUOTAS (TRQs)

Most imported goods no longer require government approval, but some products (mostly agricultural and fishery products) are restricted for import, *i.e.*, they are subject to quotas or TRQs with prohibitive over-quota rates. Korea implements quantitative restrictions through its import licensing system. A government export-import notice lists products that are restricted or prohibited.

Korea's administration of its TRQs on certain products raises additional market access problems. Per industry input, the U.S. Government has raised concerns about Korea's process for administering its quotas on rice and its TRQs, particularly those on oranges, as well as on value-added soybean and corn products. In some cases, Korea uses an auction to allocate in-quota quantities and in so doing, adds cost beyond tariffs to entering the Korean market. This raises questions about Korea's adherence to its WTO obligations.

On value-added soybean and corn products, the Korean Government continues to control allocation of the in-quota quantities. By aggregating raw and value-added products into the same TRQ, the Korean Government restricts access to the Korean market for value-added products, such as corn grits and soy flakes, while allowing entry of only the companion raw materials under the in-quota quantity.

Beef

Pursuant to a 1989 GATT panel ruling against Korea's measures on beef, Korea committed to phase out its balance-of-payment restrictions on beef. Subsequently, in 1990, and in July of 1993, the United States and Korea concluded exchanges of letters and Records of Understanding (ROUs) under which Korea agreed to annual increases in minimum market access levels for beef imports through 1995. The 1993 agreement also guaranteed direct commercial relations between foreign suppliers and Korean retailers and distributors and provided that a growing volume of beef be sold through that channel instead of through a state trading organization. Specifically, the agreement provided for the following: (1) an increase in the minimum annual quotas; (2) an increase in the number of Korean distributors that can undertake commercial transactions with U.S. exporters without Korean Government intervention – the Simultaneous Buy/Sell (SBS) system; (3) dramatically increased annual SBS sub-quota amounts; and (4) a ceiling on the mark-up levied on the duty-paid price of imported beef. Australia and New Zealand – the other two major suppliers of beef to Korea – also entered into identical agreements on beef trade with Korea. In December of 1993, the provisions of the July agreement, including the increasing, annual minimum market access provisions, were extended to December 31, 2000.

Pursuant to section 306 of the Trade Act of 1974, the USTR continues to monitor Korea's implementation of its commitments on beef imports. The U.S. and Korean Governments have met quarterly on the specifics of Korea's implementation record on the 1993 agreements. In 1997, Korea did not meet its annual commitment to import 167,000 metric tons of beef. In 1998, Korea fell short of its 187,000 metric ton quota by approximately 53 percent. In 1999, Korea again failed to meet its minimum market access commitment on beef.

Senior U.S. Government officials have repeatedly sought Korea's elimination of government impediments to the entry and distribution of foreign beef. In September and November of 1998, the U.S. and Korean Governments held talks, and in January of 1999, sat down again to try to reach agreement on a plan to establish a market-driven beef import system in Korea. No agreement was reached during these talks. As a result, the U.S. Government requested WTO dispute settlement consultations on February 1, 1999. When a settlement could not be reached at the March 1999 consultations, the United States requested formation of a panel, which the WTO Dispute Settlement Body (DSB) agreed to in May of 1999. Australia's subsequent request for the formation of a panel on Korea's beef measures was approved in July 1999. The DSB also agreed that the panel established in May to examine the U.S. complaint would examine the Australian complaint as well.

The first meeting of the combined panel was held in December of 1999, and the second meeting in mid-February of 2000. Canada and New Zealand are participating in the panel process as third parties.

The United States' complaint is focused on Korea's (1) requirements that imported beef be sold only in specialized imported beef stores; (2) Korean laws and regulations restricting the resale and distribution of imported beef by SBS super-groups, retailers, customers, and end-users; (3) discretionary import regime; (4) imposition of duties and charges in the form of mark-up, which is not provided for in Schedule LX; and (5) failure to fulfill its reduction commitment for domestic support.

Rice

The Korean Government continues to exercise full control over the purchase, distribution and end-use of imported rice. The state trading enterprise that administers the WTO-mandated minimum access program continues to purchase only low-quality Asian rice, as Korean law forbids the use of imported rice for purposes other than industrial or processing purposes. As a result, high quality U.S. rice is effectively shut out of the Korean market, fulfilling the Korean Government's oft-repeated statement that it will not allow imported table rice to be directly marketed to Korean consumers. In addition, Korea, once again, has allowed shipments of the 1999 minimum access purchases to extend into 2000. This unilateral Korean action has raised questions about Korea's compliance with its WTO obligations. The U.S. Government also is concerned with Korea's recent statements that Korean rice policies are "off the table" in the new multilateral agriculture negotiations just begun in the WTO as provided for in the Uruguay Round agreements. The United States will continue to actively engage Korea to ensure its full compliance with its current obligations on rice and to press for further liberalization of Korean rice policies.

Oranges

Quotas on fresh oranges were liberalized in July of 1997 to permit out-of-quota imports. The in-quota tariff rate is, and will remain, 50 percent, and the out-of-quota rate was 74.5 percent in 1999, and will be 69.6 percent in 2000 and 50 percent in 2004. The in-quota quantity for 2000 will be 8,343 metric tons and will be expanded at an annual growth rate of 12.5 percent through 2004.

The Cheju Citrus Cooperative, a Korean producer group, has controlled the allocation of the in-quota quantity of Korea's orange tariff-rate quota (TRQ) regime. In the past, Cheju has filled the quota, with most of the imports coming from the United States. In 1999, however, the quota was not filled. Also in 1999, Korea decided to auction a portion of the quota, despite protests from the United States, based on concerns that an auction system would add costs beyond Korea's bound tariffs to entering its market.

Import Clearance Procedures

U.S. suppliers of food and agricultural products continue to encounter trade-impeding practices in Korean ports of entry, including on products for which market access was liberalized under bilateral or multilateral trade agreements. After WTO dispute settlement consultations with the United States between 1995 and 1999, the

Korean Government revised its import clearance procedures by; (1) expediting clearance for fresh fruits and vegetables; (2) instituting a new sampling, testing and inspection regime; (3) eliminating some non-science-based phytosanitary requirements; (4) beginning revisions of the Korean Food and Food Additives Codes, for example, by bringing Korean pesticide residue level standards for citrus into conformity with Alimentarius standards; and (5) requiring ingredient listing by percentage for major, rather than all, ingredients.

Specifically, in December of 1999, the Ministry of Health and Welfare (MHW) revised the ministerial ordinance of the Food Sanitation Act. This revision changed the food inspection period to two days for document review, three days for organoleptical testing, five days for random testing, and 10 days for laboratory testing. Food products requiring incubation testing will be held up to 18 days.

Also in 1999, the Korea Food and Drug Administration (KFDA) issued for public comment proposed revisions to the Food Code, the Food Additives Code, and Labeling Standards for Food. KFDA addresses many U.S. industry concerns in these proposals, including elimination of mandatory Korean language labeling of product type and of excessive restrictions on food. However, additional work will be needed to bring Korea's food code standards up to international standards, specifically those related to chocolate and food additives (*e.g.*, Korea has not effectively adopted the "generally recognized as safe" standard). The revisions to these codes/standards should be finalized by mid-2000.

In general, clearance times are still slow and procedures remain arbitrary. Surveys of U.S. trading partners in Asia indicate that import clearance for most agricultural products requires less than three to four days. In Korea, import clearance for new products still typically takes 10 to 18 days, and four to six months if a food additive is used that is not specifically recognized in Korea's Food Code for use in that product.

The Korean Ministry of Agriculture and Forestry (MAF), including its National Plant Quarantine Service and National Veterinary Research and Quarantine Service account for the greatest delays in import clearance. These MAF agencies are responsible for administering plant, animal and animal product inspection. MAF imposes numerous requirements that prohibit access – e.g., expansion of U.S. quarantine zones and definitions of quarantinable pests – or delay import clearance – e.g., incubation testing for non-quarantinable pests and product detention based on administrative errors on export certificates – all of which add costs for importers and, ultimately, for consumers.

The United States will continue its dialogue with the Korean Government on its import clearance procedures until clearance times in Korean ports of entry are comparable to those in other Asian ports and Korean procedures are based on science and consistent with international norms. (See also "Standards and Conformity Assessment Procedures.")

Customs Procedures

Korea Customs Service's (KCS's) repeated misclassification of potato preparations to the Harmonized System (HS) heading 1105 has essentially stopped U.S. exports of these products to the Korean market. Preparations of potato flour, flakes, granules or pellets should enter Korea in the unrestricted HS 2005 heading, with a current applied tariff rate of 20 percent and a bound rate of no more than 31.5 percent in 2004. Instead, KCS has been classifying these products in the more restrictive HS 1105, which is subject to a tariff-rate quota (TRQ) with an in-quota quantity of 60 metric tons and an over-quota tariff rate in excess of 300 percent.

Even after assurances by the Korean Government that U.S. potato preparations would enter Korea as preparations under HS 2005, and a letter in which the KCS agreed to classify potato preparations according to internationally recognized criteria, U.S. exporters continue to experience severe market access problems with respect to these products. The U.S. Government will continue to aggressively pursue a definitive resolution to this issue.

U.S. exports of soda ash also have been misclassified, thus resulting in a higher tariff.

In addition, the KCS rejects customs clearance applications on administrative grounds (wrong print, font size, erasure marks on application, etc.), thereby delaying the official start of the customs clearance process.

Finally, Korean regulations often require a local trade association consisting of local competitors to certify or approve import documentation. In addition to requiring the importer to pay a processing fee, which helps to fund the association, this rule requires importers to submit business confidential information to their local competitors.

STANDARDS, TESTING, LABELING AND CERTIFICATION

Standards and Conformity Assessment Procedures (Sampling, Inspection, Testing and Certification)

Korea maintains standards and conformity assessment procedures (sampling, inspection, testing and certification), *e.g.*, in the Korean Food and Food Additives Codes, that deviate from international norms, do not appear to be based on scientific risk assessment, and specifically target imports. In 1999, the Korea Food and Drug Administration (KFDA) began to revise the Food Code and Labeling Standards to bring them more into conformity with international standards. The United States has continually expressed concern with the Food Code's prohibition of the use of non-traditional foods in food and food manufacturing. The proposed revision to the Food Code makes some changes to the rules on food ingredients. But, more changes must be made to these codes to remove existing trade barriers. (See also "Import Clearance Procedures.")

Efforts thus far to obtain market access for in-shell walnuts have been stymied by Korea's insistence on the establishment of an onerous and unnecessary phytosanitary pre-clearance inspection program. The United States also continues to conduct pest risk analysis in an effort to overcome Korea's existing phytosanitary-based import bans on fresh potatoes, apples, pears and stone fruit.

On oranges, Korea's phytosanitary barriers hindered market access for citrus in 1999. Korea's National Plant Quarantine Service (NPQS) delayed in recognizing the U.S. Department of Agriculture's (USDA) lifting of certain quarantine restrictions, and has consistently expanded U.S. fruit fly quarantine zones to include entire counties rather than the scientifically-based areas established by USDA. The Korean Government's policies to expand and extend USDA quarantine zones are some of the most restrictive and onerous in the world. U.S. Government officials have engaged Korean Government officials on this quarantine zone issue through multiple written and verbal representations. The United States will continue to press Korea on this trade policy issue until it is resolved.

Korea continues to maintain government-mandated shelf-life requirements for items such as dairy products packaged in tabletop cartons and bottled water.

Korean Government agencies require pre-approval for pharmaceuticals, chemicals, computers, telecommunications equipment and many other products. Other countries require pre-approval for some products, but the range of products affected is exceptionally large in Korea, and companies must submit documentation that is extraordinarily detailed. Furthermore, in the past, the information provided in the pre-approval/certification process has not been adequately protected and sometimes is "leaked" to the press or competitors. The January of 2000 revisions to the Pharmaceuticals Affairs Act, which will be effective July 1, 2000, require that data provided for approval/certification be protected upon written request of the providing entity. Disclosure of such information will be punishable by fine and imprisonment. That said, the January revisions stipulate that the Korean Government is not required to protect data when it would be contrary to "public interest." It is unclear how Korea defines "public interest." (See also "Intellectual Property Rights Protection.")

U.S. cosmetic producers cite Korea's testing requirements as an impediment to trade. Korea requires animal toxicity data and does not accept a certificate of analysis from a U.S. firm as a substitute. (See also "Cosmetics.") However, on January 1, 1998, the KFDA abolished the annual testing requirement for imported cosmetics and authorized importers to perform the required self-testing, provided that they maintain records for each batch/shipment. In addition, in January of 2000, the KFDA eliminated requirements for pre-approval and local testing at the first importation. Foreign cosmetic manufacturers that have passed a facility inspection by the KFDA also are exempt from testing requirements for each batch.

In the pharmaceutical sector, recent regulatory changes promise to reduce somewhat the delays that companies have typically experienced in obtaining approval from the KFDA for the local sale of products developed outside of Korea. Specifically, the KFDA now permits firms to begin local clinical trials prior to issuance of a Certificate of Free Sale (CFS) by the country of origin. According to the Korean Government, KFDA regulations, finalized in December of 1999, on acceptance of foreign clinical data and approval of new drugs comport with "the spirit" of the International Conference on Harmonization (ICH) guidelines and therefore should render Korea's rules on foreign data and testing more science-based. However, the U.S. Government remains very concerned that requirements for bridging data or studies in the approval process for non-locally produced products could directly contradict ICH guidelines, thereby constituting an unfair barrier to pharmaceutical imports.

Questions also remain on whether implementation of the KFDA's new regulations will speed up drug approvals and reduce redundant additional local studies in another respect. Because the KFDA has no system to differentiate between U.S. prescription and non-prescription (over-the-counter) drugs and nutritional supplements, both types of pharmaceuticals are subject to the same rigorous testing and approval process. (See also "Intellectual Property Rights Protection" and "Pharmaceuticals.") The U.S. Government will continue to closely monitor all aspects of Korea's pharmaceuticals-related regulations.

Korea's motor vehicle standards and certification regulations are complex and excessive. Consistent with the 1998 U.S.-Korea Memorandum of Understanding (MOU) on market access for foreign motor vehicles, Korea has taken various steps to simplify and streamline its standards and certification procedures, including by allowing motor vehicles into the Korean market that conform to the U.S. headlamp standard. The Korean Government has said that by October of 2000 it will join the Global Agreement so that it can actively participate in the international harmonization of motor vehicle standards. However, the U.S. Government remains very concerned about certain standards and certification issues, including the following: (1)

the potential application of new standards to minivans when they are reclassified as passenger vehicles; (2) the ROKG's plan to implement a pass-by-noise standard that does not comply with the provisions in the 1998 MOU; and (3) and the need for prior government approval for the use of remote keyless entry systems, and the associated burdensome documentation requirements. The U.S. Government also is closely monitoring the Korean Government's actions in developing a manufacturer-driven, or self-certification system, which Korea committed to implementing by 2002.

As a condition of its IMF economic stabilization program, the Korean Government has committed to accelerate harmonization of its certification procedures with WTO standards and to strengthen the implementation of these procedures. The Korean Government completed action, *i.e.*, revisions to law, decrees and/or regulations, in 51 out of 56 cases targeted for amendment. Whether or not these changes are liberalizing trade remains to be seen. The areas in which action is still pending include electric appliance safety and telecommunications.

Labeling Requirements

U.S. exporters cite Korea's nontransparent and burdensome labeling requirements as barriers to entry. These requirements are often arbitrarily enforced.

In 1999, the U.S. Government worked with KFDA officials to gain acceptance of foreign language labels if they meet the regulatory labeling requirements of the originating country. In November of 1999, the KFDA released for public comment its proposed new food labeling standards. The process to finalize and implement new food labeling standards should be completed by the summer of 2000.

The Ministry of Environment (MOE) approved new packaging and labeling standards on food in 1999, and will implement them in 2001. These new standards are aimed at reducing the use of PVC-shrink wraps to protect the environment. The U.S. Government will monitor this issue carefully.

In 1999, the Korean National Assembly passed legislation authorizing the Ministry of Agriculture and Forestry (MAF) and the KFDA to label food products enhanced through biotechnology – more commonly known in Korea as genetically modified organisms (GMOs). In November of 1999, MAF issued proposed labeling standards for unprocessed GMOs for public comment. MAF has the authority over labeling requirements on unprocessed GMOs, but not over the conduct of safety assessments on such products. If adopted in their current form, the proposed labeling standards, which mirror those appearing in Europe, would become effective in March of 2001. The standards would initially apply only to corn, soybeans and soybean sprouts. The KFDA has not yet issued, but is in the process of drafting, labeling standards for processed products made from ingredients produced through biotechnology.

GOVERNMENT PROCUREMENT

Korea began implementing the WTO Agreement on Government Procurement (GPA) on January 1, 1997. As part of its GPA commitments, Korea agreed to cover procurement of goods and services over specific thresholds by numerous Korean central government agencies, provincial and municipal governments and some two dozen government-invested companies. The annexes to Korea's GPA membership package specify the value thresholds in SDR terms for coverage of procurement contracts under the Agreement. Korea's Annexes to the GPA can be found on the WTO website.

Korea's coverage under the GPA does not extend to procurement related to, among other things, national security and defense, Korea

Telecom's purchases of telecommunications commodity products and network equipment and procurement of satellites (for five years from entry into force of the GPA for Korea). Purchases by the Korea Electric Power Corporation (KEPCO) are covered, with the exception of certain equipment.

Since 1997, the U.S. Government has received complaints from U.S. companies that entities responsible for procurement for the Inchon International Airport (formerly the Korea Airport Construction Authority (KOACA), now the Inchon International Airport Corporation (IIAC)), discriminate against foreign firms in bidding for projects. These procurement practices, such as the use of domestic partnering, short deadlines and certain licensing requirements, restrict the ability of U.S. firms to participate in bidding opportunities and win contracts.

U.S. officials repeatedly raised this issue in the WTO Government Procurement Committee and in bilateral consultations throughout 1997 and 1998. Korea denies that entities responsible for procurement for the Inchon Airport are subject to its obligations under the GPA. As Korea's position on this issue remained unchanged, the U.S. Government requested consultations under WTO dispute settlement procedures and consultations were held on March 17, 1999. On May 11, 1999, the United States requested the establishment of a WTO dispute settlement panel, which was formed on September 8, 1999, to clarify Korea's obligations with respect to this entity. The meetings of the panel were held in October and November of 1999, and the panel is scheduled to circulate its report in April of 2000.

EXPORT SUBSIDIES

In the past, Korea has aggressively promoted exports through a variety of policy tools. However, in the WTO, Korea committed to phasing out those subsidy programs not permitted under the WTO Agreement on Subsidies and Countervailing Measures.

Under its IMF economic stabilization package, Korea eliminated, earlier than originally planned, four WTO-prohibited subsidies. In addition, Korea is rationalizing its overall subsidies regime, including by notifying information about 19 of its programs to the WTO, as required by WTO reporting obligations, and by reducing the benefits available in 68 others.

INTELLECTUAL PROPERTY RIGHTS PROTECTION

While Korea has taken some steps to strengthen its intellectual property protection laws and enforcement, in 1999 it remained on the Special 301 "Watch List."

Pursuant to its obligations under the WTO Agreement on Trade-Related Aspects of Intellectual Property Rights (TRIPS), Korea passed four acts (patent, utility model, design and trademark) in December of 1995, and implemented new copyright, computer software and customs laws in 1996. In 1997, the trademark law was amended to afford protection to three-dimensional trademarks (registered in Korea only). On March 1, 1998, the revised trademark law became effective and the new patent court was established.

The Korean National Assembly passed a revised copyright law on December 7, 1999, which is due to become effective July 1, 2000. The revisions to the law pertain mostly to transmission rights, reproduction in libraries, penalties and calculation of damage for purposes of compensation. The U.S. Government has significant concerns about this copyright law and will press the Korean Government until these concerns have been satisfactorily addressed.

In December of 1999, the Korean National Assembly also revised the Computer Program Protection Act (CPPA), and in so doing, did not provide any opportunity for public comment. The revisions made to the law will become effective on July 1, 2000. The U.S. Government has serious concerns about the CPPA amendments on decompilation, protection against circumvention, registration of exclusive licenses, and others. MIC will begin drafting implementing language for the revised CPPA beginning in February of 2000. MIC officials have given assurance that foreign industry/government input will be solicited. The U.S. Government will continue to press the Korean Government to ensure that U.S. concerns about the revised CPPA are satisfactorily addressed.

In July of 1997, the Korean Patent Act and Utility Model Act were amended to streamline the examination and appellate process and to boost monetary penalties for cases of patent infringement from 20 million Korean *won* to 50 million Korean *won*. U.S. industry believes that deficiencies remain in the interpretation of claims and in the treatment of dominant and subservient patents. Additionally, Korea's recognition of international ownership of foreign patents has been inconsistent, and approved patents of foreign patent holders have been vulnerable to infringement.

In January of 1999, new legislation became effective that provided patent term extension for certain pharmaceutical, agrochemical and animal health products, which are subject to lengthy clinical trials and domestic testing requirements. In the past, the term of patent protection was lost due to delays in the regulatory approval process. The Korean Government has indicated that both imported and locally manufactured drugs are now equally eligible for such patent term extension**.**

Korea still fails to provide full retroactive protection to pre-existing copyrighted works as required under the WTO TRIPS Agreement and adequate and effective patent and trademark protection. The copyright law only provides protection for cartoon characters that possess artistry and creativity. The trademark law does not protect some famous U.S. cartoon characters because they have not been registered as trademarks with the Korea Industrial Property Office (KIPO). Korean courts, in recent decisions, have consequently declined to extend protection to those cartoon characters, as well as to certain textile designs.

There has been some improvement over the past several years on the removal of pirated and counterfeit goods from the Korean market. Through administrative guidance, Korea curtailed the copying and unauthorized selling of certain U.S. copyrighted works created before 1987. Korea also established "special enforcement periods," during which significant resources were devoted to raids, prosecution and other copyright enforcement activities. In 1999, the Supreme Prosecutor's Office initiated a special enforcement period from March through the end of the year. The Office reports 33,338 infringements cases in calender year 1999 (up about 92 percent from 1998) and 1,737 imprisonments (up about 30 percent from 1998).

However, the U.S. software industry reports that foreign software has been largely excluded from the enforcement efforts targeted at the public sector. U.S. businesses and industry groups also report that software piracy by large Korean corporate end-users remains a significant problem. Piracy for home-use and by educational institutions reportedly continues to be a problem as well, and U.S. firms state that they continue to have difficulties bringing law enforcement action against "small-scale" infringers. Finally, although the Korean Government has taken action to reduce illegal software usage in the government, U.S. industry questions the effectiveness of these efforts and remains concerned about the sustainability, transparency and deterrent effect of Korean

Government enforcement efforts with respect to computer software.

Although Korean laws on unfair competition and trade secrets provide some trade secret protection in Korea, these statutes remain deficient. For example, U.S. firms, particularly some manufacturers of chemicals, candy and chocolate, face continuing problems with government regulations requiring submission of very detailed product information, *i.e.*, formulae or blueprints, as part of registration or certification procedures. U.S. firms report that although the release of business confidential information is forbidden by Korean law, submitted information has not been given sufficient protection by government officials and, in some cases, has been made available to Korean competitors or to their trade associations.

The Korean Government has taken some modest steps to remedy data protection problems that affect pharmaceuticals. In February of 1999, the KFDA reinstated the reexamination period that provides *de facto* data protection for four to six years. Additionally, in January of 2000, the National Assembly passed an amendment to the Pharmaceutical Affairs Act that provides for the protection of data submitted to the Korean Government when the submitting company requests such protection. However, the amendment stipulates that the Korean Government is not required to protect data when it would be contrary to "public interest." It is unclear how the Korean Government defines "public interest," and under what circumstances the special exception might apply.

A remaining problem is the lack of coordination between Korean health and safety (KFDA) and intellectual property (KIPO) officials, allowing products that infringe existing patents to be approved for marketing. The Korean Government has not addressed U.S. concerns on this issue, and recently, refused even to engage in discussions of this issue with the relevant authorities.

A new trademark law, which became effective March 1, 1998, contains provisions for prohibiting the registration of trademarks without the authorization of foreign trademark holders by allowing examiners to reject registrations made in "bad faith." However, the legal procedures that U.S. companies must pursue in order to have infringing trademarks canceled are complex, time-consuming and costly. This has discouraged U.S. companies from pursuing legal remedies to address infringement. As such, significant problems still remain with respect to "sleeper" trademark registrations.

Korea has long been a source of exports of infringing goods. Textile designs generally receive protection under Korean design law, not copyright law. However, additional protection for textile designs was afforded in the recently revised Copyright Act, which goes into effect on July 1, 2000. Protections still remain inadequate, however, and some Korean companies pirate U.S.-copyrighted textile designs and export them to third countries, where they compete with genuine U.S.-produced goods. The U.S. Government continues to urge Korean Government officials to increase their efforts toward stopping exports and imports of counterfeit goods in third country trade.

Amendments to the Design Act became effective on March 1, 1998. Under these amendments, KIPO made industrial designs more competitive by extending the duration of the design right and simplifying the design application procedures. A new design registration system was introduced to enable applications for textiles to be registered without examination. This system has resulted in a proliferation of unauthorized registrations of U.S. textile designs.

The U.S. Government has made it clear to the Korean Government in the negotiations on a

Bilateral Investment Treaty (BIT) that the issues raised with respect to Korea's TRIPS consistency must be resolved before we can sign a BIT, especially with respect to copyright protection and protection for pharmaceutical patents and test data.

SERVICES BARRIERS

Korea continues to maintain restrictions on some service sectors through a "negative list." In these sectors, foreign investment is prohibited or severely circumscribed through equity or other restrictions. (See also "Investment Barriers.")

Construction

The construction and engineering markets in Korea were open to foreign competition on January 1, 1996. In 1997, foreign companies also became eligible to bid on public projects, including the massive social overhead capital projects designed to improve basic infrastructure in Korea. Firms still report problems with attempts to renegotiate accepted bid prices, as well as with registration and bonding procedures.

Three separate registration procedures are available to foreign companies: construction, construction supervision and design. The requirements for registration are burdensome because they involve hundreds of pages of documentation.

Foreign companies are required to deposit $250,000 (previously $800,000) as a bond with the Korean Construction Mutual Aid Association in order to obtain a certificate of registration from a Korean regional government. This requirement significantly increases the start-up cost for foreign companies interested in registering in Korea. The Korean Government has stated that the cash bond will be abolished in 2000.

Advertising

The government-affiliated Korean Broadcasting Advertising Corporation (KOBACO) has a monopoly over the allocation of television and radio advertising time. Recently, KOBACO has demonstrated considerable flexibility in offering packages to meet advertisers' needs. U.S. firms reported that KOBACO significantly increased the availability of airtime in lengths other than the Korean standard of 15 seconds, but that the pricing for non-standard time-lengths is financially unattractive. U.S. firms also noted that most packages are offered on a monthly basis, and that spot buying is allowed only when there is unsold airtime. This limits advertisers' ability to run short-term campaigns and to tailor their media delivery. Although the Korean Government proposed allowing in-program advertising, the National Assembly rejected the proposal.

The Korean Broadcasting Commission (KBC) controls advertising censorship procedures, which are nontransparent. The laws and regulations laying out these procedures are very broad and therefore allow considerable subjectivity in interpretation. All television and radio advertising must first be submitted in its final, fully produced form for censorship by the KBC, rather than at the "storyboard" stage. The unpredictability of the censorship process considerably increases the risk and costs of developing new advertising campaigns and of introducing new products.

In some product categories, *e.g.*, cosmetics, the Ministry of Health and Welfare (MHW) allows the local manufacturers' association to review advertising copy in advance of airing or publication. The approval guidelines again are broadly interpreted, and the process notifies competitors of future marketing activity, including for new products. For cosmetics and pharmaceuticals, "before and after" demonstrations of product effectiveness are not permitted. Direct efficacy claims for pharmaceuticals and over-the-counter medicines are not permitted. In addition, advertising of prescription drugs to the general public is prohibited.

Screen Quota

By requiring that domestic films be shown in each cinema a minimum number of days per year (currently, 146 days with reductions to 106 days possible if certain criteria are met), Korea imposes a screen quota on imported motion pictures. The quota acts as a deterrent to trade, cinema construction and to the expansion of theatrical distribution in Korea. In January of 1999, the National Assembly passed a resolution that a relaxation of the screen quota should only be considered if and when Korean films achieve a 40 percent market share. As a result of several Korean blockbuster movies and an infusion of new directorial talent, Korean films nearly achieved the 40 percent market share target in 1999. The screen quota issue has been part of Bilateral Investment Treaty (BIT) negotiations between the United States and Korea.

Foreign Content Quota for Free Terrestrial TV

Korea restricts foreign activities in the audiovisual sector by limiting the percentage of weekly broadcasting time (not to exceed 20 percent) that may be devoted to imported programs.

Foreign Content Quota for Cable TV

Cable channels may devote only 50 percent of airtime to foreign sports, science and documentary programs. All other types of foreign programming, including movies, are subject to an even stricter quota of 30 percent. These quotas are applied on a per-channel basis. Given the strict quota, the existence of only two movie channels and a requirement that cable TV programming and advertising must be translated into Korean, the Korean Government has severely limited the market for foreign programming. However, beginning March 13, 2000, under the new Integrated Broadcast Law, which was passed on December 28, 1999, the Korean Broadcasting Commission (KBC) will have the authority to approve foreign programming without regard to whether it is translated into Korean. Moreover, the Integrated Broadcasting Law provides for the replacement of the current licensing system for cable TV program providers with a simplified registration system in 2001. This should make it easier for Korean program providers to establish additional channels and enhance their ability to provide more foreign programming. The U.S. Government will closely monitor the changes resulting from the new Integrated Broadcasting Law.

Satellite Re-transmission

The Integrated Broadcast Law also mandates that Korean firms that wish to re-broadcast satellite transmissions of foreign programmers must make a contract with the foreign program providers in order to obtain approval from the KBC. Presently, the Korean Government and Korean firms are operating under the assumption that fees for such retransmissions need not be paid.

Accounting

Foreign Certified Public Accountants's (CPA's) can work as accountants in Korea, provided that they meet the following requirements: (1) obtain Korean certification; (2) complete a two-year internship; and (3) register with the public accountants association. These are the same requirements that Korean nationals must meet in order to practice as CPAs.

In order to establish an accounting firm in Korea, the company must be comprised of at least five Korean-certified accountants/partners. Any established accounting firm in Korea is prohibited from making an investment in, or providing a debt guarantee to, any other firm in excess of 25 percent of the accounting firm's paid-in-capital. There are no restrictions with respect to the naming of an accounting firm in Korea as long as the firm (1) meets the legal criteria for establishment, *i.e.*, a minimum of five of the partners must be Korean-certified accountants; and (2) attaches "accounting firm" to the end of its name.

Engineering

In December of 1998, the Ministry of Science and Technology (MOST) abolished the "technology filing system," under which MOST reviewed applications by domestic and foreign entities to provide engineering services on a case-by-case basis. There are no mandatory restrictions on foreign engineering services specified in Korean law or regulation. However, procuring agencies (national, local and private) can specify particular conditions/requirements for engineers and engineering services depending on the nature of the project. In this regard, specifications can be written for engineering services from firms that are locally established, which could be problematic.

Except in the area of architectural design, the Ministry of Construction and Transportation (MOCT) imposes no requirements that engineering services be provided on a joint venture basis. Foreign engineers must "file" with MOST and receive approval from that ministry before being able to provide engineering services in Korea. The criteria MOST uses to review foreign engineer filings are similar to those applied to applications from Korean nationals. Foreign engineering firms are free to hire locally qualified/certified engineers.

Legal

At the time of Korea's accession to the OECD in 1996, the Korean Government amended the "Lawyers Act" to permit non-Koreans to be licensed to practice law in Korea, provided that they meet the same criteria that are applied to Korean nationals. The Korean Government also amended the "Regulation on Foreign Investment" in 1997, so as to allow for foreign investment in the legal sector. Any individual not qualified as a lawyer under Korean law is prohibited from providing legal services to Korean and foreign clients in Korea, and from establishing a law firm/office in Korea. In Korea, there is no provision for "foreign legal consultants," although in practice there are many foreign attorneys in Korea who perform a legal advisory function of sorts.

Financial

Korea agreed to bind its OECD commitments on financial services market access in the WTO as a condition in its IMF economic stabilization package. In January of 1999, Korea provided WTO members with a revised and somewhat improved schedule of financial services commitments that entered into force as of September of 1999. The U.S. Government will continue to work with Korea to ensure that it meets its WTO and OECD financial services commitments, and to bring about more liberal treatment of foreign financial services providers.

Insurance

After Japan, Korea is the second largest insurance market in Asia, with $43.4 billion in premiums paid in the fiscal year ending March of 1999. The environment for foreign insurance companies has improved considerably since Korea implemented a series of regulatory changes after its 1996 accession to the OECD. Korea incorporated many of these changes, including expanded market access and national treatment, into the 1997 WTO Financial Services Agreement.

The 1997-98 financial crisis led to a restructuring of the Korean insurance industry. In 1998, the newly established Financial Supervisory Commission (FSC), which is a unified financial services regulatory authority intended to be independent of the Korean Government, revoked the licenses of four life insurance companies and merged two existing surety and fidelity insurance companies on the grounds of insolvency. In addition, 16 life and non-life insurance companies entered FSC-supervised workout programs. (A workout program is a voluntary, out-of-court debt restructuring framework, which may or may not involve government oversight.)

The Korean Government is gradually liberalizing foreign entry into the life and non-life insurance markets and has lifted some restrictions on partnering with Korean insurance companies and on hiring Korean insurance professionals. In April of 1998, Korea liberalized insurance appraisal and activities ancillary to the management of insurance and pension funds. Korea's brokerage market was opened to foreign firms in April of 1998. Several foreign reinsurance firms have since entered the market.

Banking

The Korean banking sector is undergoing structural reform aimed at ending the policy-directed lending of the past. The Korean Government has committed to refrain from interfering in bank lending and management decisions, except with regard to prudential supervision. It is important to note, however, that in the aftermath of the economic crisis, the Korean Government nationalized many of its commercial banks. Currently, three of these banks remain nationalized. The Korean Government retains a majority ownership in several of the largest commercial banks in Korea and a significant stake in a number of others, including a 49 percent share of Korea First Bank. However, late in 1999, the Korean Government approved a sales contract for Newbridge Capital to acquire 51 percent of Korea First Bank.

Foreign banks are currently allowed to establish subsidiaries or direct branches. In 1998 and 1999, the Korean Government opened the capital markets to foreigners, permitting foreign financial institutions to engage in non-hostile mergers and acquisitions of domestic financial institutions.

Korea continues to limit the operations of foreign bank branches based on local-capital versus parent-bank capital. These limits affect: (1) loans to individual customers; (2) foreign exchange trading; and (3) foreign-bank capital adequacy and liquidity requirements. Foreign banks are subject to the same lending ratios as Korean banks, requiring them to allocate a certain share of their loan portfolios to Korean companies other than the top five *chaebol*s and to small and medium enterprises.

All banks in Korea continue to suffer from a non-transparent regulatory system and must seek approval before introducing new products and services – an area where foreign banks are most competitive. The foreign exchange market continues to be heavily regulated, with tight controls on the introduction of new instruments, where U.S. banks would be especially competitive. The Korean Government temporarily lifted some restrictions during the financial crisis, for example, allowing foreign banks to increase their swap lines as a way to generate additional foreign exchange. Although the Korean Government has said that it has no plans to decrease the existing lines, Korea's huge foreign exchange reserves, which could reach $100 billion in 2000, could prompt the Government to do so. The interbank money market is still underdeveloped and is not a stable source of funding for foreign bank activities.

The April 1999 foreign exchange law liberalized foreign exchange, import and export transactions. The new law will deregulate the foreign exchange market by liberalizing primary corporate transactions, including, *inter alia,* capital transfers and bank certification requirements for settling trade finance by December 31, 2000. In July of 1998, the Korean Government dropped restrictions on capital transactions, including limits on capital imports under deferred payment arrangements.

Securities

The Korean Government places no limits on foreign ownership of listed bonds or commercial paper, no longer restricts foreign ownership of securities traded in local markets and has almost entirely removed foreign investment ceilings on Korean stocks. In the case of state-owned companies, aggregate foreign investment limits now are 25 to 33 percent, while individual investor limits are three to fifteen percent. These limits are scheduled to be raised, but not completely abolished. Despite considerable liberalization, foreign securities firms in Korea continue to face some non-prudential barriers to their operations.

Foreign-based, non-financial businesses in Korea are subject to high cost procedures and restrictions, inappropriate to Korea's level of development and financial sophistication. For instance, virtually all inter-company transfers are subject to certification, a cumbersome, costly and unnecessary requirement, particularly for transactions between subsidiaries.

INVESTMENT BARRIERS

The Kim Dae Jung Government made a strong commitment to create a more favorable investment climate and to facilitate foreign investment. The centerpiece of its effort is the 1998 Foreign Investment Promotion Act (FIPA). The FIPA: (1) increased the number of business sectors open to foreign investment (currently, only four remain closed and 17 partially closed to FDI); (2) provided more tax incentives; (3) simplified investment procedures; and (4) established Foreign Investment Zones. The Korean Government must automatically approve a foreign investor's notification unless the activity appears on an explicit "negative list" or is somehow related to national security, the maintenance of public order or the protection of public health, morality or safety.

One of the most significant liberalization steps that the Korean Government has taken is the revision to the Alien Land Registration Acquisition Act of 1998, to remove restrictions on the direct purchase of land by foreigners. Non-Koreans, however, still cannot produce some agricultural products for commercial purposes, nor can agriculturally-zoned land be taken out of agricultural production.

Also, since May of 1998, foreigners can purchase 100 percent of the target company's outstanding stock without consent of its board of directors.

As noted above, capital market reforms have eliminated some ceilings on aggregate foreign equity ownership and individual foreign ownership and limits on foreign investment in the government, corporate and special bond markets, and have liberalized foreign purchases of short-term financial instruments issued by corporate and financial institutions. However, the Korean Government still maintains foreign equity restrictions with respect to investments in Pohang Iron and Steel Company (POSCO), KEPCO, Korea Telecom, and many types of media, schools and beef wholesaling.

While the more liberalized Korean investment regime has increased U.S. investor interest in Korea, additional changes, *e.g.*, tax exemptions, enhanced labor-market flexibility, better intellectual property protection and a more transparent regulatory environment, could greatly improve Korea's attractiveness as a destination for foreign investment.

Korea has not notified the WTO of any measures that are inconsistent with its obligations under the WTO Agreement on Trade-Related Investment Measures (TRIMS).

ANTI-COMPETITIVE PRACTICES

Competition Policy

The Korea Fair Trade Commission's (KFTC's) role as enforcer of Korea's competition law and advocate of competition policy and corporate restructuring has continued to expand. KFTC powers to conduct investigations and to impose tougher penalties were enhanced in January of 1999 with the passage of the revised Fair Trade Act. The Act was subsequently revised on December 28, 1999, to reinstitute inter-subsidiary equity investment ceilings of 25 percent of paid-in capital. This regulation, which targets the *chaebols*, had been dropped in February of 1998 to facilitate corporate restructuring. The Act also raised penalties for illegal inter-subsidiary trading from two percent of sales to five percent of sales. The KFTC'S longer-term objectives continue to include installing a more transparent, rules-based system that is conducive to, and consistent with, a free and competitive market-based economy.

The KFTC's deregulation task force has actively participated in the Administration's efforts to cut by nearly half the roughly 11,000 government regulations in force in 1998.

The KFTC continues to use its powers to investigate the *chaebols*, particularly the five largest, to help the government to achieve its corporate reform objectives. In the most noteworthy example, in July of 1998, the KFTC imposed on the "Big Five" fines totaling approximately $60 million for illegally subsidizing subsidiaries. The *chaebols* are appealing this decision through the court system. In February of 1999, the KFTC also fined five mid-ranking *chaebols* approximately $15 million for illegally subsidizing subsidiaries.

Despite the heightened level of enforcement activity by the KFTC, it still has a weaker position in the Korean Government relative to the powerful industrial ministries. For competition policy to take root in Korea, a stronger KFTC is a prerequisite. The KFTC's opaque and arguably uneven application of the Fair Trade Law also undercuts its credibility in Korea and abroad. For example, the KFTC seems to have taken a rather passive attitude towards reviewing the so-called "Big Deals" (corporate swaps pushed by the Korean Government), that would seem to raise competition policy issues in Korea.

ELECTRONIC COMMERCE

Korea's Electronic Commerce Basic Law and the Electronic Signatures Law went into effect on July 1, 1999. These acts encourage private sector development of electronic commerce in Korea and codify authorization of electronic signatures as legally binding on consumers and businesses. Korea stated its intention not to impose customs duties on the flow of information by electronic means in the U.S./Korea Joint Statement on Electronic Commerce signed in November of 1998.

In 2000, the Korean Government anticipates enactment of additional laws to support electronic commerce, including laws covering the security of electronic transactions and electronic payment systems. The U.S. Government will continue to coordinate with Korea to foster the development of electronic commerce in accordance with guidelines set forth in the joint statement.

OTHER BARRIERS

Lack of Transparency

Fundamental to the transparency of Korean laws, regulations, decrees, guidance and other subordinate rules is the availability of these documents in official translations. The Korean Government has repeatedly refused to provide such translations, or else disputed translations that have been published by its own ministries. When the U.S. Government has attempted to resolve a trade dispute involving a Korean law or subordinate rule, Korean officials have avoided dealing with the barrier built into the law or rule by arguing that the U.S. Government is using an unofficial or incorrect Korean or U.S. translation. Trade disputes cannot be expected to be equitably resolved under such circumstances.

Many Korean trade-related laws and regulations lack specificity. Their implementation is directed by internal guidance, which is developed by the relevant ministries and rarely published. In some cases, the regulations themselves are not made public. Korean port officials exercise a great deal of discretion in applying the broad rules in the laws and regulations. This leads to inconsistency of application and often the most trade restrictive application, as well as uncertainty among business interests.

Imported food products remain particularly susceptible to capricious interpretation of ambiguously worded labeling and product categorization standards. Headquarters' intervention is too often required to clear a product through port inspection, at great time and monetary cost to the importer and ultimately, to the consumer.

The Korean Government has failed to produce advance or timely notice of changes to laws and regulations, either in domestic official publications or in the WTO. This has precluded interested parties from commenting on the effect of the proposed changes and/or made it difficult or impossible for foreign companies to adjust to the new rules when they are implemented. One recent example is the Korean National Assembly's passage of a revised Computer Programs Protection Act (CPPA) without prior notice and without providing for the opportunity for public comment.

While progress has been made on transparency issues, *e.g.*, by the Korea Food and Drug Administration (KFDA) in its approach to revamping Korea's Food and Food Additive Codes and labeling standards, additional improvement is necessary to ensure that lack of transparency no longer impedes trade.

Frugality Campaigns and Anti-Import Bias

Frugality campaigns, ostensibly directed at individual consumption but effectively targeting imported goods, are another barrier that U.S. firms face in Korea. The Korean Government has denied involvement in the anti-import aspect of the frugality campaign, but some U.S. firms complain that Korean officials continue to take arbitrary actions that impede imports. Furthermore, Korean Government agencies have reported imports of sports equipment and motor vehicles as "luxury goods," or failed to correct the record when the Korean media describes imports as "luxury goods." Labeling imports as "luxury goods" means attaching a negative connotation to the purchase of such goods by Korean consumers, thereby contributing to anti-import bias. At the December of 1999 consultations between the U.S. and Korean Governments on the implementation of the 1998 Memorandum of Understanding (MOU) on market access for foreign motor vehicles, U.S. Government officials noted a number of instances in which the Korean media has published stories that leveled criticism at imports or their owners.

While the Korean Government has taken action to address instances of anti-import activity and to promote a better understanding among Korean citizens of the benefits of free trade and open competition, as required under the 1998 MOU, U.S. industry and U.S. Government concerns about anti-import bias in Korea have heightened recently. In February of 2000, a high level Korean Government official was reported as publicly cautioning against the growing level of imports in Korea. In addition, non-government Korean organizations continue to engage in activity targeting foreign commercial interests. Hyundai, for example, issued a public statement against a U.S. motor vehicle company that has demonstrated an interest in investing in Korea.

A poll conducted by an international marketing firm in the fall of 1999 revealed that almost 60 percent of Koreans still believe that purchasing a foreign car would be detrimental to Korea. It is clear that persistent economic nationalism will continue to create fertile ground for Korean frugality campaigns oriented against imports. The U.S. Government has told the Korean Government that the import motor show scheduled for May of 2000 is an opportunity for Korea to demonstrate that the pattern of anti-import bias against foreign motor vehicles is changing for the better. The United States will continue to aggressively urge the Korean Government to end anti-import activity in Korea and to actively on a sustained basis contribute to Korean citizens' understanding of the benefits of free trade and open competition to the Korean economy.

Motor Vehicles

In the October 1, 1997 Super 301 report to Congress, the U.S. Trade Representative (USTR) identified Korean barriers to motor vehicles as a Priority Foreign Country Practice (PFCP). On October 20, 1997, the USTR initiated a Section 301 investigation with respect to certain acts, policies and practices of the Government of the Republic of Korea that posed barriers to imports of U.S. autos into the Korean market.

After intense bilateral negotiations, on October 20, 1998, the United States and Korea concluded a Memorandum of Understanding (MOU) to improve market access for foreign motor vehicles. Under this MOU, Korea agreed to: (1) bind in the WTO its 80 percent applied tariff rate at eight percent; (2) lower some of its motor-vehicle-related taxes and to eliminate others, including through the development of a long-term plan to substantially reduce the tax burden on motor vehicle owners; (3) streamline its standards and certification procedures and adopt a manufacturer-driven self-certification system by 2002; (4) establish a new mortgage mechanism to make it easier to purchase motor vehicles in Korea; and (5) actively and expeditiously address instances of anti-import activity and proactively educate Korean citizens on the benefits of free trade and competition. As a result of the Korean Government's commitment to undertake these measures, the USTR terminated the Section 301 investigation, but continues to closely monitor Korea's implementation of the 1998 MOU through regular detailed consultations and dialogue between consultations.

The first formal review of Korea's implementation of the 1998 MOU took place in April of 1999, six months after the conclusion of the agreement. In December of 1999, the U.S. and Korean Governments met again for detailed consultations on the steps that Korea has taken and will take to implement this agreement. While implementation of some of the specific MOU provisions is "on track," the U.S. Government is seriously concerned about: (1) low import sales (only 2,401 foreign vehicles sold in Korea in 1999, representing less than one-fifth of one percent of the market); (2) the lack of meaningful restructuring in the Korean motor vehicle sector; (3) ongoing instances of anti-import activity, including statements made recently by a high level Korean Government official; (4) the lack of a long-term plan to further reduce and eliminate reliance on engine-displacement-based taxes; (5) standards/certification and other tax issues, such as the potential application of new standards to minivans when they are reclassified as passenger vehicles, the timing of tax rate increases associated with reclassification, the Korean Government's plans on pass-by-noise and others. In addition to working to ensure Korea's compliance with the MOU in these areas, the U.S. Government also will monitor the implementation of the new mortgage system, and work with the Korean Government as it develops its self-certification system, which is to be implemented by 2002, per the MOU. Formal consultations will continue throughout 2000 and beyond.

As referenced above, corporate restructuring efforts undertaken thus far in Korea have yielded little change in the structure of industrial sectors, including motor vehicles and others (steel and shipbuilding). The U.S. Government has noted in representations to the Korean Government that for restructuring to be considered meaningful it must yield efficient, market-driven companies, and the process through which it is carried out must be open, transparent, treat foreign creditors equitably and comport with Korea's international obligations. The U.S. Government will continue to monitor restructuring efforts in the Korean motor vehicle and other sectors as the outcome of such efforts is directly related to the extent to which U.S. and other foreign companies are afforded fair access to Korea's market, and to which foreign companies are competing with Korean firms on a "level playing field."

Pharmaceuticals

U.S. concerns on trade in pharmaceuticals with Korea have included: (1) discrimination in the Korean reimbursement pricing system for innovative pharmaceuticals; (2) lack of protection of intellectual property rights (IPR), particularly with respect to clinical data and patents (see also "Intellectual Property Rights Protection"); and (3) burdensome and non-science-based Korean regulatory requirements, particularly on acceptance of foreign and clinical test data and approval of new drugs.

USTR, in its 1999 Super 301 trade report, listed pharmaceuticals trade issues as the bilateral trade expansion priority on the U.S.-Korea agenda. Throughout 1999, the U.S. and Korean Governments had a number of letter exchanges and discussions regarding U.S. concerns about the discriminatory treatment of foreign research-based pharmaceuticals in Korea. As a result, the Korean Government has taken some steps to address U.S. concerns. In July of 1999, the Korean Ministry of Health and Welfare (MHW) began listing imported pharmaceuticals on the Korean national health insurance reimbursement schedule. In November of 1999, the MHW also introduced a new system to reimburse hospitals for drugs at actual transaction prices (ATP) to eliminate the illegal hospital margins that were applied only to domestic drugs. The reimbursement system that was in place before the implementation of the ATP system discouraged hospitals and other large end-users from buying imported drugs. Korea also has taken some minor steps to address U.S. concerns on data protection and regulatory issues. Korea eliminated the requirement for the submission of a Certificate of Free Sale before Phase III clinical trials can begin in Korea.

That said, Korea still maintains barriers to trade in pharmaceuticals. The pharmaceutical pricing system under Korea's national health insurance scheme has raised questions of discrimination against innovative drugs. In 1999, the Korean Government formed a task force to revisit its method for determining pharmaceutical reimbursement prices. At this stage, the Korean Government is considering the recommendation of the task force.

On IPR, TRIPS-consistency concerns have been raised about Korea's rules on clinical data protection. Also, concerns have been raised about Korea's failure to provide adequate and effective protection for pharmaceutical patents. Korea does not provide for effective coordination between health and intellectual property authorities and allows products that infringe existing patents to be approved for marketing in Korea. The Korean Government has not addressed U.S. concerns about this issue, and recently, refused even to engage with the relevant authorities in discussions of this issue with U.S. officials.

Finally, Korea has impeded market access for foreign pharmaceuticals by requiring redundant clinical testing in the drug approval process. The United States has emphasized the need for the Korean Government to follow through on its statements that it will implement international guidelines on the acceptance of foreign clinical test data, make the drug approval process for new drugs more science-based and shorten the overall drug approval process in Korea. The United States will continue discussions with Korea on pharmaceuticals trade issues.

Cosmetics

Impediments to entry and distribution of foreign cosmetic products in Korea have included the following: (1) the Korean Government's delegation of authority to the domestic industry association to screen advertising and information brochures prior to use; (2) provision of proprietary information on imports to Korean competitors; (3) redundant testing; (4) burdensome import authorization and tracking requirements (record keeping from import to sale); and (5) requirements for animal toxicity test data. During July and August of 1997, U.S. Government officials made representations to Korean Embassy officials on these and other barriers that were in effect at the time. The U.S. Government cited Korea's cosmetics-related measures as a bilateral priority in the 1997 Super 301 report.

As noted in the "Standards, Testing, Labeling and Certification," section, however, the Korea Food and Drug Administration (KFDA) has: (1) abolished the annual testing requirement for imported cosmetics; (2) authorized importers to perform the required self-testing, provided that they maintain records for each batch/shipment; and (3) eliminated requirements for pre-approval and local testing at the first importation. Also, foreign cosmetic manufacturers that have passed a facility inspection by the KFDA are exempt from testing requirements for each batch. The U.S. Government will continue to press the Korean Government in a variety of fora until U.S. concerns on its barriers to entry and distribution of cosmetics are satisfactorily addressed.

Steel

The United States has long been concerned with the Korean Government's extensive involvement in, and support for, Korea's steel sector and its steel-using industries. These policies led to substantial over-investment and overcapacity in Korea's steel industry and related sectors, and, in turn, export surges to the United States, especially during the recent Asian economic crisis. Korean Government-owned banks extended substantial "soft loans" to several steel producers, apparently without regard for creditworthiness. Korea accounted for nearly 20 percent of the substantial growth in U.S. imports of steel in 1998. While in 1999, U.S. imports of steel from Korea declined 14 percent from 1998, they remained 80 percent above the 1997 level.

In June and November of 1998, President Clinton stressed to Korean President Kim Dae Jung the need for the Korean Government to address U.S. concerns about steel. In high level exchanges of letters on steel issues, the Korean Government provided assurances that: (1) it will not direct or support Hanbo, one of the largest recipients of soft loans that went bankrupt in 1997; (2) the impending sale of Hanbo will be managed by an independent international agent and will be market-driven; (3) it will not provide any market-distorting subsidies to the steel sector; and (4) POSCO had abolished its dual pricing system and adopted transparent pricing policies that would not favor any end-user based on its role in the Korean economy or on its export orientation. In concert with efforts to reach agreement on these letters, the U.S. and Korean Governments launched a series of consultations to address U.S. steel concerns. On August 5, 1999, the White House also announced its Steel Action Program stating that the U.S. Government would undertake bilateral initiatives with steel exporting nations, including Korea, to address a broad range of unfair practices that support economically unjustifiable capacity.

In the post-crisis period, the Korean Government announced its intention to privatize POSCO by the end of 1999. The government did not accomplish this stated objective, but reduced its ownership stake in POSCO from 20 percent in 1998 to 14.74 percent at the end of 1999. Currently, the government-owned Korea Development Bank (KDB) holds 9.84 percent and the Korea Industrial Bank (KIB), of which the Korean Government owns 98 percent, has a 4.9 percent stake in POSCO. POSCO's size and current monopoly producer status in Korea of some key steel products continue to raise concerns of possible unfair and anti-competitive practices and the U.S. Government continues to urge expeditious and full privatization.

On March 9, 2000, Korean officials confirmed that Hanbo's creditors had agreed on a final legal contract for the sale of Hanbo to a consortium that includes U.S. interests. It is expected that the sale will not be final for some months. The U.S. Government will continue to monitor the Hanbo sale until it is completed, and will examine its terms to ensure that they are consistent with commitments made by the Korean Government.

The overall objectives of the ongoing dialogue between the U.S. and Korean Governments on steel continue to be: (1) expeditious, complete and market-based privatization of POSCO; (2) finalization of a market-based sale of Hanbo Steel and operation of the company without Korean Government direction or support; and (3) fair trade in steel products.

Telecommunications

In July of 1996, USTR identified Korea as a Priority Foreign Country (PFC) under Section 1374 of the 1988 Omnibus Trade and Competitiveness Act for failure to address a range of impediments in the Korean telecommunications market. Ensuing bilateral negotiations resulted in an agreement in 1997 in which Korea committed to ensuring that foreign telecommunications equipment suppliers would be treated fairly in areas including procurement, certification, type approval, protection of intellectual property and technology transfer.

In 1999, Korea began to plan for licensing third-generation wireless services. The U.S. Government has consulted with the Korean Government to ensure that the licensing process does not discriminate against service suppliers or equipment makers based on choice of technology and will continue to review Korean compliance with the 1997 agreement.

U.S. companies continue to face investment restrictions in Korea's telecommunications sector, for example with respect to telecommunications services providers, despite liberalization of investment restrictions implemented by the Korean Government since the 1990s. U.S. firms currently operate only as minority investors in telecommunications services providers in Korea. The U.S. Government will continue to engage the Korean Government to enhance access for U.S. companies in the telecommunications market in Korea.

MALAYSIA

TRADE SUMMARY

In 1999, the U.S. trade deficit with Malaysia was nearly $12.4 billion, an increase of $2.3 billion from the U.S. trade deficit of just over $10 billion in 1998. U.S. merchandise exports to Malaysia were $9.1 billion, an increase of $126 million (1.4 percent) from the level of U.S. exports to Malaysia in 1998. Malaysia was the United States' 17th largest export market in 1999. U.S. imports from Malaysia were $21.4 billion in 1999, an increase of $2.4 billion (12.8 percent) from the level of imports in 1998. The stock of U.S. foreign direct investment (FDI) in Malaysia in 1998 was $6.2 billion, a five percent decrease from the level of U.S. FDI in 1997. U.S. FDI in Malaysia is concentrated largely in the manufacturing, energy and financial sectors.

IMPORT POLICIES

Tariffs are the main instruments used to regulate the importation of goods in Malaysia. However, 17 percent of Malaysia's tariff lines (principally in the construction equipment, forestry, logging, agricultural, mineral, and motor vehicle sectors) are also subject to onerous import licensing designed to protect import-sensitive or strategic industries. Although the average applied MFN tariff rate has declined to approximately 9.45 percent, duties applicable to goods for which there is significant local production are often higher. For example, 14.2 percent of tariff lines in Malaysia's tariff schedule have rates over 20 percent, 23.6 percent of tariff lines have rates over 15 percent, and several lines have rates well over 100 percent, such as automobiles and motorcycles.

The level of tariff protection is generally lower on raw materials and increases for those goods with value-added content or which undergo further processing. Malaysia has been an active participant in multilateral and regional trade fora such as the World Trade Organization (WTO) and the Asia-Pacific Economic Cooperation (APEC) forum. Malaysia implemented the WTO Customs Valuation Agreement on schedule effective January 1, 2000.

Import Restrictions on Motor Vehicles

Malaysia maintains several measures to protect the local automobile industry, including high tariffs and an import quota and licensing system on motor vehicles and motor vehicle parts. In order to qualify for certain tax/tariff incentives for domestic production, companies are required to satisfy local content requirements of 45 to 60 percent for passenger and commercial vehicles, and 60 percent for motorcycles. Malaysia has requested an extension of these measures pursuant to the WTO Agreement on Trade-Related Investment Measures (TRIMS) (see "Investment Barriers" below). Malaysia has also requested an extension of its commitments under the ASEAN Free Trade Area (AFTA) to reduce tariffs in the auto sector by the year 2000. These restrictions have hampered the ability of U.S. firms to penetrate the Malaysian market.

Malaysia's 1998 fiscal year budget increased tariffs on a range of motor vehicles, and these rates continue to apply. Although the specific tariff depends on engine capacity, in general, the currently applied tariffs rates for completely built-up (CBU) and completely knocked-down (CKD) vehicles are as follows: 140-300 percent for automobiles (CBU); 80 percent for automobiles (CKD); 42-140 percent for vans (CBU); 40 percent for vans (CKD); 60-200 percent for four-wheel drive/multipurpose vehicles (CBU); 40 percent for four-wheel drive/multipurpose vehicles (CKD); 80-120 percent for motorcycles (CBU); and 30 percent for motorcycles (CKD).

Restrictions on Construction Equipment

In October 1996, Malaysia raised tariffs on construction equipment from five to twenty percent. In October 1997, Malaysia again raised tariffs and imposed an onerous licensing regime affecting imports of heavy construction equipment. In addition, the initial capital allowance tax deduction for imported heavy equipment was reduced from twenty to 10 percent in the first year, and the annual allowance was reduced from between 12 and 20 percent to 10 percent. Current applied tariffs rates for construction equipment are as follows: five percent for heavy machinery and equipment; 50 percent for multi-purpose vehicles; 50 percent for special purpose vehicles; and 10 to 30 percent for construction materials.

Duties on High-Value Food Products

In the 2000 budget, the government proposed abolishing duties on 43 food categories. The import duties on 136 categories of food products (fresh, dried, and processed) have been reduced from between 5 and 20 percent to between two and 12 percent. The government significantly reduced import duties on prepared cereals, prepared vegetables, prepared/preserved fruits, nuts, fruit juices, pasta, and various seafood items. However, duties for some processed and high-value products still range between 20 and 30 percent. The applied tariff on soy protein concentrate is 20 percent.

Duties on Alcoholic Beverages

Tariffs on alcoholic beverages were increased in October 1998. Current applied tariff rates are as follows, reflected in Malaysian Ringitt (RM) per decaliter (RM/dal): RM 89 for beer; RM 120 for wine; RM 120 for vermouth; RM 118 for mead; RM 587 for brandy; and between RM 98-100 for liqueurs.

Plastic Resins

In December 1993, Malaysia increased tariffs on some plastic resins from two to thirty percent for a five-year period. In late 1998 the tariff was lowered to 20 percent, however the current tariff rate is still restrictive.

Tariff-Rate Quota for Chicken Parts

Although the government of Malaysia applies a zero import duty on chicken parts, imports are regulated through licensing and sanitary controls. Import levels remain well below the minimum access commitments established during the Uruguay Round.

Float Glass Tariff

Malaysia levies a 60 percent duty on "rectangular-shaped" float glass; although this classification is broadly construed to include glass cut to other shapes approximating a rectangle. The rate for float glass in other shapes is 30 percent. Under the ASEAN Free Trade Area (AFTA) Common Effective Preferential Tariff (CEPT) scheme, imported float glass from other ASEAN countries is subject to a 20 percent tariff.

Rice Import Policy

The sole authorized importer of rice is a government corporation (Bernas) with the responsibility of ensuring purchase of the domestic crop and wide power to regulate imports.

Film and Paper Product Tariffs

Malaysia applies a 25 percent tariff on imported instant print film. In August 1994, the Malaysian government raised tariffs on several categories of imported kraft linerboard (used in making corrugated cardboard boxes) to between 20 and 30 percent, depending on the category. These tariff increases are subject to review every two years and were to be phased out after five years. The 1998 review reduced tariffs to 10 percent for all categories.

GOVERNMENT PROCUREMENT

Malaysia is not party to the plurilateral WTO Government Procurement Agreement.

Malaysian government policy calls for procurement decisions to support national public policy objectives, such as encouraging greater participation of Bumiputras in the economy, transferring technology to local industries, reducing the outflow of foreign exchange, creating opportunities for local companies in the service sector, and enhancing Malaysia's export capabilities. As a result, foreign companies do not have the same opportunity as some local companies to compete for contracts and, in most cases, foreign companies are required to take on a local partner before their bid will be considered. Some U.S. companies have voiced concerns about the non-transparent nature of the Malaysian government's procurement decision-making process.

INTELLECTUAL PROPERTY RIGHTS PROTECTION

Malaysia is a member of the World Intellectual Property Organization (WIPO), the Berne Convention for the Protection of Literary and Artistic Works, and the Paris Convention. Malaysia provides copyright protection to all works (including video and sound recordings, and computer software) published in Berne Convention member countries, regardless of when the works were first published in Malaysia.

In January 2000, the Minister of Domestic Trade and Consumer Affairs reaffirmed Malaysia's commitment to "the provision of a strong intellectual property law and a cost-effective intellectual property system." He said that the Government is amending the Patents Act (1983), the Copyright Act (1987), and the Trade Marks Act (1976), as well as enacting new legislation governing layout designs of integrated circuits and geographical indications, in order to comply with the TRIPS Agreement. He also stated that Malaysia is considering acceding to more treaties and conventions under the auspices of WIPO.

In March 1998, the Malaysian Government opened an intellectual property training center to develop and offer programs for government officials, agencies, attorneys, and the judiciary. It is hoped that this training will help to promote consistent pursuit of criminal charges for infringement by government prosecution, and to help resolve the substantial backlog of pending infringement cases in Malaysian courts.

As the number of manufacturing licenses for optical disk (OD) manufacturing facilities has increased, so have piracy rates for copyrighted music and video works. Malaysia's production capacity for OD products far exceeds local demand plus legitimate exports; in fact, pirate OD products believed to have originated in Malaysia have been identified throughout the Asia-Pacific region, North America, South America, and Europe. The Malaysian government is aware of the problem and has expressed its determination to move against illegal operations.

In April 1999, the government created an interagency task force to develop and implement a regulatory regime for optical media production. Legislation to establish a comprehensive legal framework regime for the regulation and licensing of OD manufacturing facilities, which would serve as the backbone of Malaysian efforts to suppress copyright piracy, was scheduled for introduction to Parliament during its fall 1999 session. Unfortunately, consideration of the OD bill, other amendments to existing law necessary to implement Malaysia's TRIPS obligations, and reform of onerous affidavit requirements in the Copyright Act, were delayed by the Prime Minister's dissolution of Parliament in advance of November 29, 1999 elections. While we are encouraged by statements by the Minister of Domestic Trade and Consumer Affairs that enactment of legislation is a top priority, the OD legislation again appears to have encountered difficulty when the government in March 2000 considered modifications to the bill which undermine its effectiveness.

Malaysia will need to expedite enactment of a strong OD regulatory regime, and implement fully and vigorously enforce the new law if it hopes to address domestic OD piracy rates and reverse Malaysia's growing reputation as a regional hub for pirated OD products. For example, according to industry sources, total annual losses from copyright piracy in Malaysia during 1999 are estimated at nearly $290 million; by far the largest figure in the ASEAN region.

USTR conducted an out-of-cycle Special 301 review in late 1999, and announced in December of that year that it decided not to place Malaysia on the Watch List pending passage of new optical disc legislation designed to reduce substantially pirated optical media production and export. Suppressing OD-based digital piracy is consistent with the government's objective to establish the Multimedia Super Corridor (MSC) as a locus of high technology manufacturing and innovation in Asia. Police and legal authorities are generally responsive to requests from U.S. firms for investigation and prosecution of copyright infringement cases. However, despite over 6,000 raids and inspections since April 1999, no persons have been criminally prosecuted for piracy.

SERVICES BARRIERS

Basic Telecommunications

Under the WTO Basic Telecommunications Agreement, Malaysia made limited commitments on most basic telecommunication services and partially adopted the reference paper on regulatory commitments. Malaysia guarantees market access and national treatment for these services only through acquisition of up to 30 percent of the shares of existing licensed public telecommunications operators, and limits market access commitments to facilities-based providers.

Direct Selling

In May 1999, the Malaysian government announced new requirements for the licensing and operation of direct selling companies. These requirements include adherence to a maximum foreign equity level of 30 percent in a locally incorporated company, and provision of product pricing information and changes together with copies of supplier invoices. These guidelines also spell out the conditions under which companies may receive one, two and three year licenses. The Ministry of Domestic Trade and Consumer Affairs has indicated that the local content targets originally articulated in 1998 are not mandatory, except for adherence to Malaysia's national equity policy supporting Bumiputra (ethnic Malay) participation in the economy.

Legal Services

Foreign lawyers may not practice Malaysian law or operate as foreign legal consultants, nor may they affiliate with local firms or use their international firm's name. Foreign law firms may not operate in Malaysia except as minority partners with local law firms, and their stake in any partnership is limited to 30 percent. Under the Legal Profession Act of 1976, the practice of Malaysian law is normally restricted to Malaysian citizens or permanent residents who have apprenticed with a Malaysian lawyer, are competent in Bahasa Malaysian (the official language), and have a local law degree or are an accredited British Barrister at Law. The Attorney General has authority to grant limited exceptions on a case-by-case basis, provided the applicant has seven years of legal experience. Malaysian lawyers are required to practice in partnerships or sole proprietorships. Malaysian law does not allow for foreign legal consultancy, except on a limited basis in the Labuan International Offshore Financial Center (see

"Banking" below). Persons not licensed as lawyers are subject to criminal penalties if they directly or indirectly undertake activities relating to the Malaysian legal system, including drafting documents.

Architectural Services

Foreign architectural firms can operate in Malaysia only as a joint venture on a specific project with the approval of the Board of Architects. Malaysian architectural firms may not have foreign architectural firms as registered partners. Foreign architects may not be licensed in Malaysia but are allowed to be managers, shareholders, or employees of Malaysian firms. Only licensed architects may submit architectural plans.

Engineering Services

Foreign engineers may be licensed by the Board of Engineers only for specific projects, and must be sponsored by the Malaysian company carrying out those projects. The license is only valid for the duration of a specific project. In general, foreign engineers must be registered as a professional engineer in his or her home country, have a minimum of 10 years experience, and have a physical presence in Malaysia of at least 180 days in one calendar year. To obtain temporary licensing for a foreign engineer, the Malaysian company must often 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 director or shareholder of a consulting engineering company. A foreign engineering firm can establish a non-temporary commercial presence if all directors and shareholders are Malaysian. Foreign engineering companies can collaborate with a Malaysian firm, but the Malaysian company is expected to design and required to submit the plans.

Accounting and Taxation Services

Foreign accounting firms can provide accounting and taxation services in Malaysia only through affiliates. All accountants who wish to provide auditing and taxation services in Malaysia must register with the Malaysian Institute of Accountants (MIA) before they can apply for a license from the Ministry of Finance. Citizenship or permanent residency is required for registration, and only degrees from local universities are recognized. Malaysian citizens or permanent residents who are members of at least one of the 11 recognized overseas professional bodies recognized by Commonwealth countries may also apply. However, more than a year ago the MIA indicated that it would consider whether to allow members of the American Institute of Certified Public Accountants (AICPA) to become members of the MIA and provide services in Malaysia, subject to Malaysian examination procedures. The Institute is still evaluating whether all AICPA members will be allowed to take the exam, or whether this will be restricted to only those AICPA members who are nationals or permanent residents of Malaysia.

Banking

No new licenses are being granted to either local or foreign banks; foreign banks must operate as locally controlled subsidiaries. Foreign-controlled companies are required to obtain 60 percent of their local credit from Malaysian banks. The Federal Territory of Labuan was established as an International Offshore Financial Center in October 1990. Foreign investors receive preferential tax treatment for offshore banking activities, trust and fund management, offshore insurance and offshore insurance-related businesses, and offshore investment holding business.

Insurance

Branches of foreign insurance companies were required to incorporate locally under Malaysian law by June 30, 1998, however the government has made individual extensions. Foreign share holding exceeding 49 percent is not permitted unless the Malaysian government approves higher shareholding levels. As part of the 1997 WTO Financial Services Agreement, Malaysia committed itself to allowing existing foreign shareholders of locally incorporated insurance companies to increase their shareholding to 51 percent. New entry by foreign insurance companies is limited to equity participation in locally incorporated insurance companies and aggregate foreign share in such companies may not exceed 30 percent.

Securities

Fund management companies may be 100 percent foreign owned if they provide services only to foreigners, but they are limited to 70 percent foreign ownership if they provide services to both foreign and local investors. Fifteen fund management companies, with foreign equity ranging from 10-100 percent, currently operate in Malaysia. Foreigners may hold up to 49 percent equity in a stockbroking firm. Currently there are 12 stockbroking firms that have foreign ownership, five futures booking companies, and 16 investment advisory companies.

Advertising

Foreign filmed content is restricted to a maximum of 20 percent per commercial, and only Malaysian actors may be used. The government of Malaysia has an informal and vague guideline that commercials cannot "promote a foreign lifestyle." Advertising of alcohol and cigarette products is severely restricted.

Audio-Visual and Broadcasting

The Malaysian government maintains broadcast content quotas on both radio and television programming. Eighty percent of television programming is required to originate from local production companies owned by ethnic Malays (an increase from the previous limit of 60 percent). However, in practice, local stations have been granted substantial latitude in programming due to a lack of local programming. Sixty percent of radio programming must be of local origin. The Communications and Multimedia Act of 1999, which calls on industry groups to establish content standards and could be the basis for modification of existing local content restrictions, transferred responsibility for regulating broadcasting from the Ministry of Information to the Ministry of Energy, Telecommunications, and Multimedia. Foreign investments in terrestrial broadcast networks are prohibited. 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

Malaysia encourages direct foreign investment particularly in export-oriented manufacturing and high technology industries, but retains considerable discretionary authority over individual investments. Especially in the case of investments aimed at the domestic market, the Malaysian government has used this authority to restrict foreign equity (normally to 30 percent) and to require foreign firms to enter into joint ventures with local partners. To alleviate the effects of the 1998-1999 economic downturn, Malaysia announced a temporary relaxation of foreign-ownership and export requirements in the manufacturing sector for those companies which do not directly compete with local producers. This incentive, which permits 100 percent foreign equity in manufacturing concerns, will remain available to investors until

December 31, 2000. Malaysia continues to suffer shortages of skilled and technical employees, particularly in the electronics sector. Firms also face restrictions on the number of expatriate workers they are allowed to employ.

Trade-Related Investment Measures

Malaysia in 1995 notified measures inconsistent with its obligations under the WTO Agreement on Trade-Related Investment Measures (TRIMS). These measures are local content requirements in the motor vehicle industry related to investment incentives. Proper notification allowed developing-country WTO members to maintain such measures for a five-year transitional period, ending January 1, 2000. In December 1999, Malaysia submitted a request to the WTO for a two-year extension to its transition period for its measures in the motor vehicle sector. The United States is working with other WTO Members on a case-by-case basis to review of all such TRIMS extension requests, in an effort to ensure that the individual needs of those countries that have made requests can be addressed. This process does not limit a Member's rights under the WTO Agreement. No decision has yet been reached on Malaysia's request.

ELECTRONIC COMMERCE

Malaysia currently applies no special restrictions on products or services traded via electronic commerce. Products which are ordered via the Internet and subsequently imported are subject to applicable import duties. Engineering services may not be provided via Internet unless the engineer is properly licensed.

OTHER BARRIERS

U.S. companies have indicated that they would welcome improvements in the transparency of Malaysian government decision-making and procedures, and limits on anti-competitive practices. A considerable proportion of government projects and procurement are awarded without transparent, competitive bidding. The Malaysian government has declared that it is committed to fighting corruption. To promote that objective, Malaysia maintains an Anti-Corruption Agency (ACA) which is part of the Office of the Prime Minister. The ACA has the independent power to conduct investigations and is able to prosecute cases with the approval of the Attorney General.

MEXICO

TRADE SUMMARY

In 1999, two-way merchandise trade with Mexico reached a record $196.8 billion, an increase of $23.3 billion (13.5 percent) over 1998. Mexico has surpassed Japan to become the United States' second largest single country trading partner and has been the fastest growing major U.S. export market over the last six years. U.S. merchandise exports to Mexico were $87 billion in 1999, a 10.25 percent increase over the previous year. Imports from Mexico were $110 billion, an increase of 15.8 percent over 1998. The U.S. trade deficit with Mexico for 1999 was $22.7 billion, an increase of $7 billion (44.4 percent) from the deficit of $15.7 billion in 1998.

The stock of U.S. foreign direct investment in Mexico was $25.9 billion in 1998, a seven percent increase from 1997. U.S. FDI is concentrated largely in manufacturing (mostly maquiladoras) and financial services sectors.

North American Free Trade Agreement

The North American Free Trade Agreement (NAFTA) between the United States, Canada, and Mexico entered into force on January 1, 1994. The NAFTA progressively eliminates tariffs and non-tariff barriers to trade in goods; improves access for services trade; establishes rules for investment; strengthens protection of intellectual property rights; and creates an effective dispute settlement mechanism. The NAFTA is accompanied by supplemental agreements which provide for cooperation on enhancing and enforcing labor standards and for encouraging environmentally-friendly practices and bolstering environmental protection in North America.

IMPORT POLICIES

Tariffs and Market Access

Under the terms of the NAFTA, Mexico will eliminate tariffs on all industrial and most agricultural products imported from the United States within 10 years of implementation of the agreement. Remaining tariffs and non-tariff restrictions on certain agricultural items will be phased out by January 1, 2008.

The NAFTA Parties implemented the seventh annual regular tariff reductions on January 1, 2000. This reduced Mexico's average duty on U.S. goods from 10 percent prior to the NAFTA to below two percent. Currently, about 80 percent of U.S. manufactured goods enter Mexico duty free. In 1996, the NAFTA countries completed a trilateral agreement to accelerate tariff reduction on certain goods. In 1998, the United States, Canada and Mexico implemented a second round of accelerated tariff reductions. The NAFTA Parties are currently considering additional acceleration requests.

On January 1, 1999, Mexico increased most of its MFN import tariffs by three percentage points for capital and intermediate goods and by 10 percentage points for consumer goods. However, these increased rates do not apply to goods originating in the United States or other countries that have free trade agreements with Mexico. The tariffs were increased to generate additional revenue for the government. These surcharges were retained for 2000.

In November 1998, Mexico published new regulations for the maquiladora sector. Under NAFTA, beginning in 2001, Mexico can no longer waive import duties for non-NAFTA products that are processed in Mexico and exported to a NAFTA partner. The new regulations stipulate that in 2001 a maquiladora company that exports its final product to the United States or Canada will have to pay the Mexican government, within 60 days of export, import duties for the product's non-NAFTA inputs. Furthermore, starting in 2001, the maquiladora industry will have to pay duties on all imported capital goods. In a related measure, Mexico published regulations for Sectoral Promotion Programs, which will take effect in November 2000. Under the Sectoral Promotion Programs, manufacturers of certain electronic and electric products will be able to import specified inputs at reduced MFN rates. Programs for other sectors are under review by Mexico. The reduced import duties will be available to all manufacturers but will not be available to other importers, such as retailers.

Agricultural Barriers

The United States is concerned by Mexico's administration of its tariff-rate quota obligations for certain U.S. agricultural products. In particular, in 1999, Mexico delayed its auction of tariff-rate quota (TRQ) import permits for U.S. edible dry beans until so late in the year that the TRQ was not filled, despite substantial demand for U.S. dry beans. Mexican Customs also seized 25 rail cars of dry beans for alleged falsification of invoices. These beans were then donated to Mexican government food agencies. The United States is monitoring TRQ administration in 2000. An auction for one-third of the TRQ was successfully held on February 14, with the remaining allocations scheduled for mid-May and mid-August. While Mexico has met or greatly exceeded its commitments to allow imports of U.S. corn each year, U.S. firms have also complained about administration of the corn TRQ in 1999.

Mexico is a major user of anti-dumping measures, notably against agricultural products. The United States has raised its concerns regarding the manner in which Mexico has applied antidumping measures on a number of U.S. exports. On January 28, 2000, a WTO dispute settlement panel established at the request of the United States regarding High Fructose Corn Syrup (HFCS) found that Mexico's threat of injury determination violated the Antidumping Agreement in several respects. The panel also found that Mexico improperly imposed final antidumping duties for the period during which its provisional measure was in place, and that it also applied the provisional measure beyond the applicable time limit. On February 24, 2000, the WTO Dispute Settlement Body adopted the panel's report, with which Mexico will have to comply.

Other important U.S. agricultural products on which Mexico imposed provisional and/or final antidumping measures in 1999 include U.S. hogs for slaughter, and cattle, beef and beef offal. In October 1999, Mexico imposed final antidumping duties on imports of U.S. hogs of 0.351 dollars per kilogram. In August 1999, Mexico imposed provisional antidumping measures on imports of U.S. beef and beef offal, ranging as high as 215 percent. In both of these investigations, the United States has raised concerns with Mexico regarding problems with the actions taken by the Mexican antidumping authorities.

Administrative Procedures and Customs Practices

U.S. exporters continue to register complaints about certain aspects of Mexican customs administration, including: the lack of sufficient prior notification of procedural changes; inconsistent interpretation of regulatory requirements for imports at different border posts; new requirements that particular goods may enter only through certain ports; and discriminatory and capricious enforcement of Mexican standards and labeling rules. Complications and confusion have occasionally resulted in the application of harsh penalties for technical customs law violations committed as a result of simple mistakes rather than an attempt to evade Mexican customs rules. Agricultural exporters note that Mexican inspection and clearance procedures for some agricultural goods are long, burdensome, non-transparent and unreliable. The Customs Reform Law, effective April 1996, gave Mexican customs authorities the right to act in cases of suspected violations of intellectual property rights; however, they do not have the authority to seize goods on their own initiative. Several U.S. exporters have voiced concerns about border procedures in this area.

Mexico implemented a reference price system for certain imports in 1994, and has continued to expand the number of goods subject to this requirement. In February 1994, for example, there were just seven products on the list. Today there are well over 200 separate items – including certain distilled spirits, cigarettes, chemicals, wood and paper materials, textiles and apparel, footwear, steel, appliances and toys. Currently, companies importing products at prices below the Government of Mexico's official reference price must post a bond to cover the difference in duties and taxes. Bonds are closed when importers provide Mexican authorities with original invoices signed and notarized by the exporter's local chamber of commerce attesting that the declared customs value of the product is correct. In 1999 Mexico published regulations that would require importers to deposit cash in a designated financial institution (or arrange one of two alternative guarantees) instead of posting a bond. Implementation has been delayed and is currently set to become effective April 1, 2000. In 1998, Mexico implemented a prior notification requirement for sensitive products from certain countries. U.S. origin goods are subject to the reference price system, but not the prior notification requirement. The United States is reviewing Mexico's practices for their WTO consistency.

STANDARDS, TESTING, LABELING AND CERTIFICATION

Sanitary and Phytosanitary Standards

Mexican sanitary and phytosanitary standards have created barriers to exports of certain U.S. agricultural goods, including grains, seed products, potatoes, apples, stone fruit, meat, poultry, citrus from Florida and table eggs. The United States remains concerned about the far-reaching extent of some sanitary and phytosanitary import regulations, such as those for grains, poultry, rendered products and meat. These include a new animal health standard for imported poultry products which was implemented in early 1999. In addition, procedural requirements regarding SPS inspections at the port-of-entry often do not reflect agreements reached between U.S. Department of Agriculture (USDA) officials and their Mexican counterparts, resulting in unnecessary delays at the border, seaports, and airports.

Standards

The Government of Mexico revised its Federal Law of Metrology and Standardization in May 1997. While these revisions provide for greater transparency, some Mexican ministries deem that certain regulations are executive orders and therefore not subject to notification requirements and are not published for comment.

Additionally, while the law provides for the adoption of emergency mandatory standards to deal with exceptional and unforeseen circumstances which might result in irreversible situations, the legitimacy of the emergency nature of some of these mandatory standards remains questionable. Moreover, in certain instances, Mexico has not immediately notified such technical regulations to the WTO nor has it provided opportunity for comment by its trading partners.

Conformity Assessment Procedures

Mexico's Law on Metrology and Standardization mandates that products subject to technical regulations ("Normas Oficiales Mexicanas" (NOMs)) be certified by the government agency that issued the NOM or an authorized independent certification body. Until 1998, only Mexican entities could qualify for recognition as competent to perform conformity assessments. On January 1, 1998, Mexico's NAFTA obligation took effect to accredit or otherwise recognize U.S. and Canadian bodies no less favorably than Mexican entities. However, the United States is concerned that Mexico's implied decision to only accredit additional certification bodies and verification units based on market need for such services may in practice become a barrier to trade.

All imports are subject to inspection at the border and again at the retail level; domestic goods are subject only to spot inspections in the market. This enforcement of compliance with NOM certification appears to be more stringent in the case of imports. U.S. exporters also report occasional inconsistencies in certification enforcement and determinations at different ports of entry.

Mexico has made significant progress in addressing redundant testing requirements. In February 2000, the Secretariat for Trade and Industrial Development (SECOFI) revised its product certification procedures for mandatory standards under its authority. The procedures allow manufacturers in countries with which Mexico has a free trade agreement (including the United States) to submit products for testing and certification. Under the revised procedures, a U.S. manufacturer can supply numerous importers without duplicating the cost of testing and certification.

As a prerequisite for permission to import and market vitamins, Mexico now requires inspection and approval of manufacturing facilities. Mexico has indicated that it does not plan to conduct inspections of facilities outside of Mexico. This precludes U.S. companies without production facilities in Mexico from obtaining the sanitary license necessary to import and market vitamins in Mexico.

GOVERNMENT PROCUREMENT

In 1999, U.S. firms reported several instances in which Mexican procurement agencies may have awarded contracts without providing the time period for tendering normally required under the NAFTA. The Administration has expressed its concern over this issue in bilateral and trilateral consultations and will continue to closely monitor Mexican procurement agencies' practices to ensure full implementation of the NAFTA tendering requirements.

On January 4, 2000, Mexico published a new law for Public Works and Related Services. The law requires Mexican procurement agencies to implement a new system of "Buy Mexico" purchasing preferences. While the law includes a general exception for treaty obligations, there appears to be a risk that Mexico's procurement officials might interpret it in a way that could be inconsistent with Mexico's NAFTA commitments. The law requires SECOFI to develop regulations for implementing these policies. The Administration is following the situation closely to ensure that Mexico implements this law in a manner that is fully consistent with the NAFTA.

INTELLECTUAL PROPERTY RIGHTS PROTECTION

Under the NAFTA and the WTO, Mexico is obligated to implement and enforce a certain minimum level of intellectual property rights (IPR) protection. The Government of Mexico announced an anti-piracy campaign on November 11, 1998. This was followed by increased raids and seizures by government authorities and the enactment of stricter anti-piracy penalties in May 1999. The prosecution of IPR crimes has increased, but it remains to be seen if stricter sanctions will be applied consistently and serve as a deterrent. In 1996, Mexico and the United States created a bilateral working group on IPR to discuss enforcement and other matters. The group did not meet in

1998 or 1999. In 2000, the United States and Mexico plan to convene a high-level meeting to launch a bilateral working group focused on enforcement and increased cooperation.

Copyright

The Government of Mexico passed a copyright law on December 24, 1996, which addressed a number of inadequacies in the former law. The new law substantially increased protection for computer programs, textile designs and several other types of copyrighted material. Criminal penalties in several areas were increased, and some administrative procedures were introduced as well. With subsequent modifications, the law appears to provide a satisfactory legal framework. However, in practice, criminal penalties have been infrequent and mild. In May 1999, Mexico increased criminal penalties for certain copyright and trademark violations and reclassified copyright and trademark piracy as a felony (*delito grave*). As a result of the felony classification, individuals indicted for IPR piracy cannot be released on bail and search warrants are issued more expeditiously.

Copyright piracy remains a major problem in Mexico, with U.S. industry loss estimates remaining high. Pirated sound recordings and video cassettes are readily available throughout Mexico. The International Intellectual Property Association (IIPA) estimates that trade losses due to copyright piracy in Mexico in 1998 totaled $469 million. The U.S. copyright industry notes that in spite of numerous raids by legal authorities and extensive confiscation of pirated material, there were few convictions prior to the reclassification of IPR piracy as a felony. However, at the end of 1999 approximately 70 individuals were in jail awaiting trial for IPR piracy, and three individuals had been convicted, according to the Mexican Attorney General's Office.

Patents and Trademarks

Patents and trademarks are under the jurisdiction of the Mexican Institute of Industrial Property (IMPI), an independent agency. An increasing number of raids have been conducted in recent years, and use of administrative remedies are increasingly useful to U.S. trademark owners. Nonetheless, many U.S. trademark holders have encountered difficulties in enjoining former subsidiaries and franchisees from using their trademarks. U.S. firms have reported experiencing difficulty in enforcing their trademark rights when a Mexican entity has registered them, even when registration was under a different category. These anecdotal reports indicate problems are occurring, but not on a large scale.

Border Enforcement

NAFTA Article 1718 requires Mexico to allow U.S. intellectual property rights holders to request that Mexican customs authorities suspend release of goods with counterfeit trademarks or pirated copyright goods. Several U.S. companies have complained that the procedure for obtaining protection via Mexican customs authorities is complicated, for a variety of reasons, including the fact that Mexican law does not recognize its customs service as an authority competent to decide infringement issues. Intellectual property rights owners seeking to use customs resources to prevent importation of infringing goods must obtain, from a competent authority, an order which directs customs officials to detain the merchandise. Thus far, few companies have requested this type of action, but those which have report positive outcomes. The United States will work closely with Mexico to ensure that Mexico is providing effective border enforcement of intellectual property rights, as the NAFTA requires.

SERVICES BARRIERS

Telecommunications

Mexico ended Telmex's monopoly on the provision of commercial long-distance telecommunications services on August 10, 1996, and allowed long-distance competitors to interconnect to the public-switched network on January 1, 1997. A number of U.S. firms, in partnership with Mexican firms, are competing for Mexican residential and commercial long-distance subscribers. Mexico allows up to 49 percent foreign investment in telecommunications networks and services, including basic telecommunications. An exception is provided in Mexico's new telecommunications law that allows consideration of 100 percent foreign investment in cellular services.

Under the WTO Agreement on Basic Telecommunications Services, Mexico made market access and national treatment commitments on all basic telecommunication services. Mexico also adopted the pro-competitive regulatory commitments set forth in the Reference Paper associated with the WTO Agreement. Mexico, however, requires the use of Mexican infrastructure for the provision of domestic satellite service until the year 2002, and it continues to restrict foreign ownership of all services (other than cellular) to 49 percent.

The NAFTA eliminated all investment and cross-border service restrictions in enhanced or value-added telecommunications services and private communications networks, most as of January 1, 1994. The remaining restrictions, limited to enhanced packet switching services and videotext, were eliminated on July 1, 1995.

There are several aspects of Mexico's regulation of its telecommunications market that inflate the cost of terminating international traffic in Mexico and exacerbate the long-standing problem of high settlement rates by preventing competitive forces from being brought to bear on these rates. The settlement rate for U.S.-Mexico international traffic was more than 19 cents per minute in 1999, compared with U.S.-Canada rates of about seven cents per minute.

USTR is reviewing certain aspects of Mexico's regulatory regime under section 1377 of the Omnibus Trade and Competitiveness Act of 1988. Complaints from U.S. industry were received about the GOM's implementation of its commitments under the WTO Basic Telecommunications Agreement. Issues receiving particular attention were the GOM's failure to: (1) permit international simple resale (ISR), (2) establish cost-based interconnection rates, and (3) to put in place measures to prevent anti-competitive behavior by Telmex (also referred to as "dominant carrier" regulations).

The Government of Mexico has given one carrier, Telmex, a *de facto* monopoly to negotiate settlement rates, which prevents other Mexican carriers from negotiating lower rates. The policy of the Mexican Government not to permit resale, i.e., the reselling of the long distance public network in Mexico, continues to reinforce Telmex's market dominance and erode the basis for effective competition in Mexico's telecommunications market. In addition, the regulatory agency has been unable to implement regulations to restrict market abuses by Telmex. On January 1, 1999, Mexico removed a 58 percent surcharge on the settlement rate on inbound international traffic paid to Telmex.

In the 1997 section 1377 review, USTR concluded that Mexico had satisfactorily established standards for terminal attachment equipment. We continue to monitor implementation of these standards in the NAFTA Telecommunications Standards Subcommittee.

Film Law

In December 1992, Mexico promulgated film industry legislation that contained a troublesome limitation on film dubbing. Under the provision, only foreign language children's films and documentaries may be dubbed; all other foreign language films must use sub-titles. Because some viewers prefer dubbed films, however, this provision acts as a barrier to U.S. (English-language) films. In January 1999, Mexico substantially revised the film law, but retained the dubbing restriction. On March 6, 2000, the Mexican Supreme Court ruled the dubbing restriction is unconstitutional in a private case requesting injunctive ("amparo") relief, but the government has not indicated how it plans to respond to the court's decision. The law also prohibits distributors from conditioning or restricting the supply of films to exhibitors without justified cause. This requirement, which should be clarified by pending regulations, could violate the right of the copyright holder to control the public performance and distribution of its work.

INVESTMENT BARRIERS

Ownership Reservations

Mexico maintains state monopolies in a variety of sectors, including oil and gas exploration and development and basic petrochemicals, that effectively bar U.S. private investment. In addition, U.S. investment in border and coastal real estate is available only through bank-run trusts.

In May 1995, the Mexican government passed legislation to privatize the national railroad system. Mexico allows up to 49 percent foreign control of 50-year concessions to operate portions of the railroad system, renewable for a second 50-year period. The concessions for the Northeast, Southeast and Northern Pacific Railroads as well as concessions for two independent and one concession-linked short line have been awarded. Similarly, an airport law passed in December 1995 provides for renewable 50-year airport operation concessions to private investors. However, foreign ownership is limited to 49 percent in most cases (waivers are available in specific circumstances). Three out of four airport groups have been granted concessions since December 1998. Two airport groups are now completely privately owned and operated.

While Mexico actively seeks and approves foreign investment in natural gas transportation, distribution and storage systems, it continues to exclude U.S. investors from owning assets in other important sectors open to its own citizens, including oil and gasoline distribution and retailing, selected educational services, newspapers, and agricultural land.

Mexico has notified the WTO of measures that are inconsistent with its obligations under the WTO Agreement on Trade-Related Investment Measures (TRIMS). The measures are local content and trade balancing requirements in the automotive industry. Proper notification allowed developing-country WTO members to maintain such measures for a five-year transitional period ending January 1, 2000. In December 1999, Mexico submitted a request to the WTO for a four-year extension to its transition period which would parallel the agreement reached in the NAFTA. The United States is working with other WTO Members to conduct a case-by-case review of all TRIMS extension requests, in an effort to ensure that the individual needs of those countries that have made requests can be addressed.

NEW ZEALAND

TRADE SUMMARY

The U.S. ran a $185 million merchandise trade surplus with New Zealand in 1999, compared with a surplus of $240 million in 1998. U.S. exports to New Zealand were $1.934 billion in 1999, an increase of $49 million from 1998. U.S. imports from New Zealand in 1999 totaled $1.749 billion, up from $1.645 billion in 1998. The stock of U.S. foreign direct investment in New Zealand amounted to $6.9 billion in 1998, down 5.9 percent from 1997. U.S. investors accounted for the largest share (35 percent by value) of new investment approvals in 1998. U.S. direct investment in New Zealand is largely concentrated in forestry, telecommunications, transportation, food processing and electronic data processing.

OVERVIEW

New Zealand is a valued partner in the global effort to reduce barriers to the free flow of trade and investment, working closely with the United States in the World Trade Organization (WTO), Asia Pacific Economic Cooperation (APEC) and other multilateral fora. New Zealand's reform process has been largely unilateral, and it maintains a generally open trade and investment regime. Roughly 93 percent of the value of imports enter duty free; most other imports face duties in the area of five to seven percent.

With the government's deregulation and privatization program in the late 1980s, New Zealand became a growing destination for U.S. foreign direct investment. The New Zealand-U.S. commercial relationship has also expanded rapidly. Trade relations in 1999 were marked by close coordination for the New Zealand-hosted APEC summit in September and the U.S.-hosted WTO ministerial in December. The new labor-alliance coalition government elected in November 1999 and led by Prime Minister Helen Clark is expected to maintain New Zealand's generally liberal trade orientation. It has given indications, however, that it will proceed more cautiously than its predecessor in some areas (such as unilateral tariff reductions) and more aggressively in others (such as industry and export assistance).

STANDARDS, TESTING, LABELING AND CERTIFICATION

Regulations Regarding Agri-biotech Products

The Environmental Risk Management Authority (ERMA) has assumed responsibility for assessments of new organisms introduced into New Zealand. Review of products produced using modern biotechnology, referred to as "genetically modified organisms" (GMO) in New Zealand, is now compulsory and first applications under the full process of public notification and hearing have occurred. ERMA has approved field tests with strict controls for various products (including crops and livestock) but full commercial release of a GMO has yet to take place in New Zealand. An Independent Biotechnology Advisory Committee (IBAC) is preparing a study evaluating the economic impact of a first commercial release of a GMO.

Applications for GMO field trials have often evoked a large number of comments from both opposing and supporting groups. The new labor-alliance government will establish a royal commission to review genetic modification during 2000.

In addition, a new mandatory standard for foods produced using modern biotechnology came into effect in mid-1999. The standard prohibits the sale of food produced using gene technology, unless the food has been assessed by the Australia-New Zealand Food Authority (ANZFA) and listed in the standard. Various foods produced using modern gene technology are currently allowed to be sold under a temporary exemption (based on approval from foreign health agencies like the FDA and application for ANZFA review). ANZFA released for public comment by mid-January

2000, 13 applications (including some from U.S.-owned companies) requesting approval of the sale of foods produced from gene technology, including from varieties of BT corn.

In October 1999, the Australia-New Zealand Food Standards Council (ANZFSC) reaffirmed its commitment to mandatory labeling for all genetically modified foods (GMFs) based on five proposed label categories. ANZFSC affirmed that no safety issues relative to GMFs had been found but stated that it was responding to consumers' choice to be better informed. ANZFSC did, however, postpone the labeling decision that was expected in October 1999 until early in 2000 so it could review a further cost study, WTO implications, and domestic and international comments (including U.S. Government comments). ANZFSC is now expected to meet in May 2000 to further consider the labeling standard. Any labeling decision is expected to provide a 12-month lead-time before it goes into effect.

The United States Government is monitoring these programs to determine whether they conform to New Zealand's international obligations. To date, U.S. agricultural exports have not yet been affected by these programs or proposed programs. We continue to consult, send demarches and work through these issues before they become a source of trade friction.

Sanitary and Phytosanitary Controls

New Zealand maintains a strict regime of sanitary and phytosanitary control for virtually all imports of agricultural products. Opportunities for greater access to the New Zealand market remain limited for some U.S. agricultural products, while other products are subject to rigid pre-clearance and testing requirements. However, there has been improvement over the past few years in access for some U.S. agricultural products. Pears from several U.S. states were allowed access into New Zealand in November 1999, and the first imports of U.S. pears have been made.

Poultry

New Zealand maintains a complete prohibition on all imports of uncooked poultry. In September 1999, the Ministry of Agriculture and Forestry (MAF) released a review of submissions for the chicken meat and meat products import risk analysis (including comments from the United States). The review raised continued MAF concerns over three risk areas of infectious bursal disease, Newcastle disease and salmonella. MAF (along with the Ministry of Health for salmonella) also agreed to undertake further risk studies in these areas. The results of the further studies may also affect imports of cooked poultry meat, which currently are being made in small quantities from the U.S.

Salmon

Uncooked, headless, gilled and gutted salmon are now permitted to enter New Zealand from the United States, Australia, Canada, the European Union, and Norway pursuant to an August 1998 decision by the government of New Zealand and regulations finalized in January 1999. This is an issue that the United States Government was able to resolve bilaterally with New Zealand. U.S. industry is pursuing sales in the market.

INTELLECTUAL PROPERTY RIGHTS PROTECTION

Parallel Imports/IPR Laws

On May 16, 1998, the New Zealand government passed an amendment to the Copyright Act legalizing parallel importing of all copyrighted works. This action raised concerns among U.S. software, film, video, music and other copyright industries that allowing parallel imports would make it more difficult to detect and combat piracy. Concerns have also been expressed that

New Zealand's current laws do not effectively deter copyright and trademark piracy.

Because of the concerns outlined above, the U.S. trade representative initiated an out-of-cycle Special 301 review of New Zealand's intellectual property regime in 1998 and placed New Zealand on the Special 301 Watch List in April 1999.

A study commissioned by the New Zealand Department of Commerce and released in 1999 recommended a number of measures to strengthen New Zealand's IPR regime. The government agreed in August 1999 to adopt several of these recommendations, including making trademark violations a criminal offense, increasing the maximum penalty for copyright and trademark violations from three months to five years, allowing forfeiture of goods and extending custom's power to detain goods. Legislation to implement these measures remains before the parliament. In addition, the new Clark government has pledged to ban parallel imports of CDs, videos, films and software for up to two years after first release. The United States is encouraging New Zealand to make the ban permanent.

SERVICES BARRIERS

Local Content Quotas

The new labor-alliance government has pledged to introduce format-specific quotas for local content on radio and broadcast television. No specific proposals had been put forward at the time of this report. Such an action could violate New Zealand's commitments under the WTO General Agreement on Trade in Services (GATS).

ANTI-COMPETITIVE PRACTICES

Telecommunications

While prospective entrants into New Zealand's deregulated telecommunications market face no legal restrictions, there has been a history of complaints regarding the actions of the former monopoly provider Telecom New Zealand. Telecommunications firms have been required to deal directly with Telecom New Zealand for local access or telephone numbers. In such cases, Telecom has forced potential competitors to reveal marketing plans and customer information before allocating requested lines. In addition, U.S. telecommunications companies have charged that Telecom New Zealand has engaged in predatory pricing in those localities served by competing telephone and cable providers. In 1999, Telecom New Zealand was criticized for its decision to charge for local calls to internet services unless the calls were routed through specified Telecom-allocated toll-free numbers. Appeals to the courts or to the Commerce Commission have been potential entrants' only recourse from such tactics. As part of the WTO Basic Telecommunications Agreement, the Government of New Zealand took certain pro-competitive regulatory commitments which, among other things, obligate the government to maintain measures to prevent major suppliers from engaging in anti-competitive practices.

State Trading Enterprises (STEs)

New Zealand maintains several agricultural producer organizations which enjoy statutory protection as monopoly sellers or which license sellers. Export monopolies remain in place for most boards but the boards are being reformed to become more commercial per the national government's initiative in 1998. In September 1999, the government approved dairy restructuring legislation, which, if certain conditions are met, would end the statutory export monopoly of the New Zealand Dairy

Board (an STE) on September 1, 2000. The restructuring must first clear the hurdles of creating a mega coop and obtaining the approval of the Commerce Commission and 75 percent of dairy farmers. Kiwifruit New Zealand will be commercialized into Zespri Group Ltd. (and Zespri International Ltd.) on April 1, 2000, but will retain its export monopoly (except to Australia). Under the Apple and Pear Industry Restructuring Act approved in 1999, the Apple and Pear Marketing Board will become a company, Enza Ltd., on April 1, 2000, with responsibility to acquire and market New Zealand apples internationally. Although Enza Ltd. is expected to export most apples, an export permits committee has been created to approve export applications. Applications from independent exporters must complement the current marketing activities of Enza and not undermine its reputation; the permits committee made approvals for independent exports in December 1999.

OTHER BARRIERS

Pharmaceutical Management Agency (PHARMAC)

PHARMAC was established in 1993 as a limited liability company to manage the purchasing of pharmaceuticals for the health funding authority (HFA). The HFA is responsible for purchasing health services and supplies for all New Zealanders. PHARMAC administers the National Pharmaceutical Schedule on HFA's behalf. The PHARMAC schedule lists medicines subsidized by the government and the reimbursement paid for each pharmaceutical. The schedule also specifies conditions for prescription of a product listed for reimbursement. At its creation, PHARMAC was exempted from New Zealand's competition laws, an exemption upheld in a 1997 high court ruling in a court case brought against PHARMAC by New Zealand's Researched Medicines Industry (RMI) Association. While New Zealand does not *per se* restrict the sale of non-subsidized pharmaceuticals in New Zealand, private medical insurance companies will not cover unsubsidized medicines. Thus, PHARMAC effectively controls what prescription medicines will be sold in New Zealand and, to a large extent, at what price they will be sold.

Pharmaceutical suppliers complain that it is difficult to list new chemical entities and line extensions on Pharmac's schedule and that the methodology used to determine the government reimbursement levels lacks transparency and predictability. In general, PHARMAC will not apply a subsidy to a new medicine unless it is offered at a price lower than currently available subsidized medicines in the same therapeutic class, or unless the producer is willing to lower its price on another medicine already subsidized in another class. Pharmaceuticals can also be de-listed if a competing product is selected to serve the market as the result of a tender or if a cheaper alternative becomes available and the manufacturer of the original product refuses to discount its price to that of the lower-priced alternative. Pharmaceutical suppliers have also objected to Pharmac's failure to differentiate between patented and generic medicines in setting a reference price, thus effectively eroding the value of the patented medicine's intellectual property.

Pharmac's policies have not only constrained market access for U.S. pharmaceutical companies, but they have also had the potential to affect the availability of drugs in New Zealand. A Danish pharmaceutical company announced in January 2000 that it would withdraw all its drug products from the New Zealand market and cease funding of local university activities because Pharmac's policies made it impossible to run a profitable business.

The U.S. and New Zealand held bilateral discussions in 1998 regarding industry concerns over Pharmac's policies and procedures and informal discussions continued in 1999. In

March 1999, the researched medicines industry presented to the associate minister of health responsible for PHARMAC a set of procedural recommendations it believed would improve the relationship between PHARMAC and the Pharmaceutical suppliers and increase the transparency of Pharmac's actions. The pharmaceuticals industry has reported little progress in addressing its procedural recommendations and continues to be concerned that the substantive issues regarding barriers to market access and erosion of intellectual property value remain outstanding. We have made our views known to the new government and will continue our efforts to make progress on this issue.

On a related issue, the pharmaceutical industry welcomed the New Zealand Court of Appeals' December 1999 ruling that upheld the Commissioner of Patents' decision to allow Swiss-type patents (that is, patents for new uses of old drugs). PHARMAC had challenged the decision.

NICARAGUA

TRADE SUMMARY

In 1999, the U.S. trade deficit with Nicaragua was $119 million, an increase of $2 million from 1998. U.S. merchandise exports to Nicaragua were $374 million in 1999, an increase of $37 million (11.1 percent) over 1998. Nicaragua was the United States' 68th largest export market in 1999. U.S. imports from Nicaragua were $493 million in 1999, an increase of $40 million (8.7 percent) from 1998. The United States is Nicaragua's largest trading partner.

IMPORT POLICIES

Tariffs

Nicaragua is in the process of progressively reducing import taxes through the year 2002. Nicaragua currently imposes regular import duties (DAI) of 15 percent on final consumption goods and 10 percent on intermediate goods (there is no DAI on raw materials and capital goods produced outside of Central America, but raw materials and capital goods imported from a Central American country are subject to a five percent DAI). Some 900 items are levied with a temporary protection tariff (ATP) of five to 10 percent. The maximum rate of the combined DAI and ATP is 25 percent. A luxury tax, that is generally lower than 15 percent, is levied through the specific consumption tax (IED) on 609 items. DAI, ATP, and IEC are based on CIF value. Nicaragua levies a 15 percent value added tax (IGV) on most items, except agricultural inputs. Import duties on so-called "fiscal" goods (e.g. tobacco, soft drinks, and alcoholic beverages) are particularly high since the taxes are applied cumulatively (taxes on the taxes). Importers of many items face a total import tax burden of 15-45 percent.

Nicaragua's 1997 Tax Reform Law marked an important step by the Government towards fostering Nicaragua's integration into the global economy. The tax reform removed most non-trade barriers on imports; eliminated the discretion of government officials to exonerate tariffs; repealed the restrictive law on agents, representatives or distributors of foreign firms (effective July 1, 1998); eliminated payments for permits and licenses related to export activities; reduced municipal taxes from two percent to one and a half percent in 1998 and to one percent in 2000; eliminated the income tax on interest and capital gains stemming from transactions on the local stock exchange; and set a schedule of progressive import tax reductions through the year 2002.

In March 1999, the National Assembly passed an ambitious tax package that included: tax exemptions for non-governmental organizations (performing non-profit activities); exemptions on import taxes (DAI), luxury taxes (IEC) and sales taxes for hospital investments; reduction of the tax levied on vehicles based on engine size (of concern to American automobile manufacturers, since American cars often have bigger engines than Japanese vehicles); an exemption of DAI, ATP and IGV for crude or partially-refined petroleum, as well as on liquid gas and other petroleum derivatives; increased taxes on liquor and tobacco; and the elimination of import taxes on capital goods, intermediate goods, and raw materials destined for the agricultural sector, small handicraft industry, fishing and aquaculture.

In December 1999, Nicaragua imposed a punitive 35 percent tariff on goods from Honduras (and Colombia) following a dispute between Nicaragua and Honduras over their Caribbean maritime border. Honduras challenged the measure in the Central American Court, which instructed Nicaragua to remove the tariff. To date, however, the tariff remains in place.

Non-Tariff Measures

Businessmen complain about arbitrary customs procedures and valuations. Tariffs and import taxes for most used goods are not assessed on a

CIF/bill of lading basis, but rather on an arbitrary reference price determined by Customs at the time of entry (which can be significantly higher than the actual price paid). Presentation of a bill of sale (or other evidence of purchase price) that is certified by a Nicaraguan consular official is often, but not always, accepted by customs inspectors as proof of the value of used goods. For instance, the tax reform law establishes that used vehicle values will be assessed by using the most recent version of the "blue book", regardless of the mechanical condition of the vehicle. This system must be phased out by September 3, 2000, Nicaragua's deadline for implementation of the WTO Customs Valuation Agreement, which does not provide for the use of arbitrarily-established prices in determining customs valuation.

Nicaragua's 1997 Tax Reform Law eliminated the price-band mechanism. In November 1999, the Nicaraguan Government issued a decree that raised existing taxes by 15 percent on rice, yellow corn and sorghum, raising taxes to as high as 45 percent, although still within Nicaragua's WTO bound rates. This decree is renewed every 30 days. The Government has said it will lower these tariffs once world prices for these commodities rebound.

GOVERNMENT PROCUREMENT

The 1981 Law of Administrative Contracting by the State, Decentralized Autonomous Agencies, and Municipalities sets out clear guidelines for government procurement. However, in practice, many government agencies and state-owned companies engage in direct purchasing outside of the framework of this law. On December 2, 1999, the National Assembly passed a new law on government contracts aimed at improving transparency in government procurement. Nicaragua is not a signatory to the WTO Agreement on Government Procurement.

INTELLECTUAL PROPERTY RIGHTS PROTECTION

On January 7, 1998, Nicaragua signed a Bilateral Intellectual Property Rights Agreement with the United States – the first such agreement in Central America. The Agreement, which had been under negotiation for four years, covers copyrights, patents, trademarks, semiconductor layout designs, encrypted program-carrying satellite signals, trade secrets, and industrial designs. The Agreement addresses criminal and civil penalties for infractions and appears to provide a level of protection that exceeds commitments in the WTO Agreement on Trade-Related Aspects of Intellectual Property Rights (TRIPS). The Agreement called for full implementation by mid-1999 – a deadline Nicaragua was unable to meet. However, by the end of 1999, the Nicaraguan National Assembly had passed updated laws on copyright protection, protection of plant varieties, and satellite signals.

Piracy of sound and video recording, as well as U.S. satellite signal and broadcast theft, remains a problem in Nicaragua. In July 1999, the National Assembly passed copyright legislation that will greatly strengthen copyright protection. Violators will now face fines and jail sentences. A complementary law on television programming carriers was passed in November 1999. Nicaragua became a signatory to the Berne Convention in 1999. Nicaragua is also a signatory to the following copyright conventions: the Mexico Convention on Literary and Artistic Copyright; the Buenos Aires Convention on Literary and Artistic Copyrights; the Inter-American Copyright Convention; the Universal Copyright Convention (the 1952 Geneva Convention and the 1971 Paris Convention); and the Brussels Satellite Convention.

Patents

Nicaragua's patent law dates from 1899 and appears not to meet international standards for term of protection and patentability. Protection is limited by short patent terms (10 years). In February 1996, the National Assembly ratified the Paris Convention for the Protection of Industrial Property. In April 1997, Nicaragua approved the technical part of the Central American Convention on Industrial Property (Inventions and Industrial Designs), although this has not yet come into effect. New patent legislation is awaiting consideration by the National Assembly. In 1999 the National Assembly approved a new Law for the Protection of Plant Varieties which conforms to the Convention of the International Union for the Protection of Plant Varieties (UPOV, 1978).

Trademarks

Trademark infringement remains a problem area. Current Nicaraguan procedures allow individuals to register a trademark without restriction, at a low fee, for a period of 15 years. Nicaragua signed and ratified the Central American Convention for the Protection of Industrial Property and its Protocol of Modification (trademarks and distinctive signs). However, Nicaragua has not ratified the amendment to the Protocol, and neither the Convention nor the Protocol will take effect until the other Central American countries sign it. The Convention is intended to ensure compatibility with the Paris Convention and Uruguay Round TRIPS provisions. An updated draft law on trademarks is being reviewed by the Government for submission to the National Assembly.

SERVICES BARRIERS

Nicaragua has ratified its commitments under the 1997 WTO Financial Services Agreement. Nicaragua has WTO commitments covering most banking services (acceptance of deposits, lending leasing, guarantees, and foreign exchange services), but it has no commitments in securities, asset management, or other (non-insurance) financial services. Nicaragua allows foreign banks to operate either as 100 percent owned subsidiaries or as branches.

INVESTMENT BARRIERS

Sandinista-era confiscation cases of U.S. citizen-owned investments or properties continue to create questions about the rule of law and respect for private property in Nicaragua. While the Government has made some progress, several valuable properties remain in the hands of a government holding company awaiting fair compensation or return to the rightful owners. Property claimants have been denied access to the Nicaraguan courts for over two years through suspensions of legal actions on property-related lawsuits in anticipation of the creation of new mediation and arbitration services. The Government continues to offer only bonds as a means of compensation and has not implemented other forms of restitution, such as the exchange of government-held property or other assets of equivalent value. The United States continues to press Nicaragua to improve its resolution of expropriation cases.

In order to receive the benefit of the 1991 Foreign Investment Law – which provides guaranteed repatriation of profits and repatriation of original capital three years after the initial investment – investments must be approved by an interagency Foreign Investment Committee. These approvals can be time-consuming and contain criteria – e.g., approval by the Nicaraguan Environmental Agency – that lack clear definition. Investments may be made without Foreign Investment Committee approval, but such investments do not enjoy repatriation guarantees. However, there are no foreign exchange controls currently imposed in Nicaragua to prevent the free exchange of currency and repatriation of profits.

The resolution of commercial and investment disputes is unpredictable. The legal system is cumbersome, and the enforcement of judicial rulings is uncertain and sometimes subject to non-judicial considerations.

In July 1995, the Governments of Nicaragua and the United States concluded the U.S.-Nicaragua Bilateral Investment Treaty (BIT) which was designed to improve the investment climate by recognizing intellectual property rights, and by guaranteeing the repatriation of capital and compensation for damages. Nicaragua's National Assembly ratified the BIT in June 1996. The treaty has not yet been submitted to the U.S. Senate for ratification.

NIGERIA

TRADE SUMMARY

In 1999, the U.S. trade deficit with Nigeria was more than $3.7 billion, a slight increase over the trade deficit of $3.4 billion of the previous year. U.S. exports to Nigeria were $628 million, a decrease of $191 million from the previous year, and imports were almost $4.4 billion, an increase of $166 million over the previous year. Despite restricted market access for many agricultural commodities, the United States is a leading exporter of agricultural products to Nigeria and the country's top wheat supplier. In 1999, Nigeria was the United States' 58th largest export market. In 1998, the stock of U.S. foreign direct investment, largely concentrated in the petroleum sector, was estimated to be $1.9 billion, an increase of almost 12 percent from 1997.

In May 1999, Nigeria graduated from military rule to civilian democracy. The new government has affirmed its support, in principle, for reform, including trade liberalization and privatization. Nigeria is regularly ranked as one of the most corrupt countries in the world by international watchdog groups.

IMPORT POLICIES

During the past decade, the Government of Nigeria has moved to gradually eliminate import bans and remove import restrictions. In 1992, the Government of Nigeria lifted its import ban on wheat which led to Nigeria becoming the United States' largest wheat market in Africa.

In 1995, Nigeria announced a new tariff structure that aimed to narrow the range of customs duties and increase rate coverage in line with WTO provisions. The Government of Nigeria also began to consider lifting import bans that had been implemented to protect Nigeria's agricultural sector and conserve foreign exchange. Widespread smuggling had compromised the bans and played havoc with market prices. In 1996, the Nigerian Inter-Ministerial Committee on Trade Restrictions and the Technical Committee on Tariff Review abolished all export licensing requirements and began implementation of a three-year phased removal of import bans. In January 1998, the Government of Nigeria lifted import bans on poultry, eggs, barley, barley malt, beer, and mineral waters. However, it placed restrictive *ad valorem* tariffs on a number of these previously banned commodities, including poultry and eggs (150 percent), beer and mineral waters (100 percent), and barley and barley malt (20 percent).

In the 1999 budget, the Government of Nigeria announced that the 1998 higher tariffs would be reduced, but at the same time restored excise duties that had been eliminated in 1998 for the following goods: cosmetics and bleaching creams (20 percent) and wine, beer, and fermented beverages (40 percent). Other commodity *ad valorem* duty rates were adjusted as follows: rice (50 percent); day old chicks and parent stock (5 percent); sparkling wines, wine coolers and champagne (100 percent); fruits and fruit juices (reduced from 75 percent to 55 percent); jute (10 percent); cotton (60 percent); fertilizers (5 percent); textile fabrics (65 percent); and garments (75 percent). Duty rates for live, chilled or frozen poultry and eggs were reduced from 150 percent to 55 percent to limit the attractiveness of smuggling these items and the subsequent loss of duty revenue. In addition, the Government of Nigeria abolished the 25 percent import duty rebate that was granted to importers beginning in late 1997. Though poultry and eggs, beer and stout, barley and malt, and mineral and similar waters had been removed from the prohibited import list in 1998, for some reason they never qualified for this rebate. The FY1999 budget also announced that the import ban on the following items would be removed and the following duties applied: plastic materials (excluding baby feeding bottles, 30 percent); vegetable oils (40 percent); cooking oils (35 percent); margarine (40 percent); and industrial oils (20 percent). Nigeria continues to maintain an import ban on corn and sorghum.

In the FY2000 budget, the Government of Nigeria introduced new elements to its deregulation program. While continuing the reduction of tariffs on certain raw materials and capital goods and the elimination of some import bans, mostly on manufacturing inputs, the Government of Nigeria raised or revived excise duties on a number of consumer goods to protect local producers. In addition, the Government of Nigeria proposed restrictions on the importation of finished goods. Finished goods likely to be affected include textiles, edible oils, cement, refrigerators, certain vehicle makes, air-conditioners, soap, detergents and other consumer products.

Other import restrictions apply to aircraft and oceangoing vessels. A government authorized inspection agent must inspect all imported aircraft and oceangoing vessels. In addition, performance bonds and offshore guarantees must be arranged before a down payment is made and the Ministry of Finance authorizes subsequent payment.

Foreign Exchange

In 1999, the Autonomous Foreign Exchange Market (AFEM), which was reestablished by the Foreign Exchange Decree of 1995, was fully deregulated. Dual exchange rates have been eliminated and only the AFEM (renamed the Interbank Foreign Exchange Market, or IFEM) remains. The Central Bank continues to intervene in the IFEM, which comprises banks that bid daily for customers. Companies can now hold domiciliary accounts in private banks and have unfettered use of the funds. Foreign investors may bring capital into the country without Ministry of Finance approval and may freely service foreign loans and remit dividends. Exchange houses are functioning well and the transaction ceiling has been raised to $10,000.

In January 2000, the Central Bank of Nigeria declared that oil companies were free to sell foreign exchange to banks, individuals, and organizations, thus diversifying local sources of foreign exchange.

Pre-Shipment Inspection

Following a reported shortfall in customs revenues, the Government of Nigeria implemented extensive port and customs reform in April 1996 to reduce corruption in customs, raise collections, and relieve port congestion. The reform focused on the assessment of import duties and pre-shipment inspection (PSI). The change required importers to obtain an import duty report for all shipments. Although customs revenue increased by two-thirds under the program, the Government of Nigeria fell far short of its goal of clearing goods through the port within 48 hours. To speed clearance, the Government of Nigeria decided to eliminate PSI requirements for all African countries and 15 major trading countries in January 1998. In 1999, the Government of Nigeria extended similar treatment to the United States and other countries not exempted in 1998. In the 1999 budget, the Government of Nigeria outlined a plan to abolish PSI altogether and to replace it with destination inspection by April 1999. The implementation of this plan, however, suffered serious setbacks due to logistical problems, poorly trained staff, and inadequate resources. Within six months, destination inspection was withdrawn and PSI reinstated. Pre-shipment inspection time and cost requirements continue to hamper U.S. exporters.

The WTO Secretariat considers the often-changing PSI scheme in Nigeria “expensive, discriminatory, and inefficient.” The multiplicity of import documents and customs regulations and agencies in Nigeria complicates the import process. Companies have reported false invoicing and counterfeit documents, extortion, embezzlement, and poor security practices. U.S. companies report that the illegal discharging of levies may increase the cost of imports into the country by as much as 45 percent. As a result, much Nigerian trade is being diverted through Togo and Benin and a significant share of Nigeria's regional trade takes place on an informal basis.

Nigeria has not implemented the Agreement on Customs Valuation and still uses the Brussels Definition of Value (BDV) to assess duty. However, Nigerian Customs plans to implement the change to transaction values soon, and the Ministry of Commerce is receiving technical assistance from the WTO for this purpose.

Business Fraud

The broad scope of business fraud has severely tarnished the international image of Nigeria and constitutes a serious disincentive to investors and exporters. U.S. businesses and citizens lose an estimated $1 billion per year to fraud, scams, and corruption of various kinds linked to Nigerians. Nigeria has partially implemented its 1995 money laundering decree, which introduced bank reporting procedures designed to inhibit this practice. The country has also implemented a decree targeting advance-fee fraud (called 419 fraud, after the relevant section of the Nigerian criminal code). As of 1999, however, there had been only limited success in reducing financial fraud despite improved law enforcement actions against fraud perpetrators.

GOVERNMENT PROCUREMENT

Anticorruption is a central and energetic plank in the platform of the Obasanjo Administration. The Anticorruption Bill, which passed the National Assembly in January 2000, includes a series of measures that range from procedures for tendering for contracts to punishments for corrupt officials. To correct for past procurement irregularities, the new government undertook an extensive review of contracts made under the previous regime and has sought to make the oil contract process less opaque. The Obasanjo Administration has also made some progress on its pledge to institute open and competitive contracting. Tenders are currently published in newspapers for prospective contractors. Foreign companies incorporated in Nigeria receive national treatment. Nonetheless, corruption continues to be a major concern. Approximately five percent of all government procurement contracts are awarded to U.S. companies. Nigeria is not a signatory of the WTO Agreement on Government Procurement.

EXPORT SUBSIDIES

In 1976, the government established the Nigerian Export Promotion Council (NEPC) to promote non-oil exports from Nigeria. The Council administers various incentive programs, including a duty drawback program, the export development fund, tax relief and capital asset depreciation allowances, and a foreign currency retention program. The government reports that the duty-draw back and export expansion grant schemes have been the most widely utilized incentives, though each program distributes less than $1 million in subsidies annually.

The duty drawback or manufacturing in-bond program was designed to allow the duty-free importation of raw materials to produce goods for export, contingent upon the issuance of a bank guarantee. The performance bond is discharged upon evidence of exportation and repatriation of foreign exchange.

The export expansion grant program consists of a fund that provides grants to exporters of manufactured and semi-manufactured products. Grants are awarded on the basis of the value of goods exported. The only requirement for participation is that the export proceeds be repatriated to Nigeria. While the grant amounts are small, ranging from two percent to five percent of total export value, they may constitute subsidies as defined by the WTO and, as such, raise questions about compliance with WTO obligations.

Though meant to promote industry and exports, these schemes have been burdened by inefficient administration, confusion, and corruption, causing great difficulty and, in some cases, losses to the manufacturers and exporters who opted to use them. In the 1999 budget, the Government of Nigeria announced that the incentive schemes would be replaced by a non-cash incentive scheme called "Negotiable Duty Credit Certificates" (NDC's), under which an exporter's claims are credited against future imports. This measure is in conformity with the WTO and obviates the need for the Government of Nigeria to make an annual budgetary allocation to the scheme.

The Government of Nigeria discontinued fertilizer subsidies for farmers in 1997, reintroduced them in 1999, and then recently announced that they would be abolished. Against this backdrop of stop and go measures and policy reversals, widespread fertilizer shortages have persisted.

INTELLECTUAL PROPERTY RIGHTS PROTECTION

Nigeria is considered to be Africa's largest market for pirated products. Losses from inadequate protection of intellectual property rights (IPR), though difficult to estimate, are substantial. Most recordings sold in Nigeria are pirated, and the video industry is based on the sale and rental of pirated tapes. Satellite signal piracy is also common. Violation of patents on pharmaceuticals and auto parts is a significant problem. Few companies have sought trademark or patent protection in Nigeria because it is generally perceived to be ineffective.

Nigeria is a signatory to the Universal Copyright Convention and the Berne Convention. In 1993, Nigeria became a member of the World Intellectual Property Organization (WIPO), thereby becoming party to most of the major international agreements on intellectual property rights. Nigeria's active participation in these international conventions has yielded some positive results. The Nigerian Copyright Council has intensified efforts to combat piracy by organizing workshops for law enforcement agents on copyright issues. And, law enforcement agents occasionally carry out raids on suspected sites for production and sale of pirated tapes, videos, computer software, and books. Nevertheless, piracy is widespread and prosecution under the copyright law has been slow. While cases involving infringement of non-Nigerian copyrights have been successfully prosecuted in Nigeria, enforcement of existing laws remains weak, particularly in the areas of patents and trademarks.

Statutes which govern IPR in Nigeria include the Copyright Act of 1988 (amended in 1992), the Patents and Design Decree of 1970, the Trademarks Act of 1965, the National Film and Video Censors Board Act of 1993 (which reinforces the measures of the Copyright Act), and the Nigerian Film Policy Law of 1993 (which encourages the development of the Nigerian film industry). The Copyright Decree of 1988, based on WIPO standards and U.S. copyright law, criminalizes counterfeiting, exporting, importing, reproducing, exhibiting, performing, or selling any work without the permission of the copyright owner. But the expense and time necessary to pursue a copyright infringement case discourages prosecution. The Patents and Design Decree of 1970 governs the registration of patents, and the Standards Organization of Nigeria is responsible for issuing patents, trademarks, and copyrights. Once conferred, a patent conveys an exclusive right to make, import, sell, or use the products or process. The Trademarks Act of 1965 governs the registration of trademarks. A trademark conveys the exclusive right to use the registered mark for a particular good or class of goods.

IPR problems in the Nigerian film industry rose dramatically with the nationalization of the film industry (including distribution) in 1981.

Although this policy has been officially abandoned, many problems remain. Member companies of the Motion Picture Association (MPA) were never paid the contractual compensation promised by the Government of Nigeria and have been unable to repatriate their assets from the country. As a result, MPA members no longer trade in Nigeria.

There has been some movement on the part of intellectual property rights holders to combat rights infringement in Nigeria. Nigerian companies, including film makers, formed the Proteus Entertainment Agency to protect copyrights in music, video, and other industries. Attorneys active in IPR issues have formed the Industrial Property Law Interest Group (IPLIG) to educate and lobby on behalf of industrial IPR issues. They have sponsored several copyright conferences throughout the country and credit themselves for getting an IPR course included in the curriculum at the Lagos Law School.

SERVICES BARRIERS

Nigeria is substantially open to foreign investment. There are very few market restrictions in Nigeria with respect to trade and investment in services. What exists is a series of regulations that guide access to each sector.

Financial Services

The country's financial sector has been substantially liberalized during the past three years as two new foreign banks have initiated operations. Banks must comply with statutory regulations. The Central Bank of Nigeria is responsible for bank supervision. Recently, the Central Bank stipulated that new banks must maintain a minimum paid-up capital of N1 billion, while existing banks may continue meeting the previous requirement of N500 million. Merchant banks and discount houses are authorized to carry out securities underwriting and related activities. Stock brokerage businesses must register with the Securities and Exchange Commission (SEC), which regulates the Nigerian Stock Exchange. An insurance operator must register with the Nigerian Insurance Commission (NAICOM), which stipulates the minimum paid-up capital depending upon category of business, and become a member of the Nigerian Insurance Association. General insurance companies, like the National Insurance Trust Fund, are allowed to also manage pension funds. Until recently, reinsurance was only available through the government-owned Nigerian Reinsurance Corporation.

Telecommunications and Broadcasting

In 1998, the Nigerian government announced a scheme to privatize NITEL, wherein 40 percent of NITEL's equity would be sold to core foreign investors. Along with privatization, the government promised the entry of an independent carrier to compete with NITEL. In a move to break NITEL's monopoly, the Nigerian government announced in its October 1999 Telecommunications policy that licenses would be granted to four communications firms to operate a global system for mobile communications (GSM). Seven out of seventeen firms prequalified before the licensing process was suddenly suspended in March 2000, raising serious concerns about transparency and the arbitrariness of policy directives. There are more than 100 private telecommunications companies, mostly providing value-added services, wireless phones, and cellular and rural telephony.

Nigeria's radio and television market, once the province of government, was deregulated in 1995. As of the end of 1999, 10 private stations and more than 20 satellite redistribution companies have entered the market. Similarly, radio stations have expanded to include four private stations in the Lagos area.

Health

The Federal Ministry of Health and the Nigerian Medical Council stipulate conditions for establishing a health service business. In so doing, they are guided by advice from the Nigerian Medical Association (NMA). An essential requirement for a foreign medical doctor is membership in the NMA. At present, social services outside the public sector are almost nonexistent.

Education

A standard requirement is that the proprietor of a school or institute be an "education officer." Ministry of Education approval is required before a school or institute may commence operations.

Tourism

Membership in the Nigeria Hotel Owners Association is a requirement for establishing a lodging and restaurant business in Nigeria. Operators of travel businesses must be members of the National Association of Nigerian Transport Association. Another prerequisite is that they be members of the International Air Transport Association (IATA).

Computer Services

Computer services are not yet regulated. Nigeria boasts a large computer and related services market, although the exact size is unknown. A Nigerian Communications Commission survey on Internet service estimated that there were more than two million installed personal computers in the country.

INVESTMENT BARRIERS

Investors in Nigeria must compensate for the country's deteriorating infrastructure, persistent gasoline and energy shortages, a banking system which lacks credibility, confusing and inconsistent regulations, a slow legal process and weak enforcement of commercial laws, and endemic corruption. U.S. oil companies operating in the Niger Delta region have experienced sabotage, demonstrations, and frequent kidnaping of employees.

In 1995, Nigeria promulgated the Nigerian Investment Promotion Commission Decree to replace the Enterprises Promotion Act. This decree liberalized the foreign investment regime, allowing 100 percent foreign ownership of firms outside the petroleum sector. Investment in the petroleum sector is still limited to existing joint venture agreements or production-sharing contracts with the Government of Nigeria, although there has been discussion about the Government of Nigeria selling some small parts of its equity in joint ventures. There are also restrictions on foreign businesses in the telecommunications and power sectors, where the existing carriers are the state owned Nigerian Telecommunications Company (NITEL) and the National Electric Power Authority (NEPA). These have been slated for privatization (see subsection on parastatals below). In addition, a foreign enterprise may not buy shares in firms on the "negative list," which includes manufacturers of firearms, ammunition, narcotics, and military and paramilitary apparel.

The Nigerian Investment Promotion Commission Decree also created the Nigerian Investment Promotion Commission (NEPC). NEPC is responsible for registering foreign owned companies under the Companies and Allied Matters Decree of 1990. Once registered, an investor is guaranteed unconditional transfer of funds through an authorized foreign exchange dealer in any convertible currency. This provision applies to dividends, net profits, payments for foreign loans obtained, and remittances attributable to the business. While the decree abolished the expatriate quota system (except in the oil sector), in practice businesses are advised to request an expatriate quota from the Internal Affairs Ministry before engaging in activities. Foreign businesses are encouraged to employ Nigerian nationals in areas where no special technical skills are required. There is no limitation on the size of the quota, and requests are treated on a case-by-case basis. The decree also prohibits any nationalization or expropriation of a foreign enterprise by the Government of Nigeria except for such cases determined to be in the national interest.

As described in the December 1986 circular "Industrial Policy of Nigeria," the Government of Nigeria maintains a system of incentives to foster the development of particular industries, encourage firms to locate in economically disadvantaged areas, promote research and development in Nigeria, and favor the use of domestic labor and raw materials. The Industrial Development (Income Tax Relief) Act of 1971 provides incentives to "pioneer" industries deemed beneficial to Nigeria's economic development. Companies given "pioneer" status may enjoy a non-renewable tax holiday of five years, or seven years if the "pioneer" industry is located in an economically disadvantaged area.

Nigeria notified the WTO on July 17, 1996 that it maintains certain measures that are inconsistent with the WTO Agreement on Trade-Related Investment Measures (TRIMS). These measures relate to incentives for the use of local raw materials under the "Industrial Policy of Nigeria." Proper notification allows developing-country WTO members to maintain such measures for a five-year transitional period upon accession to the WTO. Nigeria has not yet eliminated these measures.

The government created the Nigerian Export Processing Zone Authority (NEPZA) in 1992 as part of an effort to increase foreign investment. To date, the only export processing zone created under this scheme is located in the eastern port city of Calabar. After six years, the Government of Nigeria reports that sixteen firms have obtained provisional authority to operate there and $50 million has been invested. However, only six firms have begun test production runs and no exports have yet been generated.

OTHER BARRIERS

Parastatals

In July 1999, President Obasanjo outlined a three-phase plan for privatizing Nigeria's state enterprises that promised to be the most comprehensive in Africa. The plan has run into a number of difficulties, not the least of which is strong opposition from entrenched vested interests. After some delay, the Government of Nigeria has embarked on the first phase, which involves privatizing eleven firms, including cement, oil marketing, and banking firms that are quoted on the stock exchange. In the second phase, the government intends to privatize hotels and vehicle assembly plants. And in the third phase, the government intends to privatize the electric utility (NEPA), the national telecommunications company (NITEL), Nigeria Airways, four oil refineries, and the national fertilizer company, (NAFCON). The decision to deal with key parastatals in the third phase has dampened the enthusiasm of investors and observers for the program.

The Government of Nigeria has repealed or amended eleven decrees that had inhibited competition or conferred monopoly powers on public enterprises in the petroleum, telecommunications, power and mineral sectors. As a result, a number of private value-added telecommunications companies opened operations in 1998.

In the 1998 budget, the Government of Nigeria had outlined the following equity scheme to privatize NITEL and NEPA: 40 percent for core foreign investors, 20 percent for Nigerian citizens, and 40 percent to be retained by the Government of Nigeria. The promised privatization of NITEL and NEPA, however, did not occur and now prospects for their sale are unclear. In July 1999, the Government of Nigeria declared conditional support for the eventual privatization of these parastatals, after the evaluation and rehabilitation of their assets. For power generation, one State Government negotiated a contract with a U.S. company to invest in an independent power plant that would complement local NEPA operations. The validity of this contract has been challenged by the Federal Government of Nigeria. At this time, it is unclear as to what the outcome will be.

NORWAY

TRADE SUMMARY

In 1999, the U.S. merchandise trade deficit with Norway was $2.6 billion, an increase in the deficit of $1.4 billion from the previous year. U.S. exports to Norway were $1.4 billion in 1999, down from $1.7 billion in 1998. Norway was the United States' 48th largest export market in 1999. In 1999, U.S. imports from Norway totaled $4.1 billion, representing an increase of $1.2 billion from the level of imports in 1998. The stock of U.S. foreign direct investment in Norway in 1998 was $7.6 billion, an increase of 9.7 percent from 1997. Such investment is concentrated in the petroleum, manufacturing, financial services, real estate and wholesale sectors.

OVERVIEW

Norway is a member of the European Economic Area (EEA), which consists of the EU member countries together with Norway, Iceland, and Liechtenstein. Inside the EEA, but outside the EU, Norway has assumed most of the rights and obligations of the EU but has limited ability to influence EU decisions.

While Norway has its own tariff system, U.S. exports face most of the same trade and investment barriers which limit U.S. access to the EU. Preferential tariff rates are granted to the EU and other EEA members. EEA non-tariff barriers of greatest concern for U.S. trade with Norway are those regarding labeling and approval for agricultural goods produced using growth hormones or through genetic modification, where questions have been raised regarding the scientific basis for such measures.

The Norwegian government has completed much of the transition required under EEA obligations to comply with EU directives. Adaptation is a constant process, however, as new EU directives are required to be implemented in Norway by virtue of the EEA. The current outgoing coalition government, which assumed power in October 1997, has faced controversy with regard to some newer EU directives, but most directives are being adopted by the parliamentary opposition.

IMPORT POLICIES

Agricultural Tariffs

In July 1995, Norway accelerated its WTO implementation commitments for tariff reduction on agricultural commodities by immediately adopting the year 2000 bound tariff rate targets. Tariffication of agricultural non-tariff barriers under the Uruguay round has led to the replacement of quotas with higher product tariffs. Domestic agricultural shortages and price surges have been countered by temporary tariff reductions. Lack of predictability of tariff adjustments and insufficient advance notification (generally only two to five days prior to implementation) have made imports from the United States of fruit, vegetables, and other perishable horticultural products substantially more difficult than under the previously existing import regime and favor nearby European suppliers.

STANDARDS, TESTING, LABELING AND CERTIFICATION

Agricultural Product Standards

The Norwegian government follows the EU policy of banning the import of animals, and meat from animals, that have been administered growth hormones, including growth hormones approved in the United States for beef. The ban effectively keeps out U.S. exports of red meat and meat products to Norway.

The government introduced a regulation in October 1997 requiring the labeling of all products which contain a minimum of two percent material derived from modern biotechnology – or, in European terminology a genetically modified organism (GMO) source.

The regulation requires labeling regardless of whether the GMO trait is carried into the processed product.

There is strong opposition to food products containing GMOs among Norwegian consumer organizations and retail groups, with the focus currently on GMO soybeans and derivative products. While the government has thus far refrained from banning such commodity imports, market prospects are very limited if alternative non-GMO commodities products are available. The refusal of Norwegian food processors to buy soybeans which are not certified as "GMO-free" has resulted in U.S. soybean sales declining from a traditional level of about 250,000 tons annually until 1995 (before the appearance of GMO soybeans in the U.S. crop) to none in 1997, 1998 and 1999. On the processed foods side, the Norwegian consumers' council, in cooperation with the large retail food chains, has threatened periodically to boycott products containing GMOs.

Under the authority of Norway's 1993 gene technology act, the government may ban the import of products containing GMOs based on a number of criteria. These criteria apply regardless of the scientific merits of the product, including safety and effectiveness. The government has used the act selectively and GMO products are generally banned if non-GMO alternatives are available. In practice, this has resulted in banning imports while granting exemptions for some locally produced GMO products.

In the pharmaceutical sector, for example, the government banned the import of certain products such as rabies vaccines containing GMOs on the basis that the disease was not endemic to Norway and non-GMO alternative pharmaceuticals were available. On the other hand, the government has granted local pharmaceutical manufacturers exemptions to produce pharmaceuticals containing GMOs for the domestic and export markets.

The market for U.S. processed foods is impeded significantly in Norway due to the Norwegian food authorities' restrictive practices concerning the import of processed foods which contain enrichment additives. While limited exceptions are granted on a case-by-case basis, the authority generally bans or restricts the distribution of foods that contain additives not essential to the product, regardless of whether the additives are beneficial. Examples include bakery mixes with enriched flour and cereals with vitamin additives.

An additional barrier for the U.S. processed food market is the requirement that importers complete a detailed agricultural raw materials declaration. Manufacturers have declined to provide the information out of concern that it would require releasing proprietary information.

INVESTMENT BARRIERS

In 1995, in accordance with EEA national treatment articles, the Norwegian government abolished the earlier rules governing foreign investment in industrial companies. Under the new system, foreign investors no longer need to obtain government authorization before buying limited shares of large Norwegian corporations. However, both foreign and Norwegian investors are still required to notify the government when their ownership in a large company (meeting certain size criteria) exceeds specific threshold levels of 33 percent, 50 percent and 67 percent. The Norwegian authorities can initiate a closer examination if they have reason to believe that the acquisition could have a substantial negative effect on the target company, trade, or the public interest, including a negative effect on employment. The result could mean some market protection to existing business against new market entrants.

There are no formal standardized performance requirements imposed on foreign investors. In the offshore petroleum sector, Norwegian authorities encourage the use of Norwegian goods and services. The Norwegian share of the total supply of goods and services to the offshore petroleum sector has been about 50 to 60 percent over the last decade.

In the past, the Norwegian government has shown a strong preference to Norwegian oil companies in awarding the most promising oil and gas blocks. In 1995, however, the government implemented an EU directive requiring equal treatment of EEA oil and gas companies. American oil companies competing in the 15th concession round (completed in 1996) agree generally that they were treated on a much improved basis compared to Norwegian companies. Norway's concession process still operates on a discretionary basis, however, instead of utilizing fully competitive bids.

Financial Sector

In December 1997, the government agreed to all elements of the WTO Financial Services Agreement (the Fifth Protocol to the GATS) with the exception of limiting the establishment of cross-border insurance operations to companies authorized specifically to operate in Norway. No additional implementation measures were required since the government's earlier implementation of the second protocol to the GATS, the EEA accords and the EU's second banking directive removed many financial sector barriers for EU and EFTA member countries. Recent deregulation of financial markets appears to have eliminated nearly all of the barriers facing U.S. financial institutions seeking to operate in Norway.

Without an exemption from the Ministry of Finance due to special circumstances, no single or coordinated group of investors, Norwegian or foreign, may purchase more than 10 percent of the equity of an insurance company, commercial bank or savings bank. The government has proposed a new threshold of twenty-five percent that would take effect in the year 2000 for certain joint ventures and strategic cooperation. In order for one or more foreign banks to establish a new Norwegian bank, one of the foreign banking partners must own more than 50 percent of the equity in the new bank. Without an exemption from the Ministry of Trade and Industry, half of the members of the board and half the members of the corporate assembly of a financial institution must be permanent residents of Norway or citizens of a state within the European Economic Area, when residing in such a state.

ANTI-COMPETITIVE PRACTICES

For most sales of pharmaceuticals to hospitals, companies are required to sell to a purchasing organization (the "LIS"). A virtual monopsony, the LIS buys on behalf of approximately 80 percent of the hospitals in Norway and has 66 percent of the market for pharmaceuticals used in hospitals. In a case before the EFTA Surveillance Authority (ESA) in 1999, however, the ESA ruled that the LIS practices did not violate the EEA agreement.

The Norwegian Association of Pharmaceutical Manufacturers (which includes American firms) has also complained about Norway's inadequate implementation of an EU directive on transparency of measures regulating the pricing of medicinal products for human use and their inclusion in the scope of national health insurance systems. ESA issued a preliminary ruling in favor of the complaint, but there are still concerns about how the Norwegian government implements the directive. In addition, Merck, a U.S. company, filed a follow-up complaint with ESA in June 1999 documenting the lack of transparency in the process of evaluating the reimbursement for the asthma medicine "Singulair."

OTHER BARRIERS

Telecommunications

On January 1, 1998, Norway fully liberalized its telecommunications services market to comply with its WTO commitments. This ended the effective monopoly of Telenor (the state-owned telecommunications company) on fixed line voice services, infrastructure, and telex services. Equipment which has not been tested and certified under the EEA's common technical regulations must be type approved by the Norwegian telecommunications authority. The Norwegian government has indicated that under normal procedures this takes about six weeks. In the past, U.S. companies have reported that this type of approval is slow and costly for companies offering new products.

Norway and its EEA EFTA partner states have expressed interest in negotiations with the U.S. to conclude mutual recognition agreements (MRAs) that could cover the following areas: telecommunications terminal equipment, electromagnetic compatibility, electrical safety, recreational craft, pharmaceutical good manufacturing procedures, and medical devices.

PAKISTAN

TRADE SUMMARY

In 1999, the U.S. trade deficit with Pakistan was $1.3 billion, an increase in the deficit of $349 million from the previous year. U.S. exports to Pakistan were $426 million in 1999, a decrease of $300 million (41.3 percent) from 1998. Pakistan was the United States' 67th largest export market in 1999. U.S. imports from Pakistan totaled $1.7 billion in 1999, an increase of $49 million (2.9 percent) from the level of imports in 1998. The stock of U.S. foreign direct investment in Pakistan in 1998 was $416 million, a decrease of 36.1 percent from 1997.

OVERVIEW

1999 continued to be a year of financial difficulty for Pakistan in the aftermath of 1998's Asian financial crisis and the pressure of nuclear-related economic sanctions that presented Pakistan with a severe foreign exchange and international payments crisis. A new financial assistance package with the IFI's and debt rescheduling through the Paris and London Clubs eased the pressure on foreign exchange, which has stabilized, and provided breathing space on international payments. Pakistan still awaits a $280 million IMF tranche originally due for disbursement in July 1999. The failure of the Sharif Government to implement IMF conditionality regarding fuel prices and continuing World Bank concerns over Independent Power Project (IPP) disputes have delayed the disbursement tranche. A change in government on October 12, 1999 due to a military coup has led to further delays while the new government develops and implements its policies on economic reform.

The new government has focused on economic reform as a top priority. Its stated goals include restoring investor confidence through stability and consistency in economic policies , including resolving the IPP disputes; reviving industry (textiles, agriculture, oil and gas), particularly to promote exports and information technology; and reducing imports, especially through increased agricultural production of wheat and edible oils. The oil and gas sector has been targeted for further development and increased foreign investment, through liberal incentives for exploration and privatization of several major government entities in this sector. The new government has also committed itself to large-scale tax reform and is engaging in an extensive accountability process to bring those who are corrupt, tax evaders, and fraudulent loan defaulters to justice.

IMPORT POLICIES

The Pakistani Government had committed itself to further liberalize its trade regime in compliance with the IMF/World Bank Policy framework paper of December 1998. Consistent with this commitment, on March 31, 1999, the maximum import tariff was reduced from 45 percent to 35 percent. The tariff for consumer goods was reduced to 35 percent, for intermediary goods from 35 percent to 25 percent, for chemicals and components from 25 percent to 15 percent, and for basic raw materials from 15 percent to 10 percent. In addition, customs duties on agricultural machinery were reduced to 10 percent in May 1999. The Pakistani Government has also committed conditionally to reduce further the maximum import tariff to 25-to-35 percent by June 2000. Minimum cash margins on imports, which had been imposed on all import letters of credit following Pakistan's nuclear tests, were progressively withdrawn, with the elimination of the cash margins in February 1999. All banned and restricted items except those prohibited on environmental, security, religious, or health grounds were allowed to be imported by exporters or by private traders.

Current Pakistani Government macroeconomic policy is focused increasingly on growth, controlling the fiscal deficit (mainly through increasing tax revenues), keeping inflation under control (inflation in 1999 was reduced to about six percent), and stabilizing foreign exchange reserves. Thus, the main thrust of trade policy is to encourage export-led growth and stimulate export oriented industries and to facilitate the export of value-added and nontraditional items from Pakistan. The new government has lowered the cost of local borrowing to spur economic activity.

Pakistan continued certain detrimental import restrictions, mostly questionable fees, including for soda ash (estimated U.S. export loss $25-50 million). For pharmaceutical packaging and raw materials, preferential tariff rates are usually granted only if the goods in question are not manufactured locally. For example, the drug Paracetamol is manufactured in Pakistan but the local product does not meet the user's specification. Nevertheless, the imported raw material attracts a 45 percent duty as well as 12.5 percent sales tax. For other pharmaceutical raw materials or products that are not manufactured locally, the duty is 10 percent and there is no sales tax. U.S. industries have expressed particular concern with the Government of Pakistan's discriminatory application of the internal sales tax between imported pharmaceutical raw materials (taxed at 15 percent) and the same domestically produced raw materials (exempt from taxation). Moreover, industry believes that Pakistan's imposition of price controls on pharmaceutical end products further impedes U.S. pharmaceutical manufacturers from maintaining profitability. Industry has estimated that removals of these barriers would result in increased sales of U.S. pharmaceutical companies' products of $50-100 million.

In 1997, Pakistan cancelled its contracts with the preshipment inspection firms SGS and Coteena, and reintroduced the "import trade price" system, whereby the value of all imports is now determined by Pakistani customs. However, in numerous disputes importers assert the import trade prices are set arbitrarily by customs. Legislation to implement the WTO Customs Valuation Agreement was enacted in 1999, taking effect January 1, 2000.

The Pakistani tariff regime is generally characterized by complexity, broad bureaucratic discretionary powers, and very limited transparency. Administrative decisions frequently grant exemptions and concessions from general rules under Special Regulatory Orders (SRO) that amount to temporary duty suspension decrees. As a result, different rates are applied to the same product and average applied rates are sometimes lower than statutory duties. The IFI reform programs address these problems, and the U.S. Embassy believes simplifying the tariff regime will benefit U.S. exporters. The new government has also spoken out generally against the prior government's abuse of SRO authority. Other U.S. exports that continue to face market access restrictions include instant print film and instant print cameras. In addition to the range of border and internal market restrictive barriers in Pakistan on the industry's products, U.S. film and entertainment industry representatives have estimated an annual loss of approximately $1 million due to the entertainment taxes.

STANDARDS, TESTING, LABELING AND CERTIFICATION

Pakistan's barriers to trade often are expressed as extra fees. Less frequently, usually in the context of protecting some domestically manufactured product, the U.S. exporter will encounter difficulty with "Quality" standards. Testing facilities for agricultural goods are inadequate, and standards are inconsistently applied, resulting in occasional discrimination against U.S. farm products.

GOVERNMENT PROCUREMENT

The Pakistani Government, along with its numerous state-run corporations, is Pakistan's largest importer. Work performed for government agencies, including purchase of imported equipment and services, often is awarded through tenders that are publicly announced or issued to registered suppliers. The Pakistani Government nominally subscribes to principles of international competitive bidding, but political influence on procurement decisions is common, and these decisions are not always made on the basis of price and technical quality alone. Charges of official corruption and long delays in bureaucratic decision-making have been common in the past. The sanctity of contracts has also has been an issue for some companies dealing with the past government. The new military government has placed a high priority on good governance and rooting out corruption, and intends to establish a national independent board or institution for public procurement. Industry estimates that if these barriers were eliminated, U.S. exports would increase by $10-25 million.

EXPORT SUBSIDIES

Pakistan actively promotes the export of Pakistani goods with measures such as government financing and tariff concessions on imported inputs, and income and sales tax concessions. Pakistan has established export processing zones with benefits including tax holidays, indefinite carry forward of losses, exemption of imports from taxes and duties, and exemption from labor laws and various other regulatory regimes. Incentives for exports, including export financing, appear to be available to both foreign and domestic investors.

In 1999, the Pakistani Government provided two explicit export subsidies for agricultural products. There was an export subsidy for sugar of 4,500 rupees per ton (about $90). Total 1998/99 sugar exports were 505,000 tons for a total export subsidy of about $45.5 million. The Government also subsidized 25 percent of freight costs for exports of fruits and vegetables; the estimated total government subsidy was less than $1 million. In 2000, the Government is considering offering export subsidies again on sugar (though probably a smaller quantity) and freight for fruit and vegetables (particularly potatoes).

INTELLECTUAL PROPERTY RIGHTS PROTECTION

The laws in Pakistan generally provide for protection of intellectual property rights. Pakistan is party to the WTO's Agreement on Trade-Related Aspects of Intellectual Property Rights (TRIPS), and is still in the process of revising its laws to become TRIPS compliant. Pakistan is a member of the Berne Convention for the Protection of Literary and Artistic works, the Universal Copyright Convention, and the World Intellectual Property Organization, but is not a member of the Paris Convention for the Protection of Industrial Property.

Pakistan has been on the "Special 301" Watch List since 1989 due to widespread piracy, especially of copyrighted materials, and failure to implement its patent mailbox obligations under the TRIPS Agreement. Upper level government officials are aware of the negative impact of intellectual property rights violations on Pakistan's investment climate. The Government has undertaken the task of rewriting legislation in the areas of copyrights, patents, and trademarks and has taken steps to strengthen enforcement, including raids on pirated-video rental shops and computer software outlets. However, the fines applied to violations have been too small to provide a credible deterrent. Other current U.S. concerns include lack of patent protection of pharmaceutical products and trademark infringement. Recently, Government officials have spoken out on the need to provide better protection for intellectual property rights in Pakistan, due to Pakistan's desire to grow and protect its nascent information technology industry. The new government's economic reform plan, outlined in a speech by Chief Executive Musharraf on December 15, 1999, specifically mentioned that laws relating to trademarks and intellectual property rights will be reviewed and improved.

Patents

Recently, Pakistani law protected only process patents for a duration of 16 years, although the government is committed to eventually offering product patents in accordance with its WTO obligations. U.S. industry has complained that the right of the patentee is not adequately protected by law, permitting infringers to continue freely manufacturing illegal products. In addition, recently only the patent-owner, not licensees, could file a suit against an infringer. Further, backlogged cases in the courts result in delays. As a result, injunction orders against the infringer cannot be issued expeditiously. U.S. industry reports that piracy continues to inflict losses on the research-based pharmaceutical industry at an estimated cost of $15-20 million per year.

Trademarks

There have been occasional instances of trademark infringement, involving a range of products such as toys, playing cards, and industrial machinery. In August 1994, the Pakistani Government issued new drug labeling rules requiring the generic names of substances to be printed with at least equal prominence as that of the brand name. This rule serves to dilute in the minds of consumers existing difference in quality, efficacy, and safety, and incorrectly implies total interchangeability and equality among different products. Industry has expressed concern about Pakistan's drug labeling rules, noting that these laws appear to place Pakistan in violation of the WTO TRIPS rules protecting trademarks. U.S. industry estimates a loss of $5-10 million in U.S. exports for patent and trademark violations.

Copyrights

Violations of intellectual property rights in Pakistan are most common in the area of copyrights, where the piracy levels are exceptionally high. The market for imported computer software has remained nearly 95 percent pirated (multinational firms and other international agencies are the only users of genuine software), while U.S. industry has estimated that the piracy rate for videos has declined to around 80 percent. The new government, however, has recognized the need for better protection of software in order to establish a Pakistani information technology industry. It has called for regulations to protect intellectual property, promote industry standards, and encourage electronic commerce.

As a result of strengthened law enforcement some video outlets are taking steps to offer legitimate products. U.S. industry has reported some improvement in Pakistan's anti-piracy program. Recent raids were conducted on about 50 computer software outlets in Karachi at the behest of the Business Software Alliance. There have also been recent reports of law enforcement agencies sealing numerous video cassette shops in Karachi for a number of days, with the dealers seeking a three-month reprieve to dispose of their existing stocks. Special police anti-piracy task forces have also been established in the different parts of the country. Nevertheless, U.S. industry continues to express concern over the high rate of video piracy in the form of back-to-back copying of videos in video outlets. Furthermore, the entertainment industry reports that motion picture infringement cases move slowly through the court system due to the backlogged court system. Piracy of copyrighted textile designs and reprint piracy of books (especially computer books, business titles, and medical texts) continue to be significant problems. Exports of counterfeit products made in Pakistan have been reported.

Despite improvements in enforcement, the courts have been lax regarding successful prosecution of copyright infringement. According to industry representatives, penalties for infringement imposed by the courts are not strict enough to provide an effective deterrent to piracy. For example, typical penalties imposed on pirate video outlets have amounted to fines of only $16 and no imprisonment. Further, the courts remain extremely backlogged because of inefficient procedures. In the area of copyright infringement alone, in Pakistan, the International Intellectual Property Alliance estimated that piracy of films, sound recordings, computer programs, and books resulted in trade losses of $80 million in 1998.

SERVICES BARRIERS

The new investment policy announced in November 1997 promised liberalization. The policy opened up new sectors for investment, including services. In general, investment in services is permitted where the amount of foreign equity investment is at least $500,000. Foreign investors are allowed to hold up to 100 percent equity at the outset subject to the condition that repatriation of profits will be restricted to a maximum of 60 percent of total equity or profits. It is also mandatory that 40 percent of the equity be held by Pakistani investors within two years of the initial investment. Foreign investments not meeting these requirements are still permitted, but are not guaranteed repatriation of profits.

Services covered by this policy include transportation, audio-visual services, sporting services, social sector services, environment, and agricultural services. Information technology services, including software development, and tourism, however, have been defined as “industries” by the investment policy. This means that foreign investors are allowed participation on the basis of 100 percent foreign equity without any permission from the government and are neither subject to a minimum investment requirement nor are required to have 40 percent Pakistani equity within two years.

There is a specific list of deregulated telecommunications services, including electronic information services, card pay telephone services, paging services and voice mail services. The investment policy permits 100 percent foreign equity on a repatriatible basis as long as foreign equity investment is at least $500,000. Basic telephony remains the monopoly of the majority state-owned Pakistan Telecommunications Corporation until 2005, but competition among service providers is now allowed in cellular telephony. In WTO negotiations on basic telecommunications, Pakistan made commitments on basic telecommunications services, with phase-in on some obligations. For example, Pakistan has agreed to provide cross border market access for voice services as of January 1, 2005, and will allow the cross-border provision of packet-switched data and Internet services on competitive networks by 2004. As part of the agreement, Pakistan also adopted certain pro-competitive regulatory principles.

Pakistan improved its financial services commitments in the WTO financial service agreement in December 1997. These commitments promise some liberalization by granting the right of establishment for banks, as well as grandfathering acquired rights of foreign banks and foreign securities firms. Foreign banks generally have been restricted to a few branches, faced higher withholding taxes than domestic banks, and experienced restrictions on doing business with state-owned corporations. Foreign brokers may join one of the country’s three stock exchanges only as part of a joint venture with a Pakistani firm.

New foreign entrants to the general insurance market virtually have been barred. Foreign firms wishing to compete in the life insurance market, while not barred, have also faced severe obstacles. Those few foreign insurance companies operating in Pakistan have faced various tax problems, long delays in remitting profits, and problems associated with operating within the insurance cartel. The new government is looking at opening up the insurance market as one of its reforms of the financial sector.

Service barriers in the form of admission price controls by provincial governments remain a matter of concern for U.S. film and entertainment industries. Admission price controls coupled with high entertainment taxes have made it very difficult for theaters to be profitable; theater owners lack the authority to set admission prices according to market conditions. U.S. industry sources report that provincial governments have made no attempts to alleviate these controls in 1999.

If all service barriers were eliminated, U.S. industry representatives estimate an increase in U.S. exports of $25-100 million.

Legal Services

A person cannot provide legal consultancy services on foreign and international law without being licensed in the practice of Pakistani law. Also, unless they are licensed to practice in Pakistan, foreign lawyers may not form partnerships with local lawyers.

INVESTMENT BARRIERS

As mentioned above, the new investment policy of November 1997 promised liberalization of the climate for foreign direct investment. Foreign investors are allowed to invest in the manufacturing and industrial sector on the basis of 100 percent foreign equity without government permission. (Several sectors are exempt for security or religious reasons.) The investment policy promises full repatriation of capital, capital gains, dividends, and profits with the approval of the State Bank of Pakistan; no restrictions on transfer of technology; expropriations only upon adequate compensation; and no changes in benefits and incentives to the disadvantage of investors.

Investors often face unstable policy conditions, however, particularly on large infrastructure projects. For example, the previous government's consistent harassment of and refusal to recognize its contractual commitments to Independent Power Producers has severely damaged Pakistan's climate for foreign investment. In the past, changes in governments have led to significant alterations in the conditions and assumptions under which an investment agreement had been signed or was being pursued. Also, security concerns can be disruptive factors influencing company choice of location of facilities and areas of operation.

Trade-Related Investment Measures

Pakistan notified measures inconsistent with its obligations under the WTO Agreement on Trade-Related Investment Measures (TRIMS). These measures are local content requirements in the automobile, electronics, electrical products, and engineering industries under Pakistan's "deletion program." The program is ostensibly not compulsory, but at least one telecommunications equipment producer has reported that telecommunications licensees must adhere to the import deletion program. Investors who "voluntarily" undertake to increase the local content of their output enjoy lower tariffs on imported inputs but are subject to fines for non-compliance with an agreed-upon import deletion schedule. In the auto sector, U.S. industry reports that the Pakistani Government expects new motor vehicle assembly plants to achieve a local content level of at least 40 percent within five years of starting production. U.S. industry reports further that 40 percent local content level is a firm requirement seven years after starting production of motor vehicles in Pakistan. Proper notification allowed developing-country WTO members to maintain such measures for a five-year transition period, ending January 1, 2000. In December 1999, Pakistan submitted a request to the WTO for a lengthy, seven-year extension to its transition period. The United States is working with other WTO members to effect a case-by-case review of all such TRIMS extension requests, with an effort to ensure that the individual needs of those countries that have made requests can be addressed. This process does not limit a Member's rights under the WTO agreement.

ANTI-COMPETITIVE PRACTICES

The U.S. Embassy has seen no evidence of any lack of government action against anti-competitive practices of state-owned and private firms that restrict the sale of U.S. products and services.

ELECTRONIC COMMERCE

At early 2000, the U.S. Embassy has received no complaints from U.S. industry regarding local restrictions affecting electronic commerce. The new miliary government's economic reform plan has highlighted the development of electronic commerce in Pakistan, citing information technology as one of its four major priorities for economic reform. The Government has already taken steps to reduce the rates charged by the Pakistan Telecommunications Authority for leased lines. The high cost of the data communication infrastructure has been cited as one barrier to electronic commerce development in Pakistan.

OTHER BARRIERS

Lack of transparency is a recurrent and substantial problem in many areas, including government procurement and customs valuation. Two Pakistani Federal Government bodies take an interest in this problem, in addition to various government departments that might investigate allegations of corruption under their purview. The new military government has targeted corruption as one of its highest priorities, creating a National Accountability Bureau (NAB) and promulgating a strict accountability ordinance aimed at rooting out corruption committed by prior government officials and politicians, tax evaders and fraudulent loan defaulters. A number of prominent persons have been arrested, with more arrests promised in the future. Whether this accountability campaign will restore funds, deter corruption, and lead to a more transparent economy has yet to be seen.

Regulations governing product registration also act as a barrier to U.S. goods. U.S. industry has expressed concerns in particular about the Pakistani Government's unilateral adoption of a discriminatory policy against transnational pharmaceutical companies that insist that these companies can only register products for sale in the country of incorporation of the respective company. Local companies, however, are not held to such a standard, as they can register products from any source. This results in a policy that discriminates against the research-based companies operating in Pakistan. In addition, the time required for the registration process for many multinational pharmaceutical companies in Pakistan is often two years, if not longer.

PANAMA

TRADE SUMMARY

In 1999, the U.S. trade surplus with Panama was nearly $1.4 billion, a decrease of $64 million from the 1998 surplus of just over $1.4 billion. U.S. merchandise exports to Panama were $1.7 million, a decrease of $12 million over 1998. Panama was the United States' 43rd largest export market in 1999. U.S. merchandise imports from Panama were $365 million in 1999, an increase of $52 million from 1998. The most recent available statistics (1998) indicate the stock of U.S. foreign direct investment (FDI) in Panama was nearly $27 billion. Most U.S. FDI in Panama is in the financial, maritime, petroleum, telecommunications, energy and wholesale sectors.

IMPORT POLICIES

Panama joined the World Trade Organization (WTO) in October 1997. WTO accession and implementation laws passed by Panama's Legislative Assembly in June 1996 liberalized several aspects of the country's trading regime, primarily in the areas of tariff reductions, import licensing and phytosanitary standards. Panama's tariffs were lowered significantly, to an average of 15 percent for agricultural goods and 8.25 percent overall.

A new Government has raised some agriculture tariffs substantially, thus completing a campaign promise. On October 15 the Government raised tariffs on 44 farm products with very little notice. New tariff rates for these products average well over 100 percent. Examples include: milk (from 40 percent to 167 percent), poultry (from 15 percent to 300 percent), rice (from 50 percent to 154 percent), pork (15 percent to 83 percent) and produce (15 percent to 77-87 percent). The Government has announced further increases in agricultural tariffs to take effect this year. Panamanian authorities maintain that these moves are only temporary.

Panama is not a member of the Central American Common Market or any other subregional economic group. It currently has limited bilateral agreements with Costa Rica, Nicaragua, and El Salvador. Panama had been conducting trade negotiations with Chile, the Dominican Republic and Mexico, although the Government recently decided to suspend these discussions in favor of focusing trade efforts on Central America.

STANDARDS, TESTING, LABELING AND CERTIFICATION

Panama's standards and certifications regime generally conforms to WTO standards. However, phytosanitary permits are sometimes used to control import levels. Administration of phytosanitary regulations has also been tightened, with the previous *de facto* two-day waiting period for phytosanitary permits lengthened to 30 working days. The Government often fails to comply with its own time frame, delaying the issuance of working permits even longer. Beef and potato exporters experience especially long delays in obtaining imports.

Panama requires that U.S. poultry, pork and beef plants be certified for import by Panamanian officials. U.S. exporters have assisted Panamanian officials in making inspection visits to U.S. plants. There is no instance of a U.S. plant failing to be certified, but inspections have been delayed many times due to the lack of personnel and budgetary constraints on the Panamanian side. The U.S. considers it a high priority to obtain Panamanian recognition of U.S. certification to avoid such problems.

While importers of non-agricultural products must register them with the Ministry of Commerce and Industry before distribution or sale in Panama, procedures for registration are straightforward and evenly applied, an improvement over previous years. There are no overall labeling or testing requirements for imports.

GOVERNMENT PROCUREMENT

Panama's government procurement regime is governed by Law 56 and managed by the Ministry of Economy and Finance. The Law provides for a transparent bidding process for government contracts, but allows for exceptions. One such exception was the bidding process for a major port concession awarded to Hutchinson-Whampoa, a Hong Kong based company, which raised concerns in the business community. This case raised concerns in the business community because of the unorthodox nature of the tendering process.

In contrast, bids for the state tele-communications company and power generation and distribution facilities were well-organized and transparent. The quasi-independent Panama Canal Authority (formed December 31, 1999), although not held to the same regulations as other government entities, has generally used a transparent and fair bidding process for procurement. The inter-oceanic regional authority, ARI, is the entity responsible for procurement relating specifically to the areas around the canal zone. As part of its WTO accession protocol, Panama offered to join the WTO Agreement on Government Procurement, but several outstanding issues remain.

EXPORT SUBSIDIES

Panamanian law allows any company to import raw materials or semi-processed goods at a duty of three percent for domestic consumption or production, or duty free for export production. In addition, companies not already receiving benefits under the Special Incentives Law of 1986 are allowed a tax deduction of up to 10 percent of their profits from export operations through 2002.

Panama revised its export subsidy policies when it acceded to the WTO. The Tax Credit Certificate (CAT), given to firms producing non-traditional exports which meet minimum established levels of national content and value, will be gradually phased out. The policy has allowed exporters to receive CATs equal to 15 percent of the national value added through 2002, after which the program will be eliminated. The certificates are transferable and may be used to pay tax obligations or sold in the secondary market. The Government has become stricter in defining national value added.

A number of industries that produce exclusively for export, such as shrimp farming and tourism, are exempted from paying certain taxes and import duties. The Government of Panama uses this policy to attract foreign investment. Companies that profit from these exemptions are not eligible for CATs.

Law 25 of 1996 provides for the development of "export processing zones" (EPZs) as part of an effort to broaden the Panamanian manufacturing sector and promote investment in former U.S. military bases reverting to Panamanian control. Companies operating in the zones may import inputs duty-free if products assembled in the zones are to be exported. The Government also provides other tax incentives to EPZ firms. Most of the six EPZs remain in the early stages of development.

INTELLECTUAL PROPERTY RIGHTS PROTECTION

Panama became a member of the Geneva Convention in 1974 and the Berne Convention in 1996 and is a member of the World Intellectual Property Organization (WIPO). Recent legislation has strengthened Panama's intellectual property rights (IPR) regime and enforcement has improved, but piracy and counterfeiting remain problems, especially in the Colon Free Zone (CFZ). A recent survey by Price-Waterhouse stated that over 65 percent of all software used in the business community is pirated.

Law 15 of 1994 (the Copyright Law) and Law 35 of 1996 (the Industrial Property Law) provide the framework for intellectual property protection in Panama. At the time of its accession to the WTO, Panama agreed to implement the WTO Agreement on Trade-Related Aspects of Intellectual Property Rights (TRIPS) with no transition period. In November 1998, the Panamanian legislature approved two laws ratifying the WIPO Intellectual Property Treaty and Treaty on Performances and Phonograms. USTR ended its GSP IPR review of Panama in October 1998 citing improvements in IPR protection over the last several years.

The Panamanian Government has made efforts to improve IPR enforcement in the Colon Free Zone. The CFZ's new IPR Department, established in March 1998, and the Customs Office in the CFZ has conducted over 20 raids and seizures since 1998. Several of the seizures were large and the operating permits of some CFZ companies have been suspended as a result.

Law 29 of February 1996 (the Anti-Monopoly Law) provides for the establishment of special courts to deal with commercial cases, including IPR. Two district courts and one superior tribunal began to operate in June 1997 and have been adjudicating patent and trademark disputes. The Panamanian Government and private interests sponsored numerous seminars in 1997 and 1998 to train prosecutors, judges, and other officials in IPR laws and procedures.

Under Law 35, IPR policy and practice in Panama is the responsibility of an inter-institutional committee. This committee consists of representatives of six government agencies and operates under the leadership of the Vice Minister for Foreign Trade. It coordinates enforcement actions and develops strategies to improve compliance with the law. In early 2000, the Government of Panama is expected to present draft legislation to consolidate the copyright office and the industrial property registry into an autonomous institute for intellectual property.

Copyrights

The Copyright Law (based on the WIPO model), which the National Assembly passed in 1994, strengthens copyright protection, facilitates prosecution of copyright violators, and makes copyright infringement a felony punishable by fines and incarceration. The bill also protects computer software as a literary work.

Since December 1996, the 10th Prosecutors Office (Fiscalia) of Panama City has conducted an aggressive campaign of raids on video clubs, seizing thousands of videos. In September 1998, the Fiscalia raided warehouses at Tocumen International Airport, seizing over five million pirated compact discs. It has also broken up a number of major illicit video production operations. Several criminal and civil cases arising from investigations of stores and businesses accused of software piracy have been settled out of court.

Patents

Law 35 of 1998 (the Industrial Property Law) provides 20 years of patent protection from the date of filing for all patent holders. Pharmaceutical patents are granted for only 15 years, but can be renewed for an additional 10 years if the patent owner licenses a national company (minimum of 30 percent Panamanian ownership) to exploit the patent.

Trademarks

Law 35 also provides trademark protection, simplifying the process of registering trademarks and making them renewable for ten-year periods. The law's most important feature is the granting of ex-officio authority to government agencies to conduct investigations and to seize materials suspected of being counterfeited. Decrees 123 of November 1996 and 79 of August 1997 specify the procedures to be followed by Customs and CFZ officials in conducting investigations and confiscating merchandise. In February 1997, the Customs Directorate created a special Office for IPR Enforcement. A similar office was created in the CFZ in March 1998.

Trade secrets, up to now, enjoyed little formal protection in Panama. The 1996 Industrial Property Law provides specific protection for trade secrets.

INVESTMENT BARRIERS

Panamanian law prohibits foreign ownership of land, limiting OPIC (Overseas Private Investment Corporation) investments that require land as collateral, but places no other legal limitations on foreign private investment or ownership. There are no performance requirements or formal investment screening mechanisms.

Panama places no restrictions on the nationality of senior management for U.S. investments in Panama but does restrict foreign nationals to 10 percent of the blue-collar work force. Additionally, specialized or technical foreign workers may number no more than 15 percent of total employees in a business. A revision of the Labor Code to ease restrictions on companies for dismissing employees was passed in the General Assembly in 1995.

In July 1998, the Government of Panama passed Law No. 54 to protect new investment in Panama. This law guarantees that investors will have no restrictions on capital and dividend repatriation, foreign exchange use and disposal of production for certain sectors of the economy. The Law is intended to protect investors from any deterioration of conditions prevailing at the time the investment was made. In practice, however, investment disputes, some involving U.S. firms, have arisen from conflicting contracts the Government of Panama has entered into with different firms. In such cases, the Government's willingness to indemnify injured parties has been lacking.

OTHER BARRIERS

The judicial system can pose a problem for investors due to poorly trained personnel, huge case backlog, lack of independence and vulnerability to outside influence. In addition, corruption persists, not only in the judicial system, but also in government procurement and at the municipal level.

PARAGUAY

TRADE SUMMARY

In 1999, the U.S. trade surplus with Paraguay was $467 million, a decrease of $285 million from 1998. U.S. merchandise exports to Paraguay were $515 million, a decrease of $271 million from 1998. Paraguay was the United States' 63rd largest export market in 1999. U.S. merchandise imports from Paraguay were $48 million in 1999, an increase of $15 million from 1998. The stock of U.S. foreign direct investment in 1998 was $204 million, a 39.7 percent increase from 1997.

IMPORT POLICIES

Paraguay has a relatively open trade regime. As a member of the Southern Cone Common Market (Mercosur), Paraguay has been required to increase its tariffs on non-Mercosur imports to comply with the group's common external tariff (CET). Paraguay maintains almost 400 exceptions to the CET and annually increases tariffs, with the objective of reaching parity with the CET in 2006. The Paraguayans were granted over 300 exceptions to the November 1997 CET increase of three percentage points, which is scheduled to expire at the end of the year 2000.

Presidential Decree 235 of August 1998, modified in 1999 by Decree 2698, arbitrarily increased the base value upon which excise taxes on beer and cigarettes are calculated. The value of these imported goods is increased by a multiplier of 20 to 30 percent prior to calculation of excise taxes, in apparent violation of the national treatment requirements of the General Agreement on Tariffs and Trade of 1994 (GATT). Domestic producers of these products are not subject to this practice.

Further, Decree 235 requires importers of these products to pay taxes on "presumed profit" (10 percent for cigarettes and 30 percent for beer) of the total value of the imported goods prior to removing the merchandise from customs. Domestic producers of the affected products are not required to pay taxes on presumed profit in this fashion, and importers are not reimbursed the tax differential when profits fall below the "presumed" rate.

According to Paraguayan customs data, exports of popular U.S. beers to Paraguay dropped by 65 percent between 1997 and 1999, a $18 million decrease in sales. U.S. cigarette exports to Paraguay dropped by 55 percent over the same period, a $28 million decrease in sales.

STANDARDS, TESTING, LABELING AND CERTIFICATION

Franchisees of U.S. fast food companies complain of the burden created by Agriculture Ministry Resolution 90, dated May 8, 1996. The Resolution requires that Paraguayan Agriculture Ministry officials certify factories producing imported meat and cheese, generally located in neighboring countries or the United States. Implementation of the resolution is reportedly inconsistent.

GOVERNMENT PROCUREMENT

Paraguay is not a signatory to the GATT Agreement on Government Procurement. U.S. companies have protested non-transparent procurement procedures, citing: bid specifications that favor a preferred bidder and/or allowance of more than one parent company's subsidiaries to submit bids, while counting each of these offers toward the minimum qualifying participants to validate the tender process. Other complaints include: discriminatory usage of bid procedures to disqualify a non-preferred bidder, declaring the bid vacant when a non-preferred bidder makes the best bid and permitting non-compliance with tender requirements by preferred bidders. Improving contract terms once the bid has been finalized is also permitted, allowing preferred bidders to submit unrealistically low bids to win a tender, while understanding that future changes will enable profits.

INTELLECTUAL PROPERTY RIGHTS PROTECTION

Paraguay belongs to the World Trade Organization (WTO) and the World Intellectual Property Organization (WIPO). It is also a signatory to the Paris Convention, Bern Convention, Rome Convention and the Phonograms Convention.

On January 16, 1998, the USTR identified Paraguay as a Priority Foreign Country (PFC) under the Special 301 provisions of the Trade Act of 1974. On February 17, 1998, the United States initiated a Section 301 investigation of Paraguay's acts, policies and practices regarding intellectual property. This investigation was extended for an additional three months on August 4, 1998, in light of the complex and complicated issues involved and to provide an opportunity to continue negotiations with a new presidential administration. The extension of the investigation moved the deadline for the USTR's determination in this case to November 17, 1998.

In November 1998, the U.S. Government and the Government of Paraguay signed a comprehensive Memorandum of Understanding (MOU) on the protection of intellectual property in Paraguay, which in conjunction with progress made in this area, allowed the United States to remove Paraguay's PFC status and to terminate the Section 301 investigation without applying sanctions. In the MOU, the Paraguayan Government committed to implement institutional reforms to strengthen enforcement for intellectual property rights at its borders and to pursue legal amendments to facilitate effective prosecution of copyright piracy in Paraguay. The Government of Paraguay also committed to take immediate action in known centers of piracy and counterfeiting, such as Cuidad del Este, and to coordinate the anti-piracy efforts of its customs, police, prosecutorial and tax authorities. Further, Paraguay agreed to pursue reform of its patent law and to ensure that government bodies use only authorized software.

Paraguay is currently subject to Section 306 monitoring, and Paraguayan implementation of the MOU, while uneven, includes some notable achievements. The "Special Enforcement Period" (SEP) of the MOU has been extended twice, in part to give the Gonzalez Macchi Administration, which took office unexpectedly in March of 1999, an opportunity to demonstrate its resolve in fighting intellectual property violations.

Copyrights and Trademarks

The Government of Paraguay, in coordination with the affected industries, took several positive steps in 1999, including the seizure and destruction of two multi-million dollar, high technology pirate CD factories. Nonetheless, Paraguay continues to be a regional center for piracy and counterfeiting and a transshipment point for infringing products to the larger markets bordering Paraguay, particularly Brazil.

In October 1998, a new copyright law was passed that is generally consistent with Paraguay's international obligations. Notable is the protection of software as a literary work. However, the Government of Paraguay has not provided adequate and effective enforcement of its laws to address the piracy problem, and in practical terms piracy and counterfeiting remain rampant. An outstanding shortcoming of the law was the designation of copyright piracy as a private, rather than a public crime, thus requiring legal action by the offended party to seek redress. However, Law 1444, passed on June 25, 1999, made copyright violations "public actions," allowing public prosecutors to take legal action without requiring the offended party to seek redress. This action remedied the deficiency in Paraguayan law to enable the

Government of Paraguay to take an active role in combating piracy and counterfeiting.

Additional special public prosecutors have been named to deal exclusively with intellectual property crimes in Asunción, Ciudad del Este and Encarnación. Yet, no significant smuggler of illicit goods has been prosecuted and sentenced to jail, and resolution of intellectual property cases in the courts is slow and non-transparent. On a positive note, a Paraguayan Decree of December 1998 calls for the use of only legal software in all federal government agencies.

A new trademark law was enacted in August 1998 and provides specific protection for well-known trademarks. Stronger enforcement measures and penalties for infractions are also included in the law, but enforcement remains deficient.

Patents

Paraguay does not provide adequate and effective patent protection, especially with regard to pharmaceutical and agricultural chemical products. The Paraguayan Senate formed a special commission to consider draft legislation for a comprehensive patent law, but the commission has only met several times and has made little progress. A proposed bill faces significant local opposition, particularly from the domestic pharmaceutical sector.

Other Intellectual Property Areas

To date, the U.S. Government has no indication that the Government of Paraguay provides TRIPS-consistent protection for industrial designs, the layout-designs of integrated circuits, or undisclosed information (trade secrets and test data) as required by TRIPS. Paraguay joined the UPOV Convention in 1997, but implementing regulations have not been promulgated. The Paraguayan Government is preparing to send two WIPO treaties (Copyright, and Performances and Phonograms) to the Senate for ratification, and the U.S. Government continues to encourage it to do so shortly.

SERVICES BARRIERS

Telecommunications Services

Paraguay has not yet developed a positive climate for growth in the telecommunications sector, particularly given its lack of WTO commitments in the areas of basic or value-added services.

In an attempt to maintain its monopoly on long-distance telephone service originating in Paraguay, ANTELCO (state run telephone company), has shut down and seized the equipment of companies alleged to have been offering call back services.

OTHER BARRIERS

Law 194 of 1993 established the legal regime governing relationships between foreign companies and their Paraguayan representatives. This law requires that foreign companies prove "just cause" in a Paraguayan court to terminate, modify or fail to renew contracts with Paraguayan distributors. Severe penalties and high fines result if the court determines that the relationship was ended by the foreign company without such "just cause," often leading to expensive out-of-court settlements. The rights under this law cannot be waived as part of contractual relationships between the parties. Several U.S. companies have singled out this law as a cause for concern.

PERU

TRADE SUMMARY

In 1999, the U.S. trade deficit with Peru was $227 million, an increase of $305 million from the U.S. trade surplus $79 million in 1998. U.S. merchandise exports to Peru were approximately $1.7 billion, a decrease of $355 million (17.3 percent) from the level of U.S. exports to Peru in 1998. Peru was the United States' 45th largest export market in 1999. U.S. imports from Peru were about $1.9 billion in 1999, a decrease of $50 million (2.5 percent) from the level of imports in 1998.

The stock of U.S. foreign direct investment (FDI) in Peru in 1998 was an estimated $2.6 billion, an increase of 4.9 percent over the 1997 level. U.S. FDI in Peru was principally in the financial, manufacturing and petroleum sectors.

IMPORT POLICIES

Tariffs

Peru's most recent tariff reform went into effect in April 1997, lowering the overall average tariff rate from sixteen to thirteen percent but raising tariffs on agricultural products, including a five percent "temporary" tariff on agricultural goods. Under the current system, a 12 percent tariff applies to more than 95 percent (by value) of goods imported into Peru; a 20 percent tariff applies to most other goods; and a few products are assessed rates (because of the additional "temporary" tariffs) of up to 25 percent.

In addition to the "temporary" tariffs on agricultural goods, Peru has applied another set of variable "temporary" import levies since 1991 on four basic commodities: rice, corn, sugar and milk products. The Government eliminated a similar surcharge on wheat in 1998. These surcharges are in addition to any applicable tariff. The surcharges are calculated on a weekly basis, according to prevailing international prices for each commodity, rather than the actual price of the commodities entering Peru.

On August 1, 1997, Peru officially rejoined the Andean Community's free trade area (FTA) – from which it had been absent since 1992 – but will not fully participate in the FTA until 2005. However, a large proportion of trade between Peru and the other Andean Community members is already tariff-free, and most of the remaining tariffs will be eliminated by 2002. Peru does not adhere to the Andean Community's common external tariff. In April 1998, the Andean Community signed a framework agreement with MERCOSUR to establish a free trade area after the year 2000. In June 1998, Peru signed a free trade agreement with Chile, which will be phased in over a number of years. Peru also has partial free trade agreements which grant tariff preferences to most Latin American countries under the Latin American Integration Association (ALADI) and is negotiating a free trade agreement with Mexico.

Non-tariff Measures

Almost all non-tariff barriers, including subsidies, import licensing requirements, import prohibitions, and quantitative restrictions have been eliminated. However, the following imports are banned: several insecticides, fireworks, used clothing, used shoes, used tires, radioactive waste, cars over five years old, and trucks over eight years old. Imported used cars and trucks that meet these age limits must pay a 45 percent excise tax – compared to 20 percent for a new car – unless they are refurbished in an industrial center in the south of the country upon entry. Import licenses are required for firearms, munitions and explosives, chemical precursors (since these can be diverted to illegal narcotics production), ammonium nitrate fertilizer, wild plant and animal species, and some radio and communications equipment.

Peru applies a value-added tax (VAT) rate of 18 percent to most products, and special consumption taxes, ranging from 10 to 50 percent, to certain items. Peru's methodology of applying a "consolidated rate" to assess special consumption and sales taxes on imported goods is burdensome, since the taxes are applied consecutively.

Most import shipments above $5,000 must be pre-inspected by contracted supervising firms to check for possible under-invoicing. The importer pays the cost of these inspections, which reach as much as one percent of the value of the goods. Some U.S. exporters have complained of excessive delays caused by the pre-inspection system, although the problem has recently improved.

GOVERNMENT PROCUREMENT

A new government procurement law was passed in August 1997, and the implementing regulations were published in September 1998. The law created an independent board to oversee government purchases and contracts and authorized special committees to be responsible for new purchases and contracts. Under the new law, public entities must prepare an annual purchasing plan in order to promote transparency in the process. There is no limitation on foreign participation in any government solicitations. Peru is not a signatory to the WTO Agreement on Government Procurement.

EXPORT SUBSIDIES

Peru does not provide any direct payment upon export. Exporters can, however, receive rebates of a portion of the tariffs and value-added taxes paid on their inputs. In June 1995, the Government approved a simplified drawback scheme, which allows small exporters to claim a flat five percent rebate, subject to certain restrictions.

INTELLECTUAL PROPERTY RIGHTS PROTECTION

Peru does not yet provide adequate and effective protection of intellectual property rights (IPR), but has taken steps over the past few years to strengthen its enforcement against infringement of intellectual property. Peru passed two laws in April 1996 which improved the country's intellectual property regime and brought national laws into conformity with Andean Community decisions on intellectual and industrial property; and, in June 1997, the government issued an executive decree improving several aspects of its industrial property law. Although Peru and its Andean Community partners were due to bring their common IPR policies, namely the Andean Decision on Intellectual and Industrial Property, into conformity with the WTO Agreement on Trade Related Aspects of Intellectual Property Rights (TRIPS) by January 1, 2000, delays in negotiations have prevented them from finalizing the revision of these Decisions.

Although piracy continues to be a serious problem in Peru, two important indexes – those for video and software piracy – dropped significantly since 1995. Conversely, piracy of sound recordings has increased slightly, from 83 percent to 85 percent, during the same period. In April 1999, the U.S. Trade Representative elevated Peru to the "Special 301" Priority Watch List due primarily to concerns about the functioning of Peru's Appellate Tribunal of the National Institute for the Defense of Competition and the Protection of Intellectual Property (INDECOPI) and continuing enforcement problems.

Patents and Trademarks

Peru's April 1996 industrial property decree provides an effective term of protection for patents, prohibits devices that decode encrypted satellite signals, and contains other improvements, such as increasing the term of protection for industrial designs. In June 1997, based on an agreement reached with the U.S. Government, the Government of Peru published an executive decree resolving several inconsistencies in the patent area between its 1996 industrial property law and TRIPS. The Government has also introduced legislation confirming its decree. Peruvian law does not provide for transitional ("pipeline") protection for pharmaceutical product patents. Trademark violations are also widespread.

Copyrights

Peru's 1996 copyright decree is generally consistent with TRIPS; however, it also contains provisions covering reciprocity, which appear to violate the MFN provision of TRIPS. Textbooks, books on technical subjects, audio cassettes, motion picture videos, and software are widely pirated.

Losses to U.S. copyright owners and pharmaceutical companies in Peru are extensive, despite improvement in IPR protection under the new laws and improvements in enforcement. U.S. companies have become more active in defending their interests in Peru by retaining local representation, conducting anti-piracy campaigns and investigations, and filing complaints with INDECOPI and the courts. U.S. industry has collaborated actively with the U.S. Embassy in sponsoring conferences and in meeting with the Peruvian Government to raise awareness of the negative economic impact of lax IPR enforcement.

SERVICES BARRIERS

Basic Telecommunications Services

In the WTO negotiations on basic telecommunications services, concluded in March 1997, Peru made commitments on all basic telecommunications services, with full market access and national treatment to be provided as of June 1999. Advancing that timetable by almost a year, Peru opened its telecommunications sector as of August 1, 1998. Peru is in the process of developing a competitive telecommunications market. However, concerns remain with the implementation of Peru's WTO commitments. For instance, BellSouth filed a complaint under Section 1377 of the 1988 Telecommunications Trade Act, alleging that Peru has failed to ensure that its major suppliers offers interconnection at cost-oriented rates, as required by the WTO Reference Paper on pro-competitive regulatory commitments. The U.S. Government is monitoring this situation very closely and expects that Peru will abide by its WTO obligations.

Financial Services

In the WTO negotiations on financial services, concluded in December 1997, Peru made broad-based market access commitments in financial services – in banking, securities, insurance and other financial services. Peru allows 100 percent foreign ownership in subsidiaries and branches in the sector and guarantees national treatment. Peru does maintain a reservation for cross border provision of financial services, not applying to cross-border provision of financial data.

INVESTMENT BARRIERS

Peru has greatly liberalized its investment regime since 1990. National treatment for foreign investors is guaranteed in the 1993 constitution. Foreign investment does not require prior approval, except in banking and defense-related industries. "Juridical stability agreements" are available to foreign investors whereby the Government of Peru guarantees tax, foreign exchange and regulatory stability for a period of 10 years.

Investors in the mining and petroleum sectors are also entitled to several tax benefits. There are no restrictions on remittances of profits, dividends, royalties or capital.

Arbitration is a constitutionally guaranteed alternative to the courts. The September 1993 establishment of the Lima Chamber of Commerce's International Arbitration Center has helped to institutionalize this option. Peru also is a signatory to the New York Convention on the Recognition and Enforcement of Foreign Arbitral Awards, as well as several other international dispute settlement agreements.

Rules regarding hiring foreign personnel have been liberalized, although foreign employees still may not make up more than 20 percent of the workforce of a company established in Peru – whether owned by foreign or national interest – and their combined salaries may not account for more than 30 percent of the total payroll. Services companies (including banks) and free trade zones are exempted from these hiring limitations. In addition, a company may apply for exemption from the limitations for foreign managerial or technical personnel.

Peru has notified the WTO of certain measures that are inconsistent with its obligations under the WTO Agreement on Trade-Related Investment Measures (TRIMS). The measures deal with local content requirements in the milk and milk products sector. Proper notification allows developing-country WTO members to maintain such measures for a five-year transitional period after entry into force of the WTO. Although Peru no longer applies these measures in practice, it was to have formally eliminated the measures before January 1, 2000. However, as of late January 2000, the Ministry of Agriculture was still preparing the Supreme Decree necessary to do so. The United States is working in the WTO to ensure that WTO members meet these obligations.

PHILIPPINES

TRADE SUMMARY

In 1999, the U.S. trade deficit with the Philippines was nearly $5.2 billion, a decrease of $59 million from the U.S. trade deficit of just over $5.2 billion in 1998. U.S. merchandise exports to the Philippines were $7.2 billion, an increase of $490 million (7.3 percent) from the level of U.S. exports to the Philippines in 1998. The Philippines was the United States' 21st largest export market in 1999. U.S. imports from the Philippines were $12.4 billion in 1999, an increase of $431 million (3.6 percent) from the level of imports in 1998. The stock of U.S. foreign direct investment (FDI) in the Philippines in 1998 was $3.2 billion, a 3.1 percent decline from the level of U.S. FDI in 1997. U.S. FDI in the Philippines is concentrated largely in the manufacturing and financial sectors.

IMPORT POLICIES

Tariffs

Imported manufactured items that are not locally produced generally face low tariffs, while imports that compete with locally-produced goods face higher tariffs of up to 30 percent. Under the Philippine Government's comprehensive tariff reform program, set out in Executive Orders (E.O.) 264 and 288, applied MFN tariff rates for all items except sensitive agricultural products are to be gradually reduced to the following target rates: three percent for raw materials by January 2003; 10 percent for finished products by January 2003; and a uniform five percent tariff rate for all other products by January 2004. While the Philippines has indicated that it remains committed to these reduced tariff levels, the Government in 1998 and 1999 made extensive changes to the incremental rate reduction schedule set out in E.O. 264 for the period 1998-2000. The Government is currently examining the schedule with a view to implementing additional tariff rate changes beyond 2000.

In response to requests from import-sensitive industry sectors (including the petrochemicals, garment and apparel, rubber, steel, and forest product industries) the Philippines revised the rate reduction schedule for a number of product categories in 1998 and 1999. E.O. 465 and E.O. 486, which took effect January 21 and July 7, 1998, respectively, implemented a more gradual rate reduction schedule for many items, higher rates for some tariff headings (garments, textiles, certain petrochemicals, ammunition, and unfinished automotive vehicles imported in kit form), and lower rates on other headings, including some agricultural products. For other tariff lines, E.O. 465 and E.O. 486 retained 1997 duty rates in 1998, or postponed until 1999/2000 reductions in duties originally scheduled for 1998.

In September 1998, the Estrada Administration agreed to consider requests by import-sensitive manufacturers for selected tariff increases, setting aside a policy of waiting at least 12 months following changes to rates before initiating any review of those new rates. E.O. 63, signed in January 1999, raised tariff rates on 714 tariff lines. The main changes of interest to U.S. companies include increases in the MFN applied tariff rates on yarns, threads, fabric, apparel, and kraft liner paper. Higher rates on these products were originally imposed in January 1998 by E.O. 465 for one year only; however, E.O. 63 extended these rates through 1999. Rates on these items returned to 1997 levels on January 1, 2000.

Imports of finished automotive vehicles (completely built-up units) are subject to the highest duty rate applied to non-agricultural products, as an incentive to promote local assembly under the Philippines' Motor Vehicle Development Program. The rate was reduced from 40 to 30 percent on January 1, 2000. E.O. 465, signed in 1998, increased tariffs on completely-knocked down (CKD) automotive vehicle imports from seven percent in 1998 to 10 percent in 1999 and 2000.

Agriculture Tariffs and Import Licensing

The Philippines maintains high tariff rates on sensitive agricultural products, including certain grains, livestock and meat products, sugar, certain vegetables, and coffee. Examples include feed grains, particularly corn (at an in-quota rate of 35 percent, 65 percent out-of-quota rate since January 1, 1999), sorghum (from 15 percent since January 1, 1999 to 10 percent beginning January 1, 2000) potatoes (in-quota rate of 45 percent, 60 percent out-of-quota rate since January 1, 1999), and fresh and chilled beef (from 20 percent since January 1, 1999 to 10 percent starting January 1, 2000).

Fifteen tariff lines of agricultural commodities (at the 4-digit HS level) are subject to minimum access volume (MAV) tariff-rate quotas (TRQs). Products covered by these TRQs include live animals, fresh, chilled and frozen pork, poultry meat, goat meat, potatoes, coffee, corn, and sugar. Administrative Order (A.O.) 9 of 1996, as amended by A.O. 8 of 1997 and A.O. 1 of 1998, established the rules by which these TRQs are implemented and import licenses are allocated. The United States had been concerned that the TRQs for pork and poultry meat were administered in a manner which allocated a vast majority of import licenses to domestic producers who had no interest in importing. Following intensive consultations, the Governments of the United States and the Philippines concluded a Memorandum of Understanding (MOU) in February 1998 which resolved the United States' primary concerns over the Philippine TRQ system. An examination of the distribution of licenses in 1999 reveals that implementation of the reforms embodied in the MOU are gradually shifting import licenses from licensees not utilizing their licenses to active importers. Operation of the Philippines' TRQ system and the allocation and distribution of import licenses continues to be closely monitored by the United States.

Section 61 of the Philippine Fisheries Code, Republic Act (R.A.) 8550 permits importation of fresh, chilled, or frozen fish and fish products only when certified as necessary by the Secretary of Agriculture and upon issuance of an import permit by the Department of Agriculture. Fisheries Administrative Order (FAO) 195, Series of 1999, issued by the Department of Agriculture on September 20, 1999, implements Section 61. One of the criteria the Secretary is mandated to consider in determining whether to approve importation is whether "there is serious injury or threat of injury to domestic industry that produces like or directly competitive products."

Excise Tax on Distilled Spirits

Current Philippine law (Sections 141-143 of R.A. 8424 and Revenue Regulation 17-99) has the effect of discriminating against many imported distilled spirits by subjecting them to a higher excise tax than the rates applied to many common domestic spirits. Distilled spirits produced from indigenously available materials (such as coconut palm, cane, and certain root crops) are subject to a specific tax of 8.96 pesos per proof liter. Distilled spirits produced from other raw materials (which would apply to most imports) are subject to a specific tax ranging from 84 pesos to 336 pesos per proof liter (depending on net retail price per 750 ml bottle). Still wines with an alcohol content of 14 percent or less by volume are assessed an excise tax of 13.44 pesos per liter while still wines with an alcohol content greater than 14 percent but less than 25 percent alcohol content by volume are charged an excise tax of 26.88 pesos per liter. Fortified wines (containing greater than 25 percent alcohol content) are taxed as distilled spirits. Depending on the net retail price per bottle, an excise tax of 112 pesos or 336 pesos per liter is assessed on sparkling wines.

Excise Tax on Automotive Vehicles

The excise tax rate for automotive vehicles is based on engine displacement, as opposed to vehicle value. This system imposes a competitive disadvantage on imported vehicles with larger engine displacement, including many U.S. exports. Current tax rates for motor vehicles with gasoline engines are: 15 percent for engines up to 1600 cubic centimeters (cc); 35 percent for those with engines between 1601-2000cc; 50 percent for those between 2001-2700cc; and 100 percent for those 2701cc and above. For motor vehicles with diesel engines, excise rates are 15 percent for engines of up to 1800cc; 35 percent for those 1801-2300cc; 50 percent for those 2301-3000cc; and 100 percent for those 3001cc and above.

Quantitative Restrictions

The Philippines retains quantitative restrictions on rice imports. The minimum access volume (quota) for rice was 111,994 metric tons for 1999 and is 119,460 metric tons for 2000. The country is expected to import considerably more, due to harvest shortfalls. Rice continues to be imported solely by the National Food Authority, although the Department of Agriculture, on a trial basis, allowed the private sector to import a small volume of premium rice in early 1999. The United States continues to urge the Philippines to consider eliminating the quantitative restriction on rice in the context of the mandated WTO agriculture negotiations.

Other Import Restrictions

The Philippines maintains import restrictions on a range of products. Imports of used automotive vehicles remain subject to government review and approval. Effective April 15, 1999, the National Telecommunications Commission (NTC) requires cellular telephone service providers or authorized equipment dealers to obtain an import certification prior to importation of handsets for satellite-based cellular phones.

Philippine regulations generally require that any firm importing coal also purchase locally produced coal. While importers in the past were required to buy one unit of local coal for every unit of imported coal, the Department of Energy sometimes provides some flexibility to importers.

The United States has protested a June 3, 1998 Order from the Office of the President, which has the effect of prohibiting the importation and sale of certain cast-iron hubless pipe, until such time as certain regulations are amended to explicitly permit its use.

Customs Barriers

The Philippine Government retains the services of a private company to perform preshipment invoice inspection, invoice price verification/valuation as part of the customs clearance procedures for most imports arriving in the Philippines. Aspects of these procedures, including physical pre-shipment inspection, are conducted in the country of exportation, as a condition for importation to the Philippines. The contract between the Philippine Government and the private company for performance of inspection services expired on December 31, 1999, but was extended through March 31, 2000. On December 20, 1999, President Estrada signed E.O. 188, creating an interagency committee to develop and conduct an international tender for a new contract for unspecified preshipment inspection and other customs services. However, no decision has been taken, and in early March 2000 officials stated that the preshipment inspection regime would expire effective April 1.

As a policy matter, the United States has repeatedly expressed concerns that the Philippine Government prioritize improving the administration of its customs regime, rather than retain a private, for-profit company to carry out vital customs clearance and revenue collection functions ordinarily maintained by governmental authorities. Moreover, as a commercial matter, the United States has repeatedly reiterated to the Philippine Government that certain actions by the private entity and its agents constitute import harassment which, in many cases, have had the effect of creating trade impediments which may conflict with Philippine obligations under the WTO Agreement on Preshipment Inspection (PSI). These abuses include failure to comply with basic transparency requirements under the WTO Agreement on Preshipment Inspection (PSI), and arbitrary and unjustified increases or "uplifts"of the invoice value of imports, often on the basis of inappropriate or questionable information. There are periodic reports of other procedural irregularities such as requests by customs officials for the payment of (unrecorded) "facilitation" fees which are not related to the cost of services rendered.

Under the current PSI regime, most imports valued at more than U.S. $500 are permitted entry only when accompanied by a "Clean Report of Findings" (CRF) issued by the private PSI entity at the point of export. However, U.S. exporters report that many of the basic procedural requirements under the WTO PSI Agreement related to transparent and efficient customs procedures are not consistently maintained, resulting in valuation and clearance problems when shipments arrive in the Philippines. Refrigerated products and most products destined for export-processing zones are exempt. Certain goods require mandatory preshipment inspection in the country of export. This preshipment inspection requirement extends to imports into certain operations in free-trade zones.

The appeals process for considering grievances by importers seeking to challenge decisions by the private entity lacks transparency. The current process also perpetuates an inappropriate conflict of interest, as representatives of the private company serve in an ex-officio capacity on the appellate board reviewing the complaints filed against the company's conduct. Moreover, the appeals process can be time consuming. Importers that pursue an appeal must first pay duties on the uplifted valuation in order to obtain release of the shipment in question, or have the shipment impounded pending the outcome of the appeal, with storage costs to be borne by the exporter or importer.

With the end of the transition period available to developing countries, the Philippines was obligated to implement the "transaction value" method of customs valuation on January 1, 2000, in accordance with obligations under the WTO Agreement on Customs Valuation. While the existing valuation law (R.A.8181) includes a provision requiring that the Bureau of Customs publish reference values that "shall be binding on importers and the Bureau of Customs until changed," new implementing regulations are silent on this issue. Legislation to remove this provision is pending in the Philippine Congress.

In valuation and other areas, a 1997 memorandum of understanding between the Bureau of Customs and two Philippine industry associations creates formal channels for local private industry, including firms which produce goods that compete with imports, to influence valuation and other customs clearance procedures. Regulations issued in October 1998 further institutionalized the ability of local firms to seek upward adjustments in customs valuation of imported products. In view of the lapse of the deadline for implementation of the Agreement on Customs Valuation, the WTO-consistency of the Bureau of Customs procedures under the 1997 memorandum and subsequent regulations will be closely scrutinized.

STANDARDS, TESTING, LABELING AND CERTIFICATION

Industrial Goods

Local inspection for standards compliance is required for 75 products subject to mandatory Philippine national standards, including cosmetics, medical equipment, lighting fixtures, electrical wires and cables, cement, pneumatic tires, sanitary wares, and household appliances. For goods not subject to mandatory standards, U.S. manufacturers' self-certification of conformance is accepted. Labeling is mandatory for textile fabrics, ready-made garments, household and institutional linens, and garment accessories. Mislabeling, misrepresentation, or misbranding may subject the entire shipment to seizure and disposal. The "Generic Act" of 1988 aims to promote the use of generic drugs by requiring that the generic name of a particular pharmaceutical must appear above its brand name on all packaging.

Agricultural Goods

The Philippine Department of Agriculture has established plant health regulations, which allow the import of U.S. apples, grapes, oranges, potatoes, onions, and garlic, provided these products do not originate from Florida or Texas. A protocol was recently negotiated to allow the importation of Florida grapefruit, oranges and tangerines into the Philippines. Similar protocols are being negotiated for a range of other fruits and vegetables, including cherries, broccoli, lettuce, and cauliflower.

The Philippine Government's zero tolerance policy for methanol in wine products has posed a concern for exporting alcohol industries. This policy requires that a manufacturer's report on the manufacturing process be submitted to the Philippine Bureau of Food and Drug (BFAD) for evaluation.

GOVERNMENT PROCUREMENT

The Philippines is not a signatory of the WTO Government Procurement Agreement (GPA). Contracts for government procurement are awarded by competitive tender. Preferential treatment of local suppliers is practiced in government purchases of pharmaceuticals, rice, corn, and iron/steel materials for use in government projects, and in locally-funded government consulting requirements. Contractors for infrastructure projects that require a public utility franchise (i.e., water and power distribution, telecommunications, and transport systems) must be at least 60 percent Filipino-owned. For other major contracts (such as Build-Operate-Transfer projects) not involving a public utility franchise, a foreign contractor must be duly accredited by its government to undertake construction work.

Executive Order 120, dated August 19, 1993, mandates a countertrade requirement for procurements by government agencies and government-owned or controlled corporations that entail the payment of at least U.S. $1 million in foreign currency. Implementing regulations issued by the Department of Trade and Industry set the level of countertrade obligations of the foreign supplier at a minimum of 50 percent of the import price, and provide for penalties for non-performance of countertrade obligations. The implementing agency for countertrade transactions is the Philippine International Trading Corporation.

EXPORT SUBSIDIES

Enterprises and exporters engaged in activities under the Government's "Investment Priorities Plan" may register with the Board of Investments (BOI) for fiscal incentives, including four to six year income tax holidays; a tax deduction equivalent to 50 percent of the wages of direct-hire workers; and tax and duty exemptions for the importation of breeding stocks and genetic materials. BOI-registered firms that locate in less-developed areas may be eligible to claim a tax deduction of up to 100 percent of outlays for infrastructure works and 100 percent of incremental labor expenses. Firms in government-designated export processing zones, free trade zones, and other special industrial estates registered with the Philippine Economic Zone Authority (PEZA) enjoy basically these same incentives, plus tax and duty-free importation of capital equipment and raw materials, and exemption from preshipment inspection. In lieu of national and local taxes, PEZA-registered firms are subject to a five percent tax on gross income. Firms which earn at least 50 percent of their income from exports may register with BOI or PEZA for certain tax credits under the Export Development Act, including a tax credit on incremental annual export revenue. Legislation is pending to restore a tax credit for imports of raw material or components not readily available locally, which expired on December 31, 1999.

INTELLECTUAL PROPERTY RIGHTS PROTECTION

Significant problems remain in ensuring the consistent and effective protection of intellectual property rights (IPR). A new intellectual property code (R.A. 8293), which took effect January 1, 1998, improves the legal framework for IPR protection in the Philippines. It provides enhanced copyright and trademark protection; creates a new Intellectual Property Office (IPO), with authority to resolve certain disputes concerning licensing; increases penalties for infringement and counterfeiting; and relaxes provisions requiring the registration of licensing agreements. Passage of the law was called for under a 1993 bilateral U.S.-Philippine agreement to strengthen protection of intellectual property rights in the Philippines.

Deficiencies in R.A. 8293 remain a serious concern. These included, *inter alia*, a provision permitting the decompilation of software programs as "fair-use," subject to certain restrictions; the lack of clear provisions for *inaudita altera parte* relief in civil cases as required by Article 50 of the WTO Agreement on Trade-Related Intellectual Property Rights (TRIPS); ambiguous provisions on the rights of copyright owners over broadcast, rebroadcast, cable retransmission, or satellite retransmission of their works; and burdensome restrictions affecting licensing contracts. Some provisions of R.A. 8293, while nominally in force, are currently unavailable to rights holders because of continued organizational delays at the IPO. These include the right to pursue cases against IPR violators using the IPO's administrative complaint provisions. Legislation is pending in the Philippine Congress to provide IPR protection for plant varieties and layout-designs of integrated circuits, in line with WTO obligations that became mandatory on January 1, 2000.

Despite the creation in February 1993 of the Presidential Interagency Committee on Intellectual Property Rights (PIAC-IPR) to coordinate enforcement oversight and program implementation, serious problems continue to hamper the effective operation of agencies tasked with IPR enforcement. Resource constraints, already a problem, have been exacerbated by general governmental budgetary shortfalls, but joint efforts between the private sector and the National Bureau of Investigation (NBI), Philippine Customs and the Videogram Regulatory Board have resulted in some successful enforcement actions. Judicial unwillingness to impose meaningful penalties and sentences remains a stumbling block to more aggressive use of the courts to deter IPR violations. The designation of 48 courts to handle IPR violations has done little to streamline the judicial proceedings in this area, as these courts have not received additional resources and continue to handle a heavy non-IPR workload. Because of the lengthy nature of court action, many cases are settled out of court. The Philippines remains on the Special 301 Watch List.

The Philippine Government is a party to the Paris Convention for the Protection of Industrial Property and the Patent Cooperation Treaty; it is also a member of the World Intellectual Property Organization, although it has not yet signed the WIPO treaties on copyright and performance rights/phonograms. The Philippines is a Member of the World Trade Organization, and utilized the transition period available to developing countries to delay implementation of the TRIPS Agreement until January 1, 2000.

Patents

R.A. 8293 mandates a first-to-file system, increases the term of patents from 17 to 20 years, provides for the ability to patent microorganisms and non-biological and microbiological processes, and gives patent holders the right of exclusive importation of his invention. A compulsory license may be granted in some circumstances, including if the patented invention is not being worked in the Philippines without satisfactory reason, although importation of the patented article constitutes working or using the patent. Legislation has been introduced in the Philippine House of Representatives which, if enacted, would curtail many rights and would shorten the term of patent protection.

Trademarks

R.A. 8293 no longer requires prior use of trademarks in the Philippines as a requirement for filing a trademark application. The law also eliminates the requirement that well-known marks be in use in Philippine commerce or registered with the Government. Trademark counterfeiting remains widespread in the Philippines.

Copyright

R.A. 8293 expands IPR protection by clarifying protection of computer software as a literary work (although it includes a fair-use provision on decompilation of software), establishing exclusive rental rights in several categories of works and sound recordings, and providing terms of protection for sound recordings, audiovisual works, and newspapers and periodicals that are compatible with the WTO TRIPS Agreement. Implementing regulations on copyright were issued by the National Library in August 1999 and address some deficiencies in the law, but significant concerns remain. As noted above, these include the lack of clear provisions for *inaudita altera parte* (*ex-parte*) relief for copyright owners in civil cases, and ambiguities concerning exclusive rights for copyright owners over broadcast and retransmission. Ratification by the Philippines of the Berne Convention (Paris Act) in June 1997 effectively ended the longstanding government practice of authorizing local publishers to reprint foreign textbooks without permission of the foreign copyright holder. However, legislation has been introduced in the Philippine House of Representatives which would permit the unrestricted reproduction of copyrighted works, including computer software, by educational institutions. According to aggregated industry statistics, the total annual trade loss resulting from copyright piracy in the Philippines in 1999 is estimated at about $115 million.

U.S. industry reports that software piracy remains widespread, with total annual trade losses from piracy in 1999 estimated at about $27 million for business software and about $24 million for entertainment software. The Philippine Government has stated its commitment to eliminate the use of pirated software within government agencies, pursuant to Memorandum Circular 115, which orders government agencies to use only licensed, legitimate software. Software vendors believe compliance, though improved, remains uneven. Despite positive, intensified cooperation with the Bureau of Customs and the Videogram Regulatory Board and actions by the NBI, U.S. distributors report continued high levels of unauthorized retail sale and distribution of audio and visual material, and unauthorized transmissions of motion pictures and other programming on cable systems. Enforcement officials, working with industry, raided two illegal optical disk (OD) production facilities in September and October 1999, confiscating several million dollars worth of equipment and inventory. The National Telecommunications Commission has undertaken new efforts to address infringement by some cable operators. Philippine courts have been reluctant to impose substantial penalties, which would serve as a deterrent for infringement; often, penalties consist only of the seizure and confiscation of the video cassettes or optical discs used in the unauthorized cable broadcast. Delays in the issuance of warrants are a problem and arrests are infrequent. It remains to be seen whether the tougher penalties contained in R.A. 8293 will enhance enforcement. The U.S. motion picture industry estimates annual losses due to audiovisual piracy in the Philippines amounted to $18 million in 1999.

Licensing of Technology

The Intellectual Property Office requires that all technology transfer arrangements comply with provisions outlined in R.A. 8293, including the prohibition of the use of certain clauses in such arrangements. The scope of these provisions is extremely broad and serves to obstruct the normal contracting process between unrelated parties or as part of intra-company business. Technology transfer arrangements are defined as contracts involving the transfer of systematic knowledge for the manufacture of a product, the application of a process, or rendering of a service including management contracts, and the transfer, assignment or licensing of all forms of intellectual property rights, including computer software except for software developed for mass market.

SERVICES BARRIERS

The Philippines is long overdue in ratifying both the Fourth Protocol to the WTO General Agreement on Trade in Services (GATS), embodying its obligations under the WTO Basic Telecommunications Agreement, and the Fifth Protocol to GATS, embodying its obligations under the WTO Finance Services Agreement. Details concerning the Philippine government's obligations in these areas are discussed below.

Basic Telecommunications

The Philippine Constitution (Section 11 of Article XII) limits foreign ownership of telecommunications firms to 40 percent. During the WTO negotiations on basic telecommunications services, the Philippines made commitments on most basic telecommunications services and adopted some pro-competitive regulatory principles contained in the WTO Reference Paper. The Philippines did not provide market access or national treatment for satellite services, and made no commitment regarding resale of leased circuits/closed user groups.

Financial Services

Insurance: Although current practice permits up to 100 percent foreign ownership in the insurance sector in 1997, the Philippines only committed to a WTO binding at a maximum of 51 percent equity participation. However, it grandfathered the status of existing insurers with more than 51 percent foreign equity. As a general rule, only the state-owned government insurance system may provide coverage for government-funded projects. A 1994 administrative order extended this policy to public-private Build-Operate-Transfer (BOT) projects. Private insurance firms, both domestic and foreign, regard this as an important trade barrier. Current regulations require all insurance/professional reinsurance companies operating in the Philippines to cede to the industry-owned National Reinsurance Corporation of the Philippines (NRCP) at least 10 percent of outward reinsurance placements.

Banking: May 1994 legislation permitted 10 foreign banks to open full-service branches in the Philippines. A foreign bank may also own up to 60 percent of a new or existing local subsidiary, although the Philippines only bound foreign ownership at 51 percent in its 1997 WTO financial services offer and included a reciprocity test for authorization to establish a commercial presence. Legislation is pending in the Philippine Congress to permit foreign banks to acquire 100 percent of local banks experiencing financial problems. Foreign branch banks are limited to six branches each. Four foreign-owned banks that had been operating in the Philippines prior to 1948 were each allowed to open up to six additional branches. Current regulations mandate that majority Filipino-owned domestic banks should, at all times, control at least 70 percent of total banking system assets.

Securities and Other Financial Services: Membership in the Philippine Stock Exchange (PSE) is open to foreign-controlled stock brokerages that are incorporated under Philippine laws. Foreign equity in trust management firms is limited to 40 percent, and in securities underwriting companies to 60 percent. Securities underwriting companies not established under Philippine law may underwrite Philippine issues for foreign markets, but not for the domestic market. Although there are no foreign ownership restrictions governing acquisition of shares of mutual funds, current law restricts membership in the board of directors to Philippine citizens. The Philippines took an MFN exemption on foreign equity participation in securities firms, stating that Philippine regulators would approve applications for foreign equity only if Philippine companies enjoy similar rights in the foreign investor's country of origin.

Advertising

The Philippine Constitution (Section 11 of Article XVI) limits foreign ownership of advertising agencies to 30 percent. All executive and managing officers of advertising agencies must be Philippine citizens.

Public Utilities

The Philippine Constitution (Section 11 of Article XII) specifically limits the operation of public utilities (i.e., water and sewage, electricity, telecommunications) to firms with at least 60 percent ownership by Philippine citizens. All executive and managing officers of such enterprises must be Philippine citizens.

Practice of Professions

As a general rule, the Philippine Constitution (Section 14 of Article XII) reserves the practice of licensed professions (e.g., law, medicine, nursing, accountancy, engineering, architecture, customs brokerage, etc.) to Philippine citizens. Philippine law (R.A. 8182) also requires that preference be given to Philippine citizens in the hiring of consultants and other professionals necessary for the implementation of projects funded by foreign assistance. Legislation signed in February 1998 (R.A. 8555) gives the President of the Philippines the authority to waive this and other preferences applicable to the procurement of goods and services funded with foreign assistance.

Shipping

The Maritime Industry Authority prohibits foreign flagged vessels from engaging in the provision of domestic carriage services. The country's bareboat chartering laws stipulate that Philippine flagged vessels should be manned by Filipino crew and disallows foreign crew/officers, except as supernumeraries.

Express Delivery Services

Foreign air express couriers and airfreight forwarding firms must either contract with a wholly-owned Philippine business to provide delivery services, or establish a domestic company with a minimum of 60 percent Philippine-owned equity.

INVESTMENT BARRIERS

The 1991 Foreign Investment Act (FIA) contains two "negative lists" that outline areas where foreign investment is restricted. The restrictions stem from a Constitutional provision, Section 10 of Article VII, which permits the Philippine Congress to reserve to Philippine citizens certain areas of investment. The scope of these lists were updated by E.O. 11, signed August 11, 1998.

"List A" covers activities in which foreign equity is excluded or limited by the Constitution or other laws. No foreign investment is permitted in mass media (including cable television operators), processing of corn and rice, small-scale mining, and private security agencies. In addition to land ownership (where a 40 percent foreign equity ceiling applies), foreign ownership limitations cover advertising (30 percent), recruitment (25 percent), financing (60 percent), securities underwriting firms (60 percent), public utilities (40 percent), education (40 percent), the operation of deep sea commercial fishing vessels (40 percent), public works (25 percent, except for projects covered by the government's build-operate-transfer program and those that are foreign-funded, where 100 percent foreign equity is permitted), and the exploration and development of natural resources (40 percent).

"List B" limits foreign ownership (generally to 40 percent) for reasons of public health, safety, morals, or national security. To protect small and medium-sized domestic enterprises, this list also restricts foreign ownership to no more than 40 percent in non-export-related firms capitalized at less than U.S.$200,000. The Philippine Congress in February 2000 enacted legislation to open the retail trade sector to foreign investment, subject to stringent conditions, including a high minimum capitalization requirement, a divestment requirement, and local sourcing requirements.

The Philippines generally imposes a foreign ownership ceiling of 40 percent on firms seeking incentives with the Board of Investments (BOI) under the annual investment priorities plan. While there are exceptions to the ceiling, divestment to reach the 40 percent level is required within 30 years, or longer as allowed by the BOI. As a general policy, the Philippine Department of Labor and Employment allows the employment of foreigners provided there are no qualified Philippine citizens that can fill the position. However, the employer must train Filipino understudies and report on such training periodically. The positions of elective officers (i.e., president, general manager and treasurer) are exempt from the labor market test and understudy requirements.

Trade-Related Investment Measures

In 1995, pursuant to the WTO Agreement on Trade-Related Investment Measures (TRIMS), the Philippines notified the maintenance of local content and foreign exchange balancing requirements to promote investment in the motor vehicle assembly and detergent industries. Proper notification allowed developing-country WTO members to maintain such measures for a five-year transitional period, ending January 1, 2000. In October 1999, the Philippines requested a five-year extension for the measures in the motor vehicle sector. The United States is working with other WTO members to review all pending TRIMS extension requests on a case-by-case basis, with an effort to ensure that the individual needs of those countries that have made requests can be addressed. This process does not limit a Member's rights under the WTO Agreement.

The Board of Investments imposes industry-wide local content requirements under its Motor Vehicle Development Program, and requires participants to generate, via exports, a certain percentage of the foreign exchange needed for import requirements. Local content requirements in the autos sector are based on a point system, which translates to 40 percent for passenger cars and 45 percent for commercial vehicles of less than three tons.

The Car Development Program requires an investment of $10 million in parts and components manufacturing for export and domestic markets as a mandatory step to establish a vehicle assembly facility ($8 million for trucks/commercial vehicles). Under Memorandum Order (MO) 473 of April 1998 manufacturers can reduce the local content requirement if they export at least $200 million a year. The Board of Investment may grant a local content offsetting scheme in which foreign exchange can replace up to 50 percent of local content, provided that the foreign exchange is twice the value of local content replaced. This measure authorizes the BOI to create a mandatory parts list as part of the local content requirement for manufacturers.

The notified measure in the chemicals/detergents sectors (Executive Order 259) requires that soap and detergents contain at least 60 percent coconut-based surface active agents, implicitly requiring local sourcing by soap and detergent manufacturers. No extension request was made in regard to these measures.

In addition to the requirements notified under the WTO TRIMS Agreement, the United States continues to monitor other measures. Regulations governing the provision of tax incentives impose a higher export performance for foreign-owned enterprises (70 percent of production should be exported) than for Philippine-owned companies (50 percent). Legislation passed by the Philippine Congress in February 2000 requires that foreign retailers, for the first 10 years after the bill's enactment, source at least 30 percent (for retail enterprises capitalized at no less than $2.5 million) and 10 percent (for retail enterprises specializing in luxury goods) of their inventory, by value, in the Philippines. In addition, there appear to be unwritten "trade balancing" requirements for firms applying for approval of ventures under the ASEAN Industrial Cooperation (AICO) scheme.

ELECTRONIC COMMERCE

Electronic transactions are not presently subject to any discriminatory trade restrictions or tax measures. At present, electronic documents do not have legal recognition in the Philippines. Legislation is pending in the Philippine Congress to give electronic documents legal standing.

OTHER BARRIERS

The Revised Penal Code, Anti-Graft and Corrupt Practices Act, and Code of Ethical Conduct for public officials are in place and are intended to combat suspected corruption and related anti-competitive business practices. The Office of the Ombudsman investigates cases of alleged graft and corruption involving public officials. The "Sandiganbayan" (anti-graft court) prosecutes and adjudicates cases filed by the Ombudsman.

In spite of these government mechanisms directed at combating suspected corruption, widespread anecdotal evidence suggests that graft remains a serious problem at many levels in all branches of the Philippine Government. In its 1999 survey of public perceptions of corruption in 99 countries, a non-governmental organization gave the Philippines a score of 3.6 (10 being the perfect corruption-free score), ranking the Philippines at twentieth place in terms of the perceived level of corruption. The U.S. Embassy and the American Chamber of Commerce in Manila have in the past successfully represented U.S. business interests in cases where U.S. firms seemed to be disadvantaged due to reportedly questionable bid/award or other government proceedings.

POLAND

TRADE SUMMARY

The United States registered a trade surplus of $12 million with Poland in 1999, a decline of $87 million from 1998. Poland was the United States' 56th largest export market in 1999. In 1999, U.S. exports to Poland were $825 million, a 6.5 percent decrease from 1998. U.S. imports from Poland were $813 million in 1999, an increase of $30 million (3.9 percent) from 1998. The stock of U.S. foreign direct investment in 1998 was $1.7 billion, a 39.6 percent increase from 1997.

IMPORT POLICIES

Poland's current trade policies are shaped primarily by its World Trade Organization (WTO) commitments and – increasingly – by the likelihood that Poland will become a full member of the European Union (EU) within several years. Poland's trade regime during the 1990s was marked by an overall trend towards lower tariffs, although the government did impose an import surcharge from 1993-1996. The past decade has also seen Poland conclude a number of preferential trade agreements, including its Association Agreement with the EU and free trade agreements with the European Free Trade Area (EFTA) countries, the Central European Free Trade Agreement (CEFTA) countries, the Baltic states and Israel. In line with its commitments in the Uruguay Round, Poland continues to lower its Most-Favored-Nation (MFN) tariffs on industrial goods; the average tariff rate in 2000 is 9.24 percent.

As a result of its preferential trade agreements, most of Poland's imports enter duty-free. In 1999, 73 percent of Poland's total industrial imports were free of tariffs, 23 percent (including those from the United States) fell under MFN tariffs, and three percent were subject to GSP tariffs applied to developing countries. Under Poland's Association Agreement with the EU, tariffs on industrial products from the EU will be completely phased out by the end of 2001. Also, these preferential trade agreements provide for reduced tariffs rates on some non-industrial products on a selective basis. U.S. products, which are subject to Poland's MFN rates, often encounter a significant tariff differential when competing against EU products, which enter duty-free or at a preferential rate. Specifically, U.S. exporters of automobiles, auto parts, small aircraft, electrical generating equipment, mining equipment, lumber and wood products, distilled spirits, wine, sporting goods, cosmetics, soybean meal, durum wheat, peanut butter, chocolate and non-chocolate confections, and grapefruit have complained about this disadvantage. Moreover, Poland applies very high duties of 75-105 percent *ad valorem* on imported alcoholic beverages (and nearly 370 percent for imports beyond the quota) and 30-452 percent *ad valorem* duties on chocolate and confectionery products.

Poland's MFN rates on industrial products are generally higher than the EU's common external tariff (CXT) rates, and so joining the EU, which would require Poland to adopt the EU's CXT rates, would benefit U.S. exporters of industrial products. Adopting the CXT would likely have a negative impact on some U.S. agriculture exports where the EU's CXT rates often exceed Poland's MFN rates. The U.S. has been urging Poland to reduce its high MFN tariff rates down to the EU's CXT levels prior to EU accession. The U.S. and Poland are engaged in discussions on how to address this tariff differential problem. Poland has responded to individual U.S. exporters' complaints about automobiles and soybean meal by unilaterally granting a reduction in customs duties on large engine automobiles and soybean meal, although these measures have not fully satisfied the exporters involved.

While the general trend has been towards liberalization of trade, the Polish government has increased tariff barriers on several agricultural products in recent years. Although

Poland negotiated high bound tariff levels for agricultural products in the Uruguay Round, the average level of applied agricultural tariffs is substantially lower at 23 percent in 2000. To protect its sugar industry, the Polish government has imposed additional duties on imported products containing sugar, although a number of EU products are exempt from them. In January 1999, an autonomous tariff on pork was increased from 60 percent to 83.3 percent; in March, changes were introduced to the customs tariff, eliminating customs concessions on imports of some agricultural products from countries with which Poland has free trade agreements, especially CEFTA countries and the EU. Tariffs were increased on over 100 items, including yogurt, pork, poultry, milk, wheat and rye. In late 1999, Poland increased duties on wheat flour, wheat and rye flour mixtures, bran, and barley malt, none of which are significant U.S. exports to Poland.

In past years, Poland used trade restrictions as a limited protective measure. Since 1998, Poland commenced antidumping procedures and safeguards to protect its markets against X-ray films from Germany, coal from Russia, and shoes and gas lighters from China. Recent safeguard actions have resulted in increased duties for Chinese shoes and a tariff-rate quota on Russian coal.

STANDARDS, TESTING, LABELING AND CERTIFICATION

Despite improvements over the past decade, exporters of U.S. products to Poland continue to complain about the lack of transparency and complexity that surround standards and certification matters. Some U.S. firms have reported that these requirements are arbitrary and excessively burdensome and consider them to be a significant obstacle to doing business in the Polish market. For example, U.S. lumber and wood products industry associations stated that Poland's Institute of Building Technology, which has responsibility for product, code and standard approval, is predisposed against wood frame construction, and this has hindered U.S. exports of new wood products for use in construction. Poland's extensive system for the certification and approval of products is burdensome. U.S. exporters to Poland have complained about the complexity and slowness of the testing process, lack of transparency in the administration of tariff-rate quotas, and vague information on fees and import procedures. Poland's arbitrary application of sanitary and phytosanitary standards on occasion has seriously disrupted trade. Most notably, the strict enforcement of a policy of zero tolerance of certain weed seeds, including ambrosia or ragweed seeds, which is common in imported U.S. grains and oilseeds, has resulted in substantial export losses for U.S. grains, oilseeds and products. Import permits are still required for live plants, fresh fruits, vegetables, meat and live animals.

In November 1999, the Polish government adopted new regulations on genetically modified organisms (GMOs). The regulations have no minimum tolerance levels for foods containing GMOs. Approval procedures for importation of new varieties of plants and livestock genetics have created difficulties for U.S. firms.

GOVERNMENT PROCUREMENT

Poland's procurement law is modeled on the United Nation's procurement code and is based on competition, transparency, and public announcement, but does not cover most purchases by state-owned enterprises. Single source exceptions to the stated preference of unlimited tender are allowed only for reasons of national security or national emergency. The domestic performance section in the law requires 50 percent domestic content and gives domestic bidders a 20 percent price preference. Companies with foreign participation organized under the Joint Ventures Act of 1991 may qualify for "domestic" status. There is also a protest/appeals process for tenders thought to be unfairly awarded. The law established a Central Policy Office of Public Procurement, which lists all tenders valued at over 30,000 euro. Poland has the status of an observer to the WTO's Government Procurement Agreement (GPA), but is not yet a signatory. It would have to become a signatory in order to join the EU. A new Public Procurement Law is being prepared and is expected to come into force on January 1, 2001.

EXPORT SUBSIDIES

With its 1995 accession to the WTO, Poland ratified the Uruguay Round Subsidies Code and eliminated earlier practices of tax incentives for exporters, but it still offers drawback levies on raw materials from EU and CEFTA countries which are processed and re-exported as finished products within 30 days. The U.S. lumber and wood products associations complained about Poland's elimination of duty drawbacks on goods from non-EU sources which are then exported from Poland to the EU. Some politically powerful state-owned enterprises continue to receive direct or indirect production subsidies to lower export prices. Poland's past policy of rolling over unused WTO sugar subsidy allowances to be used in combination with a given year's allowances appears to be no longer practiced. The one existing export insurance program has very limited resources, and rarely guarantees contracts to high-risk countries such as Russia, placing Polish firms at a disadvantage to most western counterparts.

In August 1999, the Polish government announced its intention to amend laws and regulations governing export promotion. These steps, which will be taken in 2000, are designed to both improve Poland's export performance and bring Polish regulations fully into compliance with EU regulations and practices in other OECD countries.

INTELLECTUAL PROPERTY RIGHTS PROTECTION

Poland has made major strides in improving protection of intellectual property rights over the past decade, but piracy of U.S. copyrighted works constitutes a major problem. The U.S.-Polish Bilateral Business and Economic Treaty contains provisions for the protection of U.S. intellectual property. That treaty came into force in 1994, once Poland passed a new Copyright Law that offers strong criminal and civil enforcement provisions and covers literary, musical, graphical, software, audio-visual works, and industrial patterns.

As a member of the WTO, Poland is party to the WTO TRIPS Agreement and was to have fully complied with all TRIPS standards as of January 1, 2000. Legislation that would amend both the Copyright Law and the industrial property laws (patent, trademark, and industrial design) was not passed before the end of 1999, this raises concerns regarding Poland's compliance with TRIPS. According to the Polish Government, the copyright amendments would provide full copyright protection of all pre-existing works and sound recordings. The Polish government aims to pass both bills in the first half of 2000. The U.S. pharmaceutical industry is concerned about the adequacy of Poland's protection of test data submitted to the authorities to obtain marketing approval, which is required to be protected under the WTO TRIPS Agreement. Poland has not yet adopted the EU's data exclusivity regime, which provides 6-10 years of protection, though it would have to do so in order to join the EU.

Despite a relatively strong legal foundation, Poland continues to have high rates of copyright piracy. Most of the pirated material available – particularly CDs and CD-ROMs – is imported from factories in the former Soviet Union. Industry associations estimate 1998 levels of piracy in Poland to be: 40 percent in sound recordings, 25 percent in motion pictures, and

60 percent in software. Cable television piracy in Poland is no longer a serious problem, as all operators are required to be licensed by the National Broadcasting Council. Theft of pay-television signals is a growing problem and Poland lacks anti-circumvention legislation. While enforcement has improved in recent years, the cumbersome judicial system remains an impediment. Criminal penalties will increase and procedures for prosecution will be somewhat simplified when the pending legislation takes effect. Poland is currently on the "Special 301 Watch List" due largely to legislative shortcomings and concerns over insufficient enforcement.

SERVICES BARRIERS

Poland has made progress, but many barriers remain, especially in audio-visuals, financial services, and telecommunications. In November 1997, the government implemented by regulation a minimum 50 percent European production quota for television broadcasters. Legislation introduced into parliament in late 1999 would codify the quota regime, though it would require broadcasters to meet the 50 percent quota only where practical, which is in accord with the EU's broadcast directive. In January 1998, new laws on banking and the central bank came into force. As a condition of its accession to the OECD, Poland agreed to allow firms from OECD countries to open branches and representative offices in the insurance and banking sector starting in 1999. The government began privatizing the state telecommunications monopoly, TPSA, in October 1998, and agreed to open domestic long-distance service to competition in 1999 (although that process will not be complete until some point in 2000) and international services in 2003. Local telephone service licenses are being awarded, but interconnection remains the domain of the state monopoly. Private telecommunications service providers complain that government regulation is not yet effective enough to guarantee a level playing field against TPSA. An independent telecommunications regulator has not yet been established, and U.S. firms describe the licensing system as non-transparent and discriminatory.

INVESTMENT BARRIERS

Polish law permits foreign ownership of up to 100 percent of corporations, although limits remain for foreign investment in certain "strategic sectors" such as mining, steel, defense, transport, energy, and telecommunications. Broadcasting legislation restricts foreign ownership to 33 percent (although proposed legislation would increase this to 49 percent for terrestrial broadcasting and 100 percent for satellite), and foreign stakes in air and maritime transport, fisheries and domestic long-distance telecommunications are confined to 49 percent. Foreign ownership in cable networks is limited to 49 percent, but exceptions are allowed for foreign investments in excess of that amount made before the law went into effect in 1995. No foreign investment is currently allowed in gambling or international telecommunications, though Poland has committed to allowing foreign investment up to 49 percent for international long-distance by 2003. The government is working on privatization of telecommunications, steel mills, and the energy sector, as well as a restructuring plan for the defense industry that calls for significant foreign investment. As a result of OECD accession, foreigners in Poland may purchase up to 400 square meters of urban land or up to one hectare of agricultural land without a permit. Larger purchases, or the purchase of a controlling stake in a Polish company owning real estate, require approval from the Ministry of Interior and the consent (not always automatic) of both the Defense and Agriculture Ministries.

ANTI-COMPETITIVE PRACTICES

On October 1, 1996, the Office for Competition and Consumer Protection was established out of the former Anti-Monopoly Office and State

Trade Inspection Office. This new office is empowered to fine state-owned as well as privately owned firms monopolies that unduly prevent competition. A 1995 amendment to the Antimonopoly Office Act removed ambiguities regarding this authority, thereby strengthening its ability to act.

ELECTRONIC COMMERCE

In Poland, sales through the Internet are unrestricted. Normal Value Added Tax (VAT) fees do apply to merchandise purchases through the Internet. Customs duties and VAT apply to imported software. The Ministry of Finance and Customs Office are at the initial stages of considering tax regulations for software purchased and delivered via the Internet. High interconnection charges have hindered the development of electronic commerce in Poland.

ROMANIA

TRADE SUMMARY

The United States registered a trade deficit of $258 million with Romania in 1999, compared to a deficit of $54 million in 1998. Romania was the United States' 95th largest export market in 1999. U.S. exports to Romania were $177 million, nearly a 48 percent decrease from 1998. U.S. imports from Romania were $434 million in 1999, an increase of $41 million (10.5 percent) from 1998. The stock of U.S. foreign direct investment in 1998 was $128 million, a 43.8 percent increase from 1997.

IMPORT POLICIES

Romania has dramatically improved its import policies in the last 10 years. It has ended the state's monopoly on trade, became a founding member of the World Trade Organization (WTO), bound all of its tariff lines in the Uruguay Round, and updated its customs code. Romania joined the WTO's Information Technology Agreement and so eliminated tariffs on the products covered by that agreement effective January 1, 2000. The past decade has also seen Romania conclude a number of preferential trade agreements, including its Association Agreement with the EU and free trade agreements with the European Free Trade Area (EFTA) countries and the Central European Free Trade Agreement (CEFTA) countries. In December 1999, the European Union (EU) announced its intention to begin accession negotiations with Romania in early 2000.

Romania still maintains high average bound most-favored-nation (MFN) rates for agricultural products (134 percent) and non-agricultural products (35 percent), based on 1999 data. It did, however, use much lower average applied rates, 33.9 percent in the case of agricultural products and 16.2 percent in the case of non-agricultural products. High MFN rates on distilled spirits (90 percent *ad valorem* within a modest quota and 247.5 percent outside the quota), wine (144 percent), and textiles (12-32 percent) have severely limited access to the Romanian market for U.S. exporters. Since October 1998, Romania has imposed an import surcharge affecting around 60 percent of imports, which will expire at the end of the year 2000; the initial rate of six percent was reduced to four percent in 1999.

As Romania completes the implementation of its preferential trade agreements with the EU and CEFTA countries, U.S. exporters will frequently encounter large tariff differentials particularly with respect to industrial products. U.S. exporters will have to pay relatively high MFN rates, while EU and CEFTA exporters will often not have to pay any duties or preferential rates. A number of U.S. companies already have voiced concerns about these tariff differentials; their products include wine, supplemental methionine for animal feeds, rubber tires, upholstery, lightning arresters, switching gear for telephone lines, and washers and dryers for laundromats. The differential between the MFN rate to which U.S. products entering Romania are subject compared to the duty-free or preferential rates EU exporters receive is significant in each of these categories and hinders U.S. exporters' ability to compete in the Romania market. When Romania does join the EU, which will take many years at a minimum, it will have to adopt the EU's common external tariff (CXT) rates, which currently are significantly below Romania's applied rates.

In 1997, Romania adopted a new Customs Code, and the government established minimum and maximum prices for imported meat, eggs, rice, sugar, fruits and vegetables, clothing, and footwear. It also established minimum and maximum reference prices for distilled spirits. Further, Romania instituted specific procedures for investigating import prices when the c.i.f. value falls below the minimum import price. In such situations, the importer is required to pay, in addition to the duty based on the c.i.f. value, a "guarantee" deposit that is the difference between the duties of the maximum established price and that of the c.i.f. value. This "guarantee" allows for the release of the goods while customs officials verify the accuracy of the c.i.f. value within the allotted thirty days. However, U.S. firms report that the "guarantees" are reimbursed much later or not at all, even after investigations were successfully concluded in favor of the importers.

Additionally, the verification procedures utilized by Romanian customs officials include several unnecessary requirements, which also are of concern to U.S. businesses. For instance, to verify the actual c.i.f. value of a specific transaction, the Romanian "surveillance and control brigade" will make on-site inspections at the importer headquarters, warehouses where merchandise is stored and check "all the import-export operations made within [the] last five years."

The above practices appear to contravene Romania's obligations under the Customs Valuation Agreement and other WTO agreements, and present a significant trade barrier to the affected U.S. exporters. Therefore, the United States is considering requesting formal WTO consultations with Romania on this matter.

STANDARDS, TESTING, LABELING AND CERTIFICATION

Romania has sought to bring its standards in line with international and EU standards. As of the end of 1998, there were over 16,000 national standards, of which 39 percent were identical to or equivalent to international standards, and a further nine percent were identical to or equivalent to EU standards. Romanian standards of quality and safety are under the jurisdiction of the Romanian Standards Institute. Nearly 90 percent of all new standards match ISO or EU standards. Romania adopted, for instance, international quality control standards such as ISO 8402, 9000-9004 and 9004-2 and incorporated them in its national standardization system.

Although the ISO standards are not compulsory by law for individual companies, the buyers increasingly impose them on the suppliers to prove the quality of their products and services by the certification of the quality control system they practice. Generally speaking, U.S. quality standards requirements are superior to local ones. However, Western European countries are acting very aggressively to adapt local technical standards of their own and this might in time discriminate against U.S. products. According to Romanian Decree No. 21/1992, an Office for Consumer Protection has been created. This office supervises product quality compliance with compulsory standards referring to life, health protection, work security and environmental protection.

GOVERNMENT PROCUREMENT

Romania has expressed its intention to join the WTO Government Procurement Agreement (GPA). Romania already is an observer to the GPA, and it would have to become a signatory in order to join the EU. Romania's current laws already comply with several essential GPA provisions. Romania has also supported discussions in Geneva regarding transparency in government procurement. Romania's government procurement law covers purchases by central government bodies – Parliament, the Presidency, the government and ministries, institutions of higher learning, and the judiciary – as well as by state-owned enterprises, of goods and services, and public investment, with the exception of the procurement of armaments or public works by the Ministry of Defense; state-owned companies with the status of commercial companies have their own internally elaborated purchasing policies based on commercial principles. A national preference of 20 percent was introduced in 1995, but was eliminated in 1998. Article 5 of Romanian Decree OG12/1993, as modified, establishes the conditions for the participation of foreign suppliers: on condition that Romanian suppliers are granted similar treatment in the country of origin of the foreign supplier, certified as such by the Ministry of Industry and Commerce; and on the condition that a Romanian supplier is either not available or cannot fulfill the conditions of the purchase, duly substantiated by the purchasing entity on the tender document.

EXPORT SUBSIDIES

Generally, Romania only provides export subsidies for certain agricultural products. The government has periodically used a tax incentive to stimulate domestic production for export. According to Article 7(1)(b) of Romanian Law 73/1996, a reduction of 50 percent on the profits tax applied to the portion corresponding to the share of exports of goods and services in total sales as of January 1, 1997. The government removed the measure on 30 January 1998, but the measure was reinstated by parliament for 1999, and then suspended in March 1999.

INTELLECTUAL PROPERTY RIGHTS PROTECTION

Romania's criminal enforcement against copyright piracy and trademark counterfeiting (especially of U.S. distilled spirits) has been inadequate. Romania should provide its border and other authorities the legal authority and tools to combat the widespread piracy of copyrighted works. This inadequate enforcement against copyright piracy caused Romania to be placed on the Special 301 Watch List in 1999.

The rates of piracy in Romania are high. The International Intellectual Property Alliance (IIPA) has estimated that Romanian piracy of motion pictures, sound recordings, computer programs/software, and books cost U.S. industry $43.3 million in 1998. However, the most severe effect has been with software. The Business Software Alliance (BSA) estimates that the piracy rate in Romania has dropped only from 95 percent prior to the coming into force of the law to around 80 percent now. The Motion Picture Association estimates that it lost $6 million in revenues in 1999 due to audiovisual piracy. The video piracy rate is approximately 50 percent, and many small cable companies and some private broadcast stations routinely transmit unauthorized U.S. films and programs. Romanian criminal courts have solved only 19 cases concerning copyright and related rights between the period from 1996 to 1999. Further, the deterrent effect of fines appears to be eroding due to high inflation.

In order to fully implement TRIPS obligations, the Ministry of Industries and Commerce has drafted a law amending Romanian Law 11/1999 concerning unfair competition, which deals with the protection of trade secrets. The draft has already been submitted to parliament for approval. Also, the government has drafted a new law to amend Romanian Law 129/1992 on the protection of industrial designs and patterns, but as of December 1999 had not submitted it to parliament. Further, as of December 1999, parliament had not acted on a bill on both industrial and intellectual rights (copyrights), which would provide border enforcement provisions in accordance with Romania's WTO TRIPS obligations.

SERVICES BARRIERS

In accordance with its Association Agreements with the EU, Romania was required to implement the EU broadcast directive which provides for European content quotas. However, Romania also included the "where practicable" provision of that directive, which gives the government flexibility in implementing this rule. Specifically, Romanian Law 119 of 1999, which amended the audio-visual Law 48/1992, provides: "TV stations must gradually broadcast, as much as possible, and by appropriate means, at least 51 percent of the total broadcast time to European productions, minus news and sport shows, games, advertising and teletext services." The subsequent condition is that out of the total, at least 40 percent must be Romanian made. However, this is regarded by Romanian parliamentarians as more a theoretical concept – to make Romania's legislation compatible with EU requirements – than a rule, because Romanian stations which complied with the requirement would dramatically lose market share and revenues.

The Ministry of Justice has submitted legislation to parliament requiring that foreign law firms must be associated with Romanian ones.

Romania introduced a new banking law in 1998 that opened its banking sector to foreign investors as it implemented its commitments under 1997 WTO Financial Services Agreement. Foreign insurance companies must establish a joint venture with a Romanian partner to enter the Romanian market. Administered insurance prices have tended to limit the interest of private companies in the Romanian market.

The government sold a strategic stake in the telephone company (Romtelecom) to Hellenic Telecommunications Organization in 1998; the privatization of Romtelecom is supposed to be completed after the year 2000. Tariffs are subject to governmental supervision. Romania has made commitments under the WTO Basic Telecommunications Agreement – many of which will be phased-in in 2003 – and has adopted the procompetitive regulatory principles contained in the WTO Reference Paper.

INVESTMENT BARRIERS

Since 1990, Romania's stated policy has been to encourage foreign direct investment. In general, the debate within the coalition government is not over whether to promote a market economy that is open to foreign investment, but over how to achieve that objective. There remains resistance to foreign investment in some quarters, including representatives of the nationalist political parties and from some managers of state-owned enterprises who fear that foreigners' purchases of state-owned companies at "bargain basement" prices will give them too much influence in the economy.

A significant impediment to foreign investment is Romania's unpredictable legal and regulatory system. Tax laws are changeable and unevenly enforced. Tort cases can require lengthy, expensive procedures and judges' rulings face uncertain enforcement.

ELECTRONIC COMMERCE

As a result of millions of dollars worth of fraud on credit cards, many international electronic vendors no longer fill orders filed electronically from Romania.

OTHER BARRIERS

Bribery and corruption are widespread throughout the Romanian economy and tax administration. This is believed to have stimulated the growth in the informal economy, which currently amounts to about half of the nominal Gross Domestic Product. Factors contributing to the growth of the informal economy are well-known: over-regulation and bureaucracy; inconsistent and changing legislation, with immediate effect and subjective interpretation of law; and high taxation.

The Romanian Government not only has taken no action against practices of state-owned and private firms that restrict the sale of U.S. products and services, but has even in some instances encouraged such practices. In order to boost the resolution of some important arrears with the budget and other state-owned suppliers, the Ministry of Finance cut reschedule deals with state and private domestic debtors. In certain cases, this hidden subsidy has disadvantaged U.S. competitors. For instance, the Finance Ministry agreed to re-schedule in

1998 tax arrears amounting to about $200 million with the domestic firm "European Drinks", an important domestic beverage manufacturer. This firm obtained a substantial cost advantage over its chief competitor, Coca Cola Romania (CCR), which received no concessions. CCR has experienced a steady decline in market share, while "European drinks" sales and share of the market have increased.

RUSSIA

TRADE SUMMARY

In 1999, the United States trade deficit with Russia was nearly $4 billion, an increase of $1.8 billion from the 1998 deficit of just over $2.1 billion. U.S. merchandise exports to Russia were $1.8 billion in 1999, a decrease of $1.7 billion (48.5 percent) from the level of U.S. exports in 1998. Russia was the United States' 41st largest export market in 1999. U.S. imports from Russia accounted for approximately $5.8 billion in 1999, a decrease of $71 million (1.2 percent) from 1998. The stock of U.S. foreign direct investment in 1998 was $1.1 billion, a 46.6 percent decline from 1997.

The U.S.-Russia Trade Agreement governs all trade relations between the United States and Russia. The USSR signed the agreement in June 1990, and it was approved by the U.S. Congress in November 1991. The agreement, however, never reached ratification during the existence of the USSR, and the United States offered the agreement (with minor technical changes) to each of the emerging states of the former Soviet Union. Russia's parliament approved the agreement, making it possible for the United States to extend Most-Favored-Nation (now Normal Trade Relations or NTR) status to Russia on June 17, 1992. Russia is in the process of negotiating terms of accession to the World Trade Organization (WTO). By the end of 1999, the government of Russia had met nine times with WTO members in working party meetings. Russia tabled its initial goods and services market access offer in February 1998 and October 1999, respectively, and will discuss its plans to bring its laws into line with WTO provisions at the tenth Working Party session, expected to meet in the first half of 2000.

IMPORT POLICIES

Frequent and unpredictable changes in Russian customs regulations have created problems for foreign and domestic trade and investment, and a burdensome import licensing regime for alcohol has depressed imports in that sector. However, at the end of 1999, the most significant factor affecting U.S. exports was the difficult economic situation in Russia subsequent to the August 1998 financial crisis. The devaluation of the ruble puts imports at a price disadvantage, and reduced consumption overall has also depressed imports. Other significant negative developments in the foreign trading environment include the reduced availability of trade and non-trade finance and disruptions to the distribution chain.

Since 1995, Russian tariffs have generally ranged from five to thirty percent, with a trade-weighted average in the range of 13 to 15 percent. In addition, excise and value-added taxes (VAT) are applied to selected imports. The VAT, which is applied to the price of the import plus its tariff, is currently 20 percent. Some food products have a VAT rate of 10 percent. Throughout 1999, some tariff revision occurred. In some cases tariffs dropped on inputs needed by Russian producers in the electronics and furniture business. On the other hand, there have been sharp hikes in tariffs on sugar and pharmaceuticals, including high seasonal tariffs on raw and processed sugar. In particular, compound duties with minimum tariff levels on poultry enacted in 1998 had the effect of increasing *ad valorem* duties after the fall in poultry prices in 1998-99. The Ministry of Trade, supported by the State Customs Committee, has proposed the reduction of some of Russia's higher tariffs, noting that very high tariffs only lead to evasion. The government, however, has been reluctant to approve wholesale reductions in tariffs given acute revenue concerns, as customs duties account for a significant percentage of total federal revenues (about 20 percent).

Other Russian tariffs that have stood out as particular hindrances to U.S. exports to Russia include those on autos, where combined tariffs and engine displacement-weighted excise duties can raise import prices of larger U.S.-made passenger cars and sport utility vehicles by over 70 percent. The Russian government continues to make waivers of aircraft import tariffs for purchases by Russian airlines contingent on those airlines' purchases of Russian-made aircraft.

Financial Sector Difficulties and the Ruble

Russia's overall imports slumped by over 37 percent from January to October 1999 compared to the same period of the previous year. The devaluation of the ruble in August 1998 and the reduced purchasing power of Russian consumers played the greatest role in that decline. U.S. exports to Russia decreased by an even larger margin in 1999, although there was some recovery in the later months of 1999. Many exporters remain cautious about entering the Russian market due to the reduced availability of trade finance and bad experiences with payment and clearance after the August 1998 financial crisis, although these problems became less common in 1999.

Throughout 1999, the government continued tight controls on alcohol production, including import restrictions, export duties, and increased excise taxes. Many of these controls are intended to increase budget revenues. While in some cases the government has imposed compound duties, in other cases it is resorting to pure *ad valorem* duties. According to a government resolution issued in December 1999, wine importers will have to pay a single 25 percent duty, beginning in April 2000. Presently different per liter duties are levied on different types of wines. This decree will effectively increase duties on importers of more expensive wines.

Import licenses are required for various goods, including ethyl alcohol and vodka; color TVs; sugar; combat and sporting weapons; self-defense articles; explosives; military and ciphering equipment; encryption software and related equipment; radioactive materials and waste including uranium, strong poisons and narcotics; and precious metals, alloys and stones. In 1999, new import licensing requirements were added for raw and processed sugar. Most import licenses are issued by the Russian Ministry of Trade or its regional branches, and controlled by the State Customs Committee. Import licenses for sporting weapons and self-defense articles are issued by the Ministry of Internal Affairs.

In September 1999, the State Custom Committee issued a decree restricting points of entry for poultry shipped to Russia from any country that does not have a direct land route to Russia. While implementation of this decree has been postponed until at least February 2000, poultry shipped from the United States and some other major exporting countries, not including the European Union, would be required to enter Russia though one of 30 specified sea ports. This could puts U.S. suppliers, who often ship to an intermediate country and then transport via land to Russia, at a disadvantage. The continued delay in implementation of this decree has left the industry in an uncertain environment. The decree raises issues under the U.S.-Russia Trade Agreement, which calls for MFN status in customs issues.

The Ministry of Communications and Information's Order No. 8 mandates that certain types of switching equipment be manufactured only in Russia. This has forced some U.S. telecommunications suppliers to set up manufacturing operations or joint ventures in Russia, rather than import the equipment.

STANDARDS, TESTING, LABELING AND CERTIFICATION

U.S. companies report that Russian procedures for certifying imported products and equipment are non-transparent, expensive, and beset by redundancies. Russian regulatory bodies generally refuse to accept foreign testing centers' data or certificates. U.S. firms active in

Russia have complained of limited opportunity to comment on proposed changes in standards or certification requirements before the changes are implemented. Russian standards and certifications bodies have begun to work more closely with the American Chamber of Commerce in Russia to provide relevant information. Occasional jurisdictional overlap and disputes between different regulatory bodies compound certification problems. In 1998, the Russian government established an inquiry point for regulations covered by the Technical Barriers to Trade (TBT) Agreement in the World Trade Organization (WTO). On July 31, 1998, new amendments to Russia's Law on Certification of Products and Services went into effect which Russia claims generally meet requirements of the TBT Agreement. The law allows for manufacturer declaration of conformity for a limited number of products. However, this option is not yet available in practice.

The current Russian product certification regime makes it difficult to get products into the Russian market and creates barriers to Russian exports as well. Manufacturers of telecommunications equipment, construction materials and equipment, and oil and gas equipment continue to report serious difficulties in obtaining product approvals. Certification is a particularly costly and prolonged procedure for telecommunications equipment. Telecommunications equipment is tested for compliance with standards established by both Gosstandart and the State Committee on Communications (Gostelkom). This process typically takes 12-18 months. Self- certification by manufacturers is currently not possible. Order 113, introduced by Gostelkom in July 1998, requires all mobile communications systems in Russia to convert to the Russian Glonass system by July 1999. This will require costly reconfiguration of systems by U.S. telecommunications companies to maintain access to the Russian market.

Russian agencies have begun requiring the use of holographic marks of conformity on a small number of goods and on copies of certification documents. Foreign businesses have complained that this requirement is costly and unnecessary, involves unclear rules, and that Gosstandart has not coordinated administration sufficiently with the customs service.

Requirements of the Russian Veterinary Department are burdensome and sometimes of questionable scientific or food safety value. As Russia looks to WTO accession, the Veterinary Department will need to develop a more transparent, science-based and WTO-consistent food inspection system. In 1998, biotech food products attracted the attention and increased scrutiny of Russian import authorities. Selected products were required to undergo private-sector-funded government tests in order to maintain necessary certification to remain on the market. Companies were required to fund food safety studies of questionable merit conducted by the Institute of Nutrition in order to receive necessary certification from the Health Ministry. In late 1998, the interministerial government commission responsible for issues related to genetic engineering began to form working groups to examine issues related to biotech including food safety.

Technical level discussions with U.S. officials on phytosanitary import requirements for planting seeds have resulted in a positive change in the Russian government position, making it possible to import U.S. corn and soybean seeds.

GOVERNMENT PROCUREMENT

The Russian government has virtually eliminated the Soviet practice of centralized imports through state-owned foreign trading companies. Some large-scale trade deals for state needs (such as a recent food for natural gas debt deal between Russia and Belarus) still take place. Typically, however, the government awards the right to implement such deals on its behalf to private or quasi-private trading houses.

Russian ministries and government agencies are frequent purchasers of equipment, goods and services for their own needs or for the needs of various domestic organizations or groups (i.e., the military, regional health organizations, or population centers located in remote areas). In April 1997, the government established procedures for public tenders for some government procurement. A government procurement bill, based on competitive bidding, is also being considered in the Duma. Domestic suppliers currently are not accorded many official advantages or privileges in competing for government procurement. Nonetheless, the Russian government's strong political bias toward supporting domestic industries may work in favor of Russian suppliers. An example of such bias occurred in 1997 when government agencies were directed to use only domestic automobiles (a program which ran into problems and is currently not strictly enforced).

On January 13, 1999, an amendment to the Federal Law on Communications went into effect, which appears to vaguely exhort government agencies purchasing communications equipment in efforts to give priority to systems using Russian-produced equipment. The impact on U.S. exports will depend on implementation of the new law; U.S. companies are not currently expecting a large impact.

EXPORT SUBSIDIES

The Russian government's industrial policy guidelines emphasize export promotion and import substitution. In practice, there has been limited budgetary funding for such projects, and the programs that do exist are designed to provide support to industries which export, rather than targeted export subsidies. In December 1999, Acting President Putin proposed the establishment of a Russian export credit guarantee agency. Russia has no explicit export subsidies on agricultural products.

INTELLECTUAL PROPERTY RIGHTS PROTECTION

Estimated losses to U.S. industry due to intellectual property piracy exceeded one billion dollars in 1999, according to industry sources. During the summer of 1998, the U.S. motion picture industry estimates that video piracy in Russia rose by 20-30 percent to a level of approximately 80 percent, in the aftermath of the financial crisis. Only recently have these numbers begun to come down.

With the exception of protection of pre-existing copyrighted works and sound recordings, the Russian government has made considerable progress in constructing a legal framework to bring Russia up to world standards in the area of intellectual property protection. Since 1992, Russia has enacted generally acceptable laws on trademarks and appellations of origins, patents, and protection of semiconductor chips, computer software, and copyrights. Russia is a member of the Paris Convention, the Universal Copyright Convention and other major multilateral intellectual property conventions. In 1995, Russia acceded to the Berne and Geneva Conventions. The U.S.-Russia bilateral trade agreement also requires Russia to provide protection for intellectual property. Russia is in the process of joining the WTO, and as a new member will be required to meet obligations under the WTO's Agreement on Trade Related Aspects of Intellectual Property Rights (TRIPS Agreement) immediately upon accession.

Although there have been signs of progress over the past year, there is a troubling lack of effective anti-piracy action by Russian law enforcement agencies. Strengthened criminal penalties for IPR infringement went into effect January 1, 1997. But, while the Russian government has begun to pay more attention to enforcement, there are still disappointingly few cases in which these penalties have been applied. As the estimated losses attest, piracy of U.S. video cassettes, films, music recordings, books, and computer software is extensive in Russia. Some U.S. companies have had difficulty registering well-known marks. Since mid-1999, U.S. and multinational companies have reported counterfeiting as a serious problem, especially for consumer goods, suggesting that IPR problems in Russia extend beyond copyright protection to include trademark issues as well. Administrative and judicial review bodies are only beginning to become active in IPR protection. The U.S. industry believes that at the prosecutorial and judicial levels, officials often do not consider copyright infringements to be serious offenses.

U.S. investors also consider the Russian court system to be unprepared to handle sophisticated patent cases. However, a higher patent chamber has been established at the Russian Patent and Trademark Agency which should bring greater expertise and efficiency to resolution of trademark and patent disputes.

SERVICES BARRIERS

Discrimination against foreign providers of non-financial services are not so much the result of federal law, as abuse of power, sub-national regulations, and practices that may even violate Russian law. For example, foreign providers of services have sometimes noted discrimination in obtaining licenses from local authorities and often pay fees many times more than those paid by domestic companies.

The federal law on “Banks and Banking Activity of 1996” permits foreign banks to establish branches or subsidiaries in Russia. The law allows the Central Bank to impose a ceiling on the total amount of foreign bank capital as a percentage of the total bank capital in Russia, which is currently set at 12 percent. As foreign banks recapitalized following the financial crisis and Russian banks’ capital shrank, as of September 1, the share of foreign banks’ capital increased from 4 to 12.8 percent. The Central Bank of Russia has indicated it will seek a higher quota so as not to impede foreign bank entry. Since 1997 the Central Bank has required foreign banks to have a minimum of ECU 10 million (about $11.5 million) in capital and to have at least 75 percent of its employees and 50 percent of its management board of Russian nationality. Heads of Russian offices in foreign banks are required to be proficient in the Russian language.

In the insurance sector a new law took effect in October 1999 which implicitly allows majority-foreign owned insurance companies to operate in Russia for the first time, but restricts their total market capitalization and prohibits them from selling life insurance or obligatory types of insurance. The law contains a “grandfather clause” exempting the four foreign companies currently licensed in Russia from these restrictions. Insurance companies with a minority foreign participation (49 percent or less) are not subject to these restrictions.

New tax regulations went into effect January 13, 1999, that provide tax breaks to the Russian film industry until January 1, 2001. Contracts for production, printing and showing of Russian movies (which include the sale of copyrights) will be exempt from the 20 percent value added tax. To qualify as Russian movies, a film must be produced and directed by Russian citizens/companies, have foreign investment of no more than 30 percent and use a crew made up of no more than 30 percent foreign nationals. Fifty percent of the budget must be spent in Russia, and the film must use the Russian language or another language spoken in the Russian Federation. Investments in film production, distribution, and the construction and refurbishment of movie theaters, will be exempt from the profit tax. According to press reports, the draft 1999 budget also allocates 264 million rubles (about $12 million) for direct support to the film industry.

The review process for granting licenses to telecommunications providers in Russia through the Ministry of Telecommunications lacks transparency. U.S. telecommunications companies have criticized the five-year term of the licenses, which they argue do not allow them sufficient time to recoup their investment.

Central Bank regulation 721-U effective December 31, 1999 requires that payments of greater than $10,000 for imported services must receive advance permission from the federal service for currency and export control. While it is intended as an anti-capital flight measure, and while it has been in effect for too brief a period to gauge its real impact, implementation of the rule could disadvantage foreign service exporters to Russia.

INVESTMENT BARRIERS

A Bilateral Investment Treaty (BIT) was signed between the United States and Russia in June 1992. The treaty was approved by the U.S. Senate in October of the same year, but it cannot enter into force until approved by the Russian Duma. The Duma did not actively consider ratification of the BIT in 1999.

Despite the passage of a new law regulating foreign investment in June 1999, Russian foreign investment regulations and notification requirements can be confusing and contradictory. The law on foreign investments provides that a single agency (still undesignated) will register foreign investments and that all branches of foreign firms must be registered. The law does codify the principles of national treatment for foreign investors, including the right to purchase securities, transfer property rights, protect rights in Russian courts, repatriate funds abroad after payment of duties, and receive compensation for nationalizations or illegal acts of Russian government bodies. However, the law goes on to state that federal law may provide for a number of exceptions, including, where necessary, for "the protection of the constitution, public morals and health, and the rights and lawful interest of other persons and the defense of the state." The potentially large number of exceptions thus gives considerable discretion to the Russian government. The law also provides a "grandfather clause" that existing "priority" foreign investment projects with foreign participation over 25 percent be protected from unforeseeable changes in the tax regime or new limitations on foreign investment. The definition of "priority" projects is not fully clear, although it appears that projects with a foreign charter capital of over $4.1 million and with a total investment of over $41 million will qualify. In addition, although the situation has improved over the past few years, foreigners encounter significant restrictions on ownership of real estate in some cities and regions in Russia.

Current Russian legislation restricts foreign investment in the aerospace industry to 25 percent of an enterprise. Foreign investments in the natural gas monopoly Gazprom are limited to 20 percent and in the electrical power giant Unified Energy Systems to 25 percent. However, these limits have not been strictly enforced and current foreign holdings in these two entities is believed to exceed these limits by a small amount. The Duma is also considering draft legislation which would prohibit and/or allow restriction of foreign investment in a wide range of sectors in the economy.

The Russian tax system is a key concern of foreign investors. Although part I of a major tax code reform was passed in July 1998, legislative consideration of the second half of the reform (defining specific rates) was largely stalled in 1999. The Duma did pass changes to the personal income tax which reduced the number of tax brackets from six to three and reduced the maximum tax rate from 45 percent to 30 percent. These changes take effect January 1, 2000. The Duma also expanded the list of goods taxed at the lower 10 percent VAT rate. VAT law amendments signed by Acting President Putin in

January 2000 are to allow for recovery (via offset against other VAT liabilities) of VAT assessed on capital construction projects, a change long sought by foreign and domestic direct investors, albeit one that will not take effect until January 2001. Crime and corruption in commercial transactions and problems with the implementation of customs regulations also inhibit investment. The lack of rule of law for business opens the door for crime and corruption in commercial transactions, thereby inhibiting investment. In addition, Russian trade and investment would benefit, for example, from improved dispute resolution mechanisms, the systematic protection of minority stockholders rights, conversion to international accounting standards, and the adoption and adherence by companies to business codes of conduct. More transparent implementation of customs and taxation regulations is also necessary.

The government of Russia achieved some progress on foreign energy investment in the Duma with the passage of production sharing legislation in early 1999, following passage of a production sharing agreement (PSA) amendment law in late 1998. These bills were considered necessary prerequisites, though not adequate themselves, for large-scale foreign investment in the Russian oil and gas sector. Additionally, two U.S.-partnered projects, Sakhalin III and Northern Territories, were approved for PSA development by the Duma in 1999, while the Sakhalin II consortium, which also includes U.S. participation, began offshore production in mid-1999. Little subsequent progress was made during the course of 1999 by the government of Russia in the promulgation of “normative acts” necessary to implement an effective PSA regime. In fact, several normative acts have been adopted which are not acceptable to Western energy companies in their current form. Harmonization of the draft tax code with PSA legislation is another issue which requires resolution before substantial foreign investment in Russia’s energy sector can be expected. Regulations concerning environmental permitting and pipeline access remain of concern to potential U.S. investors. Central Bank restrictions on medium-term loans (more than 180 days) of hard currency for purchase of imported inputs have also presented an obstacle to foreign investment projects in Russia’s energy sector. Existing PSA legislation retains a 70 percent local content requirement for equipment and requires 80 percent local labor content. There is no reference to the period in which these targets must be achieved, and U.S. companies believe they will be workable provided that subsequent regulations are written in an appropriately flexible way by the Russian government. A separate PSA amendment limits the total amount of foreign investment to 30 percent of Russia’s “strategic” oil reserves. The precise meaning and import of this restriction remains unclear.

Regarding purely financial disincentives, foreign investors cite restrictions on profit repatriation with respect to investments in restructured Russian sovereign domestic debt. Russia has assumed obligations under Article VIII of the IMF Articles of Agreement to permit free payment of current transactions, but the Central Bank has gradually been imposing increasing controls on capital flows. Such measures include increasing the percentage of export proceeds which must be sold on the local market (from 50 to 75 percent) and decreasing the time for repatriation (from 14 to 7 days). The Central Bank has proposed increasing the percentage to 100 percent, but the government has not indicated a willingness to move quickly on this proposal. In 1999, the Central Bank ended its practice of dual foreign currency trading sessions (one for exporters/importers and one for other transactions), which had led to some divergence in exchange rates between the two sessions.

Temporary export taxes were adopted beginning in January 1999 as revenue measures that were designed to capture a portion of the windfall profits from the devaluation of the ruble and rising world commodity prices. Ten percent export tariffs are levied on the export of scrap from seven metals – copper, nickel, aluminum, lead, zinc, cobalt and titanium – as well as sunflower seeds, rapeseed, soybeans, raw hides and tanned leather, and certain logs (oak, beech, ash). A five percent export tax will be levied on natural gas, refined copper and copper products, nickel ore, nickel and nickel products and fuel oil. The government also imposed a 15 Euro/ton export tax on crude oil exports.

A presidential decree signed in early 1998 provides investment incentives for large investments in the auto industry that meet local content requirements. Although the decree is technically still in place, its implementation has been on hold since the onset of the economic crisis. In practice, U.S. investors in this sector have faced difficulty in obtaining relief promised by the Russian government from local content requirements and for special customs treatment.

AIRCRAFT

Russian tariffs on imported aircraft were raised from 15 to 50 percent in March 1994, and then lowered to the still prohibitive level of 30 percent in 1995, and subsequently to 20 percent in 1999. On January 30, 1996, Vice President Gore and Russian Prime Minister Chernomyrdin concluded a Joint Memorandum of Understanding (MOU) that addresses U.S. concerns about barriers to the Russian civil aircraft market and the application of international trade rules to the Russian aircraft sector. The MOU states that U.S. aircraft manufacturers will be able to participate in the Russian market and share in its growth. The MOU also makes clear that the Russian aircraft industry will in time be fully integrated into the international economy. Russia pledged to undertake the same international trade principles as the United States and many others.

In the interim before Russia accepts its full international trade obligations, the MOU commits Russia to take steps, such as the granting of tariff waivers, to enable Russian airlines to meet their needs for non-Russian aircraft on a non-discriminatory basis. On July 7, 1998, the Russian government issued Resolution 716 which requires Russian airlines to commit to the purchase or lease of Russian-made aircraft in order to receive duty reductions and exemptions for foreign aircraft acquisitions. During the course of 1998 and 1999, waivers were granted to Aeroflot for purchases of foreign aircraft under these conditions.

On January 8, 1998, a federal law on state regulation of the development of aviation was signed. The law stipulates preferential treatment (tax holidays, guarantees on investment) for Russian and foreign investors in aviation-related research and manufacturing ventures. As noted above, the law limits the share of foreign capital in aviation enterprises to less than 25 percent and requires that board members and senior management staff be Russian citizens.

ELECTRONIC COMMERCE

Russian law does not currently provide identical legislative protection for both electronic and paper documents. Settlement issues need to be considered in conjunction with applicable currency control provisions. Registered trademarks are not recognized as entailing rights to the equivalent domain names and the property rights which trademarks secure for their registered owners are currently not protected for the purposes of Internet advertising and commerce through web sites. Tax implications from electronic commerce are unclear.

A number of regulatory efforts are underway with respect to both the Internet and electronic commerce. These include: control of registration of domain names and address spaces for the ru-net by the ministry of tele-communications and information; draft laws codifying activities on the Internet; licensing requirements for Internet service providers; licensing and regulating the transfer of information over the Internet; electronic signatures.

The so-called Sorm-2 Act allows the Federal Security Service (FSB) to directly monitor electronic-mail messages by digitally linking its offices with all Internet service providers throughout Russia. Most local ISPS have apparently acceded to Sorm-2 requirements for installation of technical connections with FSB facilities. Whether awareness of enhanced FSB capabilities or underlying enhanced legal authority to monitor communications will discourage electronic commerce remains to be seen.

SINGAPORE

TRADE SUMMARY

In 1999, the U.S. trade deficit with Singapore was just over $1.9 billion, an increase of $743 million from the U.S. trade deficit of nearly $2.7 billion in 1998. U.S. merchandise exports to Singapore totaled $16.2 billion, an increase of $573 million (3.7 percent) from the level of U.S. exports to Singapore in 1998. Singapore was the United States' 10th largest export market in 1999. U.S. imports from Singapore totaled $18.2 billion in 1999, a decrease of $170 million (0.9 percent) from the level of imports in 1998. The stock of U.S. foreign direct investment (FDI) in Singapore at the end of 1998 was $19.8 billion, an increase of 10.7 percent from the level a year earlier. U.S. FDI in Singapore is concentrated largely in manufacturing (notably electronics, industrial chemicals and petroleum) and the financial sectors.

IMPORT POLICIES

Tariffs

Singapore imposes tariffs on only one category of imported goods: alcoholic beverages. However, for social or environmental reasons it imposes high excise taxes on tobacco products and automobiles (which are entirely imported), and on gasoline. Approximately 99 percent of Singapore's imports are not dutiable. During the Uruguay Round of multilateral trade negotiations, Singapore agreed to bind 70 percent of its tariff lines. The Uruguay Round agreements entered into force in Singapore on January 1, 1995. As an APEC participant, Singapore has also committed to eliminating all tariffs by 2010 (consistent with the agreed time frame for "developed economies") and to bind these commitments at the World Trade Organization (WTO). Singapore is a signatory to the WTO Information Technology Agreement (ITA).

GOVERNMENT PROCUREMENT

Singapore initiated negotiations to join the WTO Government Procurement Agreement (GPA) in December 1995, and deposited its Instrument of Accession to the GPA on September 20, 1997. This Instrument of Accession entered into force for Singapore on October 20, 1997.

EXPORT SUBSIDIES

The Government of Singapore has maintained three export promotion schemes, available to both local and foreign firms: the International Trade Incentives Program, the Double Taxation Deduction, and the Production for Export Schemes. However, Singapore has announced that it will no longer accept applications for the Production for Export Schemes, and has notified the WTO that it will phase out the Double Taxation Deduction by 2003. The government does not employ multiple exchange rates, preferential financing schemes, import-cost-reduction measures or other trade-distorting policy tools.

INTELLECTUAL PROPERTY RIGHTS PROTECTION

Singapore has been on the Special 301 Watch List since 1995, primarily due to concerns regarding the consistency of Singapore's intellectual property rights (IPR) regime with provisions of the WTO Agreement on Trade-Related Intellectual Property Rights (TRIPS), and the inadequacy of police enforcement against IPR piracy. Outstanding issues include the lack of rental rights for sound recordings and software, inadequate protection against the sale of bootleg copies of musical performances, the limited scope of copyright protection for cinematography works and overly broad exemptions from copyright protection. However, in recent years the government has taken significant measures to improve IPR protection in the country.

Singapore is a member of the World Intellectual Property Organization (WIPO), and has ratified the WTO TRIPS Agreement. In December 1998, Singapore became a member of the Berne Convention; consequently, works created by Singapore citizens and residents now enjoy copyright protection in over 100 member countries, and vice versa. Singapore is also a signatory to three other international copyright agreements – the Paris Convention, the Patent Cooperation Treaty, and the Budapest Treaty – however, Singapore is not a party to the Universal Copyright Convention.

Singapore has enacted a series of laws and amendments to existing provisions with the aim of rendering its IPR regime fully TRIPS consistent. Specifically, Singapore has amended its Copyright Law (1998) and the Medicines Act (1998), and enacted the Trade Marks Bill (1998), the Geographical Indications Act, and the Layout Designs of Integrated Circuits Act (1999). The government also recently expanded the scope of the Copyright Act to cover digital and Internet piracy. In spite of these advances, progress concerning enforcement has ben inconsistent. At the core of Singapore's copyright enforcement problems is the continued reliance on a "self help" approach to enforcement which places an undue and expensive burden on rights holders to initiate raids and prosecute pirates. IPR associations have recommended that the government create an independent intellectual property enforcement office within the police force. IPR associations have also pointed out inadequacies in the August 1999 amendments extending copyright protection to the Internet and certain digital works. For example, Internet service providers are not liable for allowing websites to offer and sell pirated products. Also, current law allows up to 10 percent of the bytes of a digital work to be copied.

The Singapore government in 1997 also orchestrated adoption of a voluntary "code of conduct" by local optical disc (OD) manufacturers. The government's new licensing requirements for OD manufacturing and import controls on OD manufacturing equipment came into force in October 1998. Singapore has also increased the number and scope of police-initiated raids against retail-level piracy. According to Singapore's Trade Development Board, authorities in 1998 conducted a total of 682 raids which resulted in the seizure of over two million infringing articles. During the first nine months of 1999, authorities launched over 1,800 raids, seized more than 1.1 million infringing articles, and arrested about 330 suspects. In December 1998, the government launched a long-term campaign aimed at educating primary and secondary students and the general public concerning IPR piracy. The campaign emphasizes the message that buying pirated goods is illegal, undercuts profits for manufacturers, and will eventually lead to fewer choices for consumers.

In October 1999, a number of U.S. publishers, in cooperation with European and local counterparts, formed the Copyright Licensing and Administration Society of Singapore (CLASS). CLASS will utilize a provision of the Copyright Act to compel local universities and other educational institutions to pay royalty fees in exchange for duplication of copyrighted printed works for use in course materials.

Although piracy rates are the lowest in Asia, IPR owner associations continue to press for greater initiative by the government to enforce IPR laws and to address persisting deficiencies. The business community cites the continued retail availability of pirated film, music and software OD products in downtown shopping malls and in stalls scattered among suburban housing estates are chronic problems. According to recent industry estimates, total annual losses from copyright piracy were estimated at about $115 million in 1999. While the vast majority of pirated OD products are presumed to be smuggled into Singapore from neighboring countries, Singapore authorities have explained that a number of factors impair the government's ability to enhance IPR enforcement at the border. Nevertheless, the United States continues to urge Singapore to require the mandatory use of source identification (SID) codes which would help to ensure that domestic producers engage only in legitimate replication of copyrighted works in digital format.

INVESTMENT BARRIERS

Singapore has an open investment regime. The Singapore government promotes foreign investment via improvements to infrastructure, financial and banking reforms, and tax and other incentives. Singapore's legal framework and public policies are foreign investor-friendly. Singapore does limit foreign investment in armament manufacturing, news media, telecommunications, broadcasting, property ownership and domestic banking. The government screens investment proposals only to determine their eligibility for various incentive schemes; but otherwise no authorization is needed. Singapore lifted all restrictions on foreign exchange transactions and capital movements in 1978 and places no restrictions on reinvestment or repatriation of earnings and capital. Singapore has institutionalized and internationalized arbitration through the creation of arbitration bodies and ratification of international conventions including the Singapore International Arbitration Center (SIAC), the United Nations Commission for International Trade Law (UNCITRAL) Model Law, and the Convention on the Settlement of Investment Disputes (ICSID).

SERVICES BARRIERS

Basic Telecommunications

Singapore's telecommunications industry has been steadily liberalized since 1989 and will be fully open effective April 21, 2000. Restrictions on the sale of telecommunication consumer goods and the provision of Value-Added Network Services (VANS) were the first to be lifted. Singapore Telecom (SingTel) has been privatized, and its regulatory functions assumed by the Telecom Authority of Singapore (TAS), which has been reorganized and renamed the Info-Communications Development Authority (IDA). The government ended SingTel's monopoly in April 1996 when TAS awarded a license to a second cellular telephone service provider (a foreign-Singapore joint venture) and three new paging service providers.

Singapore also made significant liberalization commitments as part of the WTO Basic Telecommunications Agreement, including adoption of the regulatory principles in the WTO Basic Telecommunications Agreement's Reference Paper. In this negotiation, Singapore made comprehensive market access commitments in basic services but initially excluded resale via leased lines connected to the public switched network, for domestic and international services. Foreign equity limits were liberalized to allow foreign stakes of up to 49 percent for direct, and 73.99 percent for indirect, investment. In line with its WTO commitments, TAS issued a license to a new joint venture basic telephone service provider ("Starhub") in April 1998, to begin operation in April 2000. At the same time, it issued a third cellular telephone service provider license also to Starhub.

In a surprise announcement on January 21, 2000, the government indicated that it has advanced full liberalization of all sectors of the telecommunications market to April 1, 2000, two years ahead of schedule. Effective April 21, 2000, any foreign or domestic company will be eligible to apply for a license to operate either facilities-based or services-based telecommunications services, effectively eliminating all numerical quotas on telecommunications service providers. All existing telecommunications companies will be permitted to offer international telephone call services, while callback companies can openly advertise their services and buy international direct dial (IDD) capacity from any supplier. Submarine cable owners will have landing rights in Singapore and can offer additional bandwidth to users. Finally, the government announced that direct and indirect foreign equity limits for all public telecommunications service licenses are to be lifted with immediate effect.

Legal Services

Foreign law firms are presently allowed to set up offices in Singapore to advise clients only on the laws of their home country or international law. With the exception of law degrees from 15 British universities, no foreign university law degrees are recognized for the purpose of admission to practice law in Singapore; however, this issue is currently under review by a committee chaired by the Attorney General. Foreign law firms are also generally not permitted to hire Singapore lawyers, or form partnerships with Singaporean law firms, to practice Singapore law. Foreign firms regularly refer work to Singapore law firms and have entered into informal association with some of them. There are currently about 60 foreign law firms in Singapore.

In January 2000, the Singapore Parliament approved a bill submitted by the government to permit a limited number of foreign law firms to enter into joint ventures (including partnerships) or "formal alliances" with local law firms in an effort to upgrade the country's legal services sector. Under the new law, the Attorney General, in consultation with appropriate authorities, must approve such applications. These approved joint ventures and formal alliances will be permitted to market themselves as single service providers which are authorized to provide legal services in all areas in which the constituent firms are qualified to provide. Foreign lawyers in joint ventures may practice Singapore law, provided that they are registered authorized to do so by the Attorney General, but may not appear before judicial and regulatory bodies. Foreign lawyers in formal alliances may prepare all the documents in cases involving the laws of more than one country, but cannot render legal opinions relating to Singapore law. Implementing rules for the new law are to be published in April 2000.

Engineering and Architectural Services

Singapore amended its laws in April 1995 to allow engineering firms to be 100 percent foreign-owned. However, the chairman and two-thirds of the firm's board of directors must comprise engineers, architects, or land surveyors registered with local professional bodies. Professional engineering work in Singapore must be under the control and management of a director of the corporation who: is a registered owner of at least one share of the corporation; is a registered professional engineer ordinarily resident in Singapore; and has a valid practicing certificate. In the case of a partnership, only registered engineers may have a beneficial interest in the capital assets and profits of the firm, and the business of the partnership must be under the control and management of a registered professional engineer who ordinarily resides in Singapore. Similar requirements apply to architectural firms.

Accounting and Tax Services

Public accountants and at least one partner of an accounting firm must reside in Singapore. Only public accountants who are members of the Institute of Certified Public Accountants of Singapore and registered with the Public Accountants Board of Singapore may practice public accountancy in the country. In January 1999, Singapore removed the restriction prohibiting a person who is not a public accountant from using the designation "tax consultant."

Insurance

Singapore had determined that the local insurance market is saturated. As a result, only one new license for foreign or domestic direct insurers had been issued during the period 1986 to 1995. Since 1995, however, new licenses have been issued to four foreign-invested companies that fulfilled a perceived market need in the area of specialized financial guarantee insurance business.

The Monetary Authority of Singapore (MAS), the country's central bank, continues to limit foreign equity stake in domestic insurance companies to less than 50 percent. However, the existing branch operations of foreign firms, and outstanding foreign stakes in domestic firms above the 49 percent limit, are protected under Singapore's WTO financial services offer. Reinsurance licenses, allowing companies to participate in the regional reinsurance market from Singapore, are freely available to internationally reputable and financially sound reinsurers. Captive insurance licenses are also available to financially sound and reputable corporations principally to underwrite their own risks.

Banking and Securities

Prior to 1999, the MAS had not issued new licenses for local retail banking for over two decades to either foreign or domestic institutions because it considered Singapore's banking sector to be saturated. In 1999, foreign penetration of the banking system in Singapore was comparatively high, with foreign banks holding up to 22 of the 34 full (local retail) banking licenses. These licensees accounted for almost half of all non-bank deposits from residents, more than half of all non-bank loans to residents, 70 percent of total trade financing business in Singapore, and 60 percent of banking profits.

Until recently, Singapore restricted access by full-licensed foreign banks to the retail banking sector. Unlike local banks, foreign banks were not allowed to open new branches, freely relocate existing branches or operate off-premise Automated Teller Machines (ATMs). However, foreign banks were permitted to install electronic terminals at their corporate clients' premises, and to provide home banking services through telephone and personal computers. In addition, the foreign equity share in full-licensed domestic banks was restricted to an aggregate 40 percent. At the same time, the MAS continued to encourage the growth of the offshore banking industry and the Asian dollar market in Singapore, in which U.S. and other foreign banks have a substantial presence. In 1999, MAS raised the lending limit for offshore banks to Singapore-based firms from S$200 million to S$300 million.

As part of its recent financial sector reforms, however, the MAS has begun to lift many of these restrictions on foreign banks. In May 1999, it removed the 40 percent ceiling on foreign ownership of local banks. In October 1999, it granted "qualifying full bank" (QFB) licenses to four foreign banks that would allow these banks to operate up to 10 locations (branches or off-premise ATM's), freely re-locate their existing branches and share ATM's among themselves. It indicated that more QFB licenses would be issued in the next few years. In addition, the MAS issued another eight new restricted bank licenses and eight new "qualifying offshore bank" (QOB) licenses to foreign banks located in Singapore. QOB banks will have their Singapore dollar lending limit raised further from S$300 million to S$1 billion, and will be allowed to accept Singapore Dollar funds from non-bank customers through swap transactions.

In the securities area, foreign brokerages generally have the same right to establish and offer financial products as do domestic firms with respect to government securities, unit trusts and financial futures. There were some restrictions, however, on the extent to which foreign stockbroking firms can trade in the equity securities markets for Singapore resident clients and on foreign ownership of Stock Exchange of Singapore (SES) member companies. The seven “international members” (wholly foreign-owned stockbroking companies) of the SES, while authorized to trade for non-resident clients, were permitted to trade Singapore dollar denominated securities for resident clients only if the transaction value per contract is S$5 million or above. They also were not allowed to vote in an election of members to the SES board of directors. “Approved Foreign Brokers” (AFB) – a new category established in 1995 – were permitted to trade only non-Singapore dollar denominated stocks on the exchange. All other foreign stockbroking firms licensed in Singapore (SES “non-member companies”) must trade local securities through SES members.

In late 1999, the MAS announced a series of measures that significantly opens up the local securities market to foreign brokers. The government first passed the “Exchange Act” which “demutualized” and merged the previously separate securities and futures exchanges to create one integrated exchange starting December 1, 1999. The MAS subsequently announced that the new Singapore Exchange (SGX) will admit an unspecified number of new members starting July 2000. The plan is eventually to make the SGX a publicly-listed company and to allow full access to the SGX by January 2002. Meanwhile, the MAS announced that, starting January 2000, SES international members will be allowed to accept trades valued at below S$5 million, but above S$500,000. This remaining restriction on retail trading will be lifted a year later. Similarly, new members of the SGX will be immediately permitted to accept trades above S$500,000 and trades of all amounts by January 2002.

ELECTRONIC COMMERCE

There are no significant barriers hindering the development and use of electronic commerce (e-commerce) in Singapore. To the contrary, the government is actively promoting electronic commerce, and in 1998 launched a national master plan to transform Singapore into an electronic commerce hub in Asia. The Electronic Transaction Act, which came into force in July 1998, provides the legal foundation for electronic commerce transactions. In terms of infrastructure, “Singapore One” – which will connect homes, schools, offices and libraries in a nationwide broad bandwidth and high speed Internet network – was put in place at the end of 1999. The government expects the Singapore One network to facilitate the widespread use of electronic commerce in the country. Singapore is also actively working to harmonize cross-border electronic commerce laws, policies and infrastructure with other countries bilaterally and through international fora like APEC. U.S. multinational corporations have begun to establish electronic commerce centers in Singapore.

OTHER BARRIERS

Singapore is well-regarded for its strong stand and track record against corruption in government and business. In international surveys, Singapore is regularly identified as among those countries with the lowest levels of corruption. When cases of corruption are uncovered, the authorities deal with them strictly, swiftly and publicly. The Prevention of Corruption Act and the Corruption (Confiscation of Benefits) Act provide the legal basis for government action by the Corrupt Practices Investigation Bureau (CPIB), a division that operates directly under the Prime Minister’s office. These laws cover acts of corruption by citizens of Singapore at home and abroad.

SOUTH AFRICA

TRADE SUMMARY

In 1999, the U.S. trade deficit with South Africa was $613 million, a decrease of $1.184 billion from the U.S. trade surplus of $571 million in 1998. U.S. merchandise exports to South Africa were $2.6 billion, a decrease of $1.04 billion (28.8 percent) from the level of U.S. exports to South Africa in 1998. South Africa was the United States' 36th largest export market in 1999. U.S. imports from South Africa were $3.2 billion in 1999, an increase of $140 million (4.6 percent) from the level of imports in 1998. The stock of U.S. foreign direct investment (FDI) in South Africa in 1998 was $2,363 million, down slightly from $2,451 million in 1997. U.S. FDI in South Africa is concentrated largely in manufacturing (notably electronics, industrial chemicals and petroleum), telecommunications, and the financial sector.

IMPORT POLICIES

Import Permits

South Africa's Import and Export Control Act of 1963 authorizes the Minister of Trade and Industry to act in the national interest to prohibit, ration, or otherwise regulate imports for, inter alia, health, environmental, or security reasons and to ensure minimum quality specifications. In recent years, the list of restricted goods requiring import permits has been substantially reduced as Department of Trade and Industry (DTI) has tried to phase out import permits in favor of tariffs. However, some products still require import permits, including fish and fish products, used goods, scrap, waste, ashes, residues, petroleum products, ozone-depleting chemicals, firearms and ammunition, gambling equipment, and radioactive chemical elements. DTI is developing a system to issue permits electronically and to link DTI with customs and with persons applying for permits to facilitate the customs application and clearing process. Import permits must be obtained from the Director of Imports and Exports before the date of shipment.

Tariffs

To comply with its WTO commitments, South Africa has reformed and simplified a complex tariff structure, reducing its average tariff rate from more than 20 percent to an import weighted average rate of seven percent. Nevertheless, some industries previously protected by non-tariff barriers have tried to increase tariffs to WTO-bound levels, which are usually substantially higher than applied rates. Any South African producer may petition the Board of Tariffs and Trade (BTT) for tariff protection or tariff reduction. If an application passes an initial assessment by the BTT, a consultation process is initiated. Although public comment on tariff protection requests is normally open for a 6-week period, a shorter period may be applied in emergency situations. After the consultations, the BTT investigates the matter further and then makes a recommendation to the South African Government for a decision. There is no statutory limitation on the time the South African Government may take to reach a decision.

Petitions for tariff protection are decreasing because of the South African Government's policy to lower tariffs in order to improve competitiveness. DTI and the BTT have refused most but not all tariff increase applications. In 1998, the BTT handled 18 tariff increase cases. Of these cases, five concerned adjustments in the variable tariffs on maize (corn), wheat and sugar (see discussion of corn and wheat below) and two concerned tariffication of non-tariff barriers (for black tea and dried fruit). Of the other eleven cases, nine were rejected and two (on "smart" cards and on telephones) were recommended.

Ninety-eight percent of South Africa's tariff lines are now bound. Most duties are *ad* *valorem*, but mixed duties which call for both an *ad valorem* duty and a specific duty are also levied for some products. Tariff rates generally fall within eight levels ranging from zero to 30 percent.

South Africa has recently raised tariffs on certain agricultural products in order to protect local producers when international prices fall below a certain level. The following agricultural goods are affected:

Corn: the minimum import price formula tariff on imported corn was increased from $15/ton to $25/ton on November 5, 1999. The import tariff is subject to a formula that tracks the price of number two, U.S. yellow corn over a 21-day moving average. When the monitored price falls to between $70 and $80, the duty is the highest at $35/ton reducing in line with the increase of corn prices. If the price exceeds $110/ton, the duty is lifted. International corn prices recently increased and since December 28, 1999, the monitored price indicates a threshold average of $15/ton tariff. By January 9, thirteen consecutive days of prices over $90/ton had been recorded. The local millers have subsequently requested a reduction in the levy, which will be considered by the BTT as soon as the 21-day limitation is reached.

Wheat: the wheat tariff is calculated differently but still basically implies a minimum import price. To calculate subsequent adjustments to the level of protection, the difference between the world reference price on which the previous adjustment was based, and the 3-week moving average of the same price is calculated on a weekly basis. When this deviation amounts to more than $10/ton for three consecutive weeks, a new tariff is calculated and a new world reference price set. On January 5, 2000, the world reference price (three weeks moving average) was $112.67/ton and the South African initial reference price $157.00/ton. The difference between the two prices of $44.33/ton is the level of the current wheat tariff.

Poultry: despite strenuous lobbying by the U.S. Government, the BTT recommended that tariffs on imported frozen chicken parts be raised from a 27 percent flat rate to 2.2 rand per kilo. For a time, importers circumvented this high tariff by bringing in “seasoned” parts that could be imported at the 27 percent rate. Following an application to the BTT from a local producer, this loophole was closed in 1998, and all frozen chicken parts now carry the higher (effectively 65-70 percent) rate. The Board argued that this action was taken after consideration of the current level of protection and the effects on domestic producers. The BTT is currently reviewing tariffs with respect to frozen chicken cuts (and prepared or preserved meat). The South African poultry industry is seeking to maintain or increase the current level of tariff protection. The United States has urged the Government of South Africa to lower import duties on poultry parts. U.S. poultry meat exports to South Africa have declined sharply over the past two years, in large part because of the very high effective tariff rate.

Between 1992 and 1994, South Africa increased tariffs on certain paperboard and paper products as well as on certain steel products in order to achieve greater uniformity of tariffs. These increases were, however, followed by the BTT instituting, in 1995, a general phased reduction of tariffs on paper and paperboard that will bring most tariffs down to 10 percent by 2000 and to five percent *ad valorem* by 2005. Some rebate provisions have been introduced for categories of paper and paperboard not manufactured locally, authorizing full duty rebates on imports of some uncoated and coated kraft paper and paperboard, coated paper and paperboard, and tarred, bituminized or asphalted paper and paperboard.

South Africa’s textile tariff lines will comply with its WTO binding levels over a seven-year period (ending in 2002). According to the program adopted by BTT, South African tariffs on textiles will fall to the following five levels:

PRODUCT	BTT PROGRAM	WTO BINDING LEVEL (PERCENT)
Clothing	40	45
Made-up textiles	30	30
Fabrics	22	25
Yarn	15	17.5
Fibers	7.5	10

Although DTI maintains that very few tariff increases have resulted from its tariff rationalization process since 1994, several U.S. exporters have complained of increased tariff rates on their products as a result of reclassification or mis-classification into a higher tariff category. One such instance involves the classification of photographic film in plates into the tariff heading of photographic film in coils, which carries a significantly higher tariff rate. The allegation of mis-classification in this instance was challenged in the South African courts, which upheld customs' decision.

Tariffs on instant-print cameras were terminated during 1996. However, the cameras as well as instant-print film continue to be classified as "luxury items" and remain subject to excise taxes. The excise taxes are nondiscriminatory, but U.S. producers maintain that no domestic producers exist, and the high taxes are being circumvented by illegal importers. In 1999, South Africa reduced the level of excise tax from 15 to 10 percent on instant-print cameras and film.

South Africa and the European Union recently implemented trade provisions of their agreement on Trade, Development and Cooperation. Under the Agreement, South Africa and the European Union will establish a Free Trade Area over a transitional period lasting on the South African side, a maximum of twelve years, and for the European Union, a maximum of 10 years. Because the agreement calls for the reduction and eventual elimination of duties on trade between the EU and South Africa, U.S. firms exporting to South Africa may face higher tariffs than European firms exporting similar products.

Anti-dumping Actions

The South African Government is currently conducting an investigation into the importation of poultry meat. The Anti-Dumping Unit of the DTI announced this dumping investigation on November 5, 1999. The anti-dumping investigation is U.S. specific and the product coverage includes whole birds and cuts consisting of drumsticks, thighs, backs and other portions (generally referred to as dark meat or rear quarters). U.S. industry has argued strongly that international free market supply and demand factors alone account for the lower, more competitive price for U.S. exports of dark poultry meat.

Rebates

DTI has developed a program for the restructuring and development of the textile industry. Under this program, an exporter is permitted to import duty free an amount of textile products equivalent to 25 percent of its exports of clothing, 12.5 percent of fabrics and 8 percent of yarns. A similar program exists for the automobile industry known as the Motor Industry Development Programme (MIDP).

Customs

Customs valuation in South Africa is, in accordance with the WTO customs valuation agreement, based on the transaction value, that is the actual price paid or payable, or the FOB price in the country of export. If the transaction value cannot be ascertained, the actual price paid for similar goods, or a computed value may be used based on the production cost of imported goods.

During 1997, South African Customs was integrated in the South African Revenue Service (SARS) and the position of Commissioner eliminated. SARS personnel are concerned with ensuring effective collection of revenue and enforcing customs regulation. SARS inspectors have increased the number of physical searches of passengers and cargo. Some South African land points of entry have been closed to commercial traffic to allow customs officials to increase control and examinations at the remaining posts. As a result, some customs agents have been redeployed, but a shortage of customs officials still exists. A border police unit was established in 1997 to take on the responsibility for security and enforcement at South African ports of entry. This unit of the South African Police Service works closely with South African customs officials.

STANDARDS, TESTING, LABELING AND CERTIFICATION

There is an active debate ongoing in South Africa on products produced using modern biotechnology – often referred to as genetically modified organisms (GMOs). The 1997 Genetically Modified Organisms Act came into force on December 1, 1999. The Act creates an Executive Council for Genetically Modified Organisms (composed of, inter alia, representatives from six government agencies), a registrar, and a separate Advisory Committee composed of scientists and environmentalists. A proposal to require GMO labeling is currently under review by the Ministry of Health.

South Africa recently notified the WTO of a proposal to reconsider certain tolerances for specified noxious seeds in grain (primarily wheat, corn and oilseeds). The current maximum tolerance levels allowed are very low by world standards, and are potentially trade-restricting. USDA has provided a comment on the proposal that questions the scientific basis for the current tolerance.

The importation of irradiated meat from any source is still banned on public health grounds. Phytosanitary concerns regarding Stewart's Wilt in corn from the U.S. appear close to resolution. Phytosanitary restrictions on U.S. apples, pears and cherries are also on the agenda for forthcoming talks and South African officials are convinced that differences can be overcome and the market opened for these products.

GOVERNMENT PROCUREMENT

South Africa is not a signatory to the WTO Agreement on Government Procurement. Government procurement is regulated by the State Tender Board and nine Provincial Tender Boards. Parastatals funded by the government generally follow government policy on procurement. A government procurement rationalization proposal made during 1998 was not implemented. However, all parties agreed on the need for uniformity and a consensus was reached on introducing conformity between central and provincial procurement policies.

A Preferential Procurement Policy Framework Act was enacted in February 2000. It directs that preference points may be awarded to tenderers who comply with specific goals. These goals include: contracting with persons historically disadvantaged by unfair discrimination on basis of race, gender or disability and promoting the objectives of the Reconstruction and Development Program (RDP). The Act aims to promote public sector procurement reform in all organs of state and to introduce a more uniform public sector procurement system. However, given the complexity of the Act and the exceptions provided, it is unclear if it will be possible to implement the Act in a transparent and predictable manner.

The national industrial participation program provides for an industrial participation component in all state and parastatal contracts with an import content of $10 million or more. Under the program, the seller must invest at least 30 percent of the value of the imported content of the tender in a new or incremental business in South Africa. In the case of defense bids, the figure increases to 50 percent.

EXPORT SUBSIDIES

South African exports are mostly promoted by means other than direct subsidies. An Export Marketing and Investment Assistance Scheme (EMIA) provides financial support for trade missions, exhibitions, market research and outward and inward investment recruitment missions. Export financing for capital goods and projects is provided at fixed interest rates by a group of financial institutions contracted to DTI. An export finance guarantee facility for small exporters promotes small and medium sized enterprises.

INTELLECTUAL PROPERTY RIGHTS PROTECTION

Two IPR-related laws were passed on September 9, 1997: The Intellectual Property Laws Amendment Act and the Counterfeit Goods Act. The former amends the 1978 Patent Act, 1993 Trademarks Act, and the 1993 Designs Act, among others, to address South Africa's obligations under TRIPS. The latter law provides for criminal prosecution of persons trading in counterfeit or pirated goods and establishes a special anti-piracy unit. However, enforcement of these laws has not been consistent, and piracy and trademark counterfeiting remain serious concerns. The U.S. has consulted with the South African Government on developing a government-wide software management program consistent with the Administration's initiative to encourage all governments to ensure that their officials use only legal software, and only for authorized uses. U.S. firms estimate that the piracy rate in South Africa for software is about 50 percent, videos about 18 percent, and music about 40 percent.

South Africa amended its Medicines Act in December 1997. The Act is currently being challenged in South Africa's Constitutional Court, although the lawsuit was temporarily suspended because of a commitment by the South African Government to return the bill to the Parliament for revision. The U.S. Government was concerned that the new law was overly broad and could empower the Minister of Health to abrogate patent rights for pharmaceuticals. However, the U.S. and South African governments reached an understanding that South Africa, while moving vigorously forward to bring improved health care to its citizens, will do so in a manner consistent with international commitments and that fully protects intellectual property rights. South Africa was removed from the Special 301 Watch List on December 1, 1999.

SERVICES BARRIERS

On basic telecommunications services, South Africa adopted the WTO reference paper on pro-competitive regulatory principles and committed to license a second supplier no later than January 1, 2004 to compete against Telkom, the current monopoly supplier, in long-distance, data, telex, fax and privately leased circuits services. South Africa will also consider the feasibility of licensing additional suppliers. The parastatal Telkom's exclusivity period continues until March 2002, but may be extended for a further year if Telkom meets its telephony rollout targets. Competition for the second network operator may begin as early as 2001.

Until Telkom's exclusivity ends, Internet Service Providers (ISPs) and Value Added Networks (VANs) may continue to face problems from Telkom. Although value added services do not fall within the scope of Telkom's monopoly, Telkom has claimed that VANs and ISPs are mere resellers of basic services and are thus infringing on Telkom's monopoly (see also Electronic Commerce below). The South African Telecommunications Regulatory Agency (SATRA) directed Telkom, on September 10, 1999, to immediately cease and refrain from issuing threats to terminate the existing facilities and services of VAN operators. However, Telkom has subsequently refused to provision new facilities to VAN operators. SATRA continues to examine this issue under the relevant provisions of South Africa's telecommunications law. Under Section 1377 of the Telecommunications Trade Act of 1988, AT&T has urged USTR to take action to ensure that South Africa meets its commitments under the WTO General Agreement on Trade in Services and the WTO Agreement on Basic Telecommunications.

The status of call-back services is unclear. In mid-1997, SATRA ruled that call-back operators were illegal since only Telkom is licensed to provide international service. The Call-Back Association (SACBA) filed suit, and in the absence of any decision by the court, call-back operators continue to function. South Africa has not yet issued any operational satellite mobile telecommunication licenses, and is still studying the issue. The third cellular license was awarded in February 2000 to a consortium known as Cell C.

In the 1997 WTO financial services negotiations, South Africa made commitments resulting in increased access to its market in a number of financial services sectors, including banking, securities, and insurance. Although not prescribed in terms of the Banks Act, a foreign bank that wishes to operate a branch in South Africa will, however, be required to capitalize its local operation by the greater of eight percent of risk-weighted assets and other contingent liabilities or 50 million rand held in South Africa.

INVESTMENT BARRIERS

Trade-Related Investment Measures Agreement

In accordance with the Trade-Related Investment Measures Agreement, South Africa notified the WTO of measures (its tea scheme and Phase VI of its motor industry program) that were inconsistent with its TRIMS obligations. Tea measures have been tariffied and the Phase VI program has been replaced. Proper notification allows developing-country WTO members to maintain trade-related investment measures for a five-year transitional period after entry into force of the WTO. South Africa, as a developing country for investment issues, was required to eliminate these measures by January 1, 2000. The United States is working in the WTO to ensure that WTO members meet these obligations.

Bilateral Agreements

Vice President Gore and South Africa's then Deputy President Mbeki signed an income tax treaty on February 17, 1997, in Cape Town. It was ratified by each country and entered into force on January 1, 1998. The treaty, designed to increase cross-border flows of capital, trade, and technology between the United States and South Africa, should remove certain existing tax disincentives to investment in South Africa. The treaty accomplishes these objectives by reducing tax rates on certain cross-border income flows, increasing investor confidence through protection against nondiscriminatory taxation, and providing for a dispute-resolution mechanism.

On February 18, 1999, in a ceremony in Cape Town presided over by Vice President Gore and then Deputy President Mbeki, the United States and South Africa signed a Trade and Investment Framework Agreement (TIFA). The TIFA, the first ever negotiated with a country in Sub-Saharan Africa, creates a Trade and Investment Council, composed of representatives of both governments, which meet regularly to discuss specific trade and investment matters, negotiate agreements if appropriate, and identify and work to remove impediments to trade and investment flows. While the Trade and Investment Council is a government-to-government body, the private sectors of both countries may also be consulted. The first TIFA meeting was held in July 1999.

Tax Incentives

South Africa has used tax incentives to encourage investment. For a limited period, existing nondiscriminatory tax allowances, such as those contained in the Income Tax Act of 1962 for machinery and buildings used in a manufacturing process, are being granted on an accelerated basis. If any new or unused plant or machinery was acquired and used for manufacturing by a taxpayer between July 1, 1996 and September 30, 1999, the cost can be written off over three years. A similar allowance is also granted to a lessor of manufacturing plants and machinery. Similarly, a 10-year write-off is available for erecting any building, or any improvements to a building for manufacturing during July 1, 1996 to September 30, 1999, and used before March 31, 2000. The corporate tax rate was reduced from 35 percent to 30 percent in 1999.

ANTI-COMPETITIVE PRACTICES

Ownership remains highly concentrated in many of the sectors of the South African economy. Among other things, a large portion of the South African population was entirely excluded from ownership of business enterprises. In addition, successful companies such as South African Breweries, Anglo America (including De Beers which is part of Anglo America) and SASOL had been prohibited, since 1961, from investing abroad and, therefore, expanded their activities locally. Conglomerates, which can exert excessive market power, are therefore prevalent in the South African market. The previous competition authority was weak; it had no enforcement powers and could only make recommendations to the Minister of Trade and Industry on practices or acquisitions which might restrict competition in the market. A new Competition Act, concentrating much more on the abuse of dominant power, was passed in 1998. This law introduced significant improvements by prohibiting certain forms of anti-competitive conduct and by instituting a notification requirement for mergers. Importantly, the legislation established an independent competition authority, the Competition Commission, which started operations in September 1999. It is expected that the Competition Act will be amended in 2000, in part because of questions raised by the Nedcor-Stanbic merger/acquisition, where jurisdiction fell under more than one regulatory agency.

Sectors such as energy, transport, telecommunications, mining, and financial services have historically been controlled and dominated by parastatals.

ELECTRONIC COMMERCE

South Africa has a vibrant and rapidly growing Internet industry. The South African Department of Communications is formulating an electronic commerce policy through a series of public working groups, and expects to have draft legislation completed by September 2000.

The telecommunications parastatal Telkom has been restricting service to Internet Service Providers (ISPs) and Value Added Networks (VANs). Telkom claims that firms are re-selling basic services and are thus infringing on Telkom's monopoly in violation of the Telecommunications Act. The matter is currently before the regulatory agency, SATRA. The U.S. believes that such action may be inconsistent with South Africa's obligations under the WTO General Agreement on Trade in Services and the WTO Agreement on Basic Telecommunications. (See Service Barriers above.)

OTHER BARRIERS

Transparency and Corruption

The South African Government has taken a number of steps to fight corruption and increase transparency. This has been accomplished through legislation, national anti-corruption summits, the establishment of anti-corruption bodies, and reform of government institutions. South Africa has actively participated in a U.S. anti-corruption initiative and has endorsed a Global Coalition for Africa list of principles to combat corruption in Africa.

South Africa boasts 10 anti-corruption bodies. Some, such as the Public Service Commission (PSC), Office of the Public Protector (OPP), and Office of the Auditor-General (OAG), are constitutionally mandated and address corruption as only part of their responsibilities. Others such as the Heath Special Investigative Unit (HSIU), the South African Police Anti-Corruption Unit, and the newly created Scorpions Unit, are dedicated to combating crime and corruption.

Government transparency will be enhanced by the Promotion of Access to Information Act, signed into law in February 2000. The Public Finance Management Act (PFMA), passed in 1999, is expected to raise the level of oversight and control over public monies and in doing so should also improve the transparency of government spending, especially with regard to off-budget agencies and parastatals. The legislation will become effective on April 1, 2000. The Preferential Procurement Policy Framework Act, enacted in February 2000, may increase transparency in government procurement, by, inter alia, establishing rules for preferential awarding of government contracts to firms with black ownership or shareholders. However, given the complexity of the law and the exceptions provided, it is unclear whether it can be implemented in a transparent and predictable manner.

Southern African Customs Union

The Southern African Customs Union (SACU) was established in 1910 and re-negotiated and substantially amended in 1969. SACU now includes South Africa, Botswana, Lesotho, Namibia and Swaziland as members. South Africa is in the process of renegotiating the SACU agreement with its partners, but it is not clear when these discussions will be completed. In the meantime, the current trading regime among the SACU countries is expected to continue. Key issues in the negotiations include the revenue-sharing formula, time lags in distribution of revenue, management of the system, and the need for a dispute resolution mechanism.

Imports from outside the SACU are subject to a common external tariff. Under the current agreement, the tariffs for all of SACU are instituted by the Minister of Trade and Industry of South Africa upon the recommendation of the BTT. The other SACU members are, however, consulted on the tariff. When the tariff is amended, the new tariff is implemented by all the SACU member states.

An Agreement on Trade, Development and Cooperation between the European Community and its Member States and the Republic of South Africa was signed in October 1999. Trade provisions of the Agreement were provisionally implemented in early 2000. The trade provisions call for the establishment of a free trade area over a transition period lasting a maximum of twelve years for South Africa and a maximum of 10 years for the European Community. Elimination of duties on European Community goods exported to South Africa will impact on customs revenues distributed to members of SACU.

Because of the Southern African Customs Union, products from Botswana, Lesotho, Swaziland and Namibia enter South Africa duty free. In a few cases, products from these countries compete directly with U.S. goods and have the advantage of a lower tariff duty. For example, soda ash from Botswana comes into South Africa at zero duty whereas soda ash from the U.S. faces a 10 percent duty. South Africa does not produce soda ash but the duty on imported soda ash was introduced for the benefit of Botswana.

Southern African Development Community

One other development which is likely to affect U.S. exports to South Africa, as well as to the other members of the Southern African Development Community (SADC) is the implementation of a SADC Trade Protocol, which should be implemented in early-to-mid 2000. The trade protocol calls for the establishment of a Free Trade Agreement within a time frame of eight years from implementation of the Protocol. The Trade Protocol limits ratifying countries' ability to raise tariffs against other SADC members or to impose new non-tariff barriers. The Protocol also calls for the harmonization of customs, trade facilitation, and general and phyto-sanitary standards.

Steel

Steel (carbon steels, ferro-alloys, stainless steels and down-stream products) has been identified by the DTI as a strategic growth industry for South Africa that will gradually fill the employment and foreign exchange earnings gap being created by the declining gold sector. This is of concern in light of the global overcapacity of steel production and recent steel import surges. Over the past year, there have been a number of U.S. anti-dumping, countervailing duty or safeguard actions against South African steel. An investigation is currently underway on South African line and pressure pipe, small diameter seamless.

U.S. countervailing concerns stemmed from South Africa steel producers' financial arrangements with the Industrial Development Corporation (IDC) (considered by some U.S. companies to provide subsidized interest rates) and from the government's fiscal incentives, namely Section 37E of the tax act, which allows for the rapid write-off of capital assets (considered by some to be at higher rates than the industry norm). The South African Government maintains that these "trade concessions" do not violate WTO obligations.

Specific concerns were raised relating to Saldanha steel, a mini steel plant designed to produce 1.2 million tons of steel when operating at full capacity. The South African Government has said that Saldanha's steel is for export only and should therefore not be a barrier to U.S. imports into South Africa, and that the involvement of the IDC in financial arrangements and as an equity partner in Saldanha Steel was based on normal commercial practices and terms. A U.S. company, however, argued that Saldanha steel will affect its ability to export to third countries (and to South Africa), and that the use of IDC financing and Section 37E of the tax act constitutes South African Government subsidization of the plant.

The Section 37E tax concession was phased out during 1992-1995. This concession was not sector specific but was generally available to all industries, including chemical, petro-chemical, motor and mining.

The IDC was established in 1940 to promote and develop the, then, small South African industrial base with emphasis on the upgrading of raw mineral products and job creation. To implement this mandate, the IDC frequently provided below-market-rate financing. This practice has been discontinued and the IDC now functions as a private sector project financing and development organization.

SWITZERLAND

TRADE SUMMARY

In 1999, the U.S. trade deficit with Switzerland was $1.2 billion, a decrease of $193 million from the U.S. trade deficit of 1.4 billion in 1998. U.S. merchandise exports to Switzerland were $8.4 billion, an increase of $1.1 billion (15.4 percent) from the level of U.S. exports to Switzerland in 1998. Switzerland was the United States' 18th largest export market in 1999. U.S. imports from Switzerland were $9.6 billion in 1999, an increase of $920 million (10.6 percent) from the level of imports in 1998. The stock of U.S. foreign direct investment (FDI) in Switzerland at the end of 1998 was $37.6 billion, an increase of 19.7 percent from the level a year earlier. U.S. FDI in Switzerland is concentrated largely in the financial, wholesale, and manufacturing sectors.

IMPORT POLICIES

According to the Organization for Economic Cooperation and Development (OECD), Swiss farmers are one of the most highly protected producer groups in the world. Switzerland is self-sufficient in pork, dairy and other agricultural commodities but imports approximately $6 billion worth of agricultural products annually, accounting for over 40 percent of total food consumption. The U.S. share of the agricultural import market is about five percent, which makes the U.S. the sixth most important exporter of agricultural goods to Switzerland and the largest outside the EU.

Switzerland is a relatively difficult market for many U.S. products to enter because of the high tariffs on certain agricultural products and preferential tariff rates for other countries, such as members of the European Union. It is not clear if these special tariff rates fully conform to World Trade Organization (WTO) rules, since numerous agricultural products are excluded from the arrangements. It is particularly difficult to export pre-packaged food products because of the Swiss customs practice of charging tariffs on the gross weight of imports (because the weight of the package is included in the tariff).

Administration of agricultural tariff-rate quotas has also presented problems for U.S. exports, since Swiss regulations often allocate the quotas to importers that purchase domestic products. This requirement has increased the level of protection for domestic producers and in some cases, (such as potato products), has meant that it was not possible for U.S. exporters to ship under the tariff-rate quotas.

Food and agriculture represent the only sector where government policies have any significant impact on American products being imported into the country.

If the above impediments in the agriculture sector were removed, U.S. industries estimate that U.S. exports would increase by more than $25 million.

STANDARDS, TESTING, LABELING AND CERTIFICATION

In general, Swiss standards and labeling requirements do not present a significant hardship for U.S. companies.

In recent years, genetically engineered food products from the U.S., such as genetically modified corn and soybeans, are facing increased obstacles, such as relatively slow approval processes and increasing opposition from Swiss consumer groups and retail organizations. In June 1998, Swiss voters defeated a referendum to ban biotechnology research and release of biotechnology products into the environment, in part due to concerns about the impact of this proposal on medical research. Nonetheless, biotechnology products are becoming increasingly controversial.

Approval of products containing genetically modified organisms (GMOs) has generally been slower than in the United States, a situation which has caused products approved elsewhere to be banned in Switzerland pending such approval. Once approved, food products containing GMOs are subject to strict labeling requirements.

In addition, a new law that took effect on January 1, 2000, stipulating that imports of fresh meat and eggs from abroad that are produced in a manner not permitted in Switzerland must be clearly labeled as such. Methods not allowed in Switzerland include the use of hormones, antibiotics and other antimicrobial substances in the raising of beef and pork. The law also requires the labeling of eggs produced by chickens kept in certain types of battery cages.

GOVERNMENT PROCUREMENT

On the federal level, Switzerland is a signatory of the WTO government procurement agreement and fully complies with WTO rules concerning public procurement. On the cantonal and local levels, a law passed by the parliament in 1995 provides for nondiscriminatory access to public procurement. The United States and Switzerland reached agreement in 1996 on a text which expands the scope of public procurement access on a bilateral basis.

EXPORT SUBSIDIES

Switzerland's only subsidized exports are in the agricultural sector, where exports of dairy products (primarily cheese) and processed food products (chocolates, grain-based bakery products, etc.) benefit from state subsidies. Switzerland is gradually reducing export subsidies as required under World Trade Organization (WTO) rules. The Swiss government has negotiated, but not yet ratified, an agreement with the European Union according to which neither side will subsidize dairy product exports to the other. This may motivate Switzerland to increase subsidized dairy exports to non-European destinations.

SERVICES BARRIERS

Switzerland's services regime appears to be as open as any in Western Europe. The telecommunications market, for example, has for the most part been fully liberalized, and U.S. firms have established a significant presence in Switzerland. In 1998, a U.S. firm (as part of an international consortium) won one of the three government licenses to provide cellular telephone services.

In contrast to the EU's broadcast directive, Switzerland's guidelines do not set specific limitations on the amount of non-Swiss or non-European origin programming that can be broadcast or shown in theaters. The government reserves the right, however, to require that broadcasters or cinema companies use a certain minimal share of Swiss production "if deemed necessary to maintain the diversity of supply".

Switzerland does maintain some restrictions on legal services. Foreign lawyers cannot provide legal consultancy services nor legal advice on foreign or international law without being licensed in the practice of Swiss law; and foreign lawyers may not form partnerships with local lawyers without being licensed under local law.

INVESTMENT BARRIERS

The Swiss welcome foreign investment and accord it national treatment. Foreign investment is neither actively encouraged nor hampered by any significant barriers. The federal government confines itself to creating and maintaining the general conditions that are favorable both to Swiss and foreign investors. Such factors include economic and political stability, a firmly established legal system, extensive and reliable infrastructure, and efficient capital markets.

ANTI-COMPETITIVE PRACTICES

There has been a very high degree of cartelization in the Swiss economy. A new law came into force in July 1, 1996, that deals much more harshly with cartels and similar associations than did the previous law. While cartels will still be permitted under certain limited circumstances, it should now be much more difficult for companies to justify to the authorities their continuation. It is too early to judge, however, how quickly or extensively the cartel situation in Switzerland will change. The existence of cartels likely has only a very limited impact on U.S. exports to Switzerland. This is because the sectors of highest cartel concentration have been in the trades, (i.e., construction plumbing/electricians) and in distribution – sectors where there has been minimal U.S. commercial activity.

ELECTRONIC COMMERCE

The proportion of Swiss using computers and the Internet is high and the government generally supports promoting the evolution of electronic commerce with a minimum of regulatory interference. A number of U.S. firms providing Internet access are active in the Swiss market.

Switzerland is following the EU lead with respect to Internet privacy issues. Swiss law stipulates that personal data may not pass to a foreign country if that country does not offer an adequate level of data protection.

TAIWAN

TRADE SUMMARY

The United States trade deficit with Taiwan reached $16.1 billion in 1999, up 7.5 percent from 1998. U.S. exports in 1999 were $19.1 billion, up 5.3 percent from 1998. Corresponding U.S. imports from Taiwan were $35.2 billion, up 6.3 percent. Taiwan is currently the 8th largest export market for U.S. goods. The stock of U.S. foreign direct investment (FDI) in Taiwan in 1998 was $4.9 billion. U.S. FDI in Taiwan is concentrated largely in the manufacturing, banking, and wholesale sectors.

OVERVIEW

Market access in Taiwan was significantly improved when the U.S. and Taiwan reached agreement in February 1998 on the market access elements of Taiwan's WTO accession package. The agreement includes both immediate market access and phased-in commitments, and will provide substantially increased access for U.S. goods, services, and agricultural exports to Taiwan. The agreement provides improved access to the automobile, telecommunications, government procurement, beer, spirits, and wine markets.

Significantly, it also provides for annual imports from the United States of previously-banned pork, chicken, and variety meat products. Relevant Taiwan authorities recently announced the availability of these meat product quotas for the year 2000.

Most of the trade barriers described in this section have been resolved through extensive negotiations; however, the barriers will not be eliminated until Taiwan becomes a member of the World Trade Organization.

IMPORT POLICIES

Tariffs

Many agricultural tariffs were cut as part of tariff reductions in 1995 and 1998. U.S. exporters nevertheless consider that many of the tariff reductions were not deep enough to have real commercial effect, and that the present tariff structure on these items, as well as other agricultural tariffs, continue to be a significant barrier to exports. Some examples include: fresh fruits (40-50 percent tariff), processed vegetables, including vegetable juices (35-40 percent), and sunflower seeds and oil (11-15 percent). However, many of these tariffs will be lowered in the context of Taiwan's accession to the WTO.

Tariffs on fish products are of growing concern to U.S. industry. Taiwan was the ninth largest fishery export market for the United States in 1999. U.S. fish exports to Taiwan last year were $41 million, while the value of imports from Taiwan totaled $207 million. Taiwan's high tariffs on fish were the major reason for the imbalance. Tariffs exist on virtually all seafood products, frequently in the range of 30-50 percent. Reduction of tariffs on fishery products would create important U.S. export opportunities for fishery products including frozen squid, fresh sea urchin roe, frozen hake and whiting, Pacific and Atlantic mackerel, frozen halibut, fresh and frozen lobster, preserved anchovy, whiting surimi, fresh bluefin tun, frozen shrimp, fresh and frozen crabs, clams, molluscs and crustaceans, frozen Alaska pollock, frozen cod, frozen mullet, and frozen Greenland turbot.

In addition, U.S. agricultural exporters continue to report instances in which the customs authorities on Taiwan have reclassified import items to lines with higher tariffs, often after years of trade history. This practice is most prominent in agricultural commodities, particularly with regard to meat products. Such a practice negates some of Taiwan's tariff cuts.

These instances are being pursued with the Taiwan authorities.

In May 1998, Taiwan began implementing tariff cuts on 1,130 items, many of specific interest to U.S. industry, such as buses, agricultural products, including fruits and vegetables, and camera film. Tariff reductions on 15 agricultural products, negotiated as part of the U.S.-Taiwan bilateral WTO agreement, took effect in July 1998, and were extended in July 1999. In February 1999, Taiwan waived tariffs on 15 aircraft components as part of plans to accede to the WTO Agreement on Trade in Civil Aircraft. An additional 777 items are slated for tariff cuts pending legislative approval. Taiwan's current average nominal tariff rate is 8.2 percent; the trade-weighted rate is 3.1 percent, both down slightly from 1998.

Taiwan is a participant in the Information Technology Agreement (ITA). Under the ITA, Taiwan has agreed to phase out tariffs on information technology products. The first tranche of ITA-related cuts was implemented on a temporary basis on July 1, 1997 under administrative order. A second tranche went into effect on January 1, 1998. While the vast majority of tariffs on these products are phased out as of the year 2000, for some products reductions will not be completed until 2002. The administrative order implementing these cuts will have to be renewed annually until permanent reductions are enacted in connection with Taiwan's accession to the WTO.

Licensing and Other Restrictions

Of some 10,200 official import product categories, nearly 86 percent are completely exempt from any controls. 991 categories are still "regulated" and require approval from relevant authorities based on the qualifications of the importer, the origin of the good, or other factors. Another 279 require import permits from the Board of Foreign Trade or pro forma notarization by banks. Imports of 270 categories are "restricted," including ammunition and some agricultural products. These items can only be imported under special circumstances, and are thus effectively banned.

Quarantine requirements, which are not based on sound science, also block imports of certain plant and animal products. Imports of rice, peanuts, adzuki beans, chicken (fresh and frozen), certain cuts of pork, animal offal (beef, pork, and poultry), sugar, and selected dairy products are banned. However, Taiwan has agreed to remove these bans upon accession to the WTO. Moreover, under the U.S.-Taiwan WTO market access agreement reached in February 1998, limited market access for U.S. chicken, pork, and variety meat products is provided under a system of annual quotas. However, subsequent to the implementation of these quotas, Taiwan authorities used reclassification in order to ban or limit importation of two pork products. As a result of product reclassification, frozen bacon imports are now banned, and some pork bone product imports are limited by quotas. Both of these products could be imported in unrestricted quantities prior to reclassification.

In addition to these restrictions on agricultural items, the Council of Agriculture also implements what amounts to a *de facto* ban on the importation of fishing boats (including sport fishing boats), which has frustrated the export efforts of several U.S. firms. Motorcycles with engines larger than 150cc likewise require a special permit and are thus effectively banned from importation. For some products for which licenses are required, the importer may be required first to obtain the authorization of numerous agencies such as Taiwan's Department of Health (DOH) for medical equipment, the Board of Foreign Trade or the Provincial Department of Agriculture and Forestry for certain fertilizers, and the Department of Environmental Protection for waste and scrap copper, aluminum, lead, and zinc. Often these additional approvals and documentary requirements add to the administrative burdens of importing the products into Taiwan or make importation effectively impossible for small exporters without the appropriate connections with the relevant authorities. Local content requirements in the automobile and motorcycle industries will be eliminated as part of Taiwan's WTO accession.

STANDARDS, TESTING, LABELING AND CERTIFICATION

Industrial products (such as air-conditioning and refrigeration equipment) are required to undergo testing to verify energy efficiency and capacity before clearing customs. Recent efforts to enforce compliance of some imported products with Taiwan standards have resulted in long delays at customs for some U.S. products entering the market, as testing facilities are inadequate and testing procedures slow and inefficient.

The most prevalent restrictive standards and testing requirements exist for agricultural goods, and Taiwan often fails to notify its trading partners of changes in sanitary and phytosanitary (SPS) import regulations. This is despite pledges to abide by international norms as embodied in the WTO Agreement on Application of SPS Measures. In 1999, however, Taiwan agreed to accept meat and poultry imports from plants approved by the USDA Food Safety Service (FSIS), and agreed that FSIS-certified exports are eligible for importation into Taiwan. Furthermore, in 1999, Taiwan agreed to accept Codex, and some cases U.S., pesticide residue standards for imported fruits and vegetables in those cases in which Taiwan's chemical regulatory agencies have not yet established Taiwan standards.

Registration and approval procedures for imports of pharmaceuticals, medical devices, and cosmetics are both complex and time consuming, and have been the subject of long-standing complaints by U.S. firms. Foreign medical device manufacturers must re-register second or third generation versions of previously approved products, and the Taiwan Department of Health also requires the registration of individual products instead of entire product lines.

For all but new chemical entities, pharmaceutical companies are still not allowed to import drugs which are produced using multi-site sourcing. Moreover, pharmaceutical companies claim that clinical trial requirements in Taiwan for drugs that have been approved in other major markets add 2-3 years to the approval time. In 1998, however, Taiwan authorities began a two-year phase-out of clinical trials as part of the registration process for new drugs. This initiative, once fully implemented, will significantly reduce regulatory burdens on pharmaceutical firms.

Department of Health authorities continue to require the submission of detailed plant master files (PMF) as part of the registration and approval process for new drugs. U.S. industry has called for submission of U.S. FDA Establishment Inspection Reports, ISO-13485 certificates, and free sales certificates as a means to satisfy the PMF requirement. This would bring the PMF compliance for new drugs into line with Taiwan's new PMF requirement for U.S.-made medical devices.

Other trade barriers facing U.S. pharmaceutical and medical device makers are detailed below under "Other Barriers."

In 1997, the Taiwan authorities promulgated new electromagnetic compatibility (EMC) standards for computer and other electronic goods which threatened to disrupt of U.S. computer exports to Taiwan. In response, in March 1999 a mutual recognition agreement (MRA) designed to eliminate duplicate testing of information technology equipment was signed. According to the terms of the MRA, certain Taiwan exports to the United States previously tested for electromagnetic conformity in labs recognized by Taiwan authorities will no longer require duplicate inspections in a U.S. lab. Reciprocal treatment will likewise be accorded similar U.S. products imported into Taiwan. Relevant U.S. agencies and their Taiwan counterparts are jointly implementing operating procedures according to the principles of the MRA, including nominating certified labs for mutual accreditation.

GOVERNMENT PROCUREMENT

Problems encountered by U.S. firms in performing government contracts in Taiwan are serious and constitute significant trade barriers. Despite recent reforms, access to Taiwan's estimated $10 billion annual public construction market remains problematic. Some major international contractors will no longer undertake significant contracts in Taiwan.

In connection with its planned accession to the WTO, Taiwan has agreed to join the Agreement on Government Procurement (GPA). Adherence to the GPA's procedures should improve the transparency of the bid process and eliminate overt discrimination between local and foreign bidders on covered contracts.

A new Government Procurement Law (GPL) went into effect in May 1999, but will not be fully applicable to foreign bidders until Taiwan's accession. In fact, individual procuring entities *may* set forth separate procedures for foreign and domestic bidders except where "governed by the rules set forth in the treaties or agreements to which [Taiwan] is a party." Until recently, U.S. firms appeared to view the GPL as a positive step forward. However, some U.S. companies have recently reported that procuring entities are using the GPL as a tool to further entrench difficult tender terms and conditions. That situation arises from the fact that the GPL gives procuring entities wide latitude in determining tender specifications.

Municipal governments in particular have been notably arbitrary in dealing with foreign contractors. The most common pattern of difficulty consists of frequent and unreasonable change orders introduced during performance of the contract. Performance bonds are forfeited and contracts canceled when foreign construction companies are unwilling to accommodate substantially increased costs within the originally agreed payment. Perhaps the most consistent complaint made by U.S. companies involves unfair terms and conditions required by the particular procuring entity. Specific problem areas include unlimited contingent liability; unreasonably high liquidated damages provisions; limited right to protest, or be paid for, work order changes. Other problems include short lead times on major tenders, non-transparent and lengthy warranty provisions, unclear payment schedules, and pre-qualification requirements which limit experience to similar projects in Taiwan and disqualify related overseas experience. Additional limitations include a requirement that foreign firms have a local construction license or else establish a local subsidiary in order to bid on projects.

Lack of timely and effective arbitration procedures prevent satisfactory resolution of contract disputes. In 1998, in response to U.S. requests, Taiwan made operational a dispute settlement mechanism under the direction of the sub-cabinet level Public Construction Commission (PCC). Under this mechanism, bidders can formally protest alleged improprieties which occur during the bidding process. The PCC has the power to either cancel or order amendments to tender procedures when it finds that a protest is justified. Companies are often reluctant to utilize this process, however, for fear of losing future contract opportunities.

U.S. firms are increasingly complaining that both procuring entities and the Public Construction Commission give unfair treatment to foreign firms. In one case, the procuring entity allowed a local company not meeting the tender requirements to bid, to the detriment of a qualifying U.S. firm. In other instances, the tender specifications appear to be written in favor of a local firm, to the disadvantage of foreign competitors. In other cases, deadlines are extended for local companies, but have been applied strictly to foreign firms. In perhaps the worst case, a local company obtained a ruling from the PCC that a tender, which only a U.S. world-leading high technology company could meet, should be canceled and re-tendered with lower qualification standards. It is estimated that another practice, the requirement that most public enterprises and administrative agencies must procure locally if the goods and services are available locally, if eliminated in the telecommunications sector, would provide U.S. firms an additional $100 million in annual revenue.

There is also some concern that Taiwan may be expanding the scope of offset provisions through "Industrial Cooperation Programs." A key example is the Aeronautics and Space Development Program, which mandates industrial cooperation and aerospace technology transfers for major government procurements.

Consultations with the Taiwan authorities on government procurement barriers are planned for March 2000.

EXPORT SUBSIDIES

Taiwan makes available an array of direct and indirect subsidy programs to farmers, ranging from financial assistance to guaranteed purchase prices higher than world prices. It also provides incentives to industrial firms in export processing zones and to firms in designated "emerging industries." Some of these programs may have the effect of subsidizing exports. Taiwan has notified the WTO of these programs, and as part of its WTO accession, is amending or abolishing any subsidy programs deemed inconsistent with WTO principles.

INTELLECTUAL PROPERTY RIGHTS PROTECTION

Citing persistent enforcement problems, the United States put Taiwan back on the Special 301 Watch List in August, 1998. Although Taiwan has enacted laws and policies designed to improve intellectual property protection, enforcement remains problematic. A key problem in Taiwan's IPR enforcement is its weak judicial system. Taiwan judges are often inadequately trained in IPR issues, and in the past have made a variety of questionable procedural decisions in patent and copyright infringement cases. In 1999, 43 percent of all infringing imports seized by U.S. Customs came from Taiwan, making it the largest source of counterfeit goods last year. The U.S. is discussing these problems with Taiwan on a regular basis, and some improvement has occurred. Nevertheless, more remains to be done.

The United States is particularly concerned about inadequate enforcement efforts in the face of continued production and export of counterfeit U.S. software, video games, and other optical media. To address these concerns, the Taiwan authorities in February 1999 issued a new directive requiring only the use of legal software by Taiwan authorities. They also required that as of July 1, 1999, all optical media products produced in Taiwan, including CD's, VCD's, CD-ROM's and DVD's, are required to bear source identification (SID) codes. At the same time, Bureau of Standards, Metrology and Inspection inspectors were authorized to perform random factory visits to ensure compliance. Further, to prevent the illegal production of counterfeit computer chips at Taiwan semiconductor factories, the Taiwan Semiconductor Industry Association began implementation of a voluntary computer chip-marking program on July 1, 1999. However, problems remain in that the SID code requirement is not being adequately enforced for all CDs, and chip marking has not been made mandatory under the Commodity Labeling Act.

Another problem area is the failure of Taiwan's judicial system to recognize foreign powers of attorney giving local representatives of foreign firms effective rights to file criminal prosecutions in intellectual property infringement cases. Burdensome power of attorney requirements now constitute a serious impediment to foreign access to the Taiwan judicial system in intellectual property cases.

Revised Copyright, Patent, and Trademark Laws were passed by Taiwan in 1997 to bring its IPR legal structure into conformity with the WTO TRIPS agreement. However, only the Trademark Law and certain provisions of the Copyright Law have been implemented. The new Copyright Law, which will be fully implemented upon WTO accession, will extend retroactive copyright protection to 50 years. Despite these changes, owners of U.S. copyrights and trademarks have experienced difficulty in obtaining and enforcing rights in Taiwan.

Another area of concern is the lack of adequate protection for the packaging, configuration, and outward appearance of products, an area of IPR known as "trade dress." Despite provisions in Taiwan's Fair Trade Law designed to protect unregistered marks and other packaging features, copying of U.S. products by local products which are misleading in appearance remains a problem.

SERVICES BARRIERS

Financial Services

The Securities and Exchange Law was amended in May 1997 to remove restrictions on employment of foreigners by securities firms, effective upon Taiwan's accession to the WTO. In early 1999, the limit on foreign ownership in listed companies was raised from 30 percent to 50 percent. For qualified foreign institutional investors, restrictions on capital flows have been removed, although they are still subject to limits on portfolio investment. Foreign individual investors are subject to some limits on their portfolio investment and restrictions on their capital flows.

In June 1997, the annual limit on a company's non-trade outward (or inward) remittances was raised from $20 million to $50 million. Inward/outward remittances unrelated to trade by individuals are subject to an annual limit of $5 million. There are no limits on trade-related remittances. NTD-related derivative contracts may not exceed one-third of a bank's foreign exchange position. To stabilize the foreign exchange market in the wake of regional financial turmoil, the CBC closed the non-deliverable forward (NDF) market to domestic corporations in May 1998; the NDF market remains open to foreign companies.

In May 1997, the financial authorities announced that insurance companies in principle would be allowed to set some premium rates and policy clauses without prior approval from regulators. Insurance companies are still required to report such rates and clauses. In July 1995, Taiwan removed a prohibition against mutual insurance companies; as of late 1999, however, authorities had not issued implementing regulations.

Legal Services

Foreign lawyers may not operate legal practices in Taiwan, but may set up consulting firms or work with local law firms. Qualified foreign attorneys may, as consultants to Taiwan law firms, provide legal advice to their employers only. Legislation was passed in May, 1998 to permit the eventual establishment of foreign legal partnerships. However, last minute changes to the law prevented it from achieving this purpose. Taiwan authorities subsequently agreed to delay implementation of the law and to make other commitments which will permit foreign attorneys to establish partnerships either upon Taiwan's accession to the WTO, or upon implementation of the new law, whichever occurs first.

Films

While restrictions have been eased recently, Taiwan continues to limit the importation and showing of foreign films. Imports of foreign film prints are limited to 58 per title. The number of theaters in any municipality allowed to show the same foreign film simultaneously is limited to 18, and multi-screen theaters are only allowed to show a single title on up to three screens simultaneously. Taiwan has pledged to abolish these restrictions upon accession to the WTO.

INVESTMENT BARRIERS

While Taiwan continues to liberalize its financial sector, limits remain on foreign ownership in listed companies. For qualified foreign institutional investors, restrictions on capital flows have been removed, although they are still subject to limits on portfolio investment. Foreign individual investors are subject to some limits on their portfolio investment and restrictions on their capital flows.

Taiwan continues to relax investment restrictions in a host of areas, but foreign investment remains prohibited in key industries such as agriculture, basic wire line telecommunications, broadcasting, and liquor and cigarette production. Wire line telecommunications will be gradually liberalized beginning in early 2000, and will be completely liberalized by July, 2001 under Taiwan's WTO commitments. In fact, the cap on foreign equity in telecommunications companies was raised from 20 percent to 59.9 percent in January 2000. Liquor and cigarette production will be fully liberalized by 2004. Foreign ownership in airlines is limited to 33 percent, but this ceiling may be raised to 50 percent under pending legislation.

ANTI-COMPETITIVE PRACTICES

In the mobile telephone market, U.S.-invested mobile service providers believe the pricing practices of former monopoly provider Chunghwa Telecom are unfair and predatory. They argue that Chunghwa has repeatedly lowered mobile charges in order to stifle competition from new entrants by cross-subsidizing its mobile operations with profits from other business areas. In October, the Taiwan Fair Trade Commission agreed, and ruled against a new Chunghwa service. The FTC found that Chunghwa's proposed pricing for the service amounted to unfair cross-subsidization which would inhibit fair competition in the mobile sector. U.S.-invested mobile service providers remain concerned, however, that Chunghwa will continue to use unfair pricing practices to undermine the competition.

In the flat glass market, an internal investigation conducted at the request of the United States in 1997 by the Taiwan FTC found that while monopoly conditions existed, there was no evidence of predatory pricing in Taiwan's glass market. However, U.S. industry continues to believe the market for flat glass products in Taiwan is subject to monopoly conditions and predatory pricing practices designed to prevent market access for foreign imports.

In the cable TV market, the U.S. program providers believe the island's two dominant multi-system operators (MSOs) frequently collude to inhibit fair competition in the offering of their products. Control by the two MSOs of upstream program distribution has in the past made it difficult for U.S. providers of popular channels to negotiate reasonable fees for their programs. Taiwan regulators have thus far not done enough to prevent collusion and unfair trade practices in program distribution.

ELECTRONIC COMMERCE

Taiwan supports international efforts to facilitate global electronic commerce, and in 1998 unveiled electronic commerce policy guidelines which emphasize the primacy of the private sector in electronic commerce development. In practice, however, Taiwan's approach to electronic commerce and related issues is still evolving. In 1998, Taiwan authorities proposed amendment to the Taiwan Telecom Law which would have required an intrusive and time-consuming inspection and approval system for all hardware and software encryption modules. The amendment was deleted from the legislation, which subsequently passed in October. In the area of software sales, imports through traditional channels are subject to up to 1.3 percent in import duties. However, assessment of duties for software sold and downloaded over the Internet is still under discussion and no conclusion has been reached. For the present, the authorities are not collecting duties. In the area of online banking, securities transactions and other online transactions, the authorities are deliberating whether to establish a compulsory security standard controlling all transactions. The Ministry of Finance announced on December 24 that it is now considering allowing competing security standards in Taiwan.

OTHER BARRIERS

Market access for U.S.-made medical devices and pharmaceuticals has been one of the most contentious trade issues between the United States and Taiwan over the last two years. Taiwan has declared both the medical device and pharmaceutical sectors as areas warranting priority for development. Favorable measures have been introduced by Taiwan agencies to promote growth and technological development in these areas.

Taiwan does not discriminate against imported devices and drugs *per se*. However, Taiwan's national health insurance system acts effectively as the exclusive buyer for all medical products and services in Taiwan. As such, Taiwan authorities set prices for all drugs and medical devices on a *de facto* basis. It is this pricing system which frequently has the effect of discriminating against typically higher-quality and higher-priced pharmaceuticals and medical devices imported from the United States by limiting the reimbursement amount for certain products. Other regulatory barriers to medical device and drug imports are discussed in detail earlier in this report under "Standards, Testing, Labeling, and Certification".

Medical Devices: The Taiwan market has been an important one for the U.S. medical device industry. The Health Industry Manufacturers Association (HIMA) estimates the total market in medical technologies in Taiwan to be around $900 million. While U.S. device exports have been growing by 11 percent, HIMA believes discriminatory practices now threaten about two-thirds of U.S. exports, as well as prospects for substantial growth.

In 1996, the United States and Taiwan concluded an agreement on medical device pricing with specific measures to be achieved regarding national treatment, transparency, openness, predictability, and functionality. Taiwan has thus far not taken adequate measures to establish differentiated pricing for devices based on the relative value to technology (the "functionality" measure). Significant differences exist between the functionality of imported products and those made in Taiwan.

In December 1997, Taiwan's National Health Insurance Bureau (NHIB) introduced a diagnostic-related group case payment system for medical device products. This system assigns "generic" pricing, counter to the principle of creating value-based pricing for devices as stated in the agreement. This unexpected change in reimbursement systems was accompanied by drastic price cuts for foreign manufactured orthopedic products to levels nearly identical to those for domestically produced orthopedic products, thus eliminating the distinction between products based on quality and relative value. Cardiovascular products have recently been added to the diagnostic-related group system.

The change to generic rather than quality pricing for medical devices threatens to reduce dramatically the market for advanced foreign medical device products, at the same time that it provides ample profits to local Taiwan companies for development of more advanced medical devices. The United States is requesting that Taiwan adopt special measures that will recognize the value of the technology embodied in U.S. medical devices, or to otherwise adopt market-based approaches, such as patient co-payment, to permit adequate market access for higher quality, higher priced devices.

Pharmaceuticals: The U.S. pharmaceutical industry faces price controls similar to those encountered by U.S. medical device manufacturers. Under Taiwan's pricing system, producers of "generic" pharmaceuticals are reimbursed at a set percentage of the price set for the equivalent proprietary drugs. This system discriminates against patented and brand name pharmaceuticals that are typically imported by providing a higher rate of return on "generic" products that are produced in Taiwan. Since Taiwan producers do not have to pay for research, development and testing (but are entitled to a high price), they can offer "unofficial" discounts on their products and thereby enjoy a significant price advantage over brand name competitors when bidding on procurement contracts. Although Taiwan authorities have eliminated situations where generic products receive the same price as higher quality patented pharmaceuticals, U.S. companies remain concerned that in some cases, price differentials between generic and name brand products remain overly narrow.

In November 1999, Taiwan health care authorities lifted a one-year moratorium on price changes for pharmaceuticals negotiated in 1998 with the United States. In so doing, the authorities announced across-the-board price cuts of up to 10 percent, effective April 1, 2000, for nearly 10,000 items. Around 70 percent of the items slated for price cuts are manufactured domestically. Most of U.S. industry concern centers on future operation of the system, and the possibility that Taiwan may be considering further cost-saving measures such as global-budgeting and reference pricing.

TANZANIA

TRADE SUMMARY

The United States has enjoyed a stable trading relationship and trade surplus with Tanzania during the past five years. In 1999, U.S. exports to Tanzania totaled $68 million and imports, $35 million, roughly approximating the level of trade in 1998 but with some growth. Tanzania was the 118th largest export market for the U.S. in 1999. The stock of U.S. foreign direct investment in Tanzania was estimated to be $26 million in 1998, nearly a 19 percent decline from 1997.

During the past five years, the pace of reform to improve the country's trade and investment environment has quickened. A comprehensive privatization program for all sectors has been devised. Financial sector reform and privatization of the banks have been ongoing. A local stock exchange was opened in 1998 to assist in the privatization effort. And, foreign exchange availability is now subject to market forces. Nevertheless, governance issues have hindered investment and, at times, the reform program. More progress is required to further streamline and regularize customs procedures and to rationalize the tariff structure, especially the lowering of some tariff rates.

IMPORT POLICIES

Import duties and value-added taxes are assessed on all Tanzanian imports, unless otherwise exempted. In FY1999, an estimated 42 percent of collectable duties were exempted, down from 48 percent in 1998. In an effort to remove ministerial discretion in the granting of exemptions, the Import Duty Act was amended so that exemption granting authority would be centralized within the Income Tax Department of the Tanzania Revenue Authority.

Effective July 1999, the Government of Tanzania adopted a five-tier structure for tariff rates: zero percent; zero to five percent for raw materials, replacement parts, and capital goods; five to 10 percent for semiprocessed inputs and spare parts (except spare parts for motor vehicles); 15-20 percent for fully processed inputs and motor vehicles spare parts; 20 percent to 25 percent for consumer goods. The simple average of applied import duties is now 16.1 percent. Previously, tariffs rates were zero percent, 5 percent, 25 percent, 30 percent, and 50 percent. The average tariff for finished goods is 18.3 percent, while the rate for primary and semiprocessed goods is 13.3 percent. Tariffs still vary widely from product to product and, in many categories, tariffs on semiprocessed goods are as high as for finished goods.

Since introduction in July 1998, the VAT has remained unchanged at the flat rate of 20 percent. Exports are zero-rated. Imports of food, health items (e.g., pharmaceuticals), education supplies, water, and transport and financial services are also zero-rated. VAT exemptions may apply on capital goods for importers who hold incentive certificates from the Tanzania Investment Center (TIC). Some agricultural equipment may also qualify. An excise tax is levied on domestic or imported petroleum, alcoholic and non-alcoholic beverages, and tobacco products, among other items.

Tanzania is a member of the Southern African Development Community (SADC) and the East African Community (EAC). Upon implementation of the SADC Trade Protocol, expected in CY2000, member countries of that regional organization will begin to phase-in intra-SADC preferential tariff treatment over a period of eight years. The EAC member countries intend to harmonize their tariff and customs regimes in CY2000, and to enact a Common External Tariff (CET) in 2004. In July 1999, Tanzania announced its intention to withdraw from the Common Market for Eastern and Southern Africa (COMESA).

Pre-Shipment Inspection and Customs

Trade regulations require pre-shipment inspection at the point of origin for goods exceeding $5,000 in value. COTECNA, a Swiss firm, has been contracted by the Government to conduct quality and quantity inspections, determine customs valuation and classification, as well as import eligibility (i.e., checking for proper labeling, expiration date, and that an item is not a prohibited good) and payable duty and tax. Upon passing inspection, COTECNA issues a Clean Report of Findings (CRF) to the Tanzanian importer for customs clearance and affixes a security label to the original exporter's final invoice, which then can serve as a Certified Final Invoice and be submitted with other final documents to a bank for a Letter of Credit. In country, COTECNA also issues a Single Bill of Entry (SBE) to importers to allow payment of duties and taxes and for customs clearance and to exporters for statistical purposes.

Tanzania's notification to postpone its application of the WTO Agreement on Customs Valuation for one year was accepted by the WTO Committee on Customs Valuation in December 1999. Tanzania now has until January 1, 2001 to make the transition to transaction value as the basis for assessing customs duties. For the time being, COTECNA continues to use the Brussels definition of value (BDV), which is an approximation of the likely price in a competitive market between independent buyers and sellers, for customs valuation.

The Customs Department and the Port Authority remain a great hindrance to importers throughout Tanzania. Unpredictable and lengthy clearance delays and bribes to expedite service are commonplace. Clashes among different departments frequently occur over issues relating to tax exemptions. The mandate for instituting a minimum dutiable value for imported goods has been vested in the Tanzania Revenue Authority, which has been known to have misused its authority on several occasions.

Import/Export Licenses and Restrictions

Trade liberalization introduced since the mid 1980s has eliminated almost all import and export licenses. Import licenses are still required on goods deemed to be sensitive for health or security reasons (such as arms and ammunition, explosives, military equipment, and narcotic drugs). An import license is required, for health reasons, from the Ministry of Agriculture for livestock, meat and edible offal, live trees and other plants, edible fruit, nuts, vegetables, roots, and tubers. Other import controls may be administered by the Bank of Tanzania. Tanzania does not currently have any legislation on antidumping, countervailing duties, or safeguard measures, but the government has plans to introduce such legislation in the future.

Trade liberalization since 1996 has involved the removal of export registration requirements, the removal of export license requirements, and the elimination of surrender requirements of export proceeds. Ministerial clearance or permits are required for goods that are monitored for environmental conservation or national heritage. These include wildlife, forest products (only teak and pau rosa logs may be exported, other varieties must undergo some processing before being exported), marine products, and some food stuffs. Fish products are subject to landing requirements to obtain health certificates before exportation. Since June 1998, export restrictions have been placed on white maize, rice, cereals, and beans for purposes of national food security. There is also a ban on charcoal exports. The importation of contraband drugs and pornographic materials is prohibited.

Exports from Tanzania must be paid for in foreign currency (unless otherwise permitted by the Bank of Tanzania) within 90 days for agricultural and natural resources and 180 days for manufactured goods (unless advance arrangements are made with a commercial bank registered in Tanzania).

STANDARDS, TESTING, LABELING AND CERTIFICATION

The Tanzania Bureau of Standards (TBS), under the Ministry of Industry and Trade, is charged with overseeing standards, labeling, testing and certification. There are no unusual requirements pertaining to standards, but a certificate of compliance must accompany every import consignment. TBS is permitted to operate as a profit-making enterprise and charge a fee of 0.2 percent of purchase price plus freight, but it also receives a budget allocation. TBS is a member of the International Organization for Standardization (ISO) as well as the Codex Alimentarius of the United Nations Food and Agriculture Organization, and serves as the contact point for the WTO Agreement on Technical Barriers to Trade, Agreement on the Application of Sanitary and Phytosanitary Measures, and for the Code of Good Practice for the Preparation, Adoption, and Application of Standards. There are 572 published Tanzanian standards, of which 105 are adopted from ISO standards and 400 are voluntary. Other standards are typically based on European or other international norms. The British Pharmacopoeia, for example, is used for pharmaceutical products. TBS recognizes testing procedures performed by counterpart entities in exporting countries. The Ministry of Agriculture and Cooperatives Phytosanitary is responsible for phytosanitary regulations and zoo-sanitary inspections. Domestic and imported products are treated equally.

Labeling and packaging requirements are not harmonized in Tanzania. Regulating entities include TBS, Tanzania Pesticide Research Institute, the Pharmacy Board, and the National Food Control Commission. TBS issues a Standard Mark of Quality equally to foreign and domestic producers.

GOVERNMENT PROCUREMENT

Government procurement regulations require that all purchases over $5,000 be made via open tender. The Central Tendering Board, based in the Ministry of Finance, is the responsible organ for administering procurement of $3 million or higher and reviewing procurement between $1 million and $3 million. Regional tender boards are responsible for tenders of less than $1 million. The Ministry of Works is responsible for procurement related to road and building construction. Each relevant ministry reviews the technical qualifications of suppliers to determine an open list of prequalifiers that are permitted to bid on its contracts. Domestic bidders are given a 7.5 percent price preference in the final determination. Reports suggest that tenders are frequently awarded to uncompetitive firms in which government officials have a significant interest. The decisions on some significant government contracts, especially those involving medicines and military hardware, have lacked transparency. Most major projects, however, are funded by international donors, and the procurement procedures of those organizations are usually employed. Tanzania is not a signatory to the Uruguay Round Plurilateral Agreement on Government Procurement.

EXPORT SUBSIDIES AND TAXES

Tanzania does not subsidize exports, but concessional credits have been available in limited quantities to exporters at various stages of export processing from the state-owned National Bank of Commerce. This bank is in the final stages of privatization, with final payment details being worked out with Amalgamated Banks of South Africa (ABSA). Subsidies supporting agricultural production have been removed, but concessional credit is available for the purchase of inputs from the newly created Agricultural Input Trust Fund. Input prices have been decontrolled and marketing monopolies eliminated. The

Tanzanian Government no longer imposes export duties or taxes.

INTELLECTUAL PROPERTY RIGHTS PROTECTION

Tanzania is a member of the World Intellectual Property Organization (WIPO), the International Union for the Protection of Industrial Property (Paris Union), and the International Union of the Protection of Literary and Artistic Works (Berne Union), and is a signatory to the Harare Protocol on Patents and Industrial Designs, the Banjul Protocol on Trademarks, and the Madrid Agreement on Trademarks. On September 14, 1999, Tanzania became a member of the Patent Cooperation Treaty. The Government of Tanzania can grant patents, but has never done so. As a member of the African Regional Industrial Property Organization (ARIPO), it refers patent applications to ARIPO for preliminary and substantive searches and registration. Under Tanzanian intellectual property law, patents are granted for 10 years, renewable for two periods of five years each. Trade and service mark protection is granted for 10 years, renewable thereafter for seven-year periods. Copyright protection is for the life of the author (or surviving author) plus 50 years. Applied art is protected for 25 years from the date of creation.

Copyright holders have been unable to defend their rights due to the lack of well-defined property right laws and inadequate law enforcement. Pirated video cassette recordings and unauthorized television and film shows can be found in country, and Tanzania is a market for pirated recordings from third countries. The government does not currently have the resources to enforce its intellectual property laws, but is working with the Copyright Collective Management Association on enforcement issues. The government plans to establish a commercial court that would also have the authority to deal with intellectual property issues in a timely manner.

To improve the legal framework for the defense of intellectual property rights, the Tanzanian Parliament passed the Copyright Act No. 7 of 1999 in June 1999, but it has not yet been signed into law. Among other things, this law will cover artistic, literary, and broadcast copyrights. For the first time, there will be criminal penalties for offenders; the previous law treated a copyright infringement as a civil offense.

SERVICES BARRIERS

Tanzania has opened its service sectors to foreign investment and participation. Significant progress has been made in the financial, telecommunications, and transportation service sectors. Travel agent services are restricted to Tanzanian nationals.

The financial sector has undergone significant reform. The new regulatory and supervisory environment of the financial sector has been modeled along the lines of the Basle Committee's Core Principles. The Bank of Tanzania is cooperating with other EAC countries to harmonize regional banking supervision. The Government is in the process of privatizing the remaining three state-owned banks.

Insurance is regulated by the Insurance Act of 1996, which brought an end to the government monopoly in this sector. There are now 11 operating insurance companies. The Act requires that at least one-third of the controlling interest of each be held by Tanzanian citizens. No such restriction applies to brokers or agents. The Act also allows for the creation of a national reinsurance corporation in which all local insurance companies would be required to participate. But no effort has been made to create such a corporation. No reinsurance is now available within Tanzania; all reinsurance is placed outside the country. Supervision for the insurance industry rests within the Ministry of Finance.

Since 1993, the government has moved to liberalize the telecommunications sector. New licenses have been issued for basic telephone services (for Zanzibar), data communications, mobile cellular telephone service, other value added services, and equipment importation. The Tanzania Communications Commission (TCC) regulates the sector and issues type approval, but in practice International Telecommunications Union (ITU) standards are applied. Privatization of the Tanzanian Telecommunications Corporation is underway, with plans to sell 35 percent of the company to private investors. A period of exclusivity, likely to be three to four years, will be granted for domestic and international services on the mainland. Fifty-one percent foreign ownership is permitted in any of the non-basic service categories. License applications are subject to 35 percent local participation for approval. Tanzania has not made any specific commitments in the GATS with respect to telecommunications.

The government is restructuring the transportation sector. New legislation is being prepared to set standards of performance and safety, preserve infrastructure, and protect the environment and consumers against monopolistic practices. Immediate goals involve the sale of a national railway, the national airline, airports, and portions of the harbor authority. Tanzania does not have a national maritime fleet. Domestic air services have been deregulated. In 1999, the United States and Tanzania signed the first ever Open Skies Agreement involving an African country, providing for unrestricted air service to, from, and beyond each country's territory.

INVESTMENT BARRIERS

With few exceptions, 100 percent foreign ownership is permitted in most sectors. Ownership of land is still subject to restrictions, but a new Land Act now being implemented will allow greater latitude in this area. A separate law applies to the petroleum and mining sectors and addresses the payment of royalties. Those sectors are also open to foreign ownership.

In 1997, the government updated the 1990 Investment Code and established the Tanzania Investment Center (TIC) to replace the Investment Promotion Center (IPC). The TIC has no authority to deny an investment, but does determine whether an investment qualifies for incentives. Incentives are available to all foreign investors wishing to invest more than $300,000 in the country ($100,000 for local investors). Investments in leading sectors (including infrastructure and export processing zones) can import capital goods duty-free. Investments in priority sectors are allowed to import capital equipment at five percent duty. Priority sectors include agriculture, aviation, commercial construction, export oriented projects, manufacturing, natural resources, rehabilitation and expansion, tourism and tour operators, broadcasting, human resource development, and special development areas so designated. Both leading and priority sectors benefit from deferment of VAT charges until the start of operations, a five-year tax holiday, and a 100 percent capital allowance deduction during income earning years. Enhanced incentives are available from various ministries for strategic investments, a concept which has yet to be fully defined. Currently, only sugar is considered a strategic investment.

Despite investment code reform, the TIC still finds it difficult to perform its duties effectively because of overlapping laws and regulations. On several occasions, TIC approvals have been rejected by other institutions within government, especially the Tanzania Revenue Authority and the Immigration Department. The TIC will assist all investors to obtain necessary permits and authorizations required by other laws.

Tanzania is a signatory to the Convention Establishing the Multilateral Investment Guarantee Agency (MIGA) and a member of the International Center for the Settlement of

Investment Disputes. Tanzania has bilateral investment treaties with Germany, Netherlands, Switzerland, and the United Kingdom, and double taxation treaties with Denmark, India, Italy, Norway, Sweden, and Zambia. The Lome Convention has provided certain protections to EU investments in ACP countries.

Privatization Program

Privatization of state-owned firms is progressing at a slow but steady pace. The privatization of large parastatals has lagged because the necessary legal and regulatory framework has not been in place. The Parastatal Sector Reform Commission (PSRC), established in 1993, listed 425 parastatal corporations for privatization over a period of five years. By September 1999, 295 firms had been privatized. In November 1999, the Parliament extended the life of the PSRC for another four years. Sales of privatized entities require approval from various government committees, including the cabinet, as a check to limit individual influence.

THAILAND

TRADE SUMMARY

In 1999, the U.S. trade deficit with Thailand was approximately $9.3 billion, an increase of $1.1 billion from the U.S. trade deficit of $8.2 billion in 1998. U.S. merchandise exports to Thailand were approximately $5.0 billion, a decrease of $250 million (4.7 percent) from the level of U.S. exports to Thailand in 1998. Thailand was the United States' 25th largest export market in 1999. U.S. imports from Thailand were $14.3 billion in 1999, an increase of $889 million (6.6 percent) from the level of imports in 1998. The stock of U.S. foreign direct investment (FDI) in Thailand in 1998 was about $5.7 billion, an increase of 45 percent from the level of U.S. FDI in 1997. U.S. FDI in Thailand is concentrated largely in the manufacturing, petroleum and wholesale sectors.

IMPORT POLICIES

Tariffs

During the 1999 fiscal year Thailand's effective tariff rate was 3.81 percent, up from 3.28 percent in 1998. The simple average tariff for 5,846 dutiable items was 16.97 percent. Tariffs accounted for 9.35 percent of government revenues during FY 1999, compared to 5.85 percent in 1998. The Thai government continues to reduce tariff rates pursuant to a reduction schedule established in 1994, although progress was impeded during 1998 and 1999 due to the economic crisis and shortfalls in government revenues from other sources. A review of Thailand's tariff policies by the WTO Trade Policy Review Body (TPRB) in December 1999 revealed that certain tariff rate increases implemented in 1997 may be inconsistent with Thailand's current tariff rate binding obligations. The United States is seeking the Thai government's clarification of this matter on a priority basis.

The current structure of Thailand's tariff policy divides the Thai tariff schedule into a number of tariff rate categories, or bands. The total number of these categories is being gradually reduced from 39 to 6, as follows: zero percent for certain goods such as medical equipment and fertilizer; one percent for raw materials, electronic components, and vehicles for international transport; five percent for primary and capital goods, such as machinery, tools, and computers; 10 percent for intermediate goods; 20 percent for finished products; and 30 percent for goods "needing special protection," to include such items as fabrics, clothing, refrigerators, and air conditioners. Plans to reduce tariffs on petrochemicals and plastic products have been delayed several times due to the effects of the regional economic crisis and sensitivity in the domestic industry. However, these tariffs, too, are gradually being reduced. In January 1999, the rates for petrochemical products were reduced to 20 percent and for plastic pellets to 30 percent.

In October 1997, the Thai government temporarily raised tariffs on passenger cars and sport utility vehicles to 80 percent, up from 42 and 68 percent. These increases were scheduled to be lifted on January 1, 2000, but they remain unchanged. In addition, in order to come into compliance with its WTO obligations (see "Trade-Related Investment Measures" below), Thailand in 1999 removed local content requirements in the automotive industry. Unfortunately, at the same time Thailand announced its intention to raise the tariff rate on completely knocked down (CKD) kits from 20 to 33 percent.

A revised tariff structure is to be unveiled during the first half of the year 2000 which will categorize goods under three general headings: primary/raw materials; intermediate and semiprocessed products; and finished products. This reorganization could remedy some troublesome anomalies in the Thai tariff schedules; for example, in some cases import duties on unfinished materials have been higher than on finished products. At the same time, tariff reductions on 1,227 of a total of 9,066 dutiable items will take effect as part of Thailand's ASEAN Free Trade Agreement (AFTA) obligations. Effective January 2000, Thailand eliminated tariffs on 153 information technology-related products pursuant to its obligations under the WTO Information Technology Agreement (ITA). However, in implementing its ITA obligations Thailand has reportedly begun to require that imported information-technology products be accompanied by a certificate of origin.

Taxation

Certain agricultural products and other sensitive items are excluded from Thailand's tariff liberalization program. Excise taxes are high on some items, such as gasoline (25 to 31 percent), beer (50 to 53 percent), and wine (50 to 55 percent). There is an excise tax of 50 percent on certain luxury items, such as yachts and wool carpets, and a 35 percent excise tax on distilled spirits (25 percent for brandy). In March 1999, as part of an economic stimulus package, the excise tax on fuel oil was reduced from 17.5 to 5 percent. The value-added tax (VAT) was temporarily reduced from 10 to seven percent. These measures will remain in effect until March 2001. A second stimulus package in August 1999 removed duty surcharges which the Thai government began to collect in October 1997 in reaction to the regional economic crisis. In addition, during the same period, Thailand reduced or eliminated tariffs on a number of raw materials and capital goods in order to increase Thailand's industrial competitiveness.

Agriculture and Food Products

High duties on agriculture and food products remain the main impediments to U.S. exports of high-value fresh and processed foods. Under its Uruguay Round agriculture obligations in the WTO, Thailand is committed to reduce its import tariffs, although items in the consumer food category will still carry a tariff of about 25 percent. Because most pre-Uruguay Round tariff rates are around 60 percent, tariffs on many items will remain in the 30 to 40 percent range by the end of the Uruguay Round implementation period in the year 2004.

Thailand has historically relied on import duties as an important source of government revenue, but which also serve to protect politically important domestic agricultural interests from competing with imports. Duties on imported consumer-ready food products range between 40-50 percent, the highest in the ASEAN region. Tariffs on meats, fresh fruits and vegetables, and pulses (e.g., dry peas, lentils, and chickpeas) are similarly high. When import duties, excise taxes and other surcharges are calculated, imported wines face a total import tax of nearly 380 percent. With the exceptions of wine and spirits, there are no longer specific duties for most agricultural and food products and *ad valorem* rates are slated to decline between 35 percent and 50 percent under WTO rules. Nevertheless, import duties are currently as high as 60 percent. Furthermore, duties on many high-value fresh and processed food products will remain high even after the WTO reductions.

Although its overall import policy is directed at protecting domestic producers, Thailand has been relatively open to imports of feed ingredients (corn, soybeans, soymeal) in recent years. Corn imports enjoy liberalized tariff rates, but the effects are limited by a government requirement that corn imports arrive within a limited time frame (February-June). This places U.S. suppliers at a disadvantage and gives most of the market to corn from the Southern Hemisphere. Corn is also subject to a tariff-rate quota (TRQ) based on domestic wholesale corn prices. In-quota imports are subject to a 20 percent tariff rate, plus a surcharge of about five dollars per ton; the out-of-quota tariff is 77 percent. There are currently no import quotas for soybeans, and the import duty on soybean meal is five percent, provided that specific domestic purchase requirements are met. There is an import tax surcharge and an excise tax on wheat imports of about $30 per ton.

Phytosanitary standards continue to be a source of concern for the United States. In 1995, the United States obtained the Thai government's approval to import fresh citrus fruit from Florida and California, and in 1999 approval was obtained to import citrus fruit from Arizona.

Quantitative Restrictions and Import Licensing

Thailand is required to bring its import licensing procedures into conformity with WTO obligations; consequently, Thailand's import licensing regime is currently under review. Progress toward implementation of WTO rules on licensing has been incremental. All items of food for human consumption are subject to import license requirements, which are often unclear and non-transparently administered. Some items are not subject to a licensing requirement but are subject to other administrative or regulatory requirements including fees or a requirement that imports must be accompanied by certificates of origin.

Customs Barriers

The Thai parliament in January 2000 enacted legislation necessary to implement the WTO Customs Valuation Agreement. This law will come into effect in March 2000 and its application will be retroactive to January 1, 2000 (which is the deadline for compliance with the WTO agreement). This is a welcome development which, if fully implemented and administered, could help address persistent U.S. concerns over Thai customs-related requirements and procedures.

The business community has long regarded Thai customs procedures as an impediment to trade and investment. Overall, the Thai Customs Department enjoys an unusual degree of autonomy and some of its practices appear arbitrary and irregular. Import regulations are complicated, non-transparent, and inconsistently applied. The problems most frequently cited by importers are excessive paperwork and formalities, lack of coordination between customs and other import regulating agencies, and lack of modern computerized processes.

Also, many Thai and foreign importers complain of demands for unrecorded cash "facilitation fees." In an effort to limit demands for such payments and to maximize customs revenue, "fire walls" have been introduced between customs personnel and brokers, and procedures have been introduced to check documentation upon filing for completeness and accuracy. The Customs Department justifies its continued reliance on original documentation, visual inspections, and average price formulas for valuations by pointing to chronic cheating on customs declarations. Plans to introduce a computerized, paperless customs system throughout the country have met with limited success. Computerized entry and clearance procedures are currently available in the limited areas of express cargo and export shipments, and are generally working well in these areas.

Customs Department authorities have periodically disregarded actual invoiced values and relied on the highest invoiced price of a particular product recorded during the previous month as a reference price for determining applicable duties. This practice often results in overvaluation and fails to take into account differences in quality, quantity and bulk purchase discounts, and fluctuations in world prices. Although these problems persist, progress was made during 1999 to reform some aspects of customs operations, particularly express shipment handling, payment procedures, document simplification and broker licensing.

STANDARDS, TESTING, LABELING AND CERTIFICATION

The Thai Food and Drug Administration (TFDA) requires standards, testing, labeling, and certification permits for the importation of all food and pharmaceutical products. This process can be a trade restriction due to the cost, length and complexity of the process, and occasional demands for disclosure of proprietary information. The fees for inspection and analysis of pharmaceuticals nearly doubled during October 1999.

Food licenses cost about $600 and must be renewed every three years. Pharmaceutical import licenses cost about $480 and must be renewed every year. The combined fee and service charges associated with renewal of licenses is approximately $290. Licensing fees ranging from $40 to $120 per item are usual for sample food products imported in bulk. Licensing fees for sealed, packaged foods cost about $200 per item. Pharmaceuticals must be registered for a fee of about $40 per item, and must be inspected and analyzed for another fee of about $80 per item. The process can take more than three months.

Some Thai Food and Drug Administration (TFDA) procedures have been streamlined, but delays of up to a year can occur. Also, all processed foods must be accompanied by a detailed list of ingredients and a manufacturing process description. American manufacturers are reluctant to disclose trade secrets, and some American products have not reached the Thai market for this reason.

GOVERNMENT PROCUREMENT

Thailand is not a signatory to the WTO Agreement on Government Procurement. Thai government practice currently requires a counter-trade transaction on government procurement contracts valued at more than 300 million baht (about $8 million), on a case-by-case basis. A counter-purchase of Thai commodities valued at not less than 50 percent of the principal contract may be required. As part of a counter-trade deal, the Thai government may also specify markets into which commodities may not be sold; these are usually markets where Thai commodities already enjoy significant access. The provision for a case-by-case approach automatically creates a lack of transparency and predictability.

EXPORT SUBSIDIES

Thailand maintains several programs that benefit manufactured products or processed agricultural products and may constitute export subsidies. These include subsidized credit on some government-to-government sales of Thai rice (agreed on a case-by-case basis), preferential financing for exporters in the form of packing credits, tax certificates for rebates of packing credits, and rebates of taxes and import duties for products intended for re-export. Thailand's Export-Import Bank has assumed responsibility for the administration of some of these programs, particularly packing credits, usually charging interest at LIBOR plus 3.0 to 3.5 percent.

The Thai government grants additional packing credit loans through commercial banks totaling $500 million, at LIBOR plus three to three and a half percent. The Thai Export-Import Bank offers a nine to nine and a half percent interest rate (LIBOR plus one percent), quoted in dollars, paid out in baht, and repaid in dollars.

INTELLECTUAL PROPERTY RIGHTS (IPR) PROTECTION

Despite the passage of significant IPR legislation and a good working relationship between foreign business entities and the Thai Department of Intellectual Property, IPR piracy continues to be one of the leading trade issues between the United States and Thailand. U.S. copyright industries report an estimated annual trade loss of more than $240 million from IPR infringement in 1999. The most significant problem is enforcement, as piratical production continues to expand and large quantities of infringing goods continue to be sold at the retail level. Allegations of irregularities continue to undermine confidence in the police and the public prosecutor's office. Since November 1994, Thailand has been on the U.S. Special 301 "Watch List."

An IPR action plan concluded between the U.S. and Thailand during 1998 strengthened levels of IPR protection and enforcement in Thailand. The action plan set forth elements for streamlining IPR regulatory procedures, enhancing cooperation between relevant Thai ministries and enforcement authorities, and other important reforms in the copyright, patent, trademark and general enforcement areas. The Thai government's implementation of the action plan continues to be a priority for the United States. During late 1998 and early 1999, the Thai government continued to step up enforcement actions and to enhance coordination among various police and enforcement-oriented authorities. As a result, police raids and successful prosecutions before the IPR court improved steadily during the last half of 1998, and dramatically during 1999.

In those areas where enforcement efforts have been concentrated, pirates and counterfeiters are on the defensive and have been forced to alter their activities. Nevertheless, overall piracy rates continue to climb. Prosecutions continue to be hampered by the disappearance from police custody of evidence of IPR infringement. The higher courts in Thailand remain reluctant to regard IPR violations as a criminal matter or to impose meaningful penalties that could help deter future infringement. When jail sentences are imposed, these are often overturned on appeal.

Patents

TRIPS-consistent amendments to Thailand's patent regime were enacted by the Thai Parliament in October 1998. The amended provisions entered into effect in September 1999.

Copyright

Thailand's copyright law became effective in March 1995, bringing Thailand into closer conformity with international standards under the WTO TRIPS agreement and the Berne Convention. With active participation on the part of U.S. industry associations, the Thai police conducted many more raids in 1999 than previous years; nevertheless, the scale of the problem is growing. For example, industry estimates for 1999 indicate that the piracy rate for business software was 81 percent (representing about $66 million in lost trade) and the piracy rate for entertainmnet software was 95 percent (representing $116.3 million in lost rate). One problem is that the copyright law contains ambiguities, particularly regarding decompilation and infringement of software, which continue to be areas of concern. Another deficiency is that the regulations for enforcement procedures leave loopholes that frustrate effective enforcement. Moreover, the fines imposed for copyright piracy are often too light to deter offenders.

Trademarks

Amendments to the trademark law in 1992 provide higher penalties for infringement and extend protection to services, certification, and collective marks. While these amendments seem to have created a viable legal framework, and have led to some improvements in enforcement, trademark infringement – especially for clothing and accessories – remains a serious problem. U.S. companies with an established presence in Thailand and a record of sustained cooperation with Thai law enforcement officials have had some success in defending trademarks, but the process remains time-consuming and expensive. Pursuant to the 1998 IPR action plan, trademark application procedures in Thailand were streamlined during that year. Counterfeit production of plush toys (including certain types of dolls and stuffed animals) in outlying provinces is a new and growing problem. In addition to action on domestic pirated production, the United States continues to urge the Thai government to address the export of infringing goods to overseas markets.

SERVICES BARRIERS

Telecommunications Services

Telecommunications services in Thailand are state-controlled, although the government has allowed significant private sector participation since 1989. The Communications Authority of Thailand imposes equity and revenue-sharing requirements on International Value Added Network Service (IVANS) providers. The privatization of the two existing state-owned telephone companies was part of the telecommunications master plan approved in late 1997.

In addition, the economic stabilization agreement concluded between Thailand and the IMF in 1997 called for acceleration of the privatization of state holdings in the energy, telecommunications, and transportation sectors. As a first step, the two state telecommunication operators are expected to form strategic alliances with foreign operators, in preparation for liberalization of the sector which will be realized upon implementation of Thailand's obligations under the WTO Basic Telecommunications Agreement. Thailand passed the State Enterprise Capital Act, a necessary precursor act, in 1999. This law will enable state enterprises to convert assets to shares.

Thailand's WTO basic telecommunications commitments cover only facilities-based services and do not include resale. Market access, national treatment, and pro-competitive regulatory provisions will only become effective in 2006, provided that Thailand enacts the necessary changes to its laws. Thus far, Thailand has yet to enact legislation to permit broader competition and implement pro-competitive regulatory reforms. Under its WTO commitments, Thailand will permit foreign participation in this sector with a maximum of 20 percent equity.

Legal Services

Current law prohibits foreign equity participation in Thai law firms in excess of 49 percent, and foreign nationals are prohibited from practicing law in Thailand. However, under the U.S.-Thai Treaty of Amity and Economic Relations, U.S. investments are exempted from the general restriction on foreign equity participation in law firms. Thus, while U.S. investors may own law firms here, U.S. citizens (and other nationals) may not provide legal services (with the exception of "grand-fathered" non-citizens). Most foreign attorneys are restricted from practicing law in Thailand, although in certain circumstances they may act in a consultative capacity.

Financial Services

Over the past several years, the Thai government has increasingly liberalized access for foreign firms to the Thai financial sector; however, significant restrictions on non-Thai participation in the sector remain. For example, aliens have been allowed to engage in brokerage services since 1997, but foreign firms are allowed to own majority shares (i.e., greater than 49 percent) of Thai securities firms only on a case-by-case basis.

In the aftermath of the Asian financial crisis, and in response to commitments made during 1997

WTO financial services negotiations, Thailand has taken major steps to liberalize its banking industry. Foreigners are now permitted to own up to 100 percent of Thai banks and finance companies for 10 years (from the date of acquisition). However, new capital invested in these ventures afterwards will have to come from domestic investors until such time as foreign-held equity shares fall to 49 percent. The Thai government is actively encouraging foreign investors to assist in the re-capitalization of Thai financial institutions by taking large equity positions in domestic firms. During the second half of 1999, majority shares in two domestic banks were sold to foreign banks and sales of two additional banks are expected early in 2000.

Foreign banks operating in Thailand are still disadvantaged in a number of ways, most notably by means of a maximum limit of three branches – although only one can be in Bangkok. Foreign banks must maintain minimum capital funds of 125 million baht ($3.3 million at December 1999 exchange rates) invested in government or state enterprise securities or deposited directly with the Bank of Thailand. Expatriate management personnel are limited to six professionals in full branches and to two professionals in Bangkok International Banking Facility operations, although exceptions are frequently granted.

INVESTMENT BARRIERS

The rights of U.S. investors in Thailand are secured by the U.S.-Thai Treaty of Amity and Economic Relations of 1966 and the U.S.-Thailand Tax Treaty of 1997. In October 1999, the Thai parliament enacted the long-awaited new Alien Business Act, laying out the overall framework governing foreign investment and employment in Thailand. The Act will enter into effect in early March 2000, and will eliminate existing prohibitions and liberalize restrictions on foreign participation in a number of occupations. The Act generally does not affect businesses established with Board of Investment Promotion (BIP) projects or export businesses authorized under the Industrial Estate Authority of Thailand law, and will not supersede provisions of bilateral treaties.

Trade-Related Investment Measures

In 1995, pursuant to the WTO Agreement on Trade-Related Investment Measures (TRIMS), Thailand notified to the WTO its maintenance of local content requirements to promote investment in a variety of sectors, including the milk and dairy processing, and the motor vehicle assembly and parts industries. It appears that Thailand eliminated these measures by the January 1, 2000 deadline established by the TRIMS Agreement. While this was a welcome development, Thailand unfortunately chose to replace its TRIMS in the auto sector with increased tariff rates on completely knocked down (CKD) kits (see “Tariffs” above).

OTHER BARRIERS

Several government firms are protected from foreign competition in Thailand. Also, allegations of impropriety in government procurement contracts and in activities administered by the Thai Customs Department are common. However, there has been progress in the procurement area. The revised Thai constitution contains provisions addressing corruption in the government. The new constitution also enhanced the status and powers of the Office of the Counter Corruption Commission (OCCC), and made this body independent from other branches of government. The members of the new commission serve for a single term of nine years, and report to their own chairman. Also, persons holding high political offices, and members of their immediate families, are now required to disclose their assets and liabilities before assuming and upon leaving office. Furthermore, a new law regulating the bidding process for government contracts both clarifies actionable anti-corruption offenses and increases penalties for violations.

ELECTRONIC COMMERCE

Thailand currently has no laws regulating electronic commerce, but it is an issue under active consideration. The Thai government is pursuing legislation designed to further promote the development of electronic commerce activity.

TURKEY

TRADE SUMMARY

In 1999, the U.S. trade surplus with Turkey was $570 million, down from $967 million in 1998. U.S. merchandise exports to Turkey were $3.2 billion, a decrease of $315 million from the level of exports in 1998. Turkey was the United States' 31st largest export market in 1999. U.S. merchandise imports from Turkey were $2.6 billion, up $82 million from 1998. The stock of U.S. foreign direct investment in Turkey was $1.1 billion in 1998. Such investment was concentrated primarily in the manufacturing, petroleum, power and financial sectors.

IMPORT POLICIES

Tariffs and Quantitative Restrictions

The introduction of Turkey's customs union with the European Union in 1996 resulted in substantial revisions to Turkey's tariff regime. Turkey now applies the EU's common external customs tariff for third country (including U.S.) imports and imposes no duty on non-agricultural items from EU and European Free Trade Association (EFTA) countries. The weighted rate of protection for industrial products from the United States and other third countries dropped from 11 percent to 6 percent with the introduction of the customs union. Higher transitional protection for imports of sensitive goods (including automobiles, leather and ceramics) from third countries are being phased out over a five-year period. The weighted rate is set to fall to four percent by the end of 2000. Further reductions in the general tariff level are not likely to affect U.S. exports significantly.

The customs union has helped the EU consolidate its trade relations with Turkey. The EU decision in December 1999 to confirm Turkey as an EU candidate will serve to further strengthen the EU's position as Turkey's primary trading partner. In particular, the harmonization of regulations will simplify import procedures for EU goods, but also should improve the general import climate.

Turkey maintains high tariff protection on many agricultural and food products. Because of generous subsidies and high support prices far above world market levels, Turkey recently raised tariffs on grains and oilseeds to high levels, though within their bindings, to discourage imports and to encourage consumption of local crops. Since 1996, Turkey has raised its applied tariffs on milling wheat (3 to 55 percent), corn (3 to 60 percent), fruit (45 to 120 percent), sorghum (3 to 60 percent), barley (3 to 85 percent), and sunflower seed (3 to 29 percent). These tariffs have adversely affected U.S. exports to Turkey. Improved market access for U.S. bulk commodities would help the growth and modernization of the Turkish livestock and poultry sectors and would reduce inflationary pressures in Turkey's economy. High costs of feed inputs (grains, soymeal) have created inflated prices for beef and poultry.

The Turkish government charges high import duties, as well as additional domestic taxes and charges, on imported alcoholic beverages. The import process for these products is cumbersome, because letters of credit for imports must be through TEKEL, the alcoholic beverage monopoly. Market opportunities for U.S. wine and beer exports are limited.

Although the government officially lifted its total ban on livestock imports in late 1999, the importation of only a limited number of breeder cattle will be allowed, and the importation of meat (with the exception of EU quota meat) is still banned.

U.S. industries estimate that eliminating high tariffs and non-tariff barriers to agricultural trade could open up markets in Turkey worth between $300 and $500 million annually for exporters of U.S. agricultural products.

Import Licenses

While import licenses generally are not required for industrial products, products which need after-sales service (e.g. office equipment, white goods, electronic and electrical consumer products, ADP equipment, diesel generators) and medical and agricultural commodities require licenses. The Ministry of Agriculture recently refused or delayed issuance of permits for imports of grains and fruits, on the basis that adequate supplies are available locally or from countries with bilateral quotas. In addition, the government requires laboratory tests and certification that quality standards are met for importation of foods and human and veterinary drugs. While licenses are generally issued in one to two weeks, occasional delays can cause problems for U.S. exporters.

GOVERNMENT PROCUREMENT

Turkey is not a signatory of the WTO Government Procurement Agreement. It nominally follows competitive bidding procedures for tenders. U.S. companies sometimes become frustrated over lengthy and often complicated bidding and negotiating processes. Some tenders, especially large projects involving co-production, are frequently opened, closed, revised, and opened again. There often are numerous requests for “best offers;” in some cases, years have passed without the selection of a contractor.

Military procurement generally requires an offset provision in tender specifications when the estimated tender value exceeds one million dollars. Direct offsets, i.e. exports from Turkey of products, systems or parts directly or indirectly related to the project, are preferred. However, indirect offsets – new foreign capital investments and product exports in fields outside the project – have been accepted. Recently the procurement arm of the Ministry of National Defense made the continuation of a defense contract contingent upon the transfer of majority ownership in a joint venture from a U.S. firm to its Turkish partner. The U.S. company, with Embassy assistance, is vigorously contesting the matter.

The entry into force of a Bilateral Tax Treaty between the United States and Turkey in 1998 eliminated the application of a 15 percent withholding tax on U.S. bidders for Turkish government contracts.

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 standards. The government continues to provide cash subsidies to a limited number of agricultural exporters (wheat, tobacco, fruits, sugar, and others). Domestic producers and exporters can take advantage of a number of government programs designed to support production for domestic and export markets, including cash and credit assistance for research and development projects, environmental projects, participation in trade fairs, market research and establishment of branch offices overseas. The Turkish Eximbank provides exporters with credits, guarantees, and insurance programs for non-agricultural products. Certain other tax credits also are available to exporters.

The government of Turkey continues to subsidize the export of wheat and barley by purchasing these products from Turkish farmers at prices above market rates, and then exporting a signficant portion of these stocks at lower international prices. Although Turkey remained within its WTO export subsidy commitments for grain in 1999, if Turkey exports a similar volume of wheat or barley in 2000 it will exceed its WTO export subsidy limits for these products.

INTELLECTUAL PROPERTY RIGHTS PROTECTION

In 1995, as part of Turkey's harmonization with the EU in advance of the customs union, the Turkish parliament approved new patent, trademark and copyright laws. Turkey also acceded to a number of multilateral intellectual property rights (IPR) conventions. Although the new laws provide an improved legal framework for protecting IPR, they require further amendments to be consistent with the standards contained in the WTO Agreement on Trade Related Aspects of Intellectual Property Rights (TRIPS). The government has declared that it intends to have a TRIPS-compatible IPR regime in place in 2000 and has volunteered for a WTO TRIPS review in the second half of 2000. Draft amendments to the Copyright Law were under consideration by parliament as of January 2000.

Turkey has been on the Special 301 Priority Watch List since 1992. In the 1997 Special 301 review, the U.S. Trade Representative provided Turkey with a set of benchmarks necessary in order to improve its status in the Special 301 process. In April 1998, the U.S. announced that it would not consider requests to augment Turkey's benefits under the U.S. Generalized System of Preferences until further progress is made on the benchmarks. Out of the six benchmarks, Turkey has made significant progress on four and is in the process of addressing the problems identified in the fifth and sixth benchmarks. Benchmark items include: equalize taxes on domestic films; legalize government software; public anti-piracy campaign; amend copyright and patent laws to provide for retroactive copyright protection and protection of proprietary data and to clarify that importation constitutes working of a patent; amend the Cinema, Video and Music Works Law to include higher penalties; and sustain enforcement efforts.

Taxes on the showing of foreign and domestic films were equalized in 1998. The Prime Minister issued a circular in 1998 directing all government agencies to legalize the software used in their offices. A public anti-piracy campaign was begun in 1998 and the government has made efforts to educate businesses, consumers, judges and prosecutors regarding the implications of its laws.

Turkey extended patent protection to pharmaceutical products in January 1999 in accordance with its customs union commitments to the EU. Turkey is currently in the process of amending its copyright legislation. In August 1999, fines were increased by 800 percent and indexed to inflation. Turkish police and prosecutors are working closely with trademark, patent and copyright holders to conduct raids against pirates within Turkey. Although many seizures have been made (including by Turkish Customs officials at ports of entry), and several cases have been brought to conclusion successfully, U.S. industry remains concerned that fines and penalties levied by the courts would not serve as a significant deterrent.

SERVICES BARRIERS

Accounting

Foreigners are not permitted to acquire, own an interest in, form a partnership with, merge with, establish, or affiliate with Turkish accounting firms. Owners and employees of accounting firms established in Turkey cannot acquire, own an interest in, form a partnership with, merge with, establish, or affiliate with foreign firms.

Names of foreign or affiliated firms cannot be used in the legal name of an auditing partnership or corporation, and cannot be used on letterheads and business cards.

Regulations prohibit the formation of partnerships among partners of different levels and titles. Also, qualified non-Turkish auditors are not permitted to practice on an equal basis as a qualified Turkish auditor because of non-recognition of foreign-country professional certification and foreign education, and because of nationality requirements.

Legal Services

The practice of Turkish law and membership of the bar is restricted to Turkish nationals. A person cannot provide legal advice on foreign or international law without being licensed in the practice of Turkish law. Turkish lawyers are not permitted to form partnerships with foreign lawyers. However, some foreign law firms have established liaison or branch offices in Turkey, staffed by Turkish lawyers.

Architecture and Engineering

The Turkish government has discretionary authority to grant a percentage preference to domestic firms on public construction projects. Licensing of architects and engineers is limited to Turkish nationals. However, some large infrastructure projects including dams, power plants, highways, and railways are tendered for international firms. The foreign firms usually have local partners. All projects, with foreign currency or foreign credit guarantees allocated by the Turkish Treasury and State Planning Organization, are open to foreign engineering and construction companies.

Telecommunication Services

State-Owned Turk Telekom currently provides basic telecommunications services, with the exception of two GSM licenses, operated by Turkcell and Telsim, which provide cellular telephone service. The Turkish government is expected to make three further GSM licenses available in 2000, one to Turk Telekom and two to private consortia. The Turkish government plans to sell 20 percent of Turk Telekom's shares to a strategic investor in 2000 as part of its privatization drive. A further five percent is slated to be sold to current employees, 10 percent to be transferred to the Postal Service, and 14 percent to be placed on international and domestic stock markets.

In the WTO negotiations on Basic Telecommunications Services, Turkey made commitments to provide market access and national treatment for all services at the end of 2005 and permitted value-added telecommunications services to be licensed to the private sector with a 49 percent limit on foreign equity investment. In the interim, Turkey committed to provide national treatment for mobile, paging and private data networks. Turkish officials have prepared a draft telecommunications law, which has been approved by two parliamentary committees and is scheduled to be approved by the parliament in January 2000 as a condition under Turkey's IMF stand-by agreement. This law, as currently drafted, will accelerate the opening of the market for basic services to January 1, 2004. Turkey agreed in its WTO commitments to establish an independent regulatory authority and to make licensing criteria publicly available. The draft law includes these commitments.

INVESTMENT BARRIERS

The U.S.-Turkish Bilateral Investment Treaty (BIT) entered into force in May 1990. Turkey has a liberal investment regime in which foreign investments receive national treatment. There is a screening process for foreign investments, which the government applies on an MFN basis; once approved, firms with foreign capital are treated as local companies. Almost all areas open to the Turkish private sector are fully open to foreign participation, but establishments in the financial and petroleum sectors require special permission. The equity participation ratio of foreign shareholders is restricted to 20 percent in broadcasting and 49 percent in aviation, telecommunications services, and maritime transportation.

Although Turkey has a BIT with the United States, and despite its membership in international dispute settlement bodies, Turkish courts have not recognized investors' rights to third party arbitration under any contract defined as a concession. This has been particularly problematic in the energy, telecommunications and transportation sectors. Constitutional amendments, accepted by the Parliament in 1999, which grant access to international arbitration to foreign investors, should correct this problem. Investors also are concerned about the lack of clarity in the government approval process, lack of lender's step-in rights, the lack of lender rights to termination, and disparities in lender and Turkish Government access to force majeure.

Resolution of concerns in this area offers the single best prospect to increase U.S. trade and investment levels, dwarfing other sectors. The Turkish Government estimates that investments of $4.5 billion will be necessary each year for the next decade just to meet expected demand for power generation. U.S. Government officials work closely with concerned U.S. companies in order to resolve barriers to investment in this sector.

ANTI-COMPETITIVE PRACTICES

As part of its customs union agreement with the EU, Turkey has pledged to adopt EU standards concerning competition and consumer protection. In 1997, a government "Competition Board" commenced operations, putting into force a 1994 competition law. Government monopolies in a number of areas, particularly alcohol and telecommunications services, have been scaled back in recent years, but remain a barrier to certain U.S. products and services.

OTHER BARRIERS

U.S. companies often state that a significant barrier to increased trade and investment is the comparative lack of political stability in Turkey resulting in a higher than usual level of uncertainty with regard to economic policies. However, the coalition government that came to power in June 1999 has demonstrated its leadership by passing necessary constitutional amendments and structural reforms and by finalizing an IMF stand-by agreement to assist in its ambitious disinflation program. The EU's decision to recognize Turkey as a formal candidate for membership should serve as an impetus for continued economic reform and stability. In September 1999, the U.S. Trade Representative, Ambassador Charlene Barshefsky, and Minister of Industry and Trade Ahmet Kenan Tanrikulu, signed a Trade and Investment Framework Agreement (TIFA) to serve as a forum for consultations on trade matters. The bilateral TIFA Council will have its first meeting in Washington.

UKRAINE

TRADE SUMMARY

The U.S. trade deficit in 1999 with Ukraine was $314 million, an increase of $150 million from 1998. U.S. exports to Ukraine were $204 million, a sharp decrease from the $367 million exported in 1998. Ukraine was the United States' 87th largest export market in 1999. U.S. imports from Ukraine were $518 billion in 1999, a decrease of $13 million (2.4 percent) from 1998. The stock of U.S. foreign direct investment in 1998 was $92 million, a 667 percent increase from 1997. According to the information from the Ukrainian Government and the private sector, the United States was the largest foreign investor in Ukraine as of October 1999, accounting for $570 million (or 18 percent) of total foreign direct investment. The major foreign investments in Ukraine were in telecommunications, tobacco, soft drinks, food processing, consumer goods, detergents, electric power, oil and gas, agribusiness and fast food. As of December 1999, there were more than 300 U.S. companies operating in Ukraine.

Trade relations between the United States and Ukraine are governed by the 1992 U.S.-Ukraine Trade Agreement. In this agreement, both countries grant each other most-favored-nation (MFN) status. The United States has not granted Ukraine permanent MFN status, however, Ukraine does fully comply with the Jackson-Vanik requirements. Ukraine is not a member of the World Trade Organization (WTO), but it has applied to join.

IMPORT POLICIES

The generally high import duties and taxes in Ukraine present a major obstacle to trade. For example, import duties range from 5 to 200 percent, excise taxes range from 10 to 300 percent, and the value added tax (VAT) is 20 percent. Ukraine has very high tariffs on a number of products entering the Ukrainian market; Ukraine's current tariff rates equate to an *ad valorem* equivalent of 150-300 percent on most U.S. distilled spirits exports to Ukraine. In general, Ukraine has two kinds of tariff rates – general (or full-rate) tariffs, and preferential (or partial-rate) tariffs. Preferential tariff rates vary according to the type of products imported. Imports from western countries are generally assessed preferential tariffs. Import duties largely depend on whether a similar item to that being imported is produced in Ukraine; if so, the rate may be higher.

On January 1, 2000, border checkpoints began collecting a new uniform customs duty, combining seven import fees – customs clearance, sanitary, veterinarian, phytosanitary, radiation, ecological control, as well as fees charged for the passage of vehicles on the motor roads of Ukraine – into a single tax. If properly implemented, this could considerably ease the customs clearance process.

As of January 1, 2000, the list of excisable goods will be reduced from 20 to five: alcohol, tobacco, oil products, automobiles, and jewelry. Excise duty rates are expressed as a percentage of the declared customs value, plus customs duties and fees paid for importing products. The excise tax for jewelry, in particular, will increase to 55 percent (up from the previous 35 percent). In October 1999, the duty on textile goods was reduced to 5-10 percent; earlier importers had to pay a 30 percent duty.

In general, U.S. exports to Ukraine receive preferential customs rates if the following three criteria are met: (1) the company is registered in the United States; (2) the goods have a certificate to prove U.S. origin; and (3) the goods are imported directly from the United States. There are no special registration or other requirements, according to the State Customs Committee.

Duties on goods imported for resale are subject to varying *ad valorem* rates. Imported goods are not considered legal imports until they have been processed through the port of entry and cleared by Ukrainian customs officials. Import licenses are required for few goods, primarily medicines, pesticides, and some industrial chemical products.

Ukraine's liquor tax system discriminates against imported products and provides protection for domestic producers. For example, under this system, all imported distilled spirits are taxed at a rate of three Euro per liter. However, brandy produced domestically is taxed at a rate of 0.25 Euro per liter. This preferential treatment is due to be eliminated by 2000.

A limited number of goods, including raw materials, component parts, equipment, machinery, and energy supplies imported by commercial enterprises for "production purposes and their own needs" are exempted from the VAT. Many agricultural enterprises are also exempt from paying VAT.

STANDARDS, TESTING, LABELING AND CERTIFICATION

Ukraine's regulatory environment is chaotic, and foreign investors still regard Ukraine's production certification system and licensing procedures as one of the most serious obstacles to trade, investment, and ongoing business. Although Ukraine recently lowered the overall number of licenses from 112 to 42 – making the certification process somewhat less difficult to navigate – many consider this lower number to be excessive.

U.S. businesses identify the standards and certification problems affecting the consumer goods industry as: (1) lack of constant, clearly defined standards and regulations; (2) registration schemes unfeasible for mass trade; (3) lack of procedural flexibility; (4) complex and lengthy import license procedures; 5) overly complex and expensive certification requirements; (6) uneven enforcement of requirements; and (7) high certification and licensing fees. These bureaucratic procedures and problems significantly raise the cost of doing business in Ukraine, provide opportunities for corruption, and drive much activity into the burgeoning shadow economy. While the law may stipulate formal equality of treatment of both national and foreign companies, U.S. businesses are left with a very strong impression that the laws are not applied equally and that, in fact, there is a discrimination against foreign companies. As a result, such requirements are a major hindrance to potential investment in Ukraine.

Ukraine applies a range of sanitary and phytosanitary measures that are not consistent with a science-based approach to regulation. The certification and approval process is often lengthy, duplicative, and expensive.

The numerous certification bodies around Ukraine effectively operate as independent (often monopolistic) entities on a private profit basis, returning only 20 percent of the proceeds derived from certification fees to the state. The state standards committee does not properly supervise or enforce the vague pricing rules. Consequently, the agencies do much of the legislative and interpretive work with little or no coordination. In addition, many products require multiple certificates from multiple agencies, with local, regional and municipal authorities often requesting additional documentation beyond that required by central agencies.

There is a new push to certify all food additive ingredients, especially for certain products such as chocolate and carbonated beverages, for which all ingredients must be certified. Some companies report having to pay $20,000 to buy the equipment used to test ingredients in use for more than 100 years (in some cases) in order to certify that they are safe for consumption. This is especially true for pre-packaged goods. In 1998, Ukraine introduced a requirement for certificates of conformity in order to import distilled spirits. To obtain such certificates a firm at its expense must have Ukrainian officials conduct exhaustive inspections of the producer's facilities. This expensive and onerous requirement has caused several U.S. distilled spirits exporters to withdraw their products from the Ukrainian market.

The U.S. telecommunications industry association reports that the certification and licensing procedures for telecommunications equipment are numerous and particularly burdensome, which is impeding access to the Ukrainian market.

GOVERNMENT PROCUREMENT

Ukraine still has no central public procurement law with uniform standards, although it has a draft law on government procurement under consideration. Regulations are the responsibilities of individual ministries, and are often not followed in practice. Among the problems faced by foreign firms are (1) a lack of public notice of tender rules, (2) the failure to state tender requirements, (3) covert preferences in tender awards, (4) awards made subject to conditions that were not part of the original tender, and (5) the lack of an effective avenue for firms to air grievances over contract awards or an effective means to resolve disputes. Ukraine is not a signatory of the WTO Agreement on Government Procurement.

EXPORT SUBSIDIES

There is no reliable estimate of the nature and amount of export subsidies, particularly as they relate to Ukraine's export of steel products to the United States. It is known that many Ukrainian enterprises do not pay taxes, do not pay for energy usage, clear transactions by offsetting mutual debts, and receive free or below-cost government inputs.

INTELLECTUAL PROPERTY RIGHTS PROTECTION

A serious and growing piracy problem, particularly with regard to optical media (CDs and CD-ROMs), undermines Ukraine's efforts to protect intellectual property rights (IPR). Still, Ukraine has made progress in developing a comprehensive legislative system for the protection of IPR. As a successor state to the former Soviet Union, Ukraine is a member of the Universal Copyright Convention (May 1973), and the convention establishing WIPO, the World Intellectual Property Organization (April 1970). After independence, Ukraine became a signatory to a number of key agreements, including: the Paris Convention for the Protection of Industrial Property (1991); the Madrid Agreement Concerning the International Registration of Marks (1991); the Patent Cooperation Treaty (1991); the Agreement on the Measures Related to the Protection of Industrial Property and the Establishment of the Interstate Council for the Protection of Industrial Property in the Commonwealth of Independent States (1993); the International Convention for the Protection of New Varieties of Plants (1995); the Berne Convention for the Protection of Literary and Artistic Works (1995); the Trademark Law Treaty (1996); the Budapest Treaty on the International Recognition of the Deposit of Microorganisms for the Purpose of Patent Procedures (1997). In addition, Ukraine has laws on the Protection of Rights in Inventions and Utility Models (1993, the Protection of Rights in Industrial Designs (1993), the Protection of Rights in Marks for Goods and Services (1993), and the Protection of Plant Variety Rights (1993). As part of its Bilateral Investment Treaty with the United States, which went into effect in 1996, Ukraine committed itself to protect copyrights in U.S. works.

In 1999, Ukraine took an important step to improve its copyright and neighboring rights regime by becoming a signatory to the Geneva

Phonograms Convention. Four additional bills that would amend or expand existing IPR legislation were submitted to parliament in June 1999. One bill would amend the copyright law by clarifying the scope of computer programs, audio-visual products, etc. It also would expand on the collective representation of copyright owners concerning the collection of royalties. The other bills would amend the laws for utility models and trademarks, and introduce protection for geographical indications.

Against this backdrop of enacting critical IPR legislation and becoming a signatory to key conventions, a serious problem of copyright piracy has emerged in Ukraine. Consequently, Ukraine was placed on the Special 301 Watch List in 1998 and was elevated to the Priority Watch List in 1999. Pirates have set up optical media (CDs and CD-ROMs) production facilities in Ukraine and are exporting a large volume of unauthorized copies throughout Europe. The U.S. music industry estimates that it alone lost an estimated $210 million in revenues for 1999. The Motion Picture Association calculates that it lost $40 million in revenues in 1999 from audio-visual piracy, including due to the unauthorized broadcast of U.S. audio-visual products by television and cable companies. Ukraine acknowledges the serious problem with piracy and is seeking help from the United States to combat it.

Ukrainian legislation has inadequate criminal penalties for copyright piracy. It does not provide customs procedures for copyright infringement, leaving the border open for the import and export of pirated goods. With the exception of an occasional crackdown, cleaning the streets of pirate vendors, or checking licenses, enforcement is negligible. Courts do not provide a reliable means to address copyright infringement: first, because there are too few judges trained in intellectual property law; and second, because legal reform has not advanced far enough for enterprises to have confidence in seeking a court settlement.

Administrative liability, in the form of fines and/or confiscation of products, equipment, and raw materials, may be sought in the event that an infringement of intellectual property rights is accompanied by unfair competition on the part of the infringer. However, fines are insignificant, and the law does not give the police or customs the authority to conduct seizure or ex-parte searches. Ukraine is attempting to remedy these shortcomings, but it admits this will take a long time.

Ukraine is in the process of acceding to the WTO, and it has set for itself the goal of bringing its laws into compliance with the requirements of the WTO TRIPS Agreement. The United States firmly insists that Ukraine's IPR regime be TRIPS-compliant at the time of accession, with no transition period. Ukraine has established a working group on intellectual property with the United States.

With respect to trademarks, counterfeiting of western products in Ukraine has increased dramatically after the Fall 1998 financial crisis, with industry sources estimating that, overall, fifty percent of the name brand products on the Ukrainian market may be fake. While it is illegal to sell counterfeit products in Ukraine, the law permits companies to produce counterfeit packaging legally, with the result that many legally licensed factories, including state-owned factories, also produce counterfeit products. Unfortunately, the government of Ukraine has done little to address this problem. When action is taken, it is usually by the companies, mostly foreign, that are affected.

SERVICES BARRIERS

Ukraine has few explicit services restrictions, so professionals (lawyers, accountants, etc.) are able to work in Ukraine, but in practice the lack of transparency and the multiplicity of licensing authorities hinder access to the Ukrainian market. Since Ukraine is interested in becoming a member of the European Union (EU), it is considering establishing a quota on foreign films, following the EU example. There already is a local content provision for radio and television broadcasting, but it has not been stringently enforced.

INVESTMENT BARRIERS

An underdeveloped banking system, poor communications networks, a difficult tax and regulatory climate, increasing occurrences of crime and corruption, limited opportunities to participate in privatization, the absence of clear mechanisms to enforce intellectual property rights (thus creating a barrier to technology transfer to Ukraine), poorly defined and overly complex certification procedures, and a poorly-functioning and unstable legal system combine to create major obstacles to U.S. investment in Ukraine. In addition, the government canceled previous privileges adopted for foreign investors (i.e., exemption from customs duties and the value added tax (VAT) on imported products, and a five-year tax holiday), which further discouraged investors.

Ukraine's burdensome and frequently changing tax structure remains a major hindrance to foreign investment and business development. Personal income taxes remain high, although pending tax code legislation includes provisions to lower the rates. Combined payroll taxes (mainly for pensions) have been reduced from the previous high of 52 percent to 37.5 percent – still high, but a considerable improvement. Modern VAT and corporate income tax laws have been enacted and implemented, with provisions for normal business deductions, VAT credits, etc. However, numerous amendments and exemptions have created a confusing and possibly inequitable situation. There are frequent changes in other tax laws and regulations as well, such as import duties and excise taxes, often with little advance notice, giving foreign companies little time to adjust to new requirements. Improvements are being made in tax filing and collection procedures, although they still differ from those in western countries in significant ways. Recognizing that this can cause frictions, the Chairman of the State Tax Administration has established an advisory committee on the tax problems of foreign companies that has been functioning for about a year and has already achieved mutually favorable resolutions of some difficult issues brought to it by U.S. and other foreign companies.

In the estimation of many U.S. businesses in Ukraine, Cabinet of Ministers' Resolution 2028 of November 1, 1999, concerning work visas for foreigners may create additional burdens for foreign enterprises. The resolution changes tax requirements and increases the personal income tax for foreign workers, who will also be required to pay into Ukraine's unemployment fund. In addition, the work visa requirements will become more stringent, with more documentation necessary in order to obtain a work visa. This would include the requirement to show an employment contract and a tax certification showing that the foreign worker has paid all taxes at the time of application. In the past, foreign enterprise representative offices were allowed one director who did not need a work visa. Foreign journalists were also exempted.

The United States has a Bilateral Investment Treaty (BIT) with Ukraine, which took effect on November 16, 1996. The BIT guarantees for U.S. investors the better of national and MFN treatment, the right to make financial transfers freely and without delay, international law standards for expropriation and compensation, and access to international arbitration. However, U.S. investors face numerous everyday "doing business" problems and regard the BIT as a tool of last resort.

A council of independent experts, established by the president, has arbitrated in a number of investment disputes. Its rulings are not legally binding, but its decisions have generally been upheld. It is not a formal dispute mechanism, but the Ukranian Government would like to elevate it to such.

To attract investments and remove obstacles to trade, Ukraine created five free economic zones (FEZ) in 1997-1998 that would have a favorable regime for investors: Donetsk, Mariupol, Slavutych, Yavoriv, and Transcarpathia. Special investment zones have also been introduced in other cities and regions, although they do not have the same favorable investment conditions, such as independent customs borders, that the economic zones do. In 1999, Ukraine did not create new economic zones, as part of an IMF loan condition that it not grant additional tax breaks.

ELECTRONIC COMMERCE

Currently, the Internet and electronic commerce are still in their infancies in Ukraine. To date, the Ukrainian Government has not sought to regulate or provide specific protections for this sector.

UZBEKISTAN

TRADE SUMMARY

In 1999, the U.S. trade surplus with Uzbekistan was $313 million, an increase of $200 million from 1998. U.S. merchandise exports to Uzbekistan were $339 million, an increase of $191 million from the level of exports in 1998. Uzbekistan was the United States' 74th largest export market in 1999. U.S. merchandise imports from Uzbekistan were $26 million in 1999, down $8 million from 1998.

Uzbekistan applied for WTO accession in December 1994 but did not initiate substantive discussions until late 1998. Negotiations are currently at an early stage.

IMPORT POLICIES

The government of Uzbekistan restricts imports by means of a system of import contract registration that severely limits the availability of foreign exchange. In 1996, the government of Uzbekistan was well on its way to creating a convertible currency. However, an overvalued official exchange rate and export revenue shortfalls caused by poor harvests that year inspired the government of Uzbekistan instead to tighten the earlier system of foreign exchange quotas. Since then, the government of Uzbekistan has periodically made the system yet more rigorous as foreign currency reserves have continued to dwindle. In 1998 the number of importers given convertibility quotas was cut by one third. The remaining two-thirds saw their quotas slashed in half. Although there was no officially announced policy restricting quotas in 1999, observers estimate that a further one-half of those firms which still had convertibility quotas in 1998 had lost them by the end of 1999. The few firms which retain quotas report that, in practice, they are rarely permitted to convert their soum earnings into hard currency.

Although its primary use is now to lower the overall level of imports and thereby husband scarce foreign exchange, the import contract registration system was designed to enforce Uzbekistan's import substitution development strategy. The government of Uzbekistan uses the system to ensure that scarce foreign currency is used primarily to import capital rather than consumer goods. Annual surveys of foreign companies consistently conclude that currency restrictions are the worst of many serious obstacles to doing business in Uzbekistan.

Foreign companies or foreign joint ventures importing capital goods with their own funds held outside Uzbekistan are also subject *de facto* to the import registration system. Although a 1998 presidential decree exempts such cases from the registration requirement, foreign businesses report that their Uzbek bankers strongly recommend that they register anyway.

Once over this hurdle, imports face the next – the State Customs Committee. Customs clearance is a tedious and capricious bureaucratic process. Even capital equipment imports for U.S.-Uzbek joint ventures are subject to substantial processing delays and often remain in customs for two to three months. In one recent case an American investor waited for three months to process equipment worth $4 million through customs and then was forced to pay $2,500 in customs storage costs. Delays affect all imports as there is no procedure for releasing goods under bond.

Although Uzbekistan's tariff rates have not been extreme by international standards, its excise taxes form an effective barrier to the legal importation of certain goods. The excise tax schedule discriminates against imports of goods subject to the tax. Imported liquor, for example, is subject to an excise tax of 90 percent, whereas the rate for domestically produced spirits ranges from 40 percent to 65 percent. Moreover, the government uses a method of calculating excise taxes specific to imported alcohol and tobacco which results in an actual excise assessment many times higher than the nominal rate.

STANDARDS, TESTING, LABELING AND CERTIFICATION

Uzbekistan continues to use an arbitrary set of technical standards based on outdated Soviet methods. Despite regulations to the contrary, customs officials routinely reject foreign certifications of conformity to these standards. Perishable goods are subject to burdensome phytosanitary tests, making it difficult, for example, for restaurants and hotels to make use of imported foodstuffs. Customs officials often take excess test samples of goods subject to technical standards for their own use.

There are three joint ventures that perform price verifications and otherwise assist in import contract registration. One of these, Intertek Testing Services, is also accredited to perform pre-shipment inspection (PSI) to verify the quality of contracted goods. Only tobacco and alcohol are currently subject to mandatory PSI, but importers may choose to contract PSI for other goods. A December 1997 decree requires the Ministry of Foreign Economic Relations to approve import contract registration of pre-inspected goods within two days. Anecdotal reports from those doing business in Uzbekistan indicate that the decree has succeeded in accelerating the clearance of pre-inspected goods.

GOVERNMENT PROCUREMENT

There is no systematic approach to government procurement in Uzbekistan. Instead, procurement decisions are made in a decentralized and ad hoc manner. Often the procurement practices of the central government are similar to those of many countries, with tenders, bid documents, bids and a formal contract award. However, many tenders are announced with suspiciously short deadlines and are awarded to insider companies. A draft Government Procurement Law produced in mid-1998 by an inter-ministerial working group with support from a USG-provided advisor has not yet been submitted to parliament. The long-term goal of this project is to produce legislation conforming to WTO procurement standards. Uzbekistan is not yet a signatory of the WTO Agreement on Government Procurement.

EXPORT POLICIES

Contrary to WTO standards, the government of Uzbekistan grants some tax benefits, such as tax holidays for Uzbek or foreign joint venture exporters. To conserve foreign exchange, the government has imposed a foreign currency surrender requirement on exporters. Exporters must each surrender 50 percent each quarter (raised recently from 30 percent) of projected earnings of hard currency at the official exchange rate. Since the government and not the firm projects these earnings (on the basis of the previous year's receipts), the surrender quota could amount to more than 50 percent of real earnings if export volume or prices drop. Banks are required to convert all earnings as they come in each quarter until the government-determined quota is met. This feature deprives firms of access to their own supply of hard currency for lengthy periods. Finally, since the official exchange rate is roughly one-fourth of the actual market rate, the conversion requirement means that exporters must increase prices to compensate. This amounts to a tax on exporters and hurts Uzbek competitiveness in world markets.

INTELLECTUAL PROPERTY RIGHTS PROTECTION

The 1994 bilateral trade agreement between the United States and Uzbekistan incorporates provisions on the protection of intellectual property rights (IPR). In 1996 Uzbekistan undertook a comprehensive revision of its copyright law, but significant deficiencies remain in Uzbekistan's protection regime for intellectual property. For example, Uzbekistan does not provide protection for pre-existing works. No protection at all is provided for U.S.

sound recordings, since Uzbekistan is neither a member of the Berne Convention nor a member of the Geneva Phonograms Convention. In addition, Uzbekistan does not provide for civil or criminal *ex parte* search procedures needed for effective anti-piracy enforcement.

With respect to enforcement, Uzbekistan needs to adopt even greater reforms. The fact that the state-owned Uzbek airlines shows pirated U.S. films in flights to the United States and elsewhere is emblematic of the government's disregard for intellectual property rights. On the streets, pirated audio and video tapes and compact disks are sold freely.

SERVICES BARRIERS

The largest barrier to foreign services firms entering the Uzbek market is difficulty in converting the currency. For example, insurance companies must collect their premiums in Uzbek currency and may not pay reinsurance premiums in hard currency on the world market. Likewise claims may only be paid in the unconvertible Uzbek currency. These provisions can only be overcome by a special presidential decree granting the company the right to do business in dollars. To date only a state-owned insurance company, Uzbekinvest, and an American-Uzbek joint venture, Uzaig, have that permission. Although the government of Uzbekistan has created an insurance supervisory board, there is not yet a system of licensing insurance companies. This means that firms can currently only operate in Uzbekistan on the basis of a governmental decree. Uzbek as well as foreign private insurance ventures face these currency and registration difficulties.

A 10 percent withholding tax imposed on reinsurance premiums amounts to a *de facto* disadvantage for U.S. reinsurers vis-a-vis other foreign companies. The tax is not levied on reinsurers in countries that, unlike the United States, have a double taxation treaty with Uzbekistan. U.S. companies would, therefore, have to add the 10 percent charge to their net premiums.

The law grants state-owned companies a monopoly over certain forms of mandatory state insurance (i.e. mandatory insurance paid for out of the state budget). The government of Uzbekistan also determines which companies are permitted to issue each of the 13 types of mandatory non-state insurance, but in some instances, foreign firms are allowed to compete.

Foreign banks may not operate in Uzbekistan except as partners in joint ventures with Uzbek firms. Banking and insurance firms with foreign participation are required to establish a charter capitalization fund of $5 million, whereas the government of Uzbekistan determines the required size of the charter funds of Uzbek firms on a case-by-case basis.

INVESTMENT BARRIERS

Two laws, “On Foreign Investment” and “On Guarantees and Measures Designed to Protect Rights Granted to Foreign Investors” came into effect in April 1998. To be considered “an enterprise with foreign investment” under the new laws, a firm must be at least 30 percent foreign-owned and have initial foreign equity of 150,000 USD. At present there is no legal means for smaller foreign-owned companies to register. Although the laws reduce these capital requirements, they are still high enough to exclude foreign investment by small companies, which have proven to be engines of growth and job creation in other countries. The government of Uzbekistan has postponed consideration of proposals to ease these requirements further. U.S.-owned companies in Uzbekistan face cumbersome registration and licensing requirements. Businesses must register with numerous government organizations and obtain licenses from separate entities. This process is so complex that many Uzbekistani officials themselves have difficulty with it.

Uzbekistan's tax code introduced in 1997 is a great improvement over its predecessor. However, it misses a few important provisions that are part of the business environment in most countries. For example, it allows no credit for VAT on capital goods, including plant, machinery and buildings. This puts firms operating in Uzbekistan at a competitive disadvantage compared to those in countries that do allow such credits. In addition, earnings of foreign-owned enterprises are subject to double taxation; such earnings are taxed once when earned by the enterprise in Uzbekistan and then taxed again when remitted to the foreign parent.

Two tax provisions tend to increase labor costs for foreign firms and to raise salaries higher than those paid by local firms. First, the government of Uzbekistan places a 30 percent "import duty" on the salaries of expatriate staff. Second, Uzbek staff face a 45 percent income tax on salaries as low as 1,200 dollars a year. While most Uzbek companies do not comply with their tax duties, foreign investors generally feel obligated to adhere to the law.

While there are no specific local content laws affecting foreign investors, the tax system differentiates among firms based on the local content of their products.

U.S. companies have complained that Uzbekistani laws are not interpreted or applied in a consistent manner. On many occasions, local officials have interpreted laws in a manner that is detrimental to individual private investors and the business community at large. Companies are particularly concerned with the consistent and fair application of the Foreign Investment Law which contains a number of specific protections for foreign investors.

ANTI-COMPETITIVE PRACTICES

Business people in Uzbekistan note that if they are engaged in a sales or services sector in which either the government of Uzbekistan, or a Uzbek-controlled firm is a competitor, they face more than the usual amount of bureaucratic hurdles and currency conversion problems. A recent example concerns a U.S.-Uzbek joint venture's shipment of pure alcohol to be used in making vodka. The shipment had already been admitted to the country when the government of Uzbekistan issued a new decree requiring special licenses for such imports. Customs officials seized the shipment, by then already awaiting processing, for lacking the import license ex *post facto* and then sold half of the alcohol to the state-owned vodka producer. After over a year of legal wrangling, the company won its case in 1999 in the Supreme Court, but the Customs Committee has requested that the case be reviewed again.

OTHER BARRIERS

American investors unanimously complain that they do not control their corporate bank accounts in Uzbekistan. Every routine banking operation requires official permission. Businesses find that enormous amounts of senior staff time are consumed processing simple transactions. The government of Uzbekistan imposes ceilings on how much money can be withdrawn to pay salaries. All purchases must be made via bank transfers because the government of Uzbekistan uses the banks to do tax accounting. It is not possible to possess a corporate expense account or petty cash. Withdrawing money to pay for airplane tickets, for example, is tedious or impossible. Uzbek companies handle this problem with salary withdrawals for non- existent staff. Western accounting practices prevent American companies from using these deceptive practices.

Currency restrictions, the absence of a modern banking system and the lack of access to computers make electronic commerce virtually impossible in Uzbekistan; bribery and corruption are endemic; and businesses complain that they lack access under Uzbek law to international arbitration. Moreover, the judiciary in Uzbekistan is not independent. In the event of disputes, courts frequently favor firms that are controlled or owned by the state.

VENEZUELA

TRADE SUMMARY

In 1999, the U.S. trade deficit with Venezuela was $5.9 billion, an increase of $3.1 billion from the U.S. trade deficit of $2.8 billion in 1998. U.S. merchandise exports to Venezuela were approximately $5.4 billion, a decrease of $1.1 billion (17.6 percent) from the level of U.S. exports to Venezuela in 1998. Venezuela was the United States' 24th largest export market in 1999. U.S. imports from Venezuela were about $11.3 billion in 1999, an increase of $2.0 billion (21.4 percent) from the level of imports in 1998.

The stock of U.S. Foreign Direct Investment (FDI) in Venezuela in 1998 was $5.7 billion, an increase of 5.9 percent from the level of U.S. FDI in 1997. U.S. FDI in Venezuela is concentrated largely in the manufacturing, petroleum and wholesale sectors.

IMPORT POLICIES

Tariffs

Venezuela has concluded several trade arrangements with other countries in Latin America and the Caribbean. Consequently, Venezuela extends preferential tariffs on a limited variety of products to member states of the Latin American Integration Association (ALADI). Venezuela signed a partial Free Trade Agreement with Chile in 1993. In 1997, the two countries agreed to expand the scope of the treaty by including all goods traded. Together with Colombia, Venezuela has also concluded a Free Trade Agreement with Mexico (the "G-3" agreement), which entered force on January 1, 1995. Under this accord, the G-3 countries will eliminate most tariffs on trade with each other by 2004. In addition, Venezuela has a preferential agreement with the Caribbean Common Market (CARICOM). Venezuela, jointly with Colombia, signed a framework agreement on free trade with several Central American countries in 1994, but has not yet negotiated schedules on tariff reduction and trade liberalization. Venezuela is also currently negotiating a free trade agreement with the Southern Common Market (MERCOSUR) in conjunction with other Andean Community members.

These preferential trade arrangements at the regional level put U.S. exports to Venezuela at a disadvantage. For instance, Venezuela imposes a 20 percent *ad valorem* duty on imports of U.S. beer, wines and distilled spirits, while imports of the same goods from Argentina, Chile, and Mexico are subject to far lower duties. Under the G-3 Agreement, duties on almost all imported alcoholic beverages from Mexico will be reduced to zero by 2004. Venezuela also imposes a 15 percent duty on imports from the United States of undenatured ethyl alcohol and other compounds used in the production of spirits. U.S. industry estimates that reducing the tariff on U.S. spirits could increase U.S. exports by $2-8 million.

The Andean Community tariff on soybeans and its byproducts is variable (set by a price band system), but it is usually 15 percent. Soybean oil from Paraguay, Argentina and Brazil is subject to lower duties of one, eight, and 10 percent, respectively, because of trade preference agreements. Soybean meal from Paraguay is subject to a 3.75 percent tariff. U.S. industry estimates that eliminating the preferences could increase U.S. exports by $50-100 million.

Similarly, Venezuela imposes a 15 percent duty on fresh and dried fruit from the United States. All fresh and dried fruit from Chile and the Andean Community enter Venezuela duty free. Elimination of these preferences could increase U.S. exports by $5-10 million, according to U.S. industry estimates.

Non-tariff Measures

Venezuela prohibits the importation of used cars, used tires, and used clothing. No other quantitative import restrictions exist for industrial products.

Agricultural Import Licenses

The Ministry of Agriculture implemented a yellow corn import licensing system in February 1997, ostensibly to administer its WTO tariff-rate quota for sorghum and yellow corn. However, this measure also had the effect of enforcing absorption requirements for domestic sorghum. Under this system, feed manufacturers must purchase a government-assigned amount of domestic sorghum at the official (i.e., higher than world market) price in order to obtain import licenses for yellow corn.

The Ministry of Agriculture imposed a ban on the import of onions, potatoes, and forage seeds from the United States in late 1998. The Ministry maintains a ban on the import of citrus products as well, citing the danger of disease.

STANDARDS, TESTING, LABELING AND CERTIFICATION

In 1993, the Venezuelan Commission for Industrial Standards (COVENIN) began to apply obligatory domestic standards for commodities to certain imports. By the end of 1995, there were nearly 300 standards. Some Venezuelan importers of U.S. products have alleged that the Government of Venezuela applies these standards more strictly to imports than to domestic products. The certification process is expensive, increasing the cost of U.S. exports vis-à-vis domestic products. COVENIN requires certification from independent laboratories located in Venezuela.

GOVERNMENT PROCUREMENT

Venezuela passed a new government procurement law that came into effect on November 1, 1999. The law increases transparency in the competitive bidding process for contracts offered by the central government, national universities, and autonomous state and municipal institutions. The law requires a contracting agency to prepare a budget estimate for a given purchase based on reference prices maintained by the Ministry of Production and Commerce. This estimate is to be used in the bidding process. Technically, the law forbids discrimination against tenders based on whether they are national or international. However, the law also states that the President can mandate temporary changes in the bidding process “under exceptional circumstances” or in accordance with “economic development plans” to promote national development or to offset adverse conditions for national tenders. These measures can include margins of preference in price, contracts reserved for nationals, and other requirements in areas of domestic content, technology transfer, the use of human resources, and incentives to purchase from companies domiciled in Venezuela. The full effects of the new law will not be felt until implementing legislation has been enacted and until it becomes clear how often the Executive intends to exercise the discretionary powers it has acquired. Venezuela is not a signatory to the WTO Agreement on Government Procurement.

EXPORT SUBSIDIES

Venezuela has reduced the number of export subsidies it provides, but retains a duty drawback system. Exporters can get a rebate of the 15.5 percent wholesale tax paid on imported inputs.

Foreign as well as domestic companies are eligible for these drawback privileges. U.S. firms located in Venezuela complain of long delays in receiving rebates. Exporters of selected agricultural products – coffee, cocoa, some fruits, and certain seafood products – receive a tax credit equal to 10 percent of the export’s value.

INTELLECTUAL PROPERTY RIGHTS PROTECTION

Venezuela does not yet provide full protection for intellectual property (IP). There is still widespread counterfeiting of products with well-known trademarks, as well as piracy of videos, satellite signals, and other protected works. Moreover, the Venezuelan court system has proven to be an unreliable venue for pursuing claims concerning intellectual property infringement, particularly those initiated prior to 1994 when Andean Community Decision 344 came into effect. Because of these deficiencies, Venezuela has been on the "Watch List" under the Special 301 Provision of the 1988 Trade Act since 1989.

The Government created a new Intellectual Property Office (SAPI) in March 1997. SAPI became operational in May 1998 and made a promising start in fighting trademark counterfeiting. Under SAPI, the Government expanded the mandate of a special anti-piracy police unit (COMANPI) to include the enforcement of patents and trademarks as well as copyrights. SAPI has recently extended patent protection to certain varieties of genetically engineered vegetables in accordance with Andean Decision 345. SAPI is currently pursuing an ambitious program to modernize the organization's computer system. Nonetheless, neither SAPI nor COMANPI has been given sufficient resources to combat the extent of piracy in Venezuela.

Venezuela is a member of the Paris Convention for the Protection of Industrial Property and the Berne Convention for the Protection of Literary and Artistic Works. Although TRIPS became applicable for Venezuela on January 1, 2000, concerns remain regarding its full implementation of the Agreement.

Patents and Trademarks

Andean Community (CAN) Decisions 344 and 345, which took effect in 1994, are comprehensive and offer a significant improvement over the previous standards of protection for patents and trademarks provided by Venezuela's 1955 Industrial Property Law. Decision 344, for example, improves protection for famous trademarks, prohibits the coexistence of similar marks, and provides for the cancellation of trademark registrations based on "bad faith."

Despite the improvements Decision 344 made to the protection of intellectual property, problems remain in Venezuela's trademark regime. Current procedures permit local pirates to produce and sell counterfeit products even after the genuine owners of those trademarks have undertaken (often-lengthy) legal proceedings against the pirates. Trademark counterfeiting is common in the clothing, toy, and sporting goods sectors. Enforcement remains inadequate. Sysco Corporation, Reebok Shoes and Home Depot are all examples of U.S. companies that have pursued litigation to protect the exclusive right to the use of their trademarks in Venezuela.

In addition, both Decisions 344 and 345 appear to raise TRIPS consistency issues. For example, they do not contain provisions for enforcing the protection of intellectual property. During 1999, the Venezuelan Government worked within the Andean Community to update Decision 344 and with the Venezuelan legislature to modify Venezuela's 1955 Industrial Property Law. Both efforts were geared toward making the language consistent with the WTO TRIPS Agreement. Unfortunately, both of these projects had yet to be completed by the WTO's January 1, 2000 deadline for full TRIPS compliance. Work continues in each of these areas.

Copyrights

Andean Community Decision 351 and Venezuela's 1993 Copyright Law are modern and comprehensive and have substantially improved protection for copyrighted works in Venezuela. The Copyright Law extended protection to a wide range of creative works, including computer software, satellite signals, and cable television. Despite consistent action on the part of COMANPI, piracy of computer software and videos is still common.

SERVICES BARRIERS

Venezuela maintains restrictions in a number of service sectors. For example, all professions subject to national licensing legislation (e.g., engineers, architects, economists, business consultants, accountants, lawyers, doctors, veterinarians, and journalists) are reserved for those who meet Venezuelan certification requirements.

Venezuela limits foreign equity participation (except from other Andean Community countries) to 19.9 percent in enterprises engaged in television and radio broadcasting, Spanish language newspapers, and professional services whose practice is regulated by national laws. Finally, 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.

The government enforces a "one-for-one" policy that requires foreign musical performers giving concerts in Venezuela to share stage time with national entertainers. There is also an annual quota regarding the distribution and exhibition of Venezuelan films; a requirement that at least half of the television programming must be dedicated to national programs; and a requirement that at least half of the FM radio broadcasting from 7 a.m. to 10 p.m. be dedicated to Venezuelan music.

Basic Telecommunications Services

As part of the 1997 WTO Basic Telecommunications Agreement, Venezuela committed itself to offering market access and national treatment to certain voice telephony services as of November 27, 2000, when the monopoly granted to the privatized national telephone company (CANTV) ends. At the close of 1999, CANTV retained a monopoly only for basic telephone service. However, Venezuela does not yet permit unlimited market access for certain key basic telecommunications services, including packet-switched data transmission network services. Regulations on Internet telephony are forthcoming.

Financial Services

In the 1997 WTO Financial Services Agreement, Venezuela made commitments on banking, foreign exchange houses, capital markets, life insurance, reinsurance, and brokerage. Venezuela did not make a commitment on pensions or on maritime, aviation and transportation insurance, and it reserved the right to apply an economic needs test as part of the licensing process. Local insurers must insure imports receiving government-approved tariff reductions or government financing, or those that are government-owned.

INVESTMENT BARRIERS

The state continues to control key sectors of the economy, including oil, gas, petrochemicals, and much of the mining and aluminum industries. Venezuela had begun an ambitious program of privatization under the Caldera administration, but throughout 1999, the pace of privatization slowed. Efforts to sell the state aluminum industry and further sections of the electrical power generating industry continue, however.

Foreign investment continues to be restricted in the petroleum sector. The new constitution reserves ownership of the State Oil Company

(PDVSA) to the Venezuelan Government. However, it does allow the sale of subsidiaries and affiliates of PDVSA to foreign investors, a measure that should preserve the “oil opening” begun under the Caldera administration. The Venezuelan Government created the oil opening to promote massive new petrochemical joint ventures and to bring heretofore inactive fields into production. Almost 60 foreign companies representing 14 different countries participated in this process. PDVSA and foreign oil companies signed 33 operating contracts for marginal fields after three rounds of bidding.

The government passed legislation in 1998 aimed at introducing domestic and foreign competition into the domestic gasoline market. The new laws allowed Venezuelan investors and those from abroad to own and operate service stations, though the government retained the right to set gas prices. By ministerial decree, Venezuela also introduced competition in the natural gas sector by allowing domestic and foreign private sector companies to process, store, transport, distribute and market methane and ethane.

A range of other natural resources – including iron ore, coal, bauxite, gold, nickel, and diamonds – are being opened to greater private investment. In 1996, CVG, the state-owned mining firm, announced its first joint venture with a foreign company to develop the Las Cristinas gold mine. President Chavez personally announced the beginning of mine operations in May 1999. Low gold prices, however, have forced CVG and its partners to put their project on hold. Acting under the Enabling Powers granted the President in April 1999, the Venezuelan Executive passed legislation that updates Venezuela’s 1945 mining law in order to encourage greater private sector participation in mineral extraction. Finally, Venezuela has vast hydroelectric resources that it has developed to power the nation’s industries. The country passed a national electricity law to provide a legal framework and to encourage private investment in this sector in 1999.

Venezuela maintains several other investment-distorting measures. Under the Andean Community Common Automotive Policy, Venezuela, Ecuador and Colombia imposed local content requirements in the automotive assembly industry in order to qualify for reduced duties on imports. Such requirements are prohibited by Agreement on Trade-Related Investment Measures (TRIMS). Under this Agreement, Venezuela was obligated to eliminate TRIMS by the year 2000. The latest Andean Automotive Policy Council determined in December 1999 that it would not eliminate all content requirements, but instead has decided to increase at least one requirement gradually to 34 percent by the year 2006. This revised automotive policy may be inconsistent with Venezuela’s WTO obligations under the TRIMS Agreement. The United States is working in the WTO to ensure that WTO members meet these obligations.

ZIMBABWE

TRADE SUMMARY

In 1999, the U.S. trade deficit with Zimbabwe was $73 million, an increase of $39 million from 1998. U.S. merchandise exports to Zimbabwe totaled $60 million, a decrease of $33 million from 1998. Zimbabwe was the United States' 124th largest export market in 1999. U.S. merchandise imports from Zimbabwe were $133 million, up $6 million from 1998. The stock of U.S. foreign direct investment in Zimbabwe was estimated at $103 million in 1998.

IMPORT POLICIES

Zimbabwe's economy, including its tariff regime, began a transition in 1991 from a highly controlled, Marxist-modeled, statist system to a more open, market-based economic system. During the first phase of its structural adjustment program, which ended in 1995, Zimbabwe abolished quantitative restrictions in favor of a tariff-based trading system. In early 1996, Zimbabwe undertook a comprehensive review and rationalization of its tariff policies and rates with substantial World Bank input and the cooperation of the Confederation of Zimbabwe Industries (CZI). A new tariff regime, effective March 1, 1997, lowered duties on raw materials and other inputs in an effort to remove most cases of the previous anomaly where there were higher duties on raw materials than on finished products. Raw materials now incur a duty rate of five percent to fifteen percent, though additional import surcharges are very likely to be applied.

In response to the significant slide of the Zimbabwe dollar against foreign currencies which began in August 1998, the Ministry of Finance announced on September 25, 1998, an increase in import tariffs ranging from 20 percent to 100 percent. Generally, higher duties are applied to luxury items and to items for which domestically produced substitutes exist. The list of targeted goods includes furniture, bicycles, motor vehicles, electrical and electronic goods, shoes, carpets and building materials. At the urging of the World Bank and the IMF, however, the Tariff Commission announced a rollback schedule for these higher duties to have commenced in January 2000. In early January, the Ministry of Finance announced the suspension of the announced reductions, citing fear of revenue loss. Industry has protested this reversal and, at this time, the outcome of the proposed rollback is uncertain.

Examples of the new tariffs and duties (along with previous tariff levels), drawn from the Customs and Excise Amendment Notice Number 12 of 1998, include the following:

< Duty on edible vegetables was increased from the previous level of 40-60 percent to 60-80 percent;

< Duty on edible fruits as well as coffee and tea was similarly increased to 60-80 percent;

< Duty on cereal flours was increased from 30 percent to 60 percent;

< Duty on prepared cereals was increased from 40 percent to 80 percent;

< Duty on fruit flavored and aerated water was set at 85 percent and 82.5 percent, respectively, and an excise duty was set at ZIM $10 per liter (about U.S. 25 cents at current exchange rates) and 22.5 percent, respectively;

< Duty on imported wines was set at 95 percent and an excise tax was set at ZIM $2.5 per liter (about U.S. 7 cents at current exchange rates);

< Duty on cigarettes was set at 100 percent and an excise tax was set at 80 percent;

- Duty on perfume was increased from 40 percent to 80 percent;
- Duty on footwear was increased from 30 percent to 65 percent;
- Duty on ceramic products was increased from 40 percent to 80 percent;
- Duty on pearls and precious and semiprecious stones was increased from 15 percent to 70 percent;
- Air-conditioning units, previously duty-free, are now charged 40 percent to 90 percent duty as well as a surcharge of ZIM $200 per unit;
- Duty on electric stoves was increased from 40 percent to 90 percent;
- Duty on passenger motor vehicles (buses) seating 20 or more persons was increased from 25 percent to 50 percent duty, while duty on vehicles seating 19 or less (minibuses) was increased from 40 percent to 80 percent;
- Duty on toys was increased from 30 percent to 70 percent; and
- Duty on plastic or wooden furniture was increased from 40 percent to 80 percent.

Duties on what are considered luxury goods that can be manufactured locally were increased on average by 100 percent. A commission has been formed to look at cases where local manufacturers have been disadvantaged by the new tariff regime. The commission meets monthly and has a large and growing backlog.

Effective on October 2, 1998, all tariffs on imported goods have been charged a 15 percent import surcharge, regardless of classification. A narrow exemption from the tax exists for capital goods, such as manufacturing equipment and intermediate goods that are employed in processing for re-export.

Periodic instances of corruption and a lack of uniform application of the law by customs officials continue to concern importers and users of imported goods or components.

GOVERNMENT PROCUREMENT

Zimbabwean law provides for non-disciminatory government procurement practices, including full transparency in the tender process. The Government of Zimbabwe’s Tender Board is required to invite bids form both local and international entities for any purchase in excess of ZIM$800,000 (U.S.$21,000). Notwithstanding, U.S. firms and various national governments, including those of the United States, Japan, Great Britain, France, Belgium, and Italy, have voiced strong complaints about the lack of transparency and fairness in government tenders. Multilateral institutions have also criticized the government tendering process and called for changes. Zimbabwe is not a signatory to the WTO Agreement on Government Procurement.

In two prominent tenders, the contract awards were based on factors other than cost, resulting in local suppliers being accepted over foreign suppliers with substantially lower bids. Despite the board’s requirement to invite tenders for any project in excess of the ZIM$800,000 threshold, Zimbabwe continues to use sole-sourcing for a number of major contracts, in particular purchases by the Ministry of Defense and contracts with the Rreserve Bank of Zimbabwe to print paper money and mint coins.

In an effort to encourage indigenous businesses, Zimbabwe maintains quotas on certain services and products to be filled only by Zimbabwean firms.

INTELLECTUAL PROPERTY RIGHTS PROTECTION

Zimbabwe has joined several international patent and trademark conventions since achieving independence in 1980. It is a member of the World Intellectual Property Organization (WIPO), the Paris convention for the Protection of Industrial Property (Stockholm text), and the Berne Convention for the Protection of Literary and Artistic works (Rome text). Zimbabwe is obligated to implement the substantive and enforcement provisions of the WTO Agreement on Trade Related Aspects of Intellectual Property Rights (TRIPS) and has made a series of amendments to existing IP laws to meet its TRIPS obligations. Notwithstanding, Zimbabwe still has not updated its IPR legislation nor has it ratified the WIPO treaties. In mid-1998, the government presented WIPO copyright treaties to Parliament, proposing their ratification as amendments to existing IPR legislation. No action has yet been taken.

Audio and video cassette piracy is the most widespread enforcement problem in Zimbabwe, though the volumes involved have been relatively small. While software bootlegging by computer users undoubtedly occurs, bootlegged software is rarely sold commercially.

SERVICES BARRIERS

At the IMF's urging, the ban on local foreign currency-denominated bank accounts (known as FCA's) was lifted in October 1999. However, in December 1999 the Reserve Bank of Zimbabwe directed that half of all FCA balances be liquidated as part of an effort to address the hard currency shortage in the country. The prospect of continued foreign currency shortages raises the possibility that additional controls or restrictions may be placed on such accounts, making operations more difficult for importers and exporters.

World-class professional services (consultancy, accounting, legal, and others) are generally available within Zimbabwe. Professionals face the same restrictions on expatriate hires as do other industries, i.e., chronic protracted delays and a lack of transparency in approving work permits for expatriate representatives of overseas firms.

In 1999, some software companies encountered difficulties with the importation of programs containing extensive graphics, as Zimbabwean Customs judged them to be entertainment programs subject to 80 percent duty rather than the 15 percent duty that is charged on computer software. There are currently no trade restrictions on electronic commerce.

INVESTMENT BARRIERS

The government has lifted some of its most onerous restrictions on foreign investment. It permits pre-independence investors to remit 100 percent of declared dividends and no longer imposes restrictions on local borrowing. In September 1995, the Reserve Bank of Zimbabwe began liberalizing blocked accounts, allowing repatriation of certain blocked funds (profits and dividends accrued on pre-1993 investments, corporate funds invested in Government of Zimbabwe external bonds, and accounts with authorized dealers). Due to Zimbabwe's ongoing financial crisis, there is serious concern that the government may resort to a reimposition of foreign exchange restrictions or a formal, fixed rate foreign exchange regime.

Zimbabwe has signed investment agreements with the Overseas Private Investment Corporation (OPIC) and the World Bank (MIGA). Notwithstanding such commitments, the government has yet to embrace the concept of national treatment or reduce the length of its "reserved list" of sectors that remain closed to all but domestic investors and those foreign investors who operate joint ventures with local partners.

Roadblocks to foreign investment are omnipresent. Foreign-owned businesses have cited instances of corruption as a troublesome aspect of doing business in Zimbabwe, particularly at the startup, expansion, or transfer of assets stages. Both new and existing investors have encountered delay and lack of transparency in obtaining investment approval from the Reserve Bank of Zimbabwe. There have also been protracted delays and a lack of transparency on the part of the government in approving work permits for expatriate representatives of overseas firms. Applicants have described the process as difficult, time-consuming, and at times arbitrary. In one example, a senior executive of a major U.S. corporation was denied renewal of his work permit on the basis of his age (63). The U.S. Embassy has had some recent success in obtaining favorable results in such cases.

Investment Promotion

As part of its effort to promote investment, the government established the Zimbabwe Investment Center (ZIC) and abolished import licensing requirements. The poor macroeconomic environment that currently exists in Zimbabwe, however, presents quite a challenge to ZIC. Harsh economic conditions and uncertainty have caused a 63 percent slide in approved investment applications in 1999, from ZIM $60.3 billion to ZIM $22.5 billion (about U.S. $590 million at current rates). Actual investment in any given year is considerably less than what may be indicated by approved investment applications.

Export Processing Zones (EPZ) and certain related tax concessions could boost foreign investment, but a number of factors have limited their success. Benefits include a five-year tax holiday, duty-free importation of raw materials, no tax liability from capital gains arising for the sale of property forming part of the investment in designated processing zones, and duty-free importation of capital equipment for use in the EPZ. A trade performance mandate requires eligible companies to export at least 80 percent of output. The EPZ authority, operational since early 1996, has approved applications for 105 companies to operate in more than a dozen zones. Just over half of these projects are up and running, with the others slowed or halted by the economic downturn that is being driven by high inflation and high interest rates. The new entities are also encountering difficulties in connecting to telecommunications services as well as water and electric utilities. Problems have and continue to arise with the Department of Customs, which frequently charges designated companies duties on exempted inputs and equipment.

Exporters of manufactured products will be able to take advantage of new tax incentives included in the 1999 budget. Companies exporting at least 40 percent of their output qualify for an eight percent tax break, while new companies exporting at least 50 percent qualify for a 10 percent tax break.

OTHER BARRIERS

Land Reform

The redistribution of large commercial farms to landless and small-scale black farmers has been a long stated goal of the Zimbabwean government, although little progress has been made until recently. How land acquisition and resettlement is implemented is especially important because of the size and economic significance of Zimbabwe's agricultural sector. Banks and supplier relationships are also affected, since land is often collateralized to obtain working capital. A draconian land reform program would leave creditors with little recourse. With the input of the international donor community, various principals and parameters that would govern the land acquisition and resettlement process were agreed to at the September 1998 Land Reform Conference in Harare. Despite politically motivated outbursts to the contrary, the government has continued to adhere to these agreements (i.e., willing seller/willing buyer and full market compensation) in all farms acquired under the program to date.

More recently, progress on land reform has been slow, primarily due to funding and resource constraints caused by Zimbabwe's economic and budget troubles. In April 1999, the Government of Zimbabwe, with donor assistance, set up a technical support unit to embark on a two-year inception phase plan beginning in April 1999 to accelerate the land acquisition and resettlement process. At the end of 1999, about 1700 families had been relocated.

Privatization

The donor community and the multilateral financial institutions agree that Zimbabwe's record on privatization has been poor. Sustained pressure by these outside groups has brought few results because the government did not have a well-defined privatization program to govern the process. The IMF has made progress on privatization a condition for the disbursal of additional tranches of its standby credit facility, but continued delays are expected. As part of the ongoing commercialization/privatization program, all parastatals must now pay taxes and declare dividends.

A central problem in the privatization effort has been the absence of a single organizational entity with overall responsibility for the design and implementation of the program. Recently, the government has approved and is setting up an independent unit, based in the President's office, that will be charged with identifying public enterprises to be privatized and expediting the sales process.

Zimbabwe has privatized several of its agricultural marketing boards. The Cotton Company of Zimbabwe (COTTCO, formerly the Cotton Marketing Board) and Dairiboard of Zimbabwe (DZL, formerly the Dairy Marketing Board) were privatized in 1997 through share floats on the Harare Stock Exchange. The Zimbabwe government retained a 25 percent interest in COTTCO and a 40 percent interest in Dairiboard. In the last quarter of 1999, the Rainbow Tourism Group, a parastatal involved in tourism was privatized with the government retaining a 30 percent equity share. The group owns several hotels, the Harare International Convention Center, and a transportation company.

A stated goal of privatization in Zimbabwe has been to increase black ownership of the nation's commercial assets. The National Investment Trust (NIT) was set up to facilitate the participation of the economically disadvantaged indigenous population in the privatization process, though funds budgeted for this purpose have never been adequate. As an ad hoc solution, the government forced postal workers and the National Social Security Fund to buy and hold shares on NIT's behalf. On several occasions, critics have asserted that the implementation of the government's privatization/indigenization policy has been slow, uneven, and tends to favor government friends and ruling party allies at the expense of independent black entrepreneurs. U.S. firms also have complained about official attempts to dictate their choice of local partners (as required in many reserved sectors) under the guise of the government's indigenization policy.

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APPENDIX
US Data for Given Trade Partners in Rank Order of US Exports
(Values in Millions of Dollars)

Country	Trade Balance 1998	Trade Balance 1999	Change 1998-99	Exports* 1999	Change 98/99 Value	Change 98/99 Percent	Rank	Imports** 1999	Change 98/99 Value	Change 98/99 Percent	FDI*** 1998	% Change 1997-98	FDI Area
World	(233,411)	(331,945)	(98,535)	692,821	12,346	1.81		1,024,766	110,881	12.13	980,565	13.29	Finance, Manuf., Petrol.
Canada	(20,692)	(34,411)	(13,720)	163,913	9,761	6.33	1	198,324	23,480	13.43	103,908	8.20	Manuf., Finance, Petrol.
Mexico	(15,699)	(22,662)	(6,964)	87,044	8,034	10.17	2	109,706	14,998	15.84	25,877	7.01	Manuf., Finance, Services
Japan	(64,094)	(73,920)	(9,826)	57,484	(404)	-0.70	3	131,404	9,422	7.72	38,153	13.13	Manuf., Finance, Wholesale
United Kingdom	4,278	(853)	(5,131)	38,338	(732)	-1.87	4	39,191	4,398	12.64	178,648	16.68	Finance, Manuf., Petroleum
Germany	(23,182)	(28,305)	(5,123)	26,789	147	0.55	5	55,094	5,270	10.58	42,853	11.34	Manuf., Finance, Petrol.
Republic of Korea	(7,398)	(8,308)	(910)	22,954	6,416	38.79	6	31,262	7,326	30.60	7,365	14.54	Manuf., Banking, Services
Netherlands	11,413	10,939	(473)	19,412	408	2.15	7	8,473	882	11.62	79,386	23.34	Finance, Manuf., Wholesale
Taiwan	(14,966)	(16,077)	(1,112)	19,121	964	5.31	8	35,198	2,076	6.27	4,937	5.76	Manuf., Banking, Wholesale
France	(6,349)	(7,071)	(722)	18,838	1,110	6.26	9	25,910	1,832	7.61	39,188	9.46	Manuf., Finance, Wholesale
Singapore	(2,684)	(1,941)	743	16,246	573	3.66	10	18,188	(170)	-0.92	19,783	10.74	Manuf., Finance, Wholesale
Brazil	5,035	1,935	(3,099)	13,249	(1,908)	-12.59	11	11,314	1,191	11.77	37,802	7.73	Manuf., Finance, Petrol.
People's Republic of China	(56,898)	(68,668)	(11,770)	13,118	(1,140)	-8.00	12	81,786	10,630	14.94	6,348	25.18	Manuf., Petrol., Finance
Hong Kong	2,385	2,116	(269)	12,647	(276)	-2.14	13	10,531	(7)	-0.07	20,802	7.97	Wholesale, Finance, Manuf.
Belgium	5,496	3,177	(2,320)	12,385	(1,533)	-11.02	14	9,208	786	9.34	18,920	8.55	Manuf., Finance, Wholesale
Australia	6,547	6,520	(27)	11,811	(119)	-0.99	15	5,290	(92)	-1.70	33,676	12.59	Finance, Manuf., Petrol.
Italy	(11,986)	(12,344)	(358)	10,094	1,067	11.82	16	22,438	1,425	6.78	14,638	-1.15	Manuf., Wholesale, Services
Malaysia	(10,049)	(12,350)	(2,301)	9,079	126	1.41	17	21,429	2,427	12.77	6,193	-5.04	Manuf., Petrol., Banking
Switzerland	(1,425)	(1,232)	193	8,365	1,113	15.35	18	9,596	920	10.61	37,616	19.72	Finance, Wholesale, Manuf.
Saudi Arabia	4,186	(336)	(4,522)	7,902	(2,623)	-24.92	19	8,237	1,898	29.95	4,209	10.01	Finance, Services, Petrol.
Israel	(1,650)	(2,175)	(525)	7,694	717	10.28	20	9,870	1,242	14.39	3,067	51.23	Manuf., Finance, Wholesale
Philippines	(5,213)	(5,153)	59	7,226	490	7.27	21	12,380	431	3.61	3,192	-3.13	Manuf., Finance, Banking
Ireland	(2,732)	(4,628)	(1,896)	6,375	722	12.77	22	11,002	2,618	31.22	15,936	23.90	Manuf., Finance, Wholesale
Spain	680	1,076	396	6,132	667	12.21	23	5,055	271	5.66	12,807	14.02	Manuf., Banking, Wholesale
Venezuela	(2,763)	(5,896)	(3,134)	5,373	(1,147)	-17.59	24	11,269	1,987	21.40	5,697	5.87	Manuf., Petroleum, Wholesale
Thailand	(8,201)	(9,340)	(1,139)	4,984	(250)	-4.77	25	14,324	889	6.62	5,721	44.98	Manuf., Petrol., Wholesale
Argentina	3,633	2,340	(1,293)	4,939	(947)	-16.09	26	2,599	346	15.38	11,489	14.84	Manuf., Finance, Banking
Sweden	(4,017)	(3,872)	145	4,239	419	10.98	27	8,111	274	3.50	6,053	10.80	Manuf., Services, Finance
Dominican Republic	(466)	(196)	269	4,086	108	2.72	28	4,282	(161)	-3.63	535	12.39	Manuf., Banking
India	(4,680)	(5,376)	(696)	3,707	163	4.59	29	9,083	859	10.44	1,480	-5.31	Banking, Finance, Manuf.
Colombia	165	(2,744)	(2,909)	3,532	(1,285)	-26.67	30	6,276	1,624	34.92	4,317	-2.68	Petrol., Manuf., Finance

* US Total Exports (f.a.s.); ** US General Imports (customs value); *** Stock of US Foreign Direct Investment Abroad.

APPENDIX
US Data for Given Trade Partners in Rank Order of US Exports
(Values in Millions of Dollars)

	Trade Balance		Change	Exports*	Change 98/99		Rank	Imports**	Change 98/99		FDI***	% Change	
Country	1998	1999	1998-99	1999	Value	Percent		1999	Value	Percent	1998	1997-98	FDI Area
Turkey	967	570	(397)	3,197	(315)	-8.98	31	2,627	82	3.21	1,069	2.69	Manuf., Banking
Chile	1,532	143	(1,389)	3,079	(906)	-22.74	32	2,936	483	19.69	9,132	1.75	Finance, Manuf., Banking
Egypt	2,399	2,408	9	3,025	(34)	-1.12	33	617	(43)	-6.55	1,955	21.28	Petrol., Manuf., Banking
United Arab Emirates	1,709	2,002	293	2,713	343	14.49	34	711	50	7.61	710	25.22	Petrol.,Services, Wholesale
Austria	(52)	(323)	(271)	2,588	82	3.26	35	2,910	352	13.77	3,838	45.49	Manuf., Wholesale, Services
Republic of South Africa	571	(613)	(1,183)	2,582	(1,044)	-28.79	36	3,195	140	4.57	2,363	-3.59	Manuf., Finance, Services
Costa Rica	(446)	(1,579)	(1,133)	2,380	80	3.50	37	3,958	1,213	44.18	2,126	37.69	Manuf.
Honduras	(222)	(344)	(122)	2,369	47	2.00	38	2,713	168	6.61	186	1.64	Manuf., Finance
Indonesia	(7,047)	(7,575)	(528)	1,939	(352)	-15.36	39	9,514	176	1.89	6,932	4.02	Petrol., Manuf.
New Zealand	240	185	(55)	1,934	49	2.62	40	1,749	104	6.32	6,136	-5.93	Finance, Manuf., Petrol.
Russia	(2,149)	(3,960)	(1,811)	1,845	(1,740)	-48.54	41	5,805	71	1.24	1,101	-46.58	
Guatemala	(131)	(454)	(323)	1,812	(129)	-6.67	42	2,266	194	9.35	429	20.17	Manufacturing
Panama	1,440	1,376	(64)	1,741	(12)	-0.66	43	365	52	16.79	26,957	28.03	Finance, Petrol., Services
Denmark	(507)	(1,106)	(599)	1,719	(155)	-8.29	44	2,825	443	18.61	2,628	20.94	Manuf., Petrol.
Peru	79	(227)	(305)	1,701	(355)	-17.27	45	1,928	(50)	-2.51	2,587	4.86	Finance, Manuf, Petrol.
Finland	(680)	(1,242)	(562)	1,668	(247)	-12.90	46	2,910	315	12.13	1,700	29.57	Manuf., Wholesale, Petrol.
El Salvador	77	(85)	(161)	1,520	5	0.34	47	1,605	167	11.58	599	173.52	
Norway	(1,164)	(2,612)	(1,447)	1,440	(269)	-15.77	48	4,051	1,178	40.98	7,609	9.73	Petrol., Finance, Manuf.
Portugal	(378)	(266)	113	1,091	204	22.95	50	1,357	91	7.20	1,474	3.44	Wholesale, Manuf, Finance
Greece	888	423	(465)	994	(361)	-26.63	51	571	104	22.23	660	4.10	Banking, Finance, Manuf.
Luxembourg	232	670	438	984	377	62.27	52	314	(60)	-16.10	14,930	47.69	Finance, Manuf.
Ecuador	(69)	(894)	(826)	920	(766)	-45.44	53	1,814	59	3.37	952	13.60	Petrol., Manuf., Wholesale
Kuwait	207	(537)	(744)	909	(570)	-38.56	54	1,446	174	13.67			
Poland	99	12	(87)	825	(57)	-6.46	56	813	30	3.88	1,698	39.64	
Nigeria	(3,375)	(3,733)	(358)	628	(191)	-23.34	58	4,361	166	3.97	1,925	38.79	Petrol
Morocco	209	183	(26)	574	21	3.85	62	390	47	13.74	86	3.61	
Paraguay	752	467	(285)	515	(271)	-34.47	63	48	15	43.67	204	39.73	
Hungary	(1,085)	(1,389)	(304)	503	21	4.31	64	1,892	324	20.70	1,353	13.98	
Algeria	(981)	(1,374)	(393)	456	(194)	-29.81	66	1,831	199	12.22	2,372	58.45	
Pakistan	(965)	(1,314)	(349)	426	(300)	-41.28	67	1,740	49	2.90	416	-36.10	
Nicaragua	(117)	(119)	(2)	374	37	11.09	68	493	40	8.72	153	11.68	
Lebanon	432	305	(127)	356	(158)	-30.66	71	51	(31)	-37.53	44	83.33	

* US Total Exports (f.a.s.); ** US General Imports (customs value); *** Stock of US Foreign Direct Investment Abroad.

APPENDIX

US Data for Given Trade Partners in Rank Order of US Exports

(Values in Millions of Dollars)

Country	Trade Balance 1998	Trade Balance 1999	Change 1998-99	Exports* 1999	Change 98/99 Value	Change 98/99 Percent	Rank	Imports** 1999	Change 98/99 Value	Change 98/99 Percent	FDI*** 1998	% Change 1997-98	FDI Area
Bahrain	139	123	(17)	348	53	18.12	72	225	70	44.98			
Uzbekistan	113	313	200	339	191	129.96	74	26	(8)	-24.84			
Tunisia	135	206	70	280	83	42.31	80	74	13	21.01	153	2.68	
Jordan	337	245	(92)	276	(77)	-21.93	81	31	15	88.92	32		
Ghana	79	26	(52)	235	12	5.26	84	209	64	44.47	321	15.05	
Ukraine	(163)	(314)	(150)	204	(163)	-44.44	87	518	(13)	-2.43	92	666.67	
Kenya	101	83	(18)	189	(10)	-4.98	92	106	8	8.01	238	68.79	
Oman	86	(32)	(118)	188	(115)	-37.93	93	219	3	1.27	84	1.20	
Kazakhstan	(66)	(49)	16	179	76	73.50	94	228	59	35.27	2,349	61.55	
Romania	(54)	(258)	(204)	177	(163)	-47.95	95	434	41	10.47	128	43.82	
Syria	116	78	(38)	173	11	7.00	96	95	49	107.39			
Ethiopia	36	134	98	165	76	86.31	98	30	(22)	-42.21	38	8.57	
Yemen	140	138	(1)	157	(20)	-11.22	100	19	(19)	-49.28	902	-4.14	
Qatar	134	(120)	(254)	146	(208)	-58.80	101	266	45	20.65	1,378	27.00	
Bulgaria	(104)	(97)	7	103	(13)	-10.95	111	200	(19)	-8.89	21	-4.55	
Tanzania	35	33	(2)	68	2	2.25	118	35	4	12.09	26	-18.75	
Zimbabwe	(34)	(73)	(39)	60	(33)	-35.59	124	133	6	4.55	103	-20.77	
Cameroon	22	(40)	(62)	37	(38)	-50.72	143	77	23	43.90	238	-46.52	
Djibouti	20	27	7	27	7	33.22	150	0	(0)	-79.21			
Mauritania	19	24	5	25	6	28.87	153	1	0	96.32			
Moldova	(91)	(78)	13	11	(10)	-48.70	173	89	(23)	-20.37			
Iraq	(1,093)	(4,184)	(3,091)	10	(97)	-91.04	176	4,193	2,994	249.62			
Sudan	4	9	5	9	2	29.91	179	0	(3)	-98.15	15		
Somalia	2	3	1	3	0	4.29	200	0	(0)	-71.49			
Comoros	(0)	(2)	(1)	0	(0)	-60.27	221	2	1	112.55			
Libya	0	0	0	0	0		235	0	0				
Arab League	8,199	(834)	(9,033)	17,577	(3,570)	-16.88		18,410	5,463	42.19			
ASEAN - 10	(34,064)	(37,807)	(3,744)	39,862	532	1.35		77,669	4,275	5.83			
European Union - 15	(26,897)	(43,723)	(16,826)	151,645	2,175	1.46		195,368	19,001	10.77	433,658	16.62	Finance, Manuf., Wholesale
Gulf Cooperation Council	6,461	1,100	(5,361)	12,206	(3,120)	-20.36		11,105	2,241	25.28			

* US Total Exports (f.a.s.); ** US General Imports (customs value); *** Stock of US Foreign Direct Investment Abroad.