

# ACKNOWLEDGEMENTS

The Office of the United States Trade Representative (USTR) is responsible for the preparation of this report, which was written by USTR staff. U.S. Trade Representative Ron Kirk gratefully acknowledges the contributions of the Departments of Agriculture, Commerce, Labor, Justice, State, Transportation, and the U.S. International Trade Commission.

In preparing the report, substantial information was solicited from our Embassies abroad. Drafts of the report were circulated through the interagency Trade Policy Staff Committee. USTR is especially appreciative of the consistent support provided by the Commerce Department's International Trade Administration throughout the process of preparing the report.



## LIST OF FREQUENTLY USED ACRONYMS AND ABBREVIATIONS

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

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

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# FOREWORD

The 2010 National Trade Estimate Report on Foreign Trade Barriers (NTE) is the twenty-fifth in an annual series that surveys significant foreign barriers to U.S. exports. This document is a companion piece to the President's Trade Policy Agenda published in March. The issuance of the NTE Report continues the elaboration of an enforcement strategy, utilizing this report, among other tools, in that strategy.

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 and strengthening the rules-based trading system, which benefits all nations, and U.S. producers and consumers in particular.

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

## SCOPE AND COVERAGE

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

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

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

- Import policies (*e.g.*, tariffs and other import charges, quantitative restrictions, import licensing, and customs barriers);
- Government procurement (*e.g.*, "buy national" policies and closed bidding);

- Export subsidies (*e.g.*, export financing on preferential terms and agricultural export subsidies that displace U.S. exports in third country markets);
- Lack of intellectual property protection (*e.g.*, inadequate patent, copyright, and trademark regimes);
- Services barriers (*e.g.*, limits on the range of financial services offered by foreign financial institutions, regulation of international data flows, restrictions on the use of foreign data processing, and barriers to the provision of services by foreign professionals);
- Investment barriers (*e.g.*, limitations on foreign equity participation and on access to foreign government-funded research and development (R&D) programs, local content requirements, technology transfer requirements and export performance requirements, and restrictions on repatriation of earnings, capital, fees and royalties);
- Government-tolerated anticompetitive conduct of state-owned or private firms that restricts the sale or purchase of U.S. goods or services in the foreign country's markets;
- Trade restrictions affecting electronic commerce (*e.g.*, tariff and nontariff measures, burdensome and discriminatory regulations and standards, and discriminatory taxation); and
- Other barriers (barriers that encompass more than one category, *e.g.*, bribery and corruption,<sup>1</sup> or that affect a single sector).

This year, for the first time, significant foreign government barriers to U.S. exports that previous reports addressed under the rubric of “standards, testing, labeling and certification” measures are treated separately in two new, specialized reports. One new report is dedicated to identifying barriers in the form of standards-related measures (such as product standards and testing requirements). A second report addresses barriers that take the form of sanitary and phytosanitary measures (such as procedures to prevent the spread of crop pests or rules regulating food additives). Together, the three reports provide the inventory of trade barriers called for under U.S. law.

Over the past year, USTR initiated more vigorous scrutiny of foreign labor practices and began to redress substandard practices that impinge upon labor obligations in U.S. free trade agreements (FTAs) and deny foreign workers their internationally recognized labor rights. USTR also introduced new mechanisms to enhance its monitoring of the steps U.S. free trade agreement partners have taken to implement and comply with their obligations under the environment chapters of those agreements. To further these initiatives, USTR implemented interagency processes for systematic information gathering and review of labor rights practices and environmental enforcement measures in FTA countries, and USTR staff are regularly visiting FTA countries to monitor practices and directly engage governments and other actors. The Administration has reported on these activities in the *2010 Trade Policy Agenda and 2009 Annual Report of the President on the Trade Agreements Program*.

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

## **FOREIGN TRADE BARRIERS**



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

NTE sections report the most recent data on U.S. bilateral trade in goods and services and compare it to the preceding period. This information is reported to provide context for the reader. In nearly all cases, U.S. bilateral trade declined in 2009 compared to the preceding period, reflecting the important negative impact of the severe global recession on international trade (with world Gross Domestic Product and world trade down 2.3 percent and 11.9 percent, respectively). The merchandise trade data contained in the NTE report are based on total U.S. exports, free alongside (f.a.s.)<sup>2</sup> value, and general U.S. imports, customs value, 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 services data are from the October 2009 issue of the Survey of Current Business (collected from the Bureau of Economic Analysis, Department of Commerce). The direct investment data are from the September 2009 issue of the Survey of Current Business (collected 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. 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

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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.

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 in detail. For these reasons, estimates of the impact of foreign barriers on trade in services also are difficult to compute.

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

In the context of trade actions brought under U.S. law, 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 computing these valuations are sometimes uncertain. Hence, their inclusion in the NTE report should not be construed as a U.S. Government endorsement of the estimates they reflect.

March 2010

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<sup>1</sup> Corruption is an impediment to trade, a serious barrier to development, and a direct threat to our collective security. Corruption takes many forms and affects trade and development in different ways. In many countries, it affects customs practices, licensing decisions, and the awarding of government procurement contracts. If left unchecked, bribery and corruption can negate market access gained through trade negotiations, undermine the foundations of the international trading system, and frustrate broader reforms and economic stabilization programs. Corruption also hinders development and contributes to the cycle of poverty.

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

The United States Government has taken a leading role in addressing bribery and corruption in international business transactions and has made real progress over the past quarter century building international coalitions to

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fight bribery and corruption. Bribery and corruption are now being addressed in a number of fora. Some of these initiatives are now yielding positive results.

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

The United States played a critical role in the successful conclusion of negotiations that produced the United Nations Convention Against Corruption, the first global anti-corruption instrument. The Convention was opened for signature in December 2003, and entered into force December 14, 2005. The Convention contains many provisions on preventive measures countries can take to stop corruption, and requires countries to adopt additional measures as may be necessary to criminalize fundamental anticorruption offenses, including bribery of domestic as well as foreign public officials. As of December 2009, 140 countries had signed the Convention, and there were 143 parties, including the United States.

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

The United States Government continues to push its anti-corruption agenda forward. The United States Government seeks binding commitments in FTAs that promote transparency and that specifically address corruption of public officials. The United States Government also is seeking to secure a meaningful agreement on trade facilitation in the WTO and has been pressing for concrete commitments on customs operations and transparency of government procurement regimes of our FTA partners. The United States Government is also playing a leadership role on these issues in the G-8 Forum, APEC, the Southeastern Europe Stability Pact and other fora.

<sup>2</sup> 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.

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# ANGOLA

## TRADE SUMMARY

The U.S. goods trade deficit with Angola was \$7.9 billion in 2009, down \$9.0 billion from 2008. U.S. goods exports in 2009 were \$1.4 billion, down 29.5 percent from the previous year. Corresponding U.S. imports from Angola were \$9.3 billion, down 50.6 percent. Angola is currently the 66th largest export market for U.S. goods.

The stock of U.S. foreign direct investment in Angola was \$2.1 billion in 2008 (latest data available), up from \$1.6 billion in 2007.

## IMPORT POLICIES

### Tariffs and Nontariff Measures

Angola is a Member of the World Trade Organization (WTO) and the Southern African Development Community (SADC). In March 2003, Angola agreed to adhere to the SADC Protocol on Trade, which seeks to facilitate trade by harmonizing and reducing tariffs and by establishing regional policies on trade, customs, and methodology. Angola has delayed implementation of this protocol until 2010, however, so that the country can revive domestic production of non-petroleum goods, which remains low as a result of years of civil war and economic underdevelopment.

According to the WTO, Angola's average applied tariff rate was 7.3 percent in 2008. A new tariff schedule came into force in September 2008 that eliminates tariffs on the import of raw materials, equipment, and intermediate goods for industries. The schedule also reduces tariffs on 58 categories of basic goods. The government established a tax on imports of luxury products, which are now subject to a one percent surcharge. Personal customs fees and transportation taxes were revoked and are no longer charged. Besides the tariffs themselves, additional fees associated with importing include clearing costs (2 percent), VAT (2 percent to 30 percent depending on the good), revenue stamps (0.5 percent), port charges (\$500 per day per 20 foot container or \$850 per day per 40 foot container), and port storage fees (free for the first 15 days, then \$20 per 20 foot container or \$40 per 40 foot container per day).

Tariff obligations for the oil industry are largely determined by individually negotiated contracts between international oil companies and the Angolan government. In December 2004, a Petroleum Customs Law was introduced that aimed to standardize tariff and customs obligations for the petroleum industry while protecting existing oil company rights and exemptions negotiated under prior contracts. According to customs officials, the law eliminated exemptions from duties on items imported by oil companies that are not directly used as equipment in oil production. Oil companies are still disputing the customs officials' interpretation of the law. Because most U.S. exports to Angola consist of specialized oil industry equipment, which is largely exempt from tariffs, the annual impact of high tariffs on U.S. exports is relatively low, estimated to be in the range of \$10 million to \$25 million.

### Customs Procedures

Administration of Angola's customs service has improved in the last few years, but remains an impediment to market access. The Angolan government implemented a new customs code in January 2007 which follows the guidelines of the World Customs Organization, WTO, and SADC. During most

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of 2009, however, port clearance time averaged several months and importers commonly faced additional delays, often the result of capacity constraints at the Port of Luanda. For instance, shipping containers, although cleared, may be physically inaccessible because they are behind other containers. The situation improved with the recent creation of two dry ports for container storage, and the diversion of excess marine traffic to the Port of Lobito. As of late 2009, port clearance time averaged one month.

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

Required customs paperwork includes the “Documento Unico” (single document) for the calculation of tariffs, proof of ownership of the good, bill of lading, commercial invoice, packing list, and specific shipment documents verifying the right to import or export the product. Any shipment of goods equal to or exceeding \$1,000 requires a clearing agent. The number of clearing agents has increased from 55 in 2006 to 157, but competition among clearing agents has not reduced fees, which often range between 1 percent and 2 percent of the value of the declaration.

## **GOVERNMENT PROCUREMENT**

The government advertises tender notices in local and international publications 15 days to 90 days before the tenders are due. Tender documents are normally obtained from a specific government ministry, department, or agency for a non-refundable fee. However, the tendering process often lacks transparency. Information about government projects and tenders is often not readily available from the appropriate authorities, and interested parties must spend considerable time to obtain the necessary information. Completed tenders, accompanied by a specified security deposit, usually must be submitted to the procuring ministry. Awards for government tenders are sometimes published in the government newspaper *Jornal de Angola*. Under the Promotion of Angolan Private Entrepreneurs Law, the Angolan government gives Angolan companies preferential treatment in the procurement of goods, services and public works. The Angolan government is continuing to work on a New General Law on Public Acquisition and Respective Regulations, which was announced in 2006 and will require public notice of government tenders and, when enacted, is expected to increase the transparency of the government procurement process.

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

## **INTELLECTUAL PROPERTY RIGHTS (IPR) PROTECTION**

Although Angolan law provides basic protection for IPRs and the National Assembly is working to strengthen existing legislation, IPR protection remains weak due to a lack of enforcement capacity. However, government officials have made efforts to confiscate and destroy pirated goods. In September 2008, Angola’s Economic Police burned 2.5 tons of medicines, CDs, and DVDs in a public event aimed

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at curbing the sales of pirated merchandise in Angola. However, there were no reports of Angola conducting similar destructions of pirated material in 2009. According to Angola's National Department for the Protection of Intellectual Property Rights, the owners of the pirated goods were sentenced to up to six months in jail or fined approximately 110,000 Kwanza (approximately \$1,500). The government has also worked with international computer companies on anti-piracy measures. No suits involving U.S. intellectual property are known to have been filed in Angola.

## **INVESTMENT BARRIERS**

Angola is formally open to foreign investment, but its regulatory and legal infrastructure is not adequate to facilitate much foreign direct investment outside the petroleum sector or to provide sufficient protection to foreign investors. Smaller, non-extractive firms tend to have a more difficult time conducting business in Angola than larger, multinational corporations engaged in extractive industries. In 2003, Angola created the National Private Investment Agency (ANIP) and replaced its 1994 Foreign Investment Law with a new Law on Private Investment. The 2003 law lays out the general parameters, benefits, and obligations for foreign investment in Angola. It encourages foreign investment by providing equal treatment for domestic and foreign investors, offering fiscal and customs incentives, and simplifying the investment application process. However, the law is vague on profit repatriation and includes weak legal safeguards to protect foreign investors. For example, several foreign construction companies abruptly lost their quarrying rights in 2007. In addition, many provisions of the law are subordinate to other sectoral legislation, allowing other government ministries to override some of the protections and incentives offered by the investment law. In 2009, President Dos Santos created a commission consisting of senior economic advisors tasked to overhaul ANIP. As part of its mandate, the commission will explore changes impacting private investment, Angola's tax incentive structure, customs policies, and immigration laws and regulations as they affect business and investment in the country.

Angolan law has no provisions for international arbitration and requires that any investment dispute be resolved in Angolan courts. In 2008, the Attorney General ruled that Angola's specialized courts to hear tax disputes were unconstitutional. Consequently, foreign investors effectively have no legal recourse to dispute claims for additional taxes imposed by the Ministry of Finance as the result of an audit. Angola has not ratified major international arbitration treaties. The World Bank's *Doing Business 2010* report estimates that commercial contract enforcement – measured by the amount of time elapsed between the filing of a complaint and the receipt of restitution – generally takes more than 1,011 days in Angola. A law on voluntary arbitration law that would provide the legal framework for speedier, non-judicial resolution of disputes has been drafted, but not yet approved.

Angola's previous foreign investment law expressly prohibited foreign investment: in the areas of defense, internal public order, and state security; in banking activities relating to the operations of the Central Bank and the Mint; in the administration of ports and airports; and in other areas of the state's exclusive responsibility by law. Although the 2003 Law on Private Investment does not explicitly restate these prohibitions, these areas are assumed to remain off-limits to foreign investors.

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

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Obtaining the proper permits and business licenses to operate in Angola is time consuming and adds to the cost of investment. The World Bank's *Doing Business in 2010* report found that it takes an average of 184 days (compared to a regional average of 80 days) to register a business. The 2003 investment law provides that ANIP and the Council of Ministers should take no more than two months to approve a contract with an investor.

The government is gradually implementing local content legislation for the petroleum sector, originally promulgated in November 2003 (Order 127/03 of the Ministry of Petroleum). The legislation requires many foreign oil services companies currently supplying the petroleum sector to form joint-venture partnerships with local companies on any new ventures.

## **OTHER BARRIERS**

### **Corruption**

Corruption is prevalent and is difficult to address because of vague laws protecting personal property, the lack of adequately trained government staff, low civil service salaries, dependence on a centralized bureaucracy and antiquated regulations dating back to the colonial era. The process to register a company is complicated and may involve up to 14 steps with many different government ministries. Investors are often tempted to seek quicker service and approval by paying gratuities and other facilitation fees.

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

Investors have at times experienced harassment, political interference, and pressure to sell their investments. In some cases, these practices have involved individuals with powerful positions within the government who exert pressure directly or through the established bureaucracy. As a result, some investors have experienced significant delays in payments for government contracts and delays in obtaining the proper permits or approval of projects. Investors report pressure to form joint ventures with powerful local interests. In general, the Angolan government has avoided expropriation of foreign-owned assets during the last decade and has upheld contractual obligations when disputes became public.

### **Deficient Infrastructure**

Angola's badly damaged and neglected infrastructure substantially increases the cost of doing business for investors. Poor roads, destroyed bridges, and mined secondary routes raise transportation costs. The country is in the process of rebuilding its communications, energy, transportation, and road infrastructure. Domestic and international communications are improving, but communication networks are oversubscribed in the provinces and sometimes in the capital city of Luanda, and coverage can be unreliable. Frequent interruptions plague water and power supplies, while power surges can damage electronic equipment. Increased overhead for investors includes outlays for security services, back-up electrical generators, and cisterns. However, rebuilding infrastructure is a major policy objective of the Angolan government.



# ARAB LEAGUE

The impact of the Arab League boycott of Israeli companies and Israeli-made goods on U.S. trade and investment in the Middle East and North Africa varies from country to country. While it can still pose a significant potential barrier (because of associated compliance costs) for U.S. companies and their subsidiaries operating in certain parts of the region, the boycott has extremely limited practical effect overall on U.S. trade and investment ties with most Arab League countries. The 22 Arab League members include the Palestinian Authority and the following states: Algeria, Bahrain, Comoros, Djibouti, Egypt, Iraq, Kuwait, Jordan, Lebanon, Libya, Mauritania, Morocco, Oman, Qatar, Saudi Arabia, Somalia, Sudan, Syria, Tunisia, Yemen, and the United Arab Emirates.

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

Under U.S. antiboycott legislation enacted in 1978, U.S. firms are prohibited from responding to any request for information that is designed to determine compliance with the boycott and are required to report receipt of any such request to the U.S. Department of Commerce's Office of Anti-boycott Compliance (OAC). Part of the U.S. Government's task involves noting for host country officials the persistence of illegal boycott requests and those requests' impact on both U.S. firms and on the countries' ability to expand trade and investment ties with the United States. In this regard, Department of Commerce OAC officials periodically visit Arab League member states to consult with appropriate host country counterparts.

The primary aspect of the boycott prohibits the importation of Israeli-origin goods and services into boycotting countries. This prohibition may conflict with the obligation of Arab League member states that are also members of the World Trade Organization (WTO) to treat products of Israel on a Most Favored Nation (MFN) basis. The secondary and tertiary aspects of the boycott discriminate against U.S. firms and those from other countries that wish to do business with both Israel and boycotting countries. The secondary aspect of the boycott prohibits individuals, as well as private and public sector firms and organizations, in Arab League countries from engaging in business with U.S. firms and those from other countries that contribute to Israel's military or economic development. Such firms are placed on a blacklist maintained by the Damascus-based Central Boycott Office (CBO), a specialized bureau of the Arab League. The tertiary aspect of the boycott prohibits business dealings with U.S. and other firms that do business with blacklisted companies.

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

send representatives to CBO meetings in an observer capacity, or to push for additional discretion in national enforcement of the CBO-drafted prohibited company lists.

EGYPT: Egypt has not enforced any aspect of the boycott since 1980, pursuant to its peace treaty with Israel. However, U.S. firms occasionally find some government agencies using outdated forms containing boycott language. In past years, Egypt has included boycott language drafted by the Arab League in documentation related to tenders funded by the Arab League.

JORDAN: Jordan formally ended its enforcement of any aspect of the boycott with the signing of the Jordanian-Israeli peace treaty in 1994. Jordan signed a trade agreement with Israel in 1995 – and later an expanded trade agreement in 2004 (essentially Israel’s first free trade agreement with an Arab country). Jordanian-Israeli bilateral trade has grown from \$10 million in 1996 to approximately \$374 million in 2008. Though some elements of society continue to oppose improving political and commercial ties with Israel, government policy does not condone such positions.

LIBYA: Libya does not maintain diplomatic relations with Israel and has a boycott law on its books. Since U.S. trade sanctions against Libya were rescinded in April 2004, U.S. companies have reported problems with Libya’s implementation of its boycott law. As part of the commercial registration process, Libyan officials continue to examine U.S. companies’ business relationships with Israel; Libya’s enforcement efforts have deterred several U.S. firms from pursuing business opportunities in the country. In 2009, prohibited boycott-related requests received by U.S. firms from Libyan entities increased markedly, according to Department of Commerce data.

IRAQ: The legal status of Iraq's boycott laws is ambiguous. Conflicting requirements imposed under the Hussein regime, during the Coalition Provisional Authority (CPA)’s administration of Iraq, and under the new government of Iraq, have been complicating efforts to harmonize an official Iraqi position on enforcement of the boycott. There is an existing law from 1956 which provides for an office charged with the enforcement of the boycott, but Iraqi officials have recently taken steps to move away from boycott enforcement. Iraqi officials, when apprised of boycott-related complaints, have been willing to replace boycott-based restrictions with alternative formulations which do not raise the same concerns. U.S. companies continue to encounter prohibited requests in documentation (*e.g.*, contracts, business registration applications, patent and trademark registrations) prepared by certain Iraqi ministries, parastatal organizations, and private sector entities. However, the number of these requests has been steadily decreasing. All Iraqi ministries but one - the Sadrist-controlled Ministry of Health - have ceased requesting private sector compliance with the boycott; the Health Ministry in 2009 issued seven boycott compliance requests to U.S. firms. U.S. Government authorities continue to engage regularly with the Iraqi government to resolve remaining discrepancies between Iraqi government policies and individual entity practices.

YEMEN: There are no specific laws on the books in Yemen regarding the boycott, though Yemen continues to enforce the primary aspect of the boycott and does not trade with Israel. Yemen has stated that, absent an Arab League consensus to end the boycott, it will continue to enforce it. However, Yemen also continues to adhere to its 1995 governmental decision to renounce observance of the secondary and tertiary aspects of the boycott and does not maintain an official boycott enforcement office. Yemen does not maintain in its territory an Arab League office dedicated to the boycott, but it remains a participant in the meetings of the CBO in Damascus.

LEBANON: Although it is not clear how completely Lebanese boycott-related legislation encompasses all three aspects of the boycott, Lebanon continues to enforce the primary boycott. Lebanese legislation

## FOREIGN TRADE BARRIERS

requires that all CBO recommendations for the placing of companies on the national boycott list be submitted to the Cabinet. The Ministry of Economy and Trade reportedly does expect to submit CBO recommendations flowing from both the April and November 2009 CBO meetings to the new Cabinet confirmed in December. It is not clear if the new Cabinet will vote to include these recommendations on the national list, or revert to the practice of previous Cabinets and leave Lebanon's list unchanged. Government contacts report that Lebanon continues to view attendance at CBO meetings as important, because Lebanon lobbies at those meetings against blacklisting certain companies.

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

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

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

**SYRIA:** As host to the Arab League Central Boycott Office, Syria continues to be the strictest adherent of the primary and secondary aspects of the boycott, though it has shown some restraint in enforcement of the tertiary boycott. Syria maintains its own boycott-related blacklist of firms, separate from the CBO list, which it regards as outdated. Syria's boycott practices have not had a substantive impact on U.S. businesses because of U.S. economic sanctions imposed on the country in 2004.

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

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

The situation in individual GCC countries is as follows:

*Bahrain* does not have any restrictions on trade with U.S. companies that have relations with Israeli companies. Outdated tender documents in Bahrain have occasionally referred to the secondary and tertiary aspects of the boycott, but such instances have been remedied quickly when brought to authorities' attention. The government has stated publicly that it recognizes the need to dismantle the

## FOREIGN TRADE BARRIERS

primary aspect of the boycott and is taking steps to do so. The U.S. Government has received assurances from the government of Bahrain that it is fully committed to complying with WTO requirements on trade relations with other WTO Members, and Bahrain has no restrictions on U.S. companies trading with Israel or doing business in Israel, regardless of their ownership or other relations with Israeli companies. Although there are no entities present in Bahrain for the purpose of promoting trade with Israel, Israeli-labeled products reportedly can occasionally be found in Bahraini markets.

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

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

*Qatar* does not have any boycott laws on the books and does not enforce the boycott. However, it normally sends an embassy employee to observe the CBO meetings in Damascus. Although some Qatari government tender documents still include outdated boycott language, the U.S. embassy is unaware of boycott language used in any recent documents. An Israeli trade office opened in Qatar in May 1996. Although Qatar ordered that office closed in January 2009 in protest against the Israeli military action in Gaza, a small number of local staff remains in place. Despite this closure, Qatar continues to allow trade with Israel and allows Israelis to visit the country. Official data from the Qatari government indicated that there was approximately \$2 million in trade between Qatar and Israel in 2007. Actual trade, including Israeli exports of agricultural and other goods shipped via third countries, would likely double the official figures. Qatar permits the entry of Israeli business travelers who obtain a visa in advance.

*Saudi Arabia*, in accordance with the 1994 GCC decision, modified its 1962 law, resulting in the termination of the secondary and tertiary boycotts. Senior Saudi government officials from relevant ministries have requested that U.S. officials keep them informed of any allegations that Saudi entities are seeking to enforce these aspects of the boycott. The Ministry of Commerce and Industry (MOCI) has established an office to address any reports of boycott-related violations; reported violations appear to reflect out-of-date language in recycled commercial and tender documents. MOCI and Commerce Department OAC officials met in January 2010 to discuss methods for ensuring Saudi commercial documents and tenders are in compliance with U.S. antiboycott regulations. Saudi companies have usually been willing to void or revise boycott-related language when they are notified of its use. Saudi Arabia is obligated to apply WTO commitments to all current WTO members, including Israel.

*The United Arab Emirates (UAE)* complies with the 1994 GCC decision and does not implement the secondary and tertiary aspects of the boycott. The UAE has not renounced the primary aspect of the boycott; however, the degree to which the government enforces the primary boycott is unclear.

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According to data from the U.S. Department of Commerce, U.S. firms continue to face a relatively high number of boycott requests in the UAE (This could be attributed to the high volume of U.S.-UAE goods and services trade) which the government explains is mostly due to the use of outdated documentation, especially among private sector entities. The United States has had success in working with the UAE to resolve specific boycott cases – Commerce Department OAC and Ministry of Economy officials met in February 2010 in the latest of a series of meetings to encourage removal of boycott-related terms and conditions from commercial documents. The government continues to take steps to eliminate prohibited boycott requests; it has issued a series of circulars to public and private companies explaining that enforcement of the secondary and tertiary aspects of the boycott is a violation of Emirati policy. These circulars urge entities to amend relevant documents to include boycott-free language previously agreed to by UAE and U.S. Department of Commerce officials. The Emirati authorities report that compliance with these requests has been high and is ongoing. The Ministry of Economy also reports it conducts periodic checks of entities' compliance efforts.

### **Non-Arab League Countries**

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



# ARGENTINA

## TRADE SUMMARY

The U.S. goods trade surplus with Argentina was \$1.7 billion in 2009, a decrease of \$44 million from 2008. U.S. goods exports in 2009 were \$5.6 billion, down 26.2 percent from the previous year. Corresponding U.S. imports from Argentina were \$3.9 billion, down 33.2 percent. Argentina is currently the 31st largest export market for U.S. goods.

U.S. exports of private commercial services (*i.e.*, excluding military and government) to Argentina were \$3.6 billion in 2008 (latest data available), and U.S. imports were \$1.6 billion. Sales of services in Argentina by majority U.S.-owned affiliates were \$4.8 billion in 2007 (latest data available), while sales of services in the United States by majority Argentine-owned firms were \$131 million.

The stock of U.S. foreign direct investment (FDI) in Argentina was \$15.2 billion in 2008 (latest data available), up from \$14.1 billion in 2007. U.S. FDI in Argentina is mostly in the nonbank holding companies, manufacturing, and mining sectors.

## IMPORT POLICIES

### Tariffs

Argentina's import tariffs range from zero percent to 35 percent, with an average applied tariff rate of 16 percent as of late 2009.

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

Argentina is permitted by MERCOSUR to maintain until December 31, 2011, over 800 exceptions to the CET on capital goods (for which the CET is 14 percent but for which Argentina allows duty-free entry), computing and telecommunications goods, chemicals, sugar, and an additional diversified group of 100 products. On November 18, 2009, Argentine President Cristina Kirchner and Brazilian President Luiz Inácio Lula da Silva agreed to work on the reduction of exceptions for Argentina.

In December 2009, Argentina – along with the other MERCOSUR members – also approved tariff increases for hundreds of products in the CET, including dairy, textiles, and bags, backpacks, and suitcases. In many cases, the applied tariffs were increased up to the bound levels, *i.e.*, the level that generally under WTO rules cannot be exceeded. In October 2008, Argentina adopted a decision (issued by MERCOSUR in September 2007), to increase the CET on several hundred tariff lines of textiles, footwear, and automobiles and automotive parts from a prior ceiling of 20 percent to either 26 percent (for textiles) or 35 percent (for apparel and footwear). Automobiles and automotive parts are subject to tariffs of 26 percent or 35 percent depending on the model, part, and/or origin.

While the majority of tariffs are levied on an *ad valorem* basis, Argentina charges compound rates consisting of *ad valorem* duties plus specific levies known as “minimum specific import duties” (DIEM)

## FOREIGN TRADE BARRIERS

on products in several sectors, including textiles and apparel, footwear, and toys. These DIEMs are scheduled to expire on December 31, 2010. These compound import duties do not apply to goods from MERCOSUR countries and cannot exceed an *ad valorem* equivalent of 35 percent.

Since late 2008, the government of Argentina has initiated numerous antidumping investigations and imposed antidumping duties in a wide range of sectors. The antidumping investigations primarily involve products imported from major trading partners Brazil and China. While none of the new investigations involve direct exports from the United States, there are several U.S.-owned companies exporting from China to Argentina that have complained of lost market share and unprofitable margins on products due to antidumping duties, either imposed or threatened.

Since 2007, Argentina has imposed a specific safeguard duty on imports of recordable compact discs. The safeguard is scheduled to be phased out by May 2010.

### **Nontariff Barriers**

Argentina has imposed new customs and licensing procedures and requirements since October 2008 that, combined with a series of measures implemented in mid-2007, can make importing U.S. products and products from third country affiliates of U.S. companies more difficult. The measures include additional inspections, port-of-entry restrictions, expanded use of reference prices, automatic and non-automatic licenses, and requirements for importers to have invoices notarized by the nearest Argentine diplomatic mission when imported goods are below reference prices. A number of U.S. companies with operations in Argentina have expressed concerns that the measures implemented in October 2008 and subsequently have delayed imports and made imports of intermediate and final goods from U.S. companies and their third country affiliates more costly and in some cases, nearly impossible. In response to U.S. Government inquiries, Argentine government officials have asserted that all of these measures are nondiscriminatory and WTO-consistent. The U.S. Government continues to monitor the situation.

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

Another measure, Disposition 16/2008 of November 2008, imposed new “automatic” license requirements on 1,200 different types of consumer goods, which collectively represented approximately 7 percent of total imports in 2007. Products affected include food and drink, pet food, computer and audio equipment, cars, bicycles, cameras, mattresses, telephones, toys, and watches. The licenses are issued 48 hours to 72 hours after application and are explained as statistical requirements.

Customs Resolution 52 of 2007 and subsequent resolutions restrict the ports-of-entry for numerous goods, including sensitive goods classified in 20 Harmonized Tariff Schedule (HTS) chapters (*e.g.*, textiles, shoes, electrical machinery, metal and certain other manufactured goods, and watches). Partial limitations on ports-of-entry are applied to plastic household goods, leather cases and apparel, porcelain and ceramic tableware and ornaments, household glass goods, imitation jewelry, household appliances, pots and pans, computers, car parts, motorcycles and parts, bicycles and parts, lamps, and toys. The government of Argentina has listed products limited to certain ports-of-entry and the ports-of-entry



applicable to those products at: <http://www.infoleg.gov.ar/infolegInternet/anexos/130000-134999/131847/norma.htm>.

Depending on their country of origin, many of these products are also subject to Customs External Note 58 of 2007, which revised some reference prices and set new ones on over 7,000 tariff lines. This Note expanded selective, rigorous “red channel” inspection procedures (via Resolution 1907 of 2005 and amplified by Customs External Note 55 in 2007) to a broader range of goods and requires importers to provide guarantees for the difference of duties and taxes if the declared price of an import is lower than its reference price.

Customs External Note 57 of 2007, which the government of Argentina indicated was designed to discourage under-invoicing and fraudulent under-payment of customs duties, requires importers of any goods from designated countries that are invoiced below the reference prices to have the invoice validated by both the exporting country’s customs agency and the appropriate Argentine Embassy or Consulate in that country. The government of Argentina has made the list of reference prices and applicable countries (the Annex to Customs External Note 58) available at: <http://www.infoleg.gov.ar/infolegInternet/anexos/130000-134999/131630/notaext58-2007-sup.doc>.

Since 2005, the government of Argentina has required non-automatic licenses on shoes, requiring certificates that are valid for only 120 days and whose issuance involves procedures that, according to the private sector, are burdensome. The government of Argentina says this requirement is needed for informational purposes. Some U.S. companies, however, claim it is designed to delay footwear imports.

Since October 2008, the government of Argentina has significantly expanded the list of products subject to both automatic and non-automatic import licensing. From January to April 2009, it submitted seven new notifications to the WTO Committee on Import Licensing Procedures. In total, Argentina has issued regulations enforcing automatic as well as non-automatic licensing on nearly 40 tariff lines affecting three dozen trading partners. A broad range of sectors have been targeted, including textiles, metallurgical products, chemical products, general and special purpose machinery, consumer goods, and several additional sectors. Since 2005, the government has also required non-automatic import licenses for toys. Obtaining a license is burdensome and requires multiple duplicative reviews by several different government offices. The process generally takes 100 days or more, partly due to a backlog of license applications. Once issued, the certificates are valid for 60 days. In 2008 and 2009, some toy importers reported difficulty in bringing products into Argentina.

Argentina also may be using its import license system as a trade balancing measure and companies have reported concerns that the system lacks transparency, appears arbitrary, and is preventing access to the Argentine market. Companies also have reported not being granted import licenses unless they commit to export from or invest in Argentina.

Since 2005, the government of Argentina has requested private sector companies to negotiate and abide by sector-specific voluntary price caps aimed at limiting price increases, especially on Argentina’s basic consumption basket components. Sectors in which voluntary price accords have been negotiated include a variety of foodstuffs, personal hygiene and cleaning products, and pharmaceuticals. The government, which had largely frozen public utility electricity and natural gas rates since 2002, has recently allowed selective increases targeting industrial and large users and is starting to allow increases for consumers.

Argentina prohibits the import of many used capital goods. Used capital goods that can be imported are subject to a 6 percent import tariff. Some used machinery imports are allowed, but only if repaired or

## FOREIGN TRADE BARRIERS

rebuilt. The Argentina-Brazil Bilateral Automobile Pact also bans the import of used self-propelled agricultural machinery, unless it is rebuilt. Imports of used clothing are prohibited through June 2010, except when donated to government or religious organizations, as established by Resolution 367 in 2005. Argentina prohibits the importation and sale of used or re-treaded tires, used or refurbished medical equipment, including imaging equipment, and used automotive parts.

A fee of 0.5 percent to fund the government of Argentina's compilation of trade data is assessed on most imports (90 percent of all HTS lines).

### **Customs Procedures**

In August 2009, Argentina's Federal Administration for Public Revenue revised certificate of origin requirements for a long list of products with non-preferential origin treatment through External Note 4 (which replaced External Note 2 from 2008). This regulation refers generally to certain organic chemicals, tires, parts of bicycles, flat-rolled iron and steel, certain iron and steel tubes, air conditioning equipment, wood fiberboard, most fabrics (wool, cotton, other vegetable, etc), carpets, most textiles (knitted, crocheted, etc.), apparel, footwear, metal screws and bolts, furniture, toys and games, brooms, and brushes. To receive the MFN tariff rate, the certificate of origin must be certified by an Argentine consulate. The certificate is valid for 180 days which has proven problematic for some companies. Companies report that the major delays in obtaining an import license often put them over the 180 day validity period for the certificate of origin.

In 2005, AFIP Resolution 1811 amended the import-export regime applied to couriers. This amendment reduced the maximum value of express delivery service shipments for which simplified customs clearance procedures are applied from \$3,000 to \$1,000. Additionally, couriers are now considered importers and exporters of goods, rather than transporters, and also must declare the tax identification codes of the sender and addressee, both of which render the process more time consuming and costly. These regulations increase the cost not only for the courier, but also for users of courier services. The U.S. Government has raised these policies with the Ministry of Federal Planning, Public Investment and Services; the Directorate of Customs; and the National Administration of Civil Aviation.

### **EXPORT POLICIES**

Following the 2002 currency devaluation, the government of Argentina imposed export taxes on all but a few exports, including significant export taxes on key hydrocarbon and agricultural commodities, to generate revenue, increase domestic supplies, and constrain domestic price increases. In many cases, the export tax for raw materials is set higher than the sale price of the processed product to encourage development of domestic value added production. Crude hydrocarbon export taxes are indexed to world commodity benchmarks. Total export tax revenue in 2008 was equal to 16.3 percent of the value of all Argentine exports (up from 11.8 percent in 2007), including goods not subject to export taxes. In 2008, export taxes, which predominantly come from agricultural exports, accounted for nearly 13 percent of total tax collection and for virtually the whole of the Argentine government fiscal surplus (3.1 percent of GDP).

Export taxes continue to be actively managed by the government of Argentina. As of November 2009, the following major agricultural commodities were subject to export taxes: soybeans at 35 percent; soybean oil and soybean meal at 32 percent; sunflower seeds at 32 percent; sunflower meal and sunflower oil at 30 percent; wheat at 23 percent; and corn at 20 percent. The effective export tax on biodiesel was 16.6 percent in 2009, with a 2.5 percent rebate. The differential taxes between raw and processed

## **FOREIGN TRADE BARRIERS**

products create large incentives to process those commodities locally - particularly for soybeans, which are turned into oil and in turn provide the feedstock for Argentina's rapidly growing biodiesel industry.

### **Export Registrations**

Along with applying high export taxes, the government of Argentina requires export registration for major commodities before an export sale can be shipped. The National Organization of Control of Agricultural Commercialization (ONCCA) administers the Registry of Export Operations under the provisions of Resolution 3433/2008 of August 27, 2008. All exports must be registered and the government has the authority to reject or delay exports depending on domestic price and supply conditions. This process has been used to control the quantity of goods exported, thereby guaranteeing domestic supply. Export registrations of wheat, corn, beef, and dairy products continue to be subject to periodic restrictions to guarantee domestic supplies. As of November 2009, registrations were open for all major commodities. Resolution 7552/2009 of October 2009 establishes mandatory domestic supply levels for corn and wheat (8 million tons and 6.5 million tons, respectively), which must be maintained in the domestic market in order for export registrations to be granted for those commodities. Resolution 7552/2009 eliminated restrictions for wheat and corn exports, principally for exporters and producers participating in an agreement to precondition exports on satisfaction of domestic market needs.

Argentina imposes time restrictions on grain and oilseed exports depending on when the export tax is paid. Under these regulations, exporters must export the product within 45 days of registration, if the export tax is paid at time of export. Up to 365 days for corn and wheat, and 180 days for soybean and sunflowers products, are allowed if the exporter pays the export tax at the time of requesting the export license.

### **INTELLECTUAL PROPERTY RIGHTS (IPR) PROTECTION**

Argentina was listed on the Priority Watch List in the 2009 Special 301 report. Key concerns cited in the report relate to strengthening IPR enforcement actions to combat the widespread availability of pirated and counterfeit products. Although cooperation has improved between Argentina's enforcement authorities and the U.S. copyright industry, and the Argentine Customs authority has taken steps to improve enforcement, stronger IPR enforcement actions to combat the widespread availability of pirated and counterfeit products is needed. Civil damages have not proven to be a deterrent to piracy and counterfeiting, and in criminal cases the judiciary is reluctant to impose strong penalties, such as prison sentences. In addition, Argentina does not provide adequate protection against unfair commercial use of undisclosed test and other data generated to obtain marketing approval for pharmaceutical products and lacks an effective system to prevent the issuance of marketing approvals for unauthorized copies of patented pharmaceutical products.

### **SERVICES BARRIERS**

#### **Audiovisual Services**

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

## **Financial Services**

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

## **GOVERNMENT PROCUREMENT**

Law 25551 of 2001 establishes a national preference for local industry for most government purchases where the domestic supplier bid, depending on the size of the company, is no more than 5 percent to 7 percent higher than the foreign bid. The preference applies to tender offers by all government agencies, public utilities, and concessionaires. There is similar legislation at the provincial level. These preferences serve as barriers to participation by foreign firms.

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

## **INVESTMENT BARRIERS**

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

## **Exchange and Capital Controls**

Hard currency earnings on exports, from both goods and services, must be converted to pesos in the local foreign exchange market, with some exceptions. There are limits set on the total amount of export income that may remain in foreign currency. For example, the maximum foreign exchange clearance allowed for hydrocarbon exports is 30 percent of total revenues. There is no maximum for exports of certain minerals, re-exports of some temporary imports, and exports to Argentine foreign trade zones. Time limits to fulfill the obligation to convert to pesos range from approximately 60 days to 360 days for goods (depending on the goods involved) and 135 days for services. For certain capital goods and situations where Argentine exports receive longer-term financing not exceeding six years, Argentine exporters face more liberal time limits. As a general matter, local companies may not use foreign currency to pay for offshore transactions. However, a portion of foreign currency earned through exports may be used for foreign transactions.

Argentina has expanded its capital control regime since 2003, with the stated goal of avoiding the potentially disruptive impact of large short-term capital flows on the nominal exchange rate. In May 2005, the government issued Presidential Decree 616 revising registration requirements for inflows and outflows of capital and extending the minimum investment time period from 180 days to 365 days. The Decree also expanded the registration requirement to include "all types of debt operations of residents that could imply a future foreign currency payment to nonresidents" and requires that all foreign debt of private Argentine residents, with the exception of trade finance and initial public debt offerings that bring foreign exchange into the market, must include provisions that the debt need not be repaid in less than 365 days. Since 2004, both foreign and domestic institutional investors are restricted to total currency transactions of \$2 million per month, although transactions by institutions acting as intermediaries for others do not count against this limit.

## **FOREIGN TRADE BARRIERS**

The Ministry of Economy implemented Decree 616 through resolutions in 2005 and 2006 that imposed more restrictive controls on the following classes of inbound investments: inflows of foreign funds from private sector debt (excluding foreign trade and initial public offerings of stock and bond issues); inflows for most fiduciary funds; inflows of nonresident funds that are destined for the holding of Argentine pesos or the purchase of private sector financial instruments (excluding foreign direct investment and the primary issuance of stocks and bonds); and investments in public sector securities purchased in the secondary market. These inflows are subject to three restrictions: (a) they may not be transferred out of the country for 365 days after their entry; (b) proceeds from foreign exchange transactions involving these investments must be paid into an account in the local financial system; and (c) a 30 percent unremunerated reserve requirement must be met, meaning 30 percent of the amount of such transactions must be deposited in a local financial entity for 365 days in an account that must be denominated in dollars and pay no interest. As of September 2006, a deposit is not required for capital inflows intended to finance energy infrastructure works. Furthermore, as of January 2008, a deposit is not required for inflows for the purchase of real estate property by foreigners as long as the foreign exchange liquidation occurs on the day of settlement (and transfer of the title). As of February 2009, a deposit is not required for inflows to be used for tax payments and social security contributions within the 10 days following settlement of the foreign currency exchange. Violations are subject to criminal prosecution. In October 2007, the Central Bank introduced new control measures, banning all foreign entities from participating in Central Bank initial public offerings. However, foreign firms may still trade Central Bank debt instruments on the secondary market.

#### **Non-Payment of Investment Treaty Awards**

Fifteen U.S. investors have submitted claims to investor-State arbitration under the United States-Argentina Bilateral Investment Treaty (BIT). Some of these cases claim that measures imposed by Argentina during the financial crisis that began in 2001 breached certain BIT obligations. Investor-State arbitral tribunals have ruled against Argentina in a number of these cases, awarding hundreds of millions of dollars to U.S. investors.

To date, Argentina has resisted paying the damages that it owes to U.S. investors under these awards. Argentina has argued that, under the Convention on the Settlement of Investment Disputes between States and Nationals of Other States (the “ICSID Convention”), it is not required to pay damages until a prevailing claimant has completed the potentially lengthy additional process of taking all necessary steps to enforce a final ICSID award through the Argentine courts. In 2008, the U.S. Government filed a submission in an ongoing arbitration rebutting Argentina’s argument and affirming its view that Argentina is obligated to pay final ICSID awards immediately. Arbitral tribunals have rejected Argentina’s argument.

At present, U.S. investors continue to seek Argentina’s payment of outstanding arbitral awards.

#### **ELECTRONIC COMMERCE**

Argentina does not allow the use of electronically produced air waybills, limiting their ability to speed up customs processing and the growth of electronic commerce transactions.



# AUSTRALIA

## TRADE SUMMARY

The U.S. goods trade surplus with Australia was \$11.6 billion in 2009, down \$47 million from 2008. U.S. goods exports in 2009 were \$19.6 billion, down 11.8 percent from 2008. Corresponding U.S. imports from Australia were \$8.0 billion, down 24.3 percent. Australia is currently the 14th largest export market for U.S. goods.

U.S. exports of private commercial services (*i.e.*, excluding military and government) to Australia were \$11.8 billion in 2008 (latest data available), and U.S. imports were \$6.1 billion. Sales of services in Australia by majority U.S.-owned affiliates were \$36.6 billion in 2007 (latest data available), while sales of services in the United States by majority Australia-owned firms were \$10.7 billion.

The stock of U.S. foreign direct investment (FDI) in Australia was \$88.5 billion in 2008 (latest data available), up from \$83.3 billion in 2007. U.S. FDI in Australia is led by the mining, nonbank holding companies, information, and manufacturing sectors.

## UNITED STATES-AUSTRALIA FREE TRADE AGREEMENT (FTA)

The United States-Australia FTA entered into force on January 1, 2005. The FTA is a comprehensive agreement that covers goods, services, investment, financial services, government procurement, standards and technical regulations, telecommunications, competition related matters, electronic commerce, intellectual property rights, labor and the environment. More than 99 percent of U.S. exports of manufactured goods are duty free under the FTA. The United States and Australia review implementation of the FTA annually. The fourth FTA review took place in October 2009.

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

## GOVERNMENT PROCUREMENT

Australia is not a signatory to the WTO Agreement on Government Procurement. Under the FTA, the Australian government opened its government procurement market to U.S. suppliers, eliminating discriminatory preferences for domestic suppliers and agreeing to use fair and transparent procurement procedures. Australia may still offer preferences for small and medium-sized businesses and indigenous people under the terms of the FTA.

For Australian national government purchases, the FTA does not apply to procurement of goods and services below \$70,079 or to procurement of construction services below \$7,804,000. For provincial government entities covered by the FTA, the agreement does not apply to procurement of goods and services below \$554,000 or to procurement of construction services below \$7,804,000.

## FOREIGN TRADE BARRIERS

Several new procurement policies have emerged recently, both at the national and provincial levels, which could potentially adversely impact U.S. suppliers or bidders. The United States is closely monitoring these policies to ensure consistency with Australia's obligations under the FTA.

In June 2009, the government of New South Wales introduced measures giving local industry preference in major projects. The Local Jobs First plan requires government agencies and state-owned corporations to give preferential treatment to Australian-made goods. The price preference means locally made content is discounted by 20 percent compared to overseas-sourced material in tender evaluations. Previously, a price preference applied only to businesses with up to 200 workers. It has now been extended to businesses with up to 500 workers. Every tender over A\$4 million (approximately \$3 million) also requires a local industry participation plan. Australia has assured the United States that this policy would be applied consistent with Australia's obligations under the FTA.

In July 2009, the Industry Ministry released the "Boosting Australian Industry Participation" policy that requires tenderers for government work to outline their use of Australian suppliers in every bid. The policy directs all tenderers to disclose their suppliers, whether local or overseas.

The Victorian Industry Participation Policy was also modified in July 2009 to encourage greater local content in procurements in that province. Pursuant to the changes, local content rules may apply to projects designated strategically significant as defined by the Victoria Department of Innovation, Industry and Regional Development.

## **INTELLECTUAL PROPERTY RIGHTS (IPR) PROTECTION**

Australia generally provides strong IPR protection and enforcement. However, some copyright holders complain that convictions for criminal copyright piracy tend to result in insufficient penalties, which undermines the goal of deterrence.

In 2008, Australia began a review of penalties and additional damages in its Trademark Act. An issues paper in February 2009 noted that penalties for criminal trademark offenses are significantly lower than for copyright offenses (two years compared to five years) and recommended that these penalties be brought into alignment with copyright penalties. The report also recommends that additional damages should be provided in civil cases for willful trademark infringement.

## **SERVICES BARRIERS**

### **Telecommunications**

The Australian government has reduced its equity share in Telstra -- Australia's largest telecommunications company which was formerly owned by the Australian government -- to 17 percent, reducing concerns about its conflicting roles as regulator and owner of the dominant telecommunications operator. The 17 percent share was placed in Australia's Future Fund. In August 2009, the Future Fund reduced its share of Telstra to 10.9 percent. Concerns remain, however, about foreign equity limits in Telstra, which are still capped at 35 percent. U.S. industry also remains concerned about the potential for Telstra to abuse its monopoly power and its aggressive use of litigation to delay regulatory outcomes. Alleged abuses include delays in making an acceptable public offer for access to its network and inflated pricing of wholesale services such as leased lines and interconnection with both its fixed and mobile



network. There have been numerous disputes with competitors over access to Telstra's network which are subject to ongoing regulatory or judicial proceedings.

In mid-2009, the Australian government announced that it wanted Telstra to voluntarily separate its retail and wholesale arms in order to level the competitive playing field of the telecommunications sector ahead of the construction of its National Broadband (NBN) project. Failure to do so could result in Telstra being forced to divest its cable network and its half-share in pay television broadcaster Foxtel or face being denied the wireless spectrum it needs to evolve its mobile business and roll out fourth generation mobile technology. Telstra has opposed the draft legislation that would implement structural separation within its telecommunications network. The United States will monitor the planned NBN, particularly with respect to whether, with or without such separation, competitors are able to obtain reasonable access to services and customers to compete with Telstra, one of the goals of the NBN.

## **Media**

Under the FTA, existing requirements on Australian local content remain, but the agreement limited or prohibited their extension to newer media or means of transmission. Australia maintains strict domestic content requirements on all free-to-air television programming broadcast between 6:00 a.m. and midnight. Australia's Broadcasting Services Amendment Act requires subscription television channels with significant drama programming to spend 10 percent of their programming budgets on new Australian drama programs (with the FTA allowing flexibility, under certain circumstances, to increase this up to 20 percent). Australian radio industry quotas require that up to 25 percent of all music broadcast between 6:00 a.m. and midnight be "predominantly" Australian in origin/performance.

## **INVESTMENT BARRIERS**

Pursuant to the Foreign Investment and Takeovers Act (FATA), certain proposed foreign investments into Australia require screening by the Foreign Investment Review Board (FIRB), which makes recommendations to the Treasurer on whether the proposed investments should be approved. Foreign investment proposals subject to the FATA include acquisitions of interest in an Australian business or corporation which is valued above A\$219 million (approximately \$176 million) (a threshold that is indexed annually, and was increased from A\$100 million (approximately \$80 million) in September 2009).

The FTA provides U.S. investors with certain beneficial treatment with respect to these screening requirements. For example, under the FTA, the screening threshold for acquisition of interests in Australian businesses by U.S. investors is A\$953 million (approximately \$765 million) (rather than the A\$219 million applicable to foreign investors generally). Acquisitions by U.S. investors below this threshold are not subject to FIRB screening, except for investments in specified sensitive sectors, in which the general threshold applies. Proposals by U.S. investors to establish new businesses in Australia are entirely exempt from FIRB screening under the FTA.

## **OTHER BARRIERS**

### **Pharmaceuticals**

The FTA addressed transparency, including certain regulatory concerns, and established an independent review process for innovative medicines. The FTA also established a Medicines Working Group that has helped facilitate a constructive dialogue between the United States and Australia on health policy issues.

## **FOREIGN TRADE BARRIERS**

However, the U.S. pharmaceutical industry continues to complain that provisions requiring patent holders receive advance notice to enable them to seek injunctive relief prior to patent infringing products entering the market have not been effectively implemented.

### **Blood Plasma Products and Fractionation**

Foreign companies face substantial barriers to the provision of blood plasma products to the Australian market. While foreign blood products may be approved for sale in Australia, the monopoly contract granted by the Australian government to an Australian company makes it virtually impossible for foreign firms to sell their products in Australia except to fill shortages or provide products not otherwise available in Australia. In late 2006, Australia completed a review, required under the FTA, of its arrangements for the supply of blood fractionation services. The Australian government recommended that states adopt the tendering process prescribed in the Government Procurement chapter of the FTA. However, state health ministers in 2007 decided to retain the current monopoly arrangement. There have been no changes since then.

# **BAHRAIN**

## **TRADE SUMMARY**

The U.S. goods trade surplus with Bahrain was \$205 million in 2009, down \$86 million from 2008. U.S. exports in 2009 were \$669 million, down 19.4 percent from the previous year. Corresponding U.S. imports from Bahrain were \$464 million, down 14.0 percent. Bahrain is currently the 81st largest export market for U.S. goods.

The stock of U.S. foreign direct investment (FDI) in Bahrain was \$18 million in 2008 (latest data available), down from \$80 million in 2007.

## **IMPORT POLICIES**

Upon entry into force of the United States-Bahrain Free Trade Agreement (FTA) in August 2006, 100 percent of bilateral trade in consumer and industrial products became duty-free. Bahrain will phase out tariffs on the remaining handful of agricultural product lines by 2015. Textiles and apparel trade is duty-free, promoting new opportunities for U.S. and Bahraini fiber, yarn, fabric, and apparel manufacturing.

As a member of the Gulf Cooperation Council (GCC), Bahrain applies the GCC common external tariff of 5 percent for most non-U.S. originating products, with a limited number of GCC-approved country-specific exceptions. Bahrain's exceptions include alcohol (125 percent) and tobacco (120 percent). Some 434 food and medical items are exempted from customs duties entirely.

## **GOVERNMENT PROCUREMENT**

Under the FTA, procuring entities in Bahrain are required to conduct procurements covered by the FTA in a fair, transparent, and nondiscriminatory manner.

Bahrain requires foreign suppliers that are awarded a tender to register in accordance with the applicable regulations in Bahrain within 30 days from the date of the award of the tender. In order to be registered in Bahrain, a supplier must obtain a Commercial Registration Certificate from the Ministry of Industry and Commerce which requires that a registrant have a local presence in Bahrain. The United States has asked Bahrain to eliminate this local presence requirement for suppliers of goods or services of the United States in procurement covered by the United States-Bahrain FTA.

Bahrain is not a signatory to the WTO Agreement on Government Procurement, but it became an observer to the WTO Committee on Government Procurement in December 2008.

## **INTELLECTUAL PROPERTY RIGHTS (IPR) PROTECTION**

In the FTA, Bahrain committed to provide strong IPR protection and enforcement. Bahrain passed IPR legislation and regulations to implement these commitments in the areas of copyrights, trademarks, patents, and enforcement, among others.

As part of the GCC Customs Union, the six Member States are preparing a common trademark law, as well as a common unfair competition law to protect from unfair commercial use undisclosed information submitted for marketing approval of pharmaceutical products. The United States is engaged in a dialogue

## **FOREIGN TRADE BARRIERS**

with GCC technical experts to ensure that the trademark law and unfair competition law will facilitate Member States' implementation of international and bilateral obligations.

# **BOLIVIA**

## **TRADE SUMMARY**

The U.S. goods trade deficit with Bolivia was \$73 million in 2009, down \$49 million from 2008. U.S. goods exports in 2009 were \$432 million, up 10.9 percent from the previous year. Corresponding U.S. imports from Bolivia were \$505 million, down 1.3 percent. Bolivia is currently the 91st largest export market for U.S. goods.

The stock of U.S. foreign direct investment (FDI) in Bolivia was \$308 million in 2006 (latest data available).

## **IMPORT POLICIES**

Bolivia's new constitution, adopted in February 2009, establishes broad new guidelines to give priority to local production. To date, implementing legislation has not been enacted.

### **Tariffs**

In an effort to protect Bolivia's local industry, the government changed its tariff structure in November 2007. Under this scheme, imported capital goods designated for industrial development enter duty-free, non-essential capital goods are subject to a five percent tariff, and most other goods are subject to tariffs of 10 percent to 20 percent. In May 2009, Bolivia established a 35 percent tariff on textile products and wooden furniture (Supreme Decree 125).

### **Nontariff Measures**

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

Since December 2008, Bolivia has prohibited the importation of cars more than five years old, diesel vehicles with engines smaller than 4,000 cubic centimeters, and all vehicles that use liquefied petroleum gas.

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

Since January 2004, Bolivia has banned the importation of certain types of used clothing, including: old or damaged apparel; used bedding and intimate apparel; old shoes; and certain damaged textile articles,

## **FOREIGN TRADE BARRIERS**

including rags, cords, string, and rope. In June 2006, the government of Bolivia renewed these prohibitions and banned all used clothing imports after April 20, 2007.

## **GOVERNMENT PROCUREMENT**

Government expenditures account for a significant portion (33 percent) of Bolivia's Gross Domestic Product. The central government, sub-central governments (state and municipal levels), and other public entities remain important buyers of machinery, equipment, materials, and other goods and services. In 2004, Bolivia enacted through a Supreme Decree the "*Compro Boliviano*" (Buy Bolivian) program. This program supports domestic production by giving preference and exclusivity to Bolivian products in government purchases.

In 2007 and again in 2009, the Bolivian government modified its rules for procurement and contracting of services. Under these rules, the government must give priority to small and micro producers and peasant associations in procurements under \$100,000. In addition, the government requires fewer guarantees and places fewer prerequisites on vendors that qualify as small and micro producers or peasant associations.

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

## **INTELLECTUAL PROPERTY RIGHTS (IPR) PROTECTION**

Bolivia was listed on the Watch List in the 2009 Special 301 report. Key concerns cited in the Report relate to the rampant piracy of software, music and movies, and counterfeiting, including counterfeiting of medicines, that persist in Bolivia. There are also concerns about the erosion of intellectual property protection for pharmaceutical products.

## **INVESTMENT BARRIERS**

Foreign investment has been negatively affected by recent government policy changes, which stem in part from the adoption of a new constitution in February 2009. While the constitution has yet to be fully implemented, one of its most troubling provisions calls for a limit on foreign companies' access to international arbitration in cases of conflicts with the government. It also states that all bilateral investment treaties must be renegotiated to adjust to this and other new provisions. The United States–Bolivia Bilateral Investment Treaty (BIT), which entered into force in June 2001, could be affected by this requirement as the treaty guarantees recourse to international arbitration. In a related action, in October 2007, Bolivia became the first country ever to withdraw from the World Bank's International Centre for Settlement of Investment Disputes (ICSID).

The current Bolivian administration is reversing a previous privatization trend and placing increasing emphasis on public enterprise. In an effort to control key sectors of the economy, the current administration has through contract renegotiations required by Bolivian law obtained 51 percent ownership control in the following companies:

## **FOREIGN TRADE BARRIERS**

- *Empresa Andina* (Repsol – Spain) – oil and gas sector;
- *Compania Logistica de Hidrocarburos Bolivia* (German and Peruvian) – oil and gas sector;
- *Transredes* (British, American, Dutch) – oil and gas sector;
- *Chaco* (British Petroleum - British) – oil and gas sector; and
- *ENTEL* (Italian) – telecommunications sector.

In September 2009, as part of renationalization negotiations, the Bolivian government acquired 47 percent to 50 percent of the shares of hydroelectric plants that were privatized 12 years ago: *Corani* (French), *Guaracachi* (English), and *Valle Hermoso* (Bolivian). The government has also announced that additional sectors, including water and railways, could also be nationalized.

Nationalization is not the only means the government is using to re-establish the role of the public sector in the economy. In the past three years, the Bolivian government has created ten public companies (with three more proposed) in the strategic sectors of food production, industrialization of natural resources, and internal and external market sales. Private sector entities complain that these public companies generate subsidized, unfair competition and are leading to a state-driven economic system.

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

In the case of hydrocarbon resources, Article 359 of the new constitution stipulates that all hydrocarbon deposits, whatever their state or form, belong to the government of Bolivia. No concessions or contracts may transfer ownership of hydrocarbon deposits to private or other interests. The Bolivian government exercises its right to explore and exploit hydrocarbon reserves and trade related products through the state-owned firm *Yacimientos Petrolíferos Fiscales Bolivianos* (YPFB). YPFB benefitted from previous government measures in 2005 that required operators to turn all production over to it and to sign new contracts that gave YPFB control over the distribution of gasoline, diesel, and liquefied petroleum gas to gas stations. Article 359 allows YPFB to enter into joint venture contracts for limited periods of time with national or foreign individuals or companies wishing to exploit or trade hydrocarbons or their derivatives.

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

Finally, Bolivian labor law also limits the ability of foreign firms to globally staff their companies by restricting foreign employees to 15 percent of the work force and only as technical staff.

## **OTHER BARRIERS**

Contraband and corruption continue to mar the business climate in Bolivia, reflecting the country's large informal economy and the prevalence of tariff and tax evasion. Approximately 34 percent of total imports are smuggled into the country. Recently, a U.S.-based, privately held worldwide distributor of mobile phone and wireless infrastructure products and services announced that it was canceling plans to establish a cellular telephone assembly plant in Bolivia due to the fact that it was impossible to compete in a market where 90 percent of the cell phones are sold on the informal market.

## **FOREIGN TRADE BARRIERS**





# BRAZIL

## TRADE SUMMARY

The U.S. goods trade surplus with Brazil was \$6.1 billion in 2009, an increase of \$4.3 billion from 2008. U.S. goods exports in 2009 were \$26.2 billion, down 19.0 percent from the previous year. Corresponding U.S. imports from Brazil were \$20.1 billion, down 34.1 percent. Brazil is currently the 10th largest export market for U.S. goods.

U.S. exports of private commercial services (*i.e.*, excluding military and government) to Brazil were \$12.3 billion in 2008 (latest data available), and U.S. imports were \$5.0 billion. Sales of services in Brazil by majority U.S.-owned affiliates were \$25.4 billion in 2007 (latest data available), while sales of services in the United States by majority Brazil-owned firms were \$1.1 billion.

The stock of U.S. foreign direct investment (FDI) in Brazil was \$45.5 billion in 2008 (latest data available), down from \$47.8 billion in 2007. U.S. FDI in Brazil is led by the manufacturing, and finance/insurance sectors.

## IMPORT POLICIES

### Tariffs

Brazil's import tariffs range from 0 percent to 35 percent, with an average applied tariff rate of 11.5 percent in 2009. Brazil's average bound tariff, *i.e.*, the rate that generally cannot be exceeded under WTO rules, is significantly higher at 31.4 percent. Given the large disparities between bound and applied rates, U.S. exporters face significant uncertainty in Brazil's market because the government has the ability to raise applied rates to bound levels in an effort to manage prices and supply. For instance, in August and September 2009, Brazil raised tariffs by as much as 14 percentage points on several industrial products including industrial fatty alcohols, refractory bricks, valves for oleohydraulic or pneumatic transmissions, and parts of electric appliances.

Brazil is a member of the MERCOSUR common market, formed in 1991 and comprised of Argentina, Brazil, Paraguay, and Uruguay. MERCOSUR's Common External Tariff (CET) averages 11.5 percent and ranges from 0 percent to 35 percent *ad valorem*, with a limited number of country-specific exceptions. Tariffs may be imposed by each MERCOSUR member on products imported from outside the region that transit at least one MERCOSUR member before reaching their final destination.

Brazil is permitted by MERCOSUR to maintain 93 exceptions to the CET until December 31, 2011. Brazil's Foreign Trade Chamber (Camex) decided in June 2009 to raise import duties on a select group of 8 imported steel products by removing these items from an exceptions list of 100 duty-free products contained in MERCOSUR's CET. Products covered under this action included different types of hot- and cold-rolled steel in plates and coils. The removal of these products from the exceptions list increased the import tariffs to between 12 percent and 14 percent.

In December 2009, Brazil – along with the other MERCOSUR members – approved tariff increases for hundreds of products in the CET, including dairy, textiles, and bags, backpacks, and suitcases. In many cases, the applied tariffs were increased up to the bound levels.

## FOREIGN TRADE BARRIERS

High *ad valorem* tariffs affect U.S. exports across diverse sectors including automobiles, automotive parts, electronics, chemicals, plastics, textiles, and apparel.

### **Nontariff Barriers**

Brazil applies federal and state taxes and charges to imports that can effectively double the actual cost of importing products into Brazil. The complexities of the domestic tax system, including multiple cascading taxes and tax disputes among the various states, pose numerous challenges to U.S. companies operating in Brazil.

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

### **Import Licensing/Customs Valuation/Trade Remedies**

All importers must register with the Secretariat of Foreign Trade (SECEX) to access Brazil's "SISCOMEX" computerized trade documentation system. SISCOMEX registration requirements are onerous, including a minimum capital requirement. However, since it was updated in early 2007, the SISCOMEX system for import-export license processing has become more efficient. Fees are assessed for each import statement submitted through SISCOMEX. Brazil has both automatic and non-automatic import license requirements. Brazil's non-automatic import licensing system covers imports of products that require authorization from specific ministries or agencies, such as beverages (Ministry of Agriculture), pharmaceuticals (Ministry of Health), and arms and munitions (National Defense Ministry). Although a list of products subject to non-automatic import licensing procedures is available on the SISCOMEX system, specific information related to non-automatic import license requirements and explanations for rejections of non-automatic import license applications are lacking. The lack of transparency surrounding these procedures can be frustrating and cumbersome for U.S. exporters.

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

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

In recent years, Brazil has become a more active user of antidumping and safeguard remedies. Since July 2009, Brazil has initiated three antidumping proceedings involving U.S. exports (an investigation of polypropylene film and reviews of the antidumping measures on ethylene glycol [EBMEG] and polyvinyl chloride in suspension [PVC-S]). Brazil presently has antidumping measures in force involving the following eight products exported from the United States: EBMEG, PVC-S, polyethylene terephthalate (PET) resin, pre-sensitized offset plate, polycarbonate resin, phenol, supercalendared paper, and butyl acrylate.

In October 2009, Brazil terminated its safeguard investigation on recordable CDs and DVDs.

## **EXPORT SUBSIDIES**

In October 2007, Brazil restored tax breaks to exporters with the enactment of Law 11529 with the stated intention of helping industries hurt by the strengthening of the *real*, the national currency. The law expands the government's program for exporting companies purchasing capital goods. To be exempt from paying the 9.25 percent social integration (PIS) and social security (COFINS) taxes on these purchases, companies normally must prove they derive at least 70 percent of their revenues from exportation. This benchmark was lowered to 60 percent for companies in the sectors covered by the legislation.

The government of Brazil offers a variety of tax, tariff, and financing incentives to encourage production for export and the use of Brazilian-made inputs in domestic production. For example, Brazil's National Bank for Economic and Social Development (BNDES) provides long-term financing to Brazilian industries through several different programs. The interest rates charged on this financing are customarily lower than the prevailing market interest rates for domestic financing. One BNDES program, FINAME, provides financing for Brazilian firms to purchase Brazilian-made machinery and equipment and capital goods with a high level of domestic content. These programs can be used for financing capacity expansions and equipment purchases in industries such as steel and agriculture.

Brazil's Special Regime for the Information Technology Exportation Platform (REPES) suspends through 2010 PIS-COFINS taxes on goods and information technology services imported by companies that commit to export software and information technology services to the extent that those exports account for over 80 percent of their annual gross income. The Special Regime for the Acquisition of Capital Goods by Exporting Enterprises (RECAP) suspends these same taxes on new machines, instruments, and equipment imported by companies that commit for a period of at least three years to export goods and services such that they account for at least 80 percent of their overall gross income for the previous calendar year.

## **GOVERNMENT PROCUREMENT**

U.S. companies have found it difficult to participate in Brazil's public sector procurement unless they are associated with a local firm. Without a substantial in-country presence, U.S. companies regularly face significant obstacles in winning government contracts and are often more successful in subcontracting with larger Brazilian firms. However, regulations allow a Brazilian state enterprise to subcontract services to a foreign firm only if domestic expertise is unavailable. Additionally, U.S. and other foreign firms may only bid to provide technical services where there are no qualified Brazilian firms available.

Brazilian government procurement policies apply to purchases by government entities and state-owned companies. Brazil has an open competition process for major government procurements. Under

## **FOREIGN TRADE BARRIERS**

Brazilian law, price is to be the overriding factor in selecting suppliers. By law, the Brazilian government may not make a distinction between domestic and foreign-owned companies during the tendering process; however, when two equally qualified vendors are considered, the law's implementing regulations provide a preference to Brazilian goods and services.

The procurement of certain parastatal companies is subject to simplified procedures designed to make those companies more competitive with their private sector counterparts. In 1997, with the end of the oil monopoly, the Brazilian government issued Law Decree number 2745/98, which regulates the procurement of services, construction works, and the acquisition of goods and equipment. Pursuant to Law Decree number 2745/98, Petrobras may hold tenders through invitation letters, electronic auctions, or national or international bids. From time to time, however, suppliers have found that Brazil's General Attorney will question procurements conducted pursuant to these simplified procedures resulting in delays in Petrobras' tenders. More recently, in May 2009, the Brazilian government extended the same simplified procurement procedures to the parastatal power company Eletrobras and its subsidiaries through Law 11.943/09.

Brazil's regulations on the procurement of information technology goods and services require federal agencies and parastatal entities to give preferences to locally produced computer products based on a complicated and nontransparent price/technology matrix. However, Brazil permits foreign companies that have established legal entities in Brazil to compete for procurement financed by multilateral development bank loans.

Through direct bidding or participation in consortia, most government procurement is open to at least some form of international competition. However, many of the larger procurements (*e.g.*, military purchases) can lead to unilateral single source procurement awards. The value of current pending military procurements exceeds \$1 billion.

Brazil is not a signatory to the WTO Agreement on Government Procurement (GPA).

## **INTELLECTUAL PROPERTY RIGHTS (IPR) PROTECTION**

Brazil was listed on the Watch List in the 2009 Special 301 report. While Brazil has made important progress in enhancing the effectiveness of intellectual property enforcement, particularly with respect to pirated audiovisual goods, some areas of IPR protection and enforcement continue to represent barriers to U.S. exports and investment. Key issues cited in the report include concerns regarding IPR enforcement, including the need to increase raids and seizures of pirated and counterfeit products, and increase actions against book and Internet piracy. The United States has also raised concerns regarding patent protection for pharmaceuticals and medical devices, including with respect to the role of Brazil's health authority (ANVISA) in the patent application process; inadequate protection against unfair commercial use of undisclosed test and other data generated to obtain marketing approval for human-use pharmaceutical products; and an inter-ministerial decision against granting patents for polymorphs and second-use inventions. Implementation of that decision would require a change to Brazil's patent law. Though not yet enacted, a bill has been introduced in the Chamber of Deputies; in the interim, the Brazilian patent and trademark office (INPI) continues to evaluate polymorph and second-use applications on a case by case basis.

## **SERVICES BARRIERS**

### **Audiovisual Services**

Law 10454 of 2002 aims to promote the national film industry through the creation of the National Film Agency (ANCINE) and through various regulatory measures. The law imposes a fixed tax on each foreign film released in theaters, foreign home entertainment products, and foreign programming for broadcast television.

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

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

### **Broadcasting**

Foreign ownership of cable companies is limited to 49 percent, and the foreign owner must have a headquarters in Brazil and have had a presence in the country for the prior 10 years. Foreign cable and satellite television programmers are subject to an 11 percent remittance tax. The tax, however, can be avoided if the programmer invests 3 percent of its remittances in co-production of Brazilian audiovisual services. National cable and satellite operators are subject to a fixed title levy on foreign content and foreign advertising released on their channels. Law 10610 of 2002 limits foreign ownership in media outlets to 30 percent, including the print and “open broadcast” (non-cable) television sectors. Open broadcast television companies are also subject to a regulation requiring that 80 percent of their programming content be domestic in origin.

### **Express Delivery Services**

U.S. express delivery service (EDS) companies face significant challenges in the Brazilian market due to numerous limitations established by the Brazilian government such as high import taxes, a new, partially functioning automated express delivery clearance system, and low maximum value limits for express export and import shipments.

The Brazilian government charges a 60 percent duty for all goods imported through the Simplified Customs Clearance process used for express delivery shipments. U.S. industry contends that this duty rate is higher than duties normally levied on goods arriving via regular mail, putting express delivery companies at a competitive disadvantage. Moreover, Brazilian Customs has established maximum value limits of \$10,000 for exports and \$3,000 for imports sent using express services. These limits severely restrict the Brazilian express delivery market’s growth potential and impede U.S. exporters doing business with Brazil.

The U.S. Government is engaging the Brazilian government on use of ATA Carnets. The ATA Carnet, an internationally accepted customs document, would facilitate the temporary importation of commercial samples, professional equipment, and goods for exhibitions and fairs. Legislation to implement ATA Carnet is currently under consideration in Brazil's Congress.

### **Financial Services**

U.S. companies wanting to enter Brazil's insurance and reinsurance market must establish a subsidiary, enter into a joint venture, or acquire or partner with a local company. Market entry for banks may occur on a case-by-case basis.

### **Telecommunications**

One U.S. company has complained that Brazil's mobile termination rates (the rate a telecommunications operator must pay a competitor to deliver a call to one of the customers on that competitor's network) are the highest in the region, given limitations on the independent regulator's (ANATEL) ability to intervene to impose rates on carriers deemed to hold significant market power. Although ANATEL has been trying to conduct a proceeding to review and establish reasonable rates, the proceeding, which is scheduled to be completed in 2010, continues to face delays. This results in arbitrarily higher costs for U.S. carriers providing mobile services in Brazil.

### **INVESTMENT BARRIERS**

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

### **Civil Aviation**

Brazil's Civil Aviation Regulatory Agency (ANAC) has proposed facilitating quicker entry of new airlines into the Brazilian market by eliminating the requirement for limited validity public concession contracts. Instead, ANAC would simply provide an authorization, without an expiration date. This proposal is expected to be approved by the Brazilian Congress in 2010. Furthermore, ANAC has begun the process of deregulating domestic and international fares, leading to further competition in the aviation market.

# **BRUNEI DARUSSALAM**

## **TRADE SUMMARY**

The U.S. goods trade surplus with Brunei was \$59 million in 2009, shifting from a deficit of \$3 million in 2008. U.S. goods exports in 2009 were \$100 million, down 10.1 percent from the previous year. Corresponding U.S. imports from Brunei were \$42 million, down 63.6 percent. Brunei is currently the 141st largest export market for U.S. goods.

The stock of U.S. foreign direct investment (FDI) in Brunei was \$26 million in 2008 (latest data available), down from \$28 million in 2007.

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

## **IMPORT POLICIES**

### **Tariffs**

Brunei has bound nearly 93 percent of its tariff lines. The average bound rate, *i.e.*, the rate that generally cannot be exceeded under WTO rules, is 25.8 percent, and applied rates averaged 3.6 percent in 2008 (down from 4.8 percent in 2007) and ranged from 0 percent to 30 percent. With the exception of a few products – including coffee, tea, tobacco, and alcohol – tariffs on agricultural products are zero. Roughly 130 products, including alcoholic beverages, tobacco, coffee, tea, petroleum oils, and lubricants are subject to specific rates of duty and higher rates of overall protection.

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

## **GOVERNMENT PROCUREMENT**

All procurement is conducted by Ministries, Departments and the State Tender Board of the Ministry of Finance. Most invitations for tenders or quotations (procurements below the B\$250,000 (approximately \$168,000)) are published in a bi-weekly government newspaper, but often are selectively tendered only to locally registered companies. The relevant ministry may approve purchases up to a B\$250,000 threshold, but tender awards above B\$250,000 must be approved by the Sultan in his capacity as Minister of Finance based on the recommendation of the State Tender Board. The award process often lacks

## **FOREIGN TRADE BARRIERS**

transparency, with tenders sometimes not being awarded or being re-tendered for reasons not made public.

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

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

## **INTELLECTUAL PROPERTY RIGHTS (IPR) PROTECTION**

Brunei was listed on the Watch List in the 2009 Special 301 report, primarily because of high copyright piracy rates in Brunei. Movie and software piracy remains rampant in Brunei's marketplace. Pirated optical discs and unlicensed software are openly sold in legitimate retail shops and department stores throughout Brunei. While enforcement has been a longstanding issue, Brunei enforcement authorities undertook several raids in August 2009 in connection with a Recording Industry Malaysia (RIM) music anti-piracy campaign that has been conducted in cooperation with the government. Those raids have had an immediate effect in reducing music piracy in Brunei, though the long term effect of these actions – and the government's willingness to prosecute the violators – is still to be determined. Another concern relates to the long delay in Brunei's drafting of amendments to the copyright law. The amendments would provide police with *ex officio* authority to take action against pirated products, but the amendments, first drafted several years ago, have not yet been finalized.

## **OTHER BARRIERS**

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



# CAMBODIA

## TRADE SUMMARY

The U.S. goods trade deficit with Cambodia was \$1.8 billion in 2009, down \$460 million from 2008. U.S. goods exports in 2009 were \$127 million, down 17.5 percent from the previous year. Corresponding U.S. imports from Cambodia were \$1.9 billion, down 20.2 percent. Cambodia is currently the 135th largest export market for U.S. goods.

## IMPORT POLICIES

*Customs:* Cambodia joined the WTO in 2004 and was given a transition period of until 2009 to implement the WTO Customs Valuation Agreement. As Cambodia has not yet completed that task, the U.S. government is consulting with Cambodia on how it will complete implementation and in what timeframe.

Both local and foreign businesses have raised concerns that the Customs and Excise Department engages in practices that are nontransparent and often appear arbitrary. Importers frequently cite problems with undue processing delays, unnecessarily burdensome paperwork and formalities driven by excessively discretionary practices. The United States and Cambodia continue to discuss these and other customs issues under the bilateral Trade and Investment Framework Agreement (TIFA).

*Taxation:* Cambodia levies a 10 percent value added tax (VAT) on goods and services. To date, the Cambodian government has imposed the VAT only on large companies, but it is in the process of expanding the base to which the tax is applied.

## GOVERNMENT PROCUREMENT

Cambodia's government procurement regime is governed by a 1995 sub-decree. The sub-decree requires public tenders for all international purchases over 200 million riel (approximately \$50,000) for civil work and 100 million riel (approximately \$25,000) for goods. Despite these regulations, the conduct of procurement is often non-transparent. The Cambodian government often provides short time frames to respond to public announcements of tenders, which frequently are not widely publicized. Cambodia is not a signatory to the WTO Agreement on Government Procurement.

## INTELLECTUAL PROPERTY RIGHTS (IPR) PROTECTION

Cambodia has made progress in implementing the WTO Trade-Related Aspects of Intellectual Property Rights (TRIPS) Agreement, but effective enforcement of IPR remains problematic. Pirated CDs, videos, software, and other copyrighted materials are reported to be widely available in Cambodian markets.

Additionally, while the 1996 United States-Cambodia Bilateral Trade Agreement contained a broad range of IPR commitments that were to be phased in, Cambodia has not yet enacted legislation regarding, for example, encrypted satellite signals and semiconductor layout designs. Work also remains ongoing on draft legislation to implement commitments with respect to the protection of trade secrets.

## FOREIGN TRADE BARRIERS

## **SERVICES BARRIERS**

### **Legal Services**

Under the WTO General Agreement on Trade in Services, Cambodia agreed to allow foreign lawyers to supply legal services with regard to foreign law and international law. It also agreed to allow them to supply certain legal services with regard to Cambodian law in “commercial association” with Cambodian law firms. The commitment defines “commercial association” as any type of commercial arrangement, without any requirement as to corporate form. Efforts by Cambodian law firms to propose a 49 percent equity limitation on foreign firms and restrictions on their forms of commercial arrangement, although unsuccessful, have exposed ambiguity in Cambodia’s regulatory regime and introduced a measure of legal uncertainty for firms in this sector.

## **INVESTMENT BARRIERS**

Cambodia has one of the most liberal investment regimes in the region, but potential investors say they are often deterred by excessive bureaucracy and corruption.

Cambodia’s constitution restricts foreign ownership of land. Foreign investors may use land through concessions and renewable leases. A new law allowing foreign ownership of properties above the ground floor is currently being drafted and is expected to be enacted in 2010. The current draft stipulates that no more than 49 percent of a building can be foreign owned, and foreigners cannot own property within 30 kilometers of the national border.

## **ELECTRONIC COMMERCE**

Electronic commerce is a new concept in Cambodia. Online commercial transactions are extremely limited, and Internet access is still in its infancy. The Cambodian government has not imposed any specific restrictions on products or services traded via electronic commerce and no existing legislation governs this sector. It is currently drafting electronic commerce legislation.

## **OTHER BARRIERS**

*Corruption:* Both foreign and local businesses have identified corruption in Cambodia as a major obstacle to business and a deterrent to attracting foreign direct investment. Cambodia began efforts to draft and enact anti-corruption legislation in the 1990’s, but the law remains in draft form. The National Assembly passed a new Penal Code in October, which was a necessary precursor to the adoption of the anti-corruption law. The U.S. Government will continue to discuss concerns related to governance and corruption with Cambodia under the TIFA.

*Judicial and Legal Framework:* Cambodia’s legal framework is incomplete and unevenly enforced. While numerous trade and investment laws have been passed over the past five years, many business-related draft laws are still pending. The judicial system is often arbitrary and subject to corruption. Many Cambodian and foreign business representatives perceive the court system to be unreliable and susceptible to external political and commercial influence. To address these concerns, the Cambodian government has announced plans to establish a commercial court, and in July passed a sub-decree creating a commercial arbitration body, the National Arbitration Center. Disputes can be resolved through international arbitration (including through the World Bank’s International Center for Settlement

## **FOREIGN TRADE BARRIERS**

of Investment Disputes), but most commercial disputes are currently resolved by negotiations facilitated by the Ministry of Commerce, the Cambodian Chamber of Commerce, and other concerned institutions.

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



# CANADA

## TRADE SUMMARY

The U.S. goods trade deficit with Canada was \$20.2 billion in 2009, down \$58.2 billion from 2008. U.S. goods exports in 2009 were \$204.7 billion, down 21.6 percent from the previous year. Corresponding U.S. imports from Canada were \$224.9 billion, down 33.8 percent. Canada is currently the largest export market for U.S. goods.

U.S. exports of private commercial services (*i.e.*, excluding military and government) to Canada were \$46 billion in 2008 (latest data available), and U.S. imports were \$24.4 billion. Sales of services in Canada by majority U.S.-owned affiliates were \$100.5 billion in 2007 (latest data available), while sales of services in the United States by majority Canada-owned firms were \$65.4 billion.

The stock of U.S. foreign direct investment (FDI) in Canada was \$227.3 billion in 2008 (latest data available), down from \$234 billion in 2007. U.S. FDI in Canada is led by the manufacturing, finance/insurance, and nonbank holding companies sectors.

## North American Free Trade Agreement

The North American Free Trade Agreement (NAFTA), signed by the United States, Canada, and Mexico, entered into force on January 1, 1994, superseding the United States-Canada Free Trade Agreement, which entered into force in 1989. Under the NAFTA, the United States and Canada agreed to continue progressively eliminating bilateral tariff and nontariff barriers to trade in goods; provided improved access for services, established strong rules on investment, and strengthened protection of intellectual property rights. After signing the NAFTA, the United States, Canada and Mexico concluded supplemental agreements on labor and the environment. Under these agreements the parties are, among other things, obligated effectively to enforce their environmental and labor laws. The agreements also provide frameworks for cooperation among the parties on a wide variety of labor and environmental issues.

## IMPORT POLICIES

### Tariffs

Pursuant to the terms of the NAFTA, Canada eliminated tariffs on all remaining industrial and most agricultural products imported from the United States on January 1, 1998.

### Agricultural Supply Management

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

## FOREIGN TRADE BARRIERS

disciplines on TRQs in the WTO Doha Round agricultural negotiations. One of the barriers created by Canada's dairy policies is a 245 percent *ad valorem* tariff on U.S. exports of breaded cheese sticks.

Early in 2008, Canada announced its intention to proceed with finalizing the implementation of the Special Safeguard (SSG) under the WTO Agreement on Agriculture for its supply-managed goods and initiated a comment period on their draft calculations of trigger levels. The SSG is a provision that would allow additional duties to be imposed on over-quota trade when import volumes rise above a certain level, or if prices fall below a certain level. The government of Canada continues to work on the details and monitor over-quota trade, but has not established a timeframe for announcing the SSG.

### **Restrictions on U.S. Grain Exports**

Canada has varietal registration requirements on its wheat. On August 1, 2008, Canada eliminated a portion of the varietal controls by no longer requiring that each registered variety of grain be visually distinguishable based on a system of Kernel Visual Distinguishability (KVD) requirements. This KVD requirement limited U.S. access to Canada's grain market since under these requirements U.S. varieties could not be registered for use in Canada. While this policy change is a step in the right direction, it will take years before U.S. wheat varieties are able to complete the necessary field trials to determine whether U.S. varieties will be registered for use in Canada. In the meantime, U.S. wheat, regardless of quality, will continue to be sold in Canada as "feed" wheat at sharp price discounts compared to Canadian varieties.

### **Personal Duty Exemption**

The United States continues to urge Canada to facilitate cross border trade for returning residents by relaxing its taxation of goods that Canadian tourists purchase in the United States. Canada's allowance, which is linked to the length of a tourist's absence from Canada and allows a zero exemption for tourists absent less than a day, is approximately \$47.00 for tourists absent for at least 24 hours, and approximately \$379.00 and \$711.00 for visits exceeding 48 hours and 7 days, respectively. The United States provides much more generous treatment for its returning travelers, with a minimum allowance of \$200 and, once each 30 days, a \$800 allowance for travelers returning after 48 hours.

### **Wine and Spirits**

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

### **The Canadian Wheat Board and State Trading Enterprises (STEs)**

The United States has longstanding concerns about the monopolistic marketing practices of the Canadian Wheat Board. The United States seeks a level playing field for U.S. farmers, including through the elimination in the WTO Doha Round agricultural negotiations of the monopoly power of exporting STEs.

### **SOFTWOOD LUMBER**

The Softwood Lumber Agreement (SLA) was signed on September 12, 2006, and entered into force on October 12, 2006. Its implementation settled extensive litigation in U.S. and international venues and resulted in the revocation of U.S. antidumping and countervailing duty orders on softwood lumber from

Canada. The SLA is designed to create a downward adjustment in softwood lumber exports from Canada into the United States through the imposition of export measures by Canada when demand in the United States is low. The SLA also provides for binding arbitration to resolve disputes between the United States and Canada regarding the interpretation and implementation of the Agreement. Under the SLA, arbitration is conducted under the rules of the LCIA (formerly the London Court of International Arbitration). The Softwood Lumber Committee, established pursuant to the SLA, met in June 2009 to discuss a range of implementation issues and Canadian provincial assistance programs for softwood lumber industries.

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

The United States filed a second request for arbitration on January 18, 2008, challenging a number of assistance programs implemented by Quebec and Ontario, which the United States believes are inconsistent with Canada's obligations under the anti-circumvention provision of the SLA. An award in this arbitration is expected in 2010.

## **DOMESTIC SUPPORT MEASURES**

### **Aerospace Sector Support**

In 2007, the Canadian federal government established the Strategic Aerospace and Defence Initiative (SADI), replacing Technology Partnership Canada (TPC). The SADI "provides repayable support for strategic industrial research and pre-competitive development projects in the aerospace, defence, space and security industries." There is no minimum or maximum limit on how much a company can apply to receive through SADI, although typically SADI is expected to contribute about 30 percent of a project's eligible costs. SADI repayment is generally based on a royalty applied to the company's gross business revenues. To receive funding through SADI, the level of assistance from all government sources (federal, provincial, territorial, municipal) shall not normally exceed 75 percent of a project's eligible costs. The first SADI funds were disbursed in early 2008; SADI is expected to invest nearly \$854 million between 2007 and 2012, with funding to reach a maximum of \$213 million per year.

In 2008, the Canadian federal government and the Quebec provincial government announced aid to the Bombardier aircraft company not to exceed \$332 million (federal) and \$112 million (provincial) to support research and development (R&D) related to the launch of a new class of Bombardier "CSeries" jets.

About one-half of the federal money is for "generic" R&D. The other half is tied specifically to the development of the "CSeries" aircraft. The government of the United Kingdom is also contributing to "CSeries" development because some of the aircraft will be produced at facilities in Northern Ireland.

In a separate but related matter, the Administration has expressed its concerns to Canada over the possible use of official export credits to support commercial aircraft sales in the U.S. market.

### **Ontario Feed-In Tariff Program**

The government of the Province of Ontario has announced a feed-in tariff energy program that is set to begin in early 2010. Under the program, the Ontario Power Authority will buy energy produced through alternative means (wind, solar/photovoltaic) on the condition that suppliers use a provincially-mandated percentage of local content (equipment, services, etc.) in their generating activity. The program is provoking complaints from U.S. suppliers of equipment and services, because the program's domestic content requirement provides a disincentive to purchase energy efficient goods and services from the United States.

## **INTELLECTUAL PROPERTY RIGHTS (IPR) PROTECTION**

Canada was elevated to the Priority Watch List in the 2009 Special 301 report. Key concerns cited in the report relate to Canada's failure to implement key copyright reforms, its weak border enforcement system, and its failure to implement the World Intellectual Property Organization (WIPO) Internet Treaties, which Canada signed in 1997. The United States continues to urge Canada to enact legislation in the near term to strengthen its copyright laws and implement these treaties. The United States also urges Canada to implement legislative changes to provide for a stronger border enforcement system by giving its customs officers the authority, without the need for a court order, to seize products suspected of being pirated or counterfeit. Canada's IPR enforcement regime would also benefit from the provision of greater resources and training to customs officers and domestic law enforcement personnel.

## **SERVICES BARRIERS**

### **Telecommunications**

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

### **Canadian Content in 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 CRTC, implements this policy. The CRTC requires that for Canadian conventional, over-the-air broadcasters, Canadian programs must make up 60 percent of television broadcast time overall and 50 percent during evening hours (6 p.m. to midnight). It also requires that 35 percent of popular musical selections broadcast on the radio should qualify as "Canadian" under a Canadian government-determined point



system. For cable television and direct to home broadcast services, a preponderance (more than 50 percent) of the channels received by subscribers must be Canadian programming services.

The CRTC also requires that the English and French television networks operated by the Canadian Broadcasting Corporation not show popular foreign feature movies between 7 p.m. and 11 p.m. The only non-Canadian films that may be broadcast during that time must have been released in theaters at least two years previously and not be listed in the top 100 of Variety Magazine's top grossing films for at least the previous 10 years. Non-Canadian channels must be pre-approved ("listed") by the CRTC. For other services, such as specialty television and satellite radio services, the required percentage of Canadian content varies according to the nature of the service. Canadian licensees may appeal the listing of a non-Canadian service which is thought to compete with a Canadian pay or specialty service. The CRTC will consider removing existing non-Canadian services from the list, or shifting them into a less competitive location on the channel dial, if they change format to compete with a Canadian pay or specialty service.

Distributors of theatrical films in Canada must submit their films to six different provincial or regional boards for classification. Most of these boards also classify products intended for home video distribution.

## **INVESTMENT BARRIERS**

### **General Establishment Restrictions**

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

The ICA has regulated foreign investment in Canada since 1985. Foreign investors must notify the government of Canada prior to the direct or indirect acquisition of an existing Canadian business of substantial size (as defined below). The Canadian government also reviews the acquisition by non-Canadians of existing Canadian businesses, as well as the establishment of new Canadian businesses in designated types of business activity relating to Canada's culture, heritage, or national identity where the federal government has authorized such review as in the public interest. In 2009, the Harper government increased the threshold for review to \$1 billion (enterprise value), allowing almost all U.S. investment to enter the country without notification. At the same time, the government added national security considerations as an additional component of investment review. Industry Canada is the reviewing authority for most investments, except for those related to cultural industries, which come under the jurisdiction of the Department of Heritage. The ICA sets time limits for the reviews. Once an application for review is received, the Minister has 45 days to determine whether or not to allow the investment. A 30 day extension is permitted if the investor is notified prior to the end of the initial 45 day period. Reviews of investments in the cultural industries usually require the full 75 days to be completed.



# CHILE

## TRADE SUMMARY

The U.S. goods trade surplus with Chile was \$3.4 billion in 2009, a decrease of \$247 million from 2008. U.S. goods exports in 2009 were \$9.4 billion, down 21.0 percent from the previous year. Corresponding U.S. imports from Chile were \$6.0 billion, down 27.4 percent. Chile is currently the 24th largest export market for U.S. goods.

U.S. exports of private commercial services (*i.e.*, excluding military and government) to Chile were \$1.9 billion in 2008 (latest data available), and U.S. imports were \$1.0 billion. Sales of services in Chile by majority U.S.-owned affiliates were \$7.2 billion in 2007 (latest data available), while sales of services in the United States by majority Chile-owned firms were \$441 million.

The stock of U.S. foreign direct investment (FDI) in Chile was \$12.6 billion in 2008 (latest data available), up from \$11.6 billion in 2007. U.S. FDI in Chile is concentrated largely in the finance/insurance, manufacturing, banking, and mining sectors.

## IMPORT POLICIES

### Tariffs

The United States-Chile Free Trade Agreement (FTA) entered into force on January 1, 2004. Under the FTA, the Parties eliminated tariffs on 87 percent of bilateral trade immediately and will establish duty-free trade for all products by 2016.

Chile has one of the most open trade regimes in the world. The uniform applied tariff rate for virtually all goods is 6 percent. There are several exceptions to the uniform tariff. For example, higher effective tariffs will remain for wheat, wheat flour, and sugar during the 12 year transition period under the FTA due to the application of an import price band system. Importers also must pay a 19 percent value added tax (VAT) calculated on the customs value plus import tariff. In the case of duty-free imports, the VAT is calculated on the customs value alone.

### Import Controls

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

Chile prohibits the import of used vehicles, used motorcycles, and used retreaded tires (with the exception of wheel-mounted tires).

## FOREIGN TRADE BARRIERS

## **Nontariff Barriers**

Chile maintains a complex price band system for wheat, wheat flour, and sugar that, under the FTA, will be phased out for imports from the United States by 2016. Mixtures containing more than 65 percent sugar (*e.g.*, high fructose corn syrup) content are subject to the sugar price band system. The price band system was created in 1985 and is intended to guarantee a minimum and maximum import price for the covered commodities. When certain CIF prices (as calculated by Chilean authorities) fall below the set minimum price, a special tax is added to the tariff rate to raise the price to the minimum price. The government sets a minimum import price that is normally higher than both international and Chilean domestic prices. Beginning in 2008, the minimum price has been adjusted downward by 2 percent per year; in 2014 Chile's President will evaluate whether to continue the price band system or eliminate it prior to 2016 as required under the FTA.

The export/import process requires non-Chilean companies operating in the country to contract the services of a specialized professional called a Customs Agent. The Customs Agent is the link between the exporter/importer and the National Customs Service. The Customs Agent's mission is to facilitate foreign trade operations and to act as the official representative of the exporter/importer in the country. Customs Agents' fees are not standardized. This is an extra cost borne by non-Chilean companies operating in country. However, companies established in any of the Chilean duty-free zones are exempt from the obligation to use a customs agent when importing or exporting goods.

## **EXPORT POLICIES**

Chile currently provides a simplified duty drawback program for nontraditional exports. The program reimburses a firm up to three percent of the value of the product it exports, if 50 percent of that product consists of imported raw materials. If the capital equipment used to produce exported goods is imported, it must carry a minimum cost, insurance and freight (CIF) value of \$3,813 in order to be eligible for duty drawback. The net value of the invoice is used if the capital good in question is also manufactured domestically. For imported vehicles to be used in an export business, such vehicles must have a minimum CIF value of \$4,830. Another export promotion measure lets all exporters defer import duties for up to seven years on imported capital equipment or receive an equivalent government subsidy for domestically produced capital goods.

In accordance with its commitments under the FTA, Chile is eliminating, over a transition period, the use of duty drawback and duty deferral for imports that are incorporated into any goods exported to the United States. Full drawback rights are allowed through 2012. Beginning in 2013, the amount of drawback allowed is reduced until it reaches zero in 2016.

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

## **GOVERNMENT PROCUREMENT**

Chile's 2003 Basic Law on Administrative Contracts for the Supply and Rendering of Services (No. 19,886) sets out the legal framework for government procurement of goods and services; however, the law does not apply to state-owned companies, which follow their own regulations.

## **FOREIGN TRADE BARRIERS**

Each government entity in Chile generally conducts its own procurement. Chile's law requires public bids for large purchases, although procurement by negotiation is permitted in certain cases. Foreign and local bidders in government tenders must register with the Chilean Bureau of Government Procurement on the National Register of Public Administration Suppliers. They must also post a bank or guaranteed bond, usually equivalent to 10 percent of the total bid, to ensure compliance with specifications and delivery dates. Through the Information System for Procurements and Public Contracts for the Public Sector (<http://www.chilecompras.cl>), any interested supplier may offer products or services and register as a potential supplier in government procurement, free of charge. In April 2009, there were about 32,000 suppliers listed in the register.

The Chilean government's Communications and Information Technology Unit (UTIC) coordinates, promotes, and advises the Chilean government on the development of information technology in several areas. The UTIC particularly was successful in a comprehensive reform of Chile's procurement system through the development of electronic procurement. Electronic procurement has made business opportunities with the Chilean government more transparent, reduced firms' transaction costs, increased opportunities for feedback and cooperation between firms and public agencies, and reduced opportunities for corruption.

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

According to the Trade Policy Review on Chile published by the WTO, procurement by the Chilean government (excluding state-owned companies and concessions) totaled approximately \$5 billion representing 2.9 percent of GDP in 2008.

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

## **INTELLECTUAL PROPERTY RIGHTS (IPR) PROTECTION**

Chile was listed on the Priority Watch List in the 2009 Special 301 report. Key concerns highlighted in the report included inadequate enforcement against copyright piracy and trademark counterfeiting, inadequate protection against unfair commercial use of undisclosed test and other data generated to obtain marketing approval for pharmaceutical products, the need to enact legislation to ratify the 1991 Act of the International Convention for the Protection of New Varieties of Plants and the Trademark Law Treaty, and the need to improve certain aspects of the copyright law. In October 2009, the Chilean legislature passed a bill amending its copyright law. However, the legislation appeared to lack key provisions implementing FTA commitments regarding Internet Service Provider (ISP) liability and copyright infringement on the Internet. On December 10, 2009, President Bachelet issued comments on the bill and sent it back to the legislature for further deliberation. On January 13, 2010, the Chilean Congress approved some of the comments submitted by President Bachelet, but rejected others, specifically some provisions related to limitations on secondary liability of ISPs for copyright infringement by their users. The bill was then sent for final administrative processing before becoming law. The U.S. Government is reviewing the legal effect of the final legislation.

In 2009, the United States and Chile held several meetings to exchange information and review

implementation of the IPR provisions of the FTA IPR Chapter. In 2010, the United States will continue to work with Chile to improve IPR enforcement and to ensure that Chile is meeting its FTA commitments.

## **SERVICES BARRIERS**

### **Financial Services**

Chile made WTO financial services commitments in banking services and in most securities and other financial services. However, Chile's WTO Commitment Schedule in the securities sector did not include asset fund management (mutual funds, investment funds, foreign capital investment funds, and pension funds). Except as permitted under the FTA for U.S.-based insurance companies, foreign-based insurance companies that operate from outside Chile cannot offer or contract insurance policies in Chile directly or through intermediaries. However, there are no restrictions on foreign-based insurance companies that wish to open a branch in Chile and begin operations in-country.

## **INVESTMENT BARRIERS**

Chile maintains a fairly open investment regime with limited exceptions in coastal trade, air transportation, and the mass media. Decree Law 600 requires that foreign investment projects worth more than \$5 million be made through the Chilean government. Under Decree Law 600, the Foreign Investment Committee of the Ministry of Economy signs a separate contract with each investor which stipulates the time period of the investment's implementation. Under Decree Law 600, profits from an investment may be repatriated immediately, but no original capital may be repatriated for one year. Chile permits investment in the fishing sector to the extent that an investor's home country reciprocally permits Chilean nationals to invest in that sector. Investors domiciled abroad may bring foreign currency into Chile under Chapter 14 of the Foreign Exchange Regulations of the Central Bank. This allows the investor to sell foreign currency freely through the formal or informal exchange market.

# CHINA

## TRADE SUMMARY

The U.S. goods trade deficit with China was \$226.8 billion in 2009, down \$41.2 billion from 2008. U.S. goods exports in 2009 were \$69.6 billion, down 0.2 percent from the previous year. Corresponding U.S. imports from China were \$296.4 billion, down 12.2 percent. China is currently the 3rd largest export market for U.S. goods.

U.S. exports of private commercial services (*i.e.*, excluding military and government) to China were \$15.9 billion in 2008 (latest data available), and U.S. imports were \$9.8 billion. Sales of services in China by majority U.S.-owned affiliates were \$14.0 billion in 2007 (latest data available), while sales of services in the United States by majority China-owned firms were \$315 million.

The stock of U.S. foreign direct investment (FDI) in China was \$45.7 billion in 2008 (latest data available), up from \$28.6 billion in 2007. U.S. FDI in China is led by the manufacturing sector.

## IMPORT BARRIERS

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

### Trading Rights

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

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

## FOREIGN TRADE BARRIERS

However, China has not yet given entities other than state trading enterprises trading rights for the importation of copyright intensive products such as theatrical films, DVDs, music, books, newspapers, and journals. Under the terms of China's Protocol of Accession to the WTO, China's trading rights commitments appear to apply fully to these products, since they are not among the products for which China reserved the right to engage in state trading. As a result, trading rights for these products should have been automatically available to all Chinese enterprises, Chinese-foreign joint ventures, wholly foreign-owned enterprises, and foreign individuals as of December 11, 2004. Nevertheless, China continued to wholly reserve the right to import these products to state trading enterprises. As a result, in April 2007, the United States filed a request for WTO dispute settlement consultations with China concerning market access restrictions in China on copyright-intensive products such as theatrical films, DVDs, music, books, newspapers, and journals. The WTO panel was established in late November 2007, and the European Union (EU), Japan, Korea, Taiwan, and Australia joined as third parties. Proceedings before the WTO panel took place in July and September 2008, and the panel issued its decision in August 2009, ruling in favor of the United States on all significant issues. China appealed the panel's decision in September 2009. The WTO's Appellate Body rejected China's appeal on all counts in December 2009. The United States will closely monitor China's implementation of this ruling. (For further information, please refer to the section below on Audiovisual and Related Services.)

### **Import Substitution Policies**

Throughout the 1990s, China gradually reduced formal import substitution policies. When it acceded to the WTO, China agreed to eliminate all subsidies prohibited under Article 3 of the WTO Agreement on Subsidies and Countervailing Measures (Subsidies Agreement), including all forms of subsidies contingent on the use of domestic over imported goods. In its Protocol of Accession to the WTO, China also committed that it would not condition import or investment approvals on whether there are competing domestic suppliers or impose other performance requirements. In anticipation of this commitment, China enacted legal changes in 2000 and 2001 to eliminate local content requirements for foreign investments. Under the prevailing rules, however, investors are still "encouraged" to follow some of the formerly mandated practices. Instances in which the Chinese government has reportedly pursued import substitution or similar policies are described below.

### **Automotive Parts**

In May 2004, China issued a new automobile industrial policy, the Policy on Development of the Automotive Industry, which included provisions discouraging the importation of automotive parts and encouraging the use of domestic technology in new vehicles assembled in China. In 2005, China issued regulations implementing the new automobile industrial policy. One measure that generated strong criticism from the United States, the EU, Japan, and Canada was the Administrative Rules on Importation of Automobile Parts Characterized as Complete Vehicles, which was issued in February 2005 and became effective in April 2005. These rules imposed charges that unfairly discriminated against imported automotive parts and discouraged automobile manufacturers in China from using imported automotive parts in the assembly of vehicles. In March and April 2006, the United States, the EU, and Canada initiated dispute settlement proceedings against China at the WTO. In March 2008, a WTO panel ruled in favor of the United States and the other complaining parties, finding that China's rules discriminated against imported automobile parts and were inconsistent with several WTO provisions, including Article III of the GATT 1994. In September 2008, China appealed the panel's decision to the WTO's Appellate Body. In December 2008 the Appellate Body upheld the panel's finding that the measures are inconsistent with China's WTO obligations. In September 2009, China repealed the challenged measures.



## Steel

China issued a new Steel and Iron Industry Development Policy (Steel Policy) in July 2005. Although many aspects of this new Steel Policy have not been implemented, it includes a host of objectives and guidelines that raise serious concerns. For example, the Steel Policy requires that foreign enterprises seeking to invest in Chinese iron and steel enterprises possess proprietary technology or intellectual property in the processing of steel. Given that foreign investors are not allowed to have a controlling share in steel and iron enterprises in China, this requirement would seem to constitute a *de facto* technology transfer requirement, raising concerns given China's commitments under its Protocol of Accession to the WTO not to condition investment rights or approvals on the transfer of technology. The Steel Policy also appears to discriminate against foreign equipment and technology imports, encouraging the use of local content by calling for a variety of government financial supports for steel and iron projects using newly developed domestic equipment. Even more troubling, however, it calls for the use of domestically produced steel manufacturing equipment and domestic technologies whenever domestic suppliers exist, raising questions, given China's commitment under its Protocol of Accession to the WTO not to condition the right of investment or importation on whether competing domestic suppliers exist. The Steel Policy is also troubling because it prescribes the number and size of steel producers in China, where they will be located, the types of products that will and will not be produced, and the technology that will be used. This high degree of government direction and decision-making regarding the allocation of resources into and out of China's steel industry raises concerns because of the commitment that China made in its Protocol of Accession to the WTO that the government would not influence, directly or indirectly, commercial decisions on the part of state-owned or state-invested enterprises.

China's steel production has grown rapidly and at a faster rate than the growth in its domestic steel consumption. China became the largest steel exporting economy in 2006, and its steel exports have increasingly become subject to trade remedy actions by other countries in the past two years. In March 2006, the United States and China held the inaugural meeting of a new U.S.-China Joint Commission on Commerce and Trade (JCCT) dialogue on the steel industry (Steel Dialogue). Since then, the two sides have held three more Steel Dialogue meetings, with the most recent one taking place in October 2008. In bilateral and multilateral meetings, the United States has argued that China has acted to impose different levels of taxes on different exports of steel products and steelmaking inputs in a manner that appears to encourage the export of certain value added steel products. In response to the financial downturn in the fall of 2008, China rapidly reduced or removed export duties on many, but not all, steel products. Then, in a series of moves over the next several months, China eliminated export duties on additional semi-finished and finished steel products while it also reinstated or increased VAT export rebates. As a result, Chinese steel production reached a record 567.8 million MT for 2009, a 13.5 percent increase when compared to 2008. The United States has cautioned China that accelerating efforts to offset falling steel demand in China using these policies is likely to increase trade tensions.

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

In September 2009, China issued an urgent measure calling for, among other things, tightening of rules for the establishment of new production facilities in six overheated industries, including steel. The United

States is working with Canada, Mexico, the EU, and other trading partners to monitor and support concrete steps by China to rein in its steelmaking capacity.

### **Semiconductors**

China's Tenth Five-Year Plan called for an increase in Chinese semiconductor output from \$2 billion in 2000 to \$24 billion in 2010. In pursuit of this policy, China has attempted to encourage the development of China's domestic integrated circuit (IC) industry through, among other things, discriminatory VAT policies. As discussed below in the section on Value Added Taxes, the United States initiated formal WTO consultations with China in March 2004 to address this problem, and China agreed to and did eliminate the measures at issue by April 2005. The United States continues to monitor closely new financial support that China is making available to its domestic IC producers for consistency with the WTO Subsidies Agreement's disciplines.

### **Fertilizer**

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

### **Telecommunications Equipment**

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

In February 2009, China's State Council approved MIIT's stimulus plan to boost the country's electronics and information industries through preferential policies and increased investment. The plan aims to promote three key goals: promoting innovation; increasing availability of financing; and fostering the use of information technologies over a three year period. Investment will focus on promoting the adoption of new technologies such as 3G services and digital television. Additional policy support will also be given to the sector, including VAT rebates for electronics and information product exports.

### **Tariffs and Other Import Charges**

China still maintains high duties on some products that compete with sensitive domestic industries. For example, the tariff on large motorcycles is 30 percent. Likewise, most video, digital video, and audio recorders and players still face duties of approximately 30 percent. Raisins face duties of 35 percent.

### **Tariff Classification**

Chinese customs officers have wide discretion in classifying a particular import. While foreign businesses might at times benefit from their ability to negotiate classification of products into tariff categories with lower import duty rates, lack of uniformity makes it difficult to anticipate border charges.

## **Customs Valuation**

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

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

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

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

## **Border Trade**

China's border trade policy also continues to generate MFN and other concerns. China provides preferential import duty and VAT treatment to certain products, often from Russia, apparently even when those products are not confined to frontier traffic as envisioned by Article XXIV of GATT 1994. In June 2003, China began to address these concerns when it eliminated preferential treatment for boric acid and 19 other products. However, several other products continue to benefit from preferential treatment. During past transitional reviews before the WTO's Council for Trade in Goods, the United States has urged China to eliminate the preferential treatment for these remaining products.

## **Antidumping, Countervailing Duty (CVD), and Safeguard Measures**

Since acceding to the WTO, China has emerged as a significant user of antidumping (AD) measures. In 2009, China became a particularly active user of the antidumping remedy, underscoring the importance of China's full adherence to the transparency and procedural fairness requirements embodied in WTO rules. As of January 2010, China had a total of 102 antidumping measures in place (some of which predate China's membership in the WTO) affecting imports from 17 countries and regions, and 18 antidumping investigations in progress. In 2009 alone, China initiated four new AD investigations involving U.S. exports. Chemical products remain the most frequent target of Chinese antidumping actions.

Most of the rules and regulations that the Ministry of Commerce (MOFCOM) uses to conduct its antidumping investigations were issued by its predecessor agencies – the Ministry of Foreign Trade and

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

In practice, it appears that China's conduct of AD investigations in many respects raises questions, given the need for full adherence to the fundamental tenets of transparency and procedural fairness embodied in the WTO AD Agreement. In 2009, respondents from the United States and other WTO Members continued to express concerns about key lapses in transparency and procedural fairness in China's conduct of AD investigations. The principal areas of concern include the inadequate disclosure of key documents placed on the record by domestic Chinese producers, insufficiently detailed disclosures of the essential facts underlying MOFCOM decisions, such as the results of on-site verification, dumping margin calculations and evidence supporting injury and dumping conclusions, and MOFCOM not adequately addressing critical arguments or evidence put forward by interested parties. These concerns took on added importance for U.S. respondents given the initiation of four new AD investigations involving U.S. exports in 2009.

As China's antidumping regime has matured, many of the AD orders put in place have reached the five-year mark, warranting expiry reviews. MOFCOM is currently conducting 11 expiry reviews, three of which involve products from the United States. Several more are scheduled for next year. To date, every expiry review involving U.S. products has resulted in the measure being extended. Given the problems that respondents have encountered in China's AD investigations, it is critical that China publish rules and procedures specifically governing the conduct of expiry reviews, as required by the AD Agreement. The United States has pressed China to issue regulations governing expiry reviews for more than two years and will continue to do so in 2010.

China initiated its first CVD investigation in 2009 and currently has 3 ongoing CVD investigations. Each of these investigations involves imports of products from the United States. Many of the concerns developed from observations of China's AD practice with regard to transparency and procedural fairness also are now emerging concerning China's CVD practice. In addition, China has committed significant procedural errors in its initial CVD investigations, raising questions in light of the standards set forth in the WTO Subsidies Agreement.

### **Nontariff Barriers**

China's Protocol of Accession to the WTO obligated China to address many of the nontariff barriers it had historically used to restrict trade. For example, China is obligated to phase out its import quota system, apply international norms to its testing and standards administration, remove local content requirements, and make its licensing and registration regimes transparent. At the national level, China made progress following its WTO accession in reforming its testing system, revising regulations requiring local content, and improving overall regulatory transparency, including in the licensing area. Despite this progress, however, as China's trade liberalization efforts have moved forward, some nontariff barriers remain in place and others have been added.

Eight years after China's WTO accession, many U.S. industries complain that they face significant nontariff barriers to trade, which are discussed in more detail in various sections below. These barriers include, for example, regulations that set high thresholds for entry into service sectors such as banking, insurance, and telecommunications, selective and unwarranted inspection requirements for agricultural imports, and the use of questionable sanitary and phytosanitary measures to control import volumes.

### **Tariff-Rate Quotas (TRQs)**

As part of its WTO accession commitments, China was to establish large and increasing TRQs for imports of wheat, corn, rice, cotton, wool, sugar, rapeseed oil, palm oil, soybean oil, and fertilizer, with most in-quota duties ranging from 1 percent to 9 percent. Under these TRQ systems, China places quantitative restrictions on the amount of these commodities that can enter at a low "in quota" tariff rate, and any imports over that quantity are charged a prohibitively high duty. Each year, a portion of each TRQ is to be reserved for importation through non-state trading entities. China's Protocol of Accession to the WTO sets forth specific rules for the administration of the TRQs, including increased transparency and reallocation of unused quotas to end users that have an interest in importing. China phased out the vegetable oil TRQs in 2006, but currently maintains a TRQ regime on six agricultural products including wheat, cotton, corn, rice, wool, and sugar, as well as three chemical fertilizers, including diammonium phosphate.

The administration of China's TRQ system for fertilizer, handled by SETC and subsequently MOFCOM, has suffered from systemic problems since China's WTO accession. By 2007, this system was still operating with insufficient transparency, and administrative guidance still seemed to be affecting how the allocated quota was used. U.S. fertilizer exports to China have declined throughout the post-WTO accession period, due in part to continuing problems with MOFCOM's administration of the fertilizer TRQ system and in part to Chinese government policies restricting the export of a key fertilizer input, phosphate rock, which has led to overcapacity in China's domestic fertilizer industry. U.S. fertilizer exports to China decreased from \$676 million in 2002 to \$232 million in 2006.

Although it was initially anticipated that U.S. fertilizer exports to China might increase following this reduction and the scheduled phase-in of foreign enterprises' rights to engage in wholesale and retail distribution of fertilizer within China, U.S. fertilizer exports sharply declined in 2007, dropping by 58 percent to \$97 million, and then rebounded to \$193 million in 2008, before dropping by 68 percent in the first nine months of 2009 when compared to the same time period in 2008 (latest data available).

### **Import Licenses**

China's inspection and quarantine agency, the General Administration of Quality Supervision, Inspection and Quarantine (AQSIQ), and MOFCOM have imposed inspection-related requirements that have led to restrictions on imports of many U.S. agricultural goods. In particular, AQSIQ issued measures in 2002 that require importers to obtain a Quarantine Inspection Permit (QIP) prior to signing purchase contracts for nearly all traded agricultural commodities as well as a Meat Quarantine Import Permit (MQIP) for the import of meat and poultry products. In addition to the AQSIQ-regulated MQIP, MOFCOM also administers a separate import permit system for poultry importers, the Automatic Registration Form (ARF), which allocates a specific volume amount to eligible importers. These permit systems have significant adverse effects on the United States and China's other agricultural trading partners.

AQSIQ sometimes slows down or even suspends issuance of QIPs at its discretion without notifying traders in advance or explaining its reasons, resulting in significant commercial uncertainty. Because of

the commercial necessity to contract for commodity shipments when prices are low, combined with the inherent delays in having QIPs issued, many cargos of products such as soybeans, meat, and poultry arrive in Chinese ports without QIPs, creating delays in discharge and resulting in demurrage bills for Chinese purchasers. In addition, traders report that shipments often are closely scrutinized and are at risk for disapproval if they are considered too large in quantity.

Little improvement in the QIP system has taken place over the last six years, and in 2009, traders continued to be concerned that the rules and regulations of the QIP system remain available as an administrative tool to limit the quantity of imports. However, traders remain hesitant to press AQSIQ for change, because they believe they would risk reprisals. Many of them would at least like AQSIQ to eliminate the quantity requirements that it unofficially places on QIPs. These quantity requirements have been used often by AQSIQ during peak harvest periods to limit the flow of commodity imports. Eliminating this requirement would help to ensure that QIPs do not interfere with the market.

Additionally, China's Ministry of Agriculture (MOA) mandates a registration procedure for animal feed, feed ingredients, and feed additives. The license applicants have reported that in order to secure licenses, they had to provide product or manufacturing details, which can involve business confidential information. MOA's registration period can be unpredictable, and license applicants complain that the evaluation process often lacks transparency. Moreover, regulations published in 2009 indicate that AQSIQ plans to introduce a system that duplicates MOA's registration process for animal feed products.

In 2004, China implemented regulations requiring foreign scrap suppliers to register with AQSIQ (see the "Scrap Recycling" section below). According to AQSIQ, the registration serves to prevent disreputable foreign scrap suppliers from sending sub-standard or illegal scrap and waste to China. The application process has been opaque, with foreign companies experiencing significant delays in receiving notification from AQSIQ. In 2007, the three-year license expired for many foreign scrap suppliers, and AQSIQ required them to renew their licenses in a process that lacked transparency and predictability. In December 2009, citing environmental objectives, China revised its license requirements for importers of iron and steel scrap, narrowing the criteria used to determine which companies may qualify to import scrap. USTR will continue to monitor China's evolving licensing procedures to ensure they are not unnecessarily trade restrictive and are consistent with China's WTO obligations.

### **Import Ban**

China continues an import ban on medical devices containing bovine materials that was instituted in August 2006, even though the U.S. bovine products included in the devices are deemed safe to trade by the World Organization for Animal Health (OIE). U.S. companies have shared extensive scientific evidence with China to demonstrate that the United States has in place appropriate controls to prevent the transmission of bovine spongiform encephalopathy (BSE). China, however, continues to maintain the ban.

## **INTERNAL POLICIES**

### **Non-discrimination**

#### *All China Federation of Trade Union (ACFTU) Fees*

Chinese law provides for the right to associate and form a union, but does not allow workers to form or join an independent union of their own choice. Any union formed must affiliate with the official All-

China Federation of Trade Unions (ACFTU). The ACFTU is controlled by the Communist Party of China. Once a union chapter is established, the enterprise is required to pay fees to the ACFTU, often through the local tax bureau, equaling two percent of total payroll, regardless of the number of union members in the enterprise. The workers at these enterprises are required to accept the ACFTU as their representative; they cannot instead select another union or decide not to have any union representation.

While China's laws on union formation apply equally to domestic enterprises and foreign-invested enterprises, since 2006, the ACFTU has engaged in a campaign to organize ACFTU chapters in foreign-invested enterprises, particularly large multinational corporations. In December 2008, an ACFTU official publicly stated that ACFTU would continue to push multinational corporations, including Fortune 500 companies, to set up trade unions in China in 2009, and reaffirmed ACFTU's goal of unionizing all foreign-invested enterprises by the end of 2009.

The ACFTU campaign may be discriminatory, both because it does not appear to be directed at private Chinese-owned companies and because it appears to specifically target Fortune 500 companies, disproportionately affecting U.S.-invested companies. The United States is monitoring this situation and attempting to assess its effects on U.S.-invested companies and their workers.

## **Taxation**

### *Value Added Taxes (VAT)*

Uneven application of China's single most important revenue source – the VAT, which ranges between 5 percent and 17 percent, depending on the product – continues. Importers from a wide range of sectors report that, because taxes on imported goods are reliably collected at the border, they are sometimes subject to application of a VAT that their domestic competitors often fail to pay. In addition, China's selective exemption of certain fertilizer products from the VAT has operated to the disadvantage of imports from the United States.

In the Memorandum of Understanding China signed to settle the WTO dispute on prohibited tax subsidies, China committed to eliminate VAT and income tax refunds tied to the purchase of domestic products over imported products. In addition, China committed to end VAT exemptions available to foreign invested enterprises with regard to imported equipment used to produce their products, provided that they exported 100 percent of their production, as discussed below in the section on Export Subsidies. China eliminated all of these subsidies, as agreed, effective January 1, 2008.

According to a notice issued by the Ministry of Finance, Customs, and the State Administration of Taxation, from July 1, 2009 through December 31, 2010, foreign-invested research and development centers are eligible for VAT exemption on imports of scientific and technological development products, while both domestic and foreign-invested enterprises can enjoy a VAT rebate for their purchases of domestically manufactured products. China has sometimes provided preferential VAT treatment for domestic enterprises when purchasing imported products in support of the government's strategic development policies. As of July 1, 2009, China exempts domestic enterprises from any import tax and VAT for imports of designated key parts and raw materials for production of certain technical equipment and products.

China retains an active VAT rebate program for exports. However, rebate payments to exporters are often delayed and in some cases have been reduced.

In 2008, the global economic crisis and China's stated desire to remove barriers to exports as part of its stimulus programs led to a reversal of the trend of gradually reducing export VAT rebates. Since July 2008, China has increased export VAT rebates on many products seven times. On July 30, 2008, VAT rebates for certain textile and bamboo products were increased. In October 2008, China announced VAT rebate increases on 3,486 products including textiles, toys, garments, furniture, and some high value added electrical machinery, representing approximately one quarter of China's total exports. Specifically, the rebate on toys was raised from 11 percent to 14 percent, the rebate for high-technology and high value added electrical machinery products increased from 11 percent to 13 percent, and the rebate on clothing and textiles increased from 13 percent to 14 percent. In December 2008, China announced an increase in VAT rebates for selected high-technology and high value added machinery and electronic products effective January 1, 2009. Effective February 1, 2009, the government again increased VAT rebates on clothing and textiles to 15 percent. Effective June 1, 2009, the government increased VAT rebates for a variety of products, including selected steel products, sewing machines, certain agricultural products, toys, furniture, selected plastic and glass products, and alcohol. Among the products affected by recent changes in VAT treatment was soda ash. On April 1, 2009, China raised the VAT rebate from zero percent to 9 percent for exports of soda ash, which compete with U.S. exports in important third country markets.

Currently, 70 percent of machinery and electronic product tariff lines enjoy full VAT rebates, but the rebates are still imposed in a manner to favor the export of some products over others. China also stated in several sector specific stimulus policies that it would continue to use "flexible" border tax policies to "maintain China's share of the global market." From January through August 2009, China rebated a total of \$39 billion to exporters, up nearly 9 percent from a year earlier, according to official data.

#### *Consumption Taxes*

China's 1993 consumption tax system continues to raise concerns among U.S. exporters. Since China uses a substantially different tax base to compute consumption taxes for domestic and imported products, the tax burden imposed on imported consumer goods ranging from alcoholic beverages to cosmetics to automobiles is higher than for competing domestic products.

#### *Business Tax on Foreign Services*

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

### **EXPORT REGULATION**

#### **Export Duties, Licenses, and Quotas**

Despite China's commitment in connection with its accession to the WTO to eliminate all taxes and charges on exports, including export duties, except as included in Annex VI to the Protocol of Accession or applied in conformity with Article VIII of GATT 1994, China has continued to impose restrictions on exports of raw materials – including quotas, duties and related fees, licensing requirements, and other restraints – as the Chinese government has continued to guide the development of downstream industries.

### **FOREIGN TRADE BARRIERS**



These export restraints are widespread. For example, China maintains export quotas and sometimes export duties on antimony, bauxite, coke, fluorspar, indium, magnesium carbonate, molybdenum, rare earths, silicon, talc, tin, tungsten, and zinc, all of which are of key interest to U.S. producers of downstream products. These types of export restraints can significantly distort trade. In the case of China, the trade-distortive impact is exacerbated because China is the world's leading producer of each of the raw materials (except for molybdenum and bauxite, for which China is the world's second leading producer).

China's export restraints affect U.S. and other foreign producers of a wide range of downstream products, such as steel, chemicals, ceramics, semiconductor chips, refrigerants, medical imagery, aircraft, refined petroleum products, fiber optic cables, and catalytic converters, among numerous others. The export restraints can create disadvantages for these foreign producers by artificially increasing China's export prices for their raw material inputs, which also drives up world prices. At the same time, the export restraints can artificially lower China's domestic prices for the raw materials due to significant domestic oversupply, enabling China's domestic producers of downstream products to produce lower priced products from the raw materials and thereby creating significant advantages for China's domestic downstream producers when competing against foreign producers of these products both in the Chinese market and in export markets.

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

In June 2009, the United States and the EU initiated a WTO case challenging export quotas, export duties, and other restraints maintained by China on the export of several key raw material inputs for which China is a leading world producer. The materials at issue include bauxite, coke, fluorspar, magnesium, manganese, silicon carbide, silicon metal, yellow phosphorus, and zinc. Joint consultations were held in July 2009. Mexico subsequently became a co-complainant in August 2009, and another round of joint consultations was held in September 2009. A WTO panel was established to hear this case in December 2009.

As discussed above in the section on the VAT, China also attempts to manage the export of many intermediate and downstream products by raising or lowering the VAT rebate available upon export and sometimes by imposing or retracting export duties. These practices have disrupted and injected uncertainty into the markets for particular products.

Sometimes the objective of these adjustments appears to be to make larger quantities of a product available domestically at lower prices than the rest of the world. In other situations, China has reduced or eliminated VAT export rebates and raised export duties in an attempt to rein in out-of-control expansion of production capacity in particular sectors. In some instances, the adjustments have benefited U.S. producers by slowing significant increases in low-priced exports from China to global markets. However, the adjustments can also have harmful consequences, whether or not intended. For example, in November 2006 and April 2007, China reduced export VAT rebates and raised export duties on a wide range of semi-finished and finished steel products, as part of its efforts to discourage further unneeded production capacity for these products in China. At the same time, these export VAT rebate reductions did not target all steel products, and the result was that Chinese steel producers shifted their production to steel products for which full export VAT rebates were still available, particularly steel pipe and tube products, causing a significant increase in exports of these products, many of which found their way into

the U.S. market. In 2009, in the face of the economic crisis and in apparent contradiction to its stated goals of discouraging excess capacity, China eliminated most steel export duties and raised VAT rebates on many steel products while continuing to apply differential border tax treatment to encourage the export of more value added products.

To date, China has been willing to take certain steps toward remedying some of the unintended consequences of its measures when the United States has brought them to China's attention. In July 2007, for example, China issued a notice extending export VAT rebate reductions to most steel pipe and tube products, with the notable exception of oil country tubular goods. In 2009, through JCCT dialogues and bilateral contacts, USTR raised concerns about differential VAT rebates and export duties that appear to encourage the export of downstream products such as steel wire products, steel pipe and tube and aluminum foil, to the rising concern of U.S. producers of these products.

### **Export Subsidies**

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

In its Protocol of Accession to the WTO, China committed to eliminate all subsidies prohibited under Article 3 of the WTO Subsidies Agreement, including all forms of export subsidies on industrial and agricultural goods, upon its accession to the WTO in December 2001. China finally submitted its long overdue subsidies notification to the WTO's Subsidies Committee in April 2006. Although the notification is lengthy, with over 70 subsidy programs reported, it is also notably incomplete, as it failed to notify any subsidies provided by state-owned banks or by provincial and local government authorities. In addition, while China notified several subsidies that appeared to be prohibited under WTO rules, it did so without making any commitment to withdraw them, and it failed to notify other subsidies that appeared to be prohibited.

Through the remainder of 2006, the United States pressed China to withdraw the subsidies that appeared to be prohibited, which included both export subsidies and import substitution subsidies, benefiting a wide range of industries in China principally through income tax and VAT exemptions and reductions. However, China was unwilling to commit to the immediate withdrawal of these subsidies. Accordingly, the United States, with Mexico as a co-complainant, initiated a challenge to these subsidies under the WTO's dispute settlement procedures in February 2007. The WTO established a panel in August 2007 to hear the dispute. Following extensive negotiations with China, the United States and Mexico suspended the dispute settlement proceedings with China in November 2007 when China agreed to eliminate all of the prohibited subsidies at issue by January 1, 2008. As agreed, China issued measures that formally eliminated these subsidies effective January 1, 2008.

In December 2008, the United States requested WTO dispute settlement consultations regarding China's "Famous Brand" initiatives, with Mexico and subsequently Guatemala joining as co-complainants. Designed primarily to promote the development of global Chinese brand names and increase sales of Chinese branded merchandise around the world, these initiatives appeared to incorporate prohibited export subsidies that unfairly disadvantage U.S. manufacturers, farmers, ranchers, and workers. Joint consultations were held in February 2009, followed by intense discussions as China took steps to repeal

or modify the numerous measures at issue. In December 2009, the parties to the dispute concluded a settlement agreement in which China confirmed that it had eliminated all of the export-contingent benefits in the challenged measures.

## **INTELLECTUAL PROPERTY RIGHTS (IPR) PROTECTION**

China was listed on the Priority Watch List in the 2009 Special 301 report because of continuing concerns regarding IPR protection and enforcement. Key concerns listed in the report included unacceptable levels of retail and wholesale counterfeiting, as well as persistently high-levels of book and journal piracy, end-user piracy of business software, and copyright piracy over the Internet. The report describes these enforcement-related concerns and summarizes the legal difficulties rights holders face when attempting to assert their IPR rights in China. The lack of deterrent penalties and other policies, such as barriers to the market for legitimate products, contribute to the poor record on reducing IPR crime in China. The report also recognizes industry concerns about the possibility that laws or policies in a variety of fields might be used to unfairly favor domestic intellectual property (IP) over foreign IP, including procurement preferences for products with domestically developed IP, the treatment of IPR in setting standards, and reports that officials, apparently motivated by the financial crisis and the need to maintain jobs, are urging more lenient enforcement of IPR laws.

The United States continues to urge China to provide stronger protection against unfair commercial use of undisclosed test and other data submitted by foreign pharmaceutical companies seeking marketing approval for their products. The United States has also encouraged China to implement an effective system to prevent the issuance of marketing approvals for unauthorized copies of patented pharmaceutical products. In addition, built-in delays in China's marketing approval system for pharmaceuticals and inadequate regulatory oversight of the production of active pharmaceutical ingredients by domestic chemical manufacturers continue to create incentives for counterfeiting.

The JCCT IPR Working Group meetings held in October 2009 featured constructive dialogue on the intellectual property regimes of both countries. Following these meetings, China made commitments at the JCCT meeting held later that month to impose maximum administrative penalties, including the revocation of business licenses, in cases of Internet piracy, and to work with the United States to ensure that the Ministry of Culture's prescreening requirements for sound recordings do not hamper the distribution of legitimate copies online. China also announced that it had issued a notice stressing the importance of complying with all copyright laws, especially with respect to electronic journals, in state-run and academic libraries.

A troubling trend that has emerged, however, is China's willingness to encourage domestic or "indigenous" innovation at the cost of foreign innovation and technologies. For example, as noted below in the Government Procurement section, in November 2009, China issued the Circular on Launching the 2009 National Indigenous Innovation Product Accreditation Work with the aim of improving "indigenous" innovation in computer and other technology equipment. In order to qualify as "indigenous" innovation under the accreditation system, and therefore be entitled to procurement preferences, a product's intellectual property must originally be registered in China.

Another example of this broad trend is the draft Regulations for the Administration of the Formulation and Revision of Patent-Involving National Standards that the Standardization Administration of China (SAC) released for public comment in November 2009. These proposed regulations have raised a number of concerns regarding their expansive scope, the feasibility of certain patent disclosure requirements, and the undermining of IP rights through possible compulsory licensing of essential patents included in

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national standards. If adopted in their current form, these provisions may have the unintended effect of undermining the incentives for innovation and, by discouraging rights holders from participating in the development of standards in China, depriving the standard setting process of potentially superior technology. The United States has provided comments on the draft regulations and has suggested that SAC defer implementation in favor of proceeding with additional consultations to assess the situation.

On October 1, 2009, the Third Amendment to China's Patent Law, passed in December 2008, went into effect. While many areas of the Patent Law were clarified and improved, rights holders have raised a number of concerns about the new law and implementing regulations. The United States will be closely following implementation of these measures in 2010.

With respect to copyright piracy and trademark counterfeiting, weaknesses in China's enforcement system – criminal, civil, and administrative – contribute to China's poor IPR enforcement record. The United States sought to resolve specific concerns about China's high legal thresholds for criminal enforcement along with other concerns regarding weaknesses in China's laws concerning border enforcement and the denial of copyright protection and enforcement to creative works that are awaiting or have not received Chinese censorship approval. When bilateral attempts to address these concerns did not succeed, the United States requested WTO dispute settlement consultations in April 2007. A WTO panel was composed to hear the dispute in December 2007, and it circulated its decision in January 2009, finding for the United States on two out of three claims, and clarifying important legal principles related to the third claim. Neither China nor the United States appealed the panel's decision, and China has agreed to bring its measures into compliance with the WTO's findings by March 2010. The United States is monitoring China's implementation process.

An exacerbating factor contributing to China's poor IPR protection has been China's maintenance of restrictions on the right to import and distribute legitimate copyright-intensive products, such as theatrical films, DVDs, music, books, newspapers, and journals. These restrictions impose burdens on legitimate, IPR-protected goods and delay their introduction into the market. These burdens and delays faced by legitimate products create advantages for infringing products and help to ensure that those infringing products continue to dominate markets within China. As discussed above in the sections on Trading Rights and Distribution Services, the United States raised these restrictions in another WTO dispute filed in April 2007. In August 2009, a WTO panel ruled in favor of the United States on all significant issues, and the WTO's Appellate Body rejected China's subsequent appeal on all counts in December 2009.

## **SERVICES BARRIERS**

The market for services in China has significant growth potential in both the short and long term. However, China imposes restrictions in a number of services sectors that prevent or discourage foreign suppliers from gaining or further expanding market access. For example, for certain sectors, China does not grant new licenses or maintains a licensing review process that is opaque or slow-moving. In certain cases, China imposes foreign equity limitations or other discriminatory measures on foreign suppliers. High minimum capital requirements plague other sectors. China also sometimes applies overly burdensome regulatory regimes or other restrictions.

### **Insurance Services**

China continues to maintain certain market access barriers for the insurance sector. Foreign life insurance companies can only be established as joint ventures, with foreign equity capped at 50 percent. China's

markets for third party liability automobile insurance and for political risk insurance are closed to foreign participation.

Although China has shown some recent improvement in the insurance sector, U.S. and other foreign companies already established in China continue to have difficulty setting up internal branches in order to expand their operations. The China Insurance Regulatory Commission (CIRC) is not always consistent in following its own deadlines for reviewing and approving internal branch applications from foreign life and non-life companies. Unlike domestic companies, foreign companies also report difficulties in applying for and receiving multiple, concurrent internal branch approvals. The United States will be monitoring how China implements the October 1, 2009 Measures for the Administration of Insurance Companies and whether foreign insurance companies begin to receive the same treatment as domestic insurance companies regarding approvals for new branches and sub-branches.

In addition, the United States has urged the relevant Chinese authorities to ensure that China Post, which has been granted a license to supply insurance through its existing network of postal facilities, is not given advantages in terms of how it is regulated and to what extent it is required to provide distribution possibilities for insurance products of other companies.

### **Private Pensions—Enterprise Annuities**

U.S. and other foreign companies have found it difficult to obtain a license to participate in China's market for "enterprise annuities" services (private pensions similar to the U.S. 401(k) system), which will grow in importance as China develops alternatives to its state-funded social security system. Under existing regulations, licenses to manage enterprise annuities must be obtained from the China Banking Regulatory Commission (CBRC), the China Securities Regulatory Commission, and the Ministry of Labor and Social Security. China has licensed very few foreign operators and only for limited elements of enterprise annuities services. The United States remains very concerned that China's licensing process appears to be largely closed, and has urged China to open its licensing process and ensure that such licensing procedures do not impose quotas on the number of licenses granted to qualified suppliers.

### **Banking Services**

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

To date, numerous foreign banks have received approval to convert to subsidiaries. In 2008, the first application to issue local currency debit and credit cards was approved, although administrative barriers have hindered the approval of other applications and the actual issuance of domestic currency (RMB) cards. Also in 2008, the CBRC announced that foreign banks would be allowed to trade and underwrite bonds on the interbank market, albeit via a gradual phasing-in process. At the inaugural July 2009 meeting of the U.S.-China Strategic and Economic Dialogue (S&ED), launched by President Barack Obama and Chinese President Hu Jintao to discuss bilateral and global economic, environmental and diplomatic issues, China reiterated its commitment to deepen financial system reform. In addition, it

agreed to continue to allow foreign-invested banks incorporated in China that meet relevant prudential requirements to enjoy the same rights as domestic banks with regard to underwriting bonds in the interbank market. CBRC subsequently approved one U.S. bank's application to underwrite bonds in the interbank market.

Foreign banks seeking to operate in China through branches instead of through subsidiaries saw some relaxation of prior restrictions, but not enough to allow them to compete effectively in the retail domestic currency business. Specifically, foreign bank branches can continue to take deposits from, and make loans to, Chinese enterprises in domestic currency, but they can only take domestic currency deposits of RMB 1 million (\$133,000) or more from Chinese individuals and cannot make any domestic currency loans to Chinese individuals. Foreign bank branches also cannot issue domestic currency credit cards to Chinese enterprises or Chinese individuals.

The rules on the establishment of Chinese-foreign joint venture banks remain a concern. China continues to follow a 2003 regulation that defines a “Chinese bank” as one that has less than 25 percent foreign ownership, with no single foreign investor having over 19.9 percent ownership (the so-called 20/25 rule). China draws a distinction between domestic and foreign companies through different treatment and requirements relating to experience in China. Under this bifurcated regulatory structure, if a Chinese bank were to sell over 25 percent of its shares to foreign investors, it would be classified as a foreign bank and fall under separate rules, which would reduce its permitted scope of business. While November 2006 State Council regulations appear to virtually eliminate any significant differences in rules for locally incorporated foreign banks and domestic Chinese banks, the possibility of increasing foreign stakes in Chinese banks above the 25 percent threshold, thus falling under the regulatory scrutiny for foreign banks, and attempting to continue the full range of banking business has not been tested.

In September 2009, the state-owned Assets Supervision and Administration Commission (SASAC) announced that it would investigate fuel oil derivative contracts, and that state-owned enterprises (SOEs) could unilaterally terminate such derivative contracts with foreign banks that provide over-the-counter commodity hedging services. These actions raised serious concerns among foreign banks regarding derivative deals signed with Chinese SOEs.

### **Securities Services**

In December 2005, China instituted a moratorium on foreign investment in the securities sector, claiming the need to better regulate domestic companies and further develop the sector. In December 2007, as follow up to a U.S.-China Strategic Economic Dialogue (SED) commitment, China announced that it had lifted the moratorium on the securities sector, and several foreign firms subsequently began discussions with potential joint venture partners. Since that time, China has begun to license some new Chinese-foreign joint ventures. However, China continues to apply a 33 percent foreign equity limit in this sector (as well as a 49 percent foreign equity limit for the asset management sector).

In late 2007, China issued rules that allow foreign joint venture securities firms to gradually expand their scope of business over an extended time frame. However, the regulations contain a number of troublesome aspects that will continue to limit competition in the securities sector, whether for new entrants or for acquisitions of shares in existing companies.

## **Financial Information Services**

In September 2006, Xinhua issued the Administrative Measures on News and Information Release by Foreign News Agencies within China. These regulations precluded foreign suppliers of financial information services from contracting directly with, or providing financial information services directly to, domestic Chinese clients. Instead, foreign financial information service suppliers would have to operate through a Xinhua-designated agent, and the one agent designated was a Xinhua affiliate. Xinhua told foreign financial information service suppliers that the new rules would not be applied to them until after an implementing measure was issued; however, Xinhua subsequently required foreign financial information service suppliers to conclude agreements with the Xinhua affiliate before they could renew their annual licenses. Foreign financial information service suppliers continued to operate, but without renewed licenses.

In March 2008, the United States and the EU initiated WTO dispute settlement proceedings against China, after it had become clear that Xinhua was not prepared to remove the 2006 rules and the resulting market uncertainty was beginning to adversely affect relations between U.S. and European suppliers and their Chinese customers. Joint consultations were subsequently held in Geneva in April 2008. A series of further discussions took place among the parties, and Canada joined in these discussions in September 2008 after it had initiated its own WTO dispute settlement proceedings against China. In November 2008, an MOU was signed in which China addressed all of the concerns that had been raised by the United States, the EU and Canada. Among other things, China agreed to establish an independent regulator, to eliminate the agency requirement for foreign suppliers, and to permit foreign suppliers to establish local operations in China, with all necessary implementing measures issued by April 30, 2009, and effective no later than June 1, 2009. Subsequently in 2009, China issued the implementing measures, and since then foreign suppliers have not reported any problems with the new regulatory regime.

## **Electronic Payment Processing**

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

The United States remains concerned that China has not yet issued regulations to allow foreign companies to operate electronic payment systems for single brand, RMB-denominated credit and debit cards. China Union Pay, an entity created by the People's Bank of China and owned by participating Chinese banks, remains the sole authorized provider of electronic payment services in China.

## **Retailing Services**

Although China has made great strides since September 2008 in approving foreign retail outlets, the United States continues to have concerns that China treats domestic companies more favorably than foreign companies regarding zoning and urban development requirements and imposes additional informal minimum capital requirements on foreign suppliers. The United States also would like China to

lift ownership restrictions on foreign retailers operating more than 30 stores in China and selling certain commodities.

### **Sales Away From a Fixed Location**

Since 2005, China has significantly liberalized its regime for direct selling services, and a number of foreign direct sellers have received licenses to operate. In October 2009, China finally approved some additional applications for direct selling licenses, the first such approvals since July 2007. This is a welcome step, but the United States will be closely monitoring how future foreign applications are treated. A number of concerns remain, as China maintains unduly burdensome “service center” establishment requirements, caps and other restrictions on sales force compensation, and discriminatory qualification requirements affecting foreign direct sellers.

### **Express Delivery Services**

A number of aspects of China’s express delivery regime continue to cause concern for the United States. For example, in October 2009, China enacted a new Postal Law that excludes foreign suppliers from the document segment of China’s domestic express delivery market. The United States also has a general concern that the practical implementation of the law and related regulations and standards by China’s State Postal Bureau (SPB) will not treat foreign and domestic companies equally. Indeed, China already may be interpreting the law to exclude certain foreign suppliers, but not others, from such activity. The United States is also concerned that China may interpret the universal service fund requirement of the law to require private companies to pay into that fund and, in effect, be forced to subsidize China Post’s own express delivery services.

In most economies, express delivery services are not regulated directly or even subject to licensing. For this reason, foreign companies have raised concerns about the risk that SPB will regulate the express delivery sector in an overly burdensome manner that is not necessary to ensure the quality of the service. Foreign companies are also concerned that any express delivery standards may cover operational issues, including many commercial decisions such as weight, package examination, transit time, and personnel requirements, which would normally remain within the purview of individual companies in the marketplace.

The SPB has established a national China Express Association (CEA) as well as local express associations in all of China's provinces. These associations often perform quasi-regulatory functions, such as the development of voluntary standards, and have apparently sought to discuss pricing practices. U.S. industry would like the Chinese government to issue strong, clear, and specific guidance to the CEA and the provincial-level express delivery industry associations on the types of activities that are legitimate under Chinese law. Express delivery firms also faced customs issues in 2009, including a proposed four-hour advance manifest rule that, if implemented, would seriously hobble overnight international deliveries.

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



## **Construction, Engineering, Architectural, and Contracting Services**

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

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

Implementing rules for Decree 114 became effective in January 2007. These rules are important, as U.S. companies have a very strong interest in providing engineering and design services in China. The implementing rules were generally positive, in that they temporarily lifted foreign personnel residency requirements imposed by Decree 114, and recognized the foreign qualifications of technical experts for licensing purposes. U.S. and other foreign companies would like to see these improvements in the implementation of Decree 114 made permanent. Decree 160 provided some improvements to enable construction enterprises to apply for comprehensive "Grade A" design licenses; however, Circular 202 curtails such access by imposing other requirements that disqualify certain foreign companies from such access.

Circular 200 imposes certain qualification requirements on foreign suppliers of project management services that the industry finds overly burdensome. Specifically, China does not allow foreign companies to provide project management services without already holding construction or design enterprise approvals. If China were to issue implementation rules for Decree 155 relating to foreign-invested construction engineering services enterprises, this would provide an important new avenue for foreign companies to supply project management services.

## **Logistics Services**

In March 2008, China announced the establishment of a new Ministry of Transport (MOT) that combined responsibilities formerly held by the Ministry of Communications, the Civil Aviation Administration of China (CAAC), and SPB. Rail transport remains administered separately by the Ministry of Railways.

MOT has been slow to approve applications by foreign logistics firms and is unwilling to issue nationwide trucking licenses, which limits the ability of foreign firms to build economies of scale. In addition, according to local regulations, trucks are not allowed daytime city access in almost all major Chinese cities. China's enforcement efforts are often targeted at foreign transport/logistics firms, while local firms are permitted to operate without being in full compliance.

In February 2009, China's State Council announced a support plan for the logistics industry as part of the Chinese government's industry revitalization plans for ten key industries. Foreign logistics firms with investments in China have raised concerns about transparency of implementing measures, equitable treatment, and efforts to strengthen industry standardization.

There also are growing concerns about the use of inappropriate standards that may hinder market access for logistics firms. Foreign companies have complained about AQSIQ standards issued in April 2005 that are unnecessarily burdensome since they establish artificial classification categories of transport, warehousing, and multi-purpose activities. In addition, freight forwarding firms are concerned that their exclusion from these regulatory categories may prevent their participation in standards setting activities.

### **Aviation and Maritime Services**

Under the auspices of the SED, the United States and China negotiated an amended bilateral air services agreement that was signed in July 2007. The agreement brings significant economic benefits to the aviation industry, passengers, shippers, and local communities. It is an important step to facilitate trade, investment, tourism, and cultural exchanges between the United States and China. By 2012, the agreement will add 12 new daily passenger flights that U.S. carriers may operate to the Chinese gateway cities of Beijing, Shanghai, and Guangzhou, more than doubling the number of flights allowed. The new agreement also provides for unlimited cargo flights to any point in China and allows an unlimited number of U.S. cargo carriers to serve the market as of 2011. Finally, it increases the available opportunities for carriers to code-share on other U.S. carriers' flights to China, and it commits China to begin negotiations by 2010 on a timetable for the full liberalization of the bilateral civil aviation relationship.

Since early 2008, the United States has engaged in a series of technical consultations with China to discuss differences in the interpretation of the cargo hub provision of the aviation agreement, which has created difficulties for some U.S. cargo carriers to gain approval of their flight schedules. While differences in interpretation remain, China has agreed to continue working with the United States in a pragmatic manner to approve the U.S. carriers' cargo schedules.

In 2003, China took steps to liberalize the maritime services sector. The United States and China signed a far-reaching, five-year bilateral maritime agreement, extended automatically for successive one year periods, which gives U.S. registered companies the legal flexibility to perform an extensive range of additional shipping and logistics activities in China. U.S. shipping and container transport services companies, along with their subsidiaries, affiliates, and joint ventures also are able to establish branch offices in China without geographic limitation. Under the framework of the 2003 agreement, the United States and China have annual consultations. The most recent round was held in December 2008.

### **Telecommunications**

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

equity for basic telecommunications and 50 percent for value added telecommunications) severely diminish commercial opportunities in the sector.

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

After years of delay and sustained U.S. pressure, MIIT finally issued licenses in January 2009 for third-generation (3G) mobile telecommunications services to the country's three main state-owned mobile telecommunications operators. There was no public announcement or details available regarding the application process for these licenses, and the company deploying the indigenous 3G technology, TD-SCDMA, appears to have chosen this standard at the government's direction, and not as a commercial decision. China Mobile received a license to operate TD-SCDMA, the Chinese-developed 3G standard. China Telecom received a license for CDMA2000, the U.S.-developed standard, and China Unicom received a license to operate W-CDMA, the European-developed standard. Although this new network roll-out provides significant opportunities for U.S. equipment and services suppliers, continued reports on plans to support and favor China's domestic 3G standard are troubling. As China considers making new spectrum available for new wireless services, improving the transparency of its licensing process will be a priority for all market participants seeking access to the services and technologies a new release of spectrum will make possible. For example, China has not been clear about why mobile wireless services using the 802.16 ("WiMax") standard are not permitted, despite interest among both Chinese service suppliers and U.S. equipment vendors.

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

The United States also has pressed China to make available its draft Telecom Law for review and comment, and it did so in the fall of 2009. This draft contains troubling elements, including provisions that would codify China's foreign equity limitations for the sector, complicating ongoing efforts in the WTO and other fora to encourage China to liberalize this sector. China has been working on the draft Law for over ten years. MIIT still lacks a specific authorizing statute for its powers.

## **Online Services**

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

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

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

## **Audiovisual and Related Services**

China's desire to protect the revenues earned by the state-owned audiovisual and print media importers and distributors, as well as concerns about politically sensitive materials, have resulted in continued restrictions on foreign providers of audiovisual and related services. Importation and distribution of books, newspapers, journals, sound recordings, videos, films, and television programs remain highly restricted. Inconsistent and subjective application of censorship regulations further impedes market growth for foreign providers. China's large black market for foreign DVDs and other home entertainment video products continues to grow, because these market access restrictions create a demand for pirated goods in the absence of legitimately licensed home or theatrical entertainment.

At both the central and regional levels, interconnected agencies under the State Administration for Radio, Film, and Television (SARFT) dictate the terms under which films can be produced and distributed. SARFT permits only one film importer and two film distributors (which are both components of the same monopoly managed by SARFT) to operate in China. For theatrical releases, the monopoly importer and distributor dictate the films that will be imported (currently limited by China to 20 revenue sharing films a year, with remaining films imported only under low, fixed price terms), when they will be released in the market, and the box office revenue sharing terms in a master contract agreement imposed unilaterally and uniformly on foreign studios by the Chinese government. In addition, the Chinese government sets strict guidelines with respect to the public screening of foreign films. Under Regulations for the Administration of Films Decree No. 342, Article 44, issued by the State Council in 2001, the total annual

screening time for foreign films must not exceed one-third of the total screening time of all films (domestic and foreign).

Television quotas are also highly restrictive. The Administrative Measures on the Import and Broadcast of Extraterritorial Television Programs (No. 42), effective October 23, 2004, restricts foreign television drama and film programming to no more than 25 percent of total airtime, and other foreign programming to no more than 15 percent of total air time. Foreign programming, including animated programs, is banned on prime time between 7:00 P.M. and 10:00 P.M. on terrestrial stations. SARFT's Interim Regulation on Digital Cable TV Pay Channels (November 14, 2003) restricts foreign programming to a maximum of 30 percent of total airtime on pay television channels.

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

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

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

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

As discussed above in the section on Trading Rights, the United States initiated a WTO dispute settlement case against China in April 2007 challenging the importation and distribution restrictions applicable to certain copyright-intensive products, including books, newspapers, journals, theatrical films, videos, and sound recordings. The WTO panel that heard the case issued its decision in August 2009, ruling in favor of the United States on all significant issues. China appealed the panel's decision in September 2009. The WTO's Appellate Body rejected China's appeal on all counts in December 2009. The United States will closely monitor China's implementation of this ruling.

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

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

### **Travel and Tourism Services**

In December 2007, the United States and China signed an MOU to facilitate Chinese group leisure travel to the United States and the marketing in China of U.S. destinations or businesses. The first group of Chinese leisure travelers visited the United States under the MOU in June 2008. In November 2009, the United States and China agreed to implement phase II of the MOU to include an additional 12 jurisdictions, bringing the total to 21. However, foreign travel and tourism firms in China are still restricted from competing under the same conditions as Chinese firms. For example, wholly foreign-owned enterprises and Chinese-foreign joint ventures continue to be restricted in selling outbound travel packages and airline tickets. In addition, China requires all travel agents and airlines to connect into China's nationally owned and operated computer reservation system when booking airline tickets for domestic flights and outbound international flights. China also continues to apply an annual sales requirement on foreign travel agencies, although there are no such requirements for domestic agencies.

### **Education and Training Services**

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

### **Legal Services**

Foreign law firms face numerous restrictions on the scope and structure of their activities in China, as well as other barriers affecting market access. Current Chinese law prohibits foreign firms from practicing Chinese law, which means that they are unable to hire Chinese-qualified lawyers to practice Chinese law. China also maintains restrictions on cooperation with Chinese law firms (including investment and profit sharing restrictions) that further limit market opportunities. In addition, foreign law firms are concerned that China may make it more difficult to provide other legal services (such as advisory and consultation services) that are currently widely regarded as permissible.

China also maintains separate regulatory requirements for foreign representative legal offices that are not applied to Chinese law firms as set forth in the December 2001 Regulations on the Administration of Foreign Firm Representative Offices and July 2002 implementing rules. The measures appear to create an economic needs test for foreign law firms seeking to establish representative offices in China. In

addition, a foreign law firm may not establish an additional representative office until its most recently established office has been in practice for three consecutive years. China also requires that representatives of foreign law firms must have practiced for no less than two years outside of China as a member of a bar or law society of a WTO Member. New foreign representatives must undergo a lengthy approval process that can take more than one year, during which they must leave the country periodically to renew their visas.

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

## **INVESTMENT BARRIERS**

The volume of foreign direct investment (FDI) in China fell by only 2.6 percent in 2009 (latest data available) amid a 39 percent decrease in FDI flows globally and despite the maintenance of significant investment barriers. According to the United Nations Conference on Trade and Development, China received \$90 billion in FDI in 2009 (latest data available). China was the world's second-largest destination for FDI, after the United States. In 2009, investors continued to complain of a lack of transparency, inconsistently enforced laws and regulations, weak IPR protection, corruption, and an unreliable legal system that fails to enforce contracts and judgments.

China's leadership has repeatedly affirmed its commitment to further open China to foreign investment, including a strong statement at the S&ED meeting in July 2009 in which China reiterated its commitment to open trade and investment. However, there is growing concern that recent steps China has taken may increasingly discriminate against or otherwise disadvantage foreign investors. For example, SASAC in December 2006 issued the Guiding Opinion Concerning the Advancement of Adjustments of State Capital and the Restructuring of State-Owned Enterprises. Statements accompanying its release identified an expansive list of sectors deemed critical to the national economy, including "pillar" industries such as equipment manufacturing, automotive, electronic information, construction, iron and steel, nonferrous metal, chemical, survey and design, and science and technology industries. SASAC committed to restrict foreign participation in these sectors by preventing further foreign investment in state-owned enterprises operating in these sectors. Furthermore, China's 2009 revision of its 2006 Provisions on the Mergers and Acquisitions of Domestic Enterprises by Foreign Investors neither removed nor provided greater clarity with respect to terms such as "national economic security" and "critical industries," and also retained a provision permitting denial of a foreign investor's acquisition if a famous trademark or a traditional Chinese brand is being acquired. Revisions in these areas would have provided useful clarity for foreign investors. Their absence raises concerns that administrative ambiguity will continue to provide a basis for uneven administration, and for differential treatment of Chinese and foreign investors. In addition, there have been indications since mid-2008 that China is developing a more integrated national security foreign investment review process. The United States is concerned about the increase in proposed and adopted measures that restrict investment. These restrictions are often accompanied by other problematic industrial policies, such as the increased use of subsidies and the development of China-specific standards. Many of these developments appear to represent protectionist tools created by industrial planners to shield inefficient or monopolistic enterprises, particularly those in which the Chinese government has an ownership interest, from competition.

## **FOREIGN TRADE BARRIERS**

## **Investment Requirements**

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

Although China has revised many laws and regulations to conform to its WTO investment commitments, some of the revised laws and regulations continue to raise WTO concerns, including ones that “encourage” technology transfers to China, without formally requiring them. U.S. companies remain concerned that this “encouragement” in practice can amount to a “requirement,” particularly in light of the high degree of discretion provided to Chinese government officials when reviewing investment applications. Similarly, some laws and regulations “encourage” exportation or the use of local content. Moreover, according to U.S. companies, some Chinese government officials in 2009, even in the absence of encouraging language in a law or regulation, still considered factors such as export performance and local content when deciding whether to approve an investment or to recommend approval of a loan from a Chinese policy bank, which is often essential to the success of an investment project.

## **Investment Guidelines**

### *Foreign Investment Catalogue*

China’s foreign investment objectives are primarily defined through its Catalogue Guiding Foreign Investment in Industry, which is revised every few years and was most recently updated in November 2007. The catalogue suggests that China’s investment policies may be becoming more selective in allowing foreign investment by actively targeting higher value added sectors (including high technology research and development, advanced manufacturing, energy efficiency, environmental conservation, and modern agriculture and services) rather than basic manufacturing. Meanwhile, the catalogue places new restrictions on several industries, including chemicals, automotive parts, rare earths processing, biofuel production, and edible oil processing, while the prohibitions and restrictions facing copyright-intensive products, conventionally bred plant seeds, and genetically modified plant seeds remain in place. It also moves the mining of raw materials such as antimony, fluorite, molybdenum, tin, and tungsten from the “restricted” category to the “prohibited” category. From a positive standpoint, the catalogue encourages foreign investment in highway cargo transport and modern logistics, while it removes from the “encouraged” category projects of foreign-invested enterprises that export all of their production. Further, through the Catalogue of Priority Industries for Foreign Investment in the Central and Western Regions, updated in December 2008, China appears to be seeking to spread the benefits of foreign investment beyond China’s comparatively wealthy coastal area by encouraging foreign investors to establish regional headquarters and operations in Central, Western, and Northeast China.

### *Administrative Measures to Restrict Investment*

Over the past few years, Chinese regulators have announced a number of measures limiting the ability of foreign firms to invest in China’s market.



For example, in June 2006, the State Council issued the Opinions on the Revitalization of the Industrial Machinery Manufacturing Industries, which calls for China to expand the market share of domestic companies involved in 16 types of equipment manufacturing, including large equipment for clean and efficient power generation, critical semiconductor manufacturing equipment, civilian aircraft and aircraft engines, pollution control equipment, textiles machinery, and large excavators. This measure advocates a variety of policy supports, such as preferential import duties on parts needed for research and development, encouraging domestic procurement of major technical equipment, a dedicated capital market financing fund for domestic firms and strict review of imports. This measure also suggests that China will implement controls on foreign investments in the industrial machinery manufacturing industries, including a requirement for administrative approval when foreign entities seek majority ownership or control of leading domestic firms.

As previously noted, in June 2009, revisions to the 2006 Provisions on the Mergers and Acquisitions of Domestic Enterprises by Foreign Investors (2006 Provisions) were promulgated by MOFCOM and five other government agencies. The 2006 Provisions had added rules allowing MOFCOM to conduct anti-monopoly reviews of proposed mergers and acquisitions by foreign investors, and the primary purpose of the 2009 revisions was to remove these provisions, as the Anti-Monopoly Law came into force in September 2008 to provide for such reviews for both foreign and domestic investors (See the “Anticompetitive Practices” section below). The 2006 Provisions also revised existing rules for mergers and acquisitions involving foreign investors and, among other things, established a legal basis for a “national economic security” review process that can block proposed transactions. Under the 2006 Provisions, foreign mergers and acquisitions of domestic enterprises that would result in “actual control” of a domestic enterprise in a “key industry” with “potential impact on national economic security” or that would alter control of a famous Chinese trademark or brand require approval at the central government level by MOFCOM. The 2006 Provisions also place MOFCOM in the role of determining if the domestic acquisition target has been appropriately valued.

In November 2006, the National Development and Reform Commission (NDRC) released a Five Year Plan on foreign investment, which promised greater scrutiny over foreign capital utilization. The plan calls for the realization of a “fundamental shift” from “quantity” to “quality” in foreign investment during the period from 2006 to 2010. The state’s focus would change from shoring up domestic capital and foreign exchange shortfalls to introducing advanced technology, management expertise, and talent. In addition, the plan specifically encourages foreign investments contributing to natural resource conservation and environmental protection, and discourages foreign investment in industries with a high rate of pollution and water resource depletion. The plan also demands tighter tax supervision of foreign enterprises and seeks to restrict foreign firms’ acquisition of “dragon head” enterprises to prevent the “emergence or expansion of foreign capital monopolies,” to protect national economic security and to prevent the “abuse of intellectual property.”

As noted above, in December 2006, SASAC issued the Guiding Opinion Concerning the Advancement of Adjustments of State Capital and the Restructuring of State-Owned Enterprises. Statements accompanying its release identified an expansive list of sectors deemed critical to the national economy. This measure explained that “pillar” and “backbone” industries such as automotive, chemical, construction, electronic information, equipment manufacturing, iron and steel, nonferrous metal, science and technology, and survey and design must remain under relatively strong state control. Reportedly, SASAC officials also identified a separate set of seven strategic sectors in which state capital must play a leading role, including aviation, coal, defense, electric power and grid, oil and petrochemicals, shipping, and telecommunications. Further, in October 2008, the National People’s Congress issued the Enterprise

State-Owned Assets Law, which later took effect in May 2009. Among other provisions, Article 57 of the law states that where state-owned assets are transferred to a foreign investor, the transfer must not harm the national security or public interests of China. It remains unclear how SASAC will implement these policies or, in the context of the Enterprise State-Owned Assets Law, how it will interpret the “national security” and “public interests” of China.

China also continued to employ various sector-specific measures designed to impose new requirements on foreign investors. Measures affecting foreign investment in the automotive and steel sectors are discussed above in the section on Import Substitution Policies.

## **Other Investment Issues**

### *Venture Capital and Private Equity*

Investment exit options have, to some extent, curbed foreign participation in China's venture capital and private equity sectors, although both forms of investment enjoy high growth rates. Most foreign venture capital and private equity investments in China are actually housed in offshore holding companies, which, in the past, as with other offshore FDI, could be transferred without Chinese government approval. The Chinese government issued new regulations in September 2006, however, that effectively shut down this method of transferring local assets to offshore “special purpose vehicles.” The 2006 regulations require pre-approval by no less than six agencies for a Chinese company to transfer assets offshore to a foreign entity. Since the issuance of these rules, no approvals have been granted.

China, in September 2006, also implemented regulations that made it more difficult to list on foreign stock exchanges, but at the same time facilitated listing on the domestic A-share market. Although private equity investors have successfully listed in the A-shares market, these investors face a three year lock up period during which they may not liquidate their listed holdings.

The Chinese government issued new regulations for domestic venture capital firms in the fall of 2005, which took effect on March 1, 2006. The regulations aimed at cultivating China's domestic venture capital industry, streamlined the incorporation process, and relaxed capital requirements for venture capital firms. Though some restrictions remained in place for foreign-invested firms, the provisions eased overall foreign venture capital investment in China.

In June 2007, an amended Partnership Law took effect, which allowed the formation of limited partnership enterprises. The law limits investor liability and exempts partnership enterprises from corporate income tax. It governs only domestic partnership enterprises, however, and calls for foreign partnerships to be guided by foreign investment partnership regulations, which are currently in draft and in circulation among relevant Chinese government agencies. It is expected that the final regulations will have a negligible effect on foreign invested partnerships, including private equity and venture capital firms.

### *Holding Companies*

China has relaxed some restrictions on the scope and operations of holding companies, although minimum capital requirements normally make the establishment of a holding company suitable only for corporations with several large investments. Holding companies may manage human resources across their affiliates and also provide certain market research and other services. However, some restrictions on services provided by holding companies and on holding companies' financial operations, in addition to

the ability to balance foreign exchange internally, remain in place. Profit and loss consolidation within holding companies also remains prohibited.

### *Securities Firms*

China has begun to open its domestic equity markets to investments from foreign firms. Through the Qualified Foreign Institutional Investor (QFII) program, foreign securities firms may apply for QFII status, which permits limited access to the RMB-denominated A-share market. As of January 2010, China had granted QFII status to 86 foreign entities, with quotas allotted totaling \$16.7 billion. The Chinese government committed during the May 2007 SED meeting to announce an expansion of the quota to \$30 billion, and did so on December 11, 2007.

### *Access to Capital Markets*

Foreign-invested firms in China are often unable to access domestic and international stock markets, to sell corporate bonds and equity, or to engage in normal merger, acquisition, and divestment activity. However, at the SED meeting in December 2007, China agreed to allow, in accordance with relevant prudential regulations, qualified foreign-invested companies to issue RMB-denominated stocks, and qualified listed companies to issue RMB-denominated corporate bonds. This move should ease some of the capital inflow pressure from foreign investment, a major concern of Chinese policy makers given excess liquidity and the recent rise in inflation in the domestic economy.

Foreign exchange transactions on China's capital account can be concluded only through case-by-case review by the State Administration of Foreign Exchange (SAFE) and approvals are tightly regulated. During the first part of 2009, SAFE reportedly refused to allow some American companies to repatriate their earnings; these restrictions reportedly eased in the second half of the year, however. Recent regulations permitting greater capital outflows and pronouncements by Chinese government officials encouraging Chinese firms to invest abroad suggest that China now recognizes that continued large capital inflows are not sustainable. To date, foreign firms remain generally satisfied because they are able to repatriate profits. At the same time, most major foreign firms prefer to reinvest their profits, not exit the Chinese market. With respect to capital inflows, several foreign firms have noted difficulties in obtaining government approval to bring in foreign capital to expand their businesses.

## **GOVERNMENT PROCUREMENT**

### **Accession to the WTO Agreement on Government Procurement**

China is not a signatory to the WTO Agreement on Government Procurement (GPA). In accordance with its commitment upon accession to the WTO, China became an observer to the WTO Committee on Government Procurement in 2002. China also committed, in its Protocol of Accession to the WTO, to initiate negotiations for accession to the GPA "as soon as possible". In accordance with its further commitment on this matter at the April 2006 JCCT meeting, China initiated GPA accession by submitting its application for accession and initial offer of coverage in December 2007. The United States and other GPA Parties have noted that significant improvements will be needed in China's initial offer to bring China's coverage to the level of other Parties' coverage.

At the July 2009 S&ED meeting, China agreed to submit to the WTO Committee on Government Procurement, before its October 2009 meeting, a report setting out the improvements that China would make in its revised offer. At the Government Procurement Committee's meeting, China submitted a

report on the coverage that it intends to include in its revised offer, which will provide for the coverage of more entities, goods and services and lower thresholds. At the same time, however, China noted that it was encountering difficulties in completing its revised offer. Subsequently, China committed during the October 2009 JCCT meeting to submit a revised offer as early as possible in 2010.

### **Government Procurement Regime**

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

The GPL does not cover tendering and bidding for public works projects, which represent at least one-half of China’s \$82 billion government procurement market. Those projects are subject to a different regulatory regime, established by China’s Bidding and Tendering Law, which entered into force in January 2000. It has taken nearly 10 years for the responsible agency, NDRC, to draft implementing regulations for the Bidding and Tendering Law. In September 2009, the State Council finally circulated NDRC’s draft implementing regulations for public comment. In October 2009, the United States submitted written comments on these draft regulations in which it emphasized, among other things, the need for greater clarification of the relationship between the Bidding and Tendering Law and the GPL, and the need to define “domestic products.”

Beginning in 2003, the United States expressed concerns about policies that China was developing with regard to government procurement of software. In 2003, the United States specifically raised concerns about MOF implementing rules on software procurement, which reportedly contained guidelines mandating that central and local governments – the largest purchasers of software in China – purchase only software developed in China to the extent possible. U.S. concerns were not only about the continuing access of U.S. software exporters to China’s large and growing government market for packaged and custom software – \$7.5 billion when the MOF rules went into effect – but also about the precedent that could be established for other sectors if China proceeded with MOF’s proposed restrictions on the purchase of foreign software by central and local governments. At the July 2005 JCCT meeting, China indicated that it would indefinitely suspend its drafting of implementing rules on government software procurement.

Subsequently, in 2007 and 2008, the United States grew concerned with statements and announcements being made by some Chinese government officials indicating that state-owned enterprises should give priority to the purchase of domestic software. In response, at the September 2008 JCCT meeting, China clarified that its formal and informal policies relating to software purchases by Chinese enterprises, whether state-owned or private, will be based solely on market terms without government direction.

A similar issue arose in 2005 when China issued a measure that required preferences for products incorporating the WLAN Authentication and Privacy Infrastructure (WAPI) standards in government procurement. In 2006, the State Council issued China’s Medium-to-Long-Term Science and Technology Master Plan. The NDRC and other ministries and agencies are in charge of developing regulations to implement this plan, which includes preferences for the purchase of domestic goods as an important industrial policy tool. In September 2007, the NDRC implemented provisional rules for e-government projects, which mandate priority purchasing of domestic goods and services in national electronic government projects. The United States is concerned that these measures may unfairly discriminate against U.S. firms.

In December 2007, MOF issued two measures that would substantially restrict the Chinese government's purchase of foreign goods and services. The first measure, the Administrative Measures on the Government Procurement of Imported Products, severely restricts government procurement of imported foreign products and technologies. The second measure, Administrative Measures for Government Procurement on Initial Procurement and Ordering of Indigenous Innovation Products, is directed at restricting government procurement of "indigenous innovation" products to Chinese products developed by domestic enterprises or research institutions. The central government and provincial governments have since followed up by creating catalogues of qualifying "indigenous innovation products." While China may maintain these measures until it completes its GPA accession, the United States has raised strong concerns with regard to them, as they run counter to the liberalization path expected of a WTO Member seeking to accede to the GPA.

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

Meanwhile, using the S&ED and JCCT processes in 2009, the United States obtained important commitments from China that, if implemented, should lead to a government procurement regime that is more favorable to foreign-invested enterprises. First, during the July 2009 S&ED meeting, China committed to treat, under its Government Procurement Law, products produced in China by foreign-invested enterprises the same as products produced in China by Chinese enterprises. During the October 2009 JCCT meeting, China later reaffirmed this commitment and further committed to issue rules implementing it.

In November 2009, the Ministry of Science and Technology (MOST), NDRC and MOF issued the Circular on Launching the 2009 National Indigenous Innovation Product Accreditation Work, requiring companies to file applications by December 2009 for their products to be considered for accreditation as "indigenous innovation products." In order to qualify as indigenous innovation under the Circular, a product's intellectual property must originally be registered in China. The Circular applies to six broad areas: computer and application devices; communication products; modernized office equipment; software; "new energy and equipment"; and energy-efficient products. This measure provides for preferential treatment in government procurement to any products that are granted this accreditation. The United States has since expressed serious concerns to China about this measure, as it appears to establish a system designed to provide preferential treatment in government procurement to products developed by Chinese enterprises. Provinces and municipal governments have also issued their own "indigenous innovation" catalogues related to government procurement.

At the end of December 2009, MOST, MOF, MIIT and SASAC issued a Catalog Guiding Domestic Innovation in Major Technology Equipment to improve indigenous innovation in equipment used for manufacturing. The catalog covers 240 products in 18 broad categories including renewable energy

products, high technology equipment, transportation, medical devices, construction and agriculture. This measure provides that when a product is successfully developed and certified as an “indigenous innovation” product, it will be included in the Catalog for Government Procurement of Indigenous Innovation Products and entitled to procurement preferences.

## **ELECTRONIC COMMERCE**

China has experienced dramatic growth in Internet usage since 1999. According to the 20th Internet survey recently published by the China Internet Network Information Center (CNNIC), the number of Internet users in China reached approximately 384 million by the end of 2009, 94 percent of whom have broadband access. There are now more than 120 million broadband subscribers in China, including over 10 million 3G mobile subscribers, a number expected to increase exponentially over the next several years. Falling personal computer prices and the arrival of devices tailored for the Chinese market will further expand Internet access. China also has experienced a dramatic increase in the number of domain names established. By the end of 2009, there were more than sixteen million domain names registered under “.cn,” almost twice as many as in 2007.

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

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

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

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

## **FOREIGN TRADE BARRIERS**

## **ANTICOMPETITIVE PRACTICES**

### **Competition Policy Laws and Regulations**

China maintains many laws and regulations in the competition policy area. One of China's principal laws is the Anti-Unfair Competition Law, enacted by the National People's Congress (NPC) in 1993. This law addresses a variety of matters, as it: (a) prohibits firms from using a trademark, name, or packaging without a license, as well as false advertising and other practices intended to confuse consumers; (b) outlaws bribery, the purchase or sale of business secrets, and predatory pricing; (c) restricts a firm's ability to tie the sale of one product to another or impose "unreasonable conditions" on purchases; (d) bans collusion and outlaws "spreading false facts" that damage a competitor; and (e) in theory, limits the business practices of legally authorized monopolies and restricts the government's ability to require that private firms engage in certain commercial transactions with state-owned enterprises.

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

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

After the Anti-Monopoly Law was issued, MOFCOM, SAIC, NDRC and other Chinese government ministries and agencies began to formulate implementing regulations, departmental rules and other measures. Generally, these ministries and agencies have been willing to seek public comment on their proposed measures. In commenting on these proposed implementing measures, the United States has urged China not to use its Anti-Monopoly Law to pursue industrial policy objectives. The United States has also specifically pressed China to ensure that any implementing measures do not create disguised or unreasonable barriers to trade and do not provide less favorable treatment to foreign goods and services or foreign investors and their investments.

## **FOREIGN TRADE BARRIERS**

The Anti-Monopoly Law does contain provisions that have generated concern. For example, it remains unclear how China will implement one provision that requires protection for the lawful operations of state-owned enterprises and government monopolies in industries deemed nationally important. On the other hand, the inclusion of provisions on the abuse of administrative power in the Anti-Monopoly Law, which also appear in NDRC's and SAIC's draft implementing regulations, could be important instruments for promoting the establishment and maintenance of increasingly competitive markets in China.

To date, China's enforcement of the Anti-Monopoly Law has been most active in the merger area overseen by MOFCOM, largely due to the requirement to pre-notify merger transactions. More than 70 percent of mergers notified to MOFCOM since the law came into effect have involved multinational corporations, and most of the merger transactions challenged by MOFCOM to date have included at least one foreign party. Although MOFCOM's initial merger decisions were brief, over the last year MOFCOM has begun to release more detailed explanations of its merger decisions, some of which have been criticized by U.S. industry observers for a lack of adequate bases to find that a merger has or may have the effect of eliminating or restricting competition.

### **Measures Restricting Inward Investment**

In 2006, China began to revise its policies toward inward investment. While insisting that it remains open to foreign investment, China adopted policies that restrict inward investment in a range of "strategic" sectors, which appear designed to shield domestic enterprises from foreign competition. As discussed above in the Investment Barriers section, these policies include the State Council's June 2006 Opinions on the Revitalization of the Industrial Machinery Manufacturing Industries, which calls for China to expand the market share of domestic companies in 16 equipment manufacturing industries.

In addition, in August 2006, the Ministry of Commerce and five other agencies issued revised rules for foreign mergers and acquisitions, which, among other things, establish a vague "national economic security" basis for rejecting proposed transactions as well as an anti-monopoly review for foreign transactions. In November 2006, the NDRC issued a Five Year Plan on foreign investment that seeks to restrict foreign acquisitions of leading Chinese enterprises, prevent the emergence of foreign capital monopolies, protect industrial security, and prevent abuse of intellectual property. In December 2006, SASAC published an expansive list of seven "critical economic sectors" in which China should restrict foreign participation, including armaments, electrical power and distribution, oil, chemicals, telecommunications, coal, aviation, and shipping. Finally, the Catalogue Guiding Foreign Investment in Industry, which is revised every few years and was most recently issued in November 2007 suggests China's policies toward inward investment may be more selective, actively targeting higher value added sectors (including high technology research and development, advanced manufacturing, energy efficiency, and modern agriculture and services) rather than basic manufacturing.

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



## **OTHER BARRIERS**

### **Transparency**

In its Protocol of Accession to the WTO, China committed to publish all laws, regulations, and other measures that relate to trade matters, including those that affect imports, and generally to provide a reasonable period for commenting on them before implementation. China also agreed to establish or designate an official journal for the publication of these trade related measures. In addition, China agreed to provide a copy of new trade related laws, regulations, and other measures to the WTO Secretariat in Geneva, translated into one or more of the WTO's official languages (English, French, and Spanish) no later than 90 days after implementation. China further agreed to create various enquiry points for its WTO trading partners and foreign businesses to obtain information about these measures.

In accordance with State Council regulations issued in December 2001, which require the publication of new or amended regulations 30 days before their implementation, almost all new or revised laws and regulations have been published (in Chinese) soon after issuance and prior to their effective date, an improvement over pre-WTO accession practice. These laws and regulations have been published in a wide variety of journals and on the Internet.

In late 2002, China designated the China Foreign Economic and Trade Gazette as the official journal for publishing trade related measures. In March 2006, the State Council issued a notice directing all central, provincial, and local government entities to begin sending copies of all of their trade related measures to MOFCOM for immediate publication in the MOFCOM Gazette. So far, adherence to the State Council's notice is far from complete.

In December 2001, the State Council issued regulations explicitly allowing comment periods and hearings. However, many of China's ministries and agencies continued to follow the practice that had been followed prior to China's accession to the WTO. The ministry or agency responsible for drafting a new or revised law or regulation will normally consult with, and submit drafts to, other ministries and agencies, Chinese experts, and affected Chinese companies. At times, the responsible ministry or agency will also consult with select foreign companies, although it will not necessarily share drafts with them. As a result, only a small proportion of new or revised laws and regulations have been issued after a period for public comment, and even in these cases the amount of time provided for public comment has generally been short.

At the June 2008 SED meeting, China agreed to publish in advance for public comment, subject to specified exceptions, all trade and economic related administrative regulations and departmental rules that are proposed for adoption, and provide a public comment period of not less than 30 days from the date of publication. China further agreed to publish such measures for comment in a single location: the Chinese Government Legislative Information Website of the Legislative Affairs Office of the State Council. Since then, the United States has been monitoring the effectiveness of this commitment, and it appears that many government entities are increasingly publishing their trade related measures. However, many such proposed measures are not published on this website, or elsewhere, and it is still not clear whether all types of trade-related measures are being published. Thus, for example, the legal basis for prohibiting Wi-Fi without including a competing Chinese standard, WAPI, on cell phones is not publicly available. Additionally, in many instances, the time provided for public comment remains less than 30 days.

## **Legal Framework**

### *Laws and Regulations*

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

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

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

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

### *Commercial Dispute Resolution*

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

At the same time, the Chinese government is moving to establish consistent and reliable mechanisms for dispute resolution through the adoption of improved codes of ethics for judges and lawyers and increased

emphasis on the consistent and predictable application of laws. For example, Supreme Court rules provide that foreign or Chinese enterprises and individuals may bring cases in the designated courts raising challenges under the Administrative Litigation Law to decisions made by China's administrative agencies relating to international trade matters. The rules also state that when there is more than one reasonable interpretation of a law or regulation, the courts should choose an interpretation that is consistent with the provisions of international agreements to which China has committed, such as the WTO rules.

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

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

#### *Labor Issues*

In recent years, China has expanded the scope of its national labor laws and regulations. Three important new labor laws went into effect in 2008: the Labor Contract Law, which clarifies the rights and obligations of workers and employers to promote better labor relations; the Labor Dispute Mediation and Arbitration Law, which improves and streamlines the labor dispute resolution process; and the Employment Promotion Law, which aims to stimulate employment opportunities. However, China does not adhere to certain internationally recognized labor standards with respect to freedom of association and the right to bargain collectively, and there continue to be many reports indicating that China does not effectively enforce its labor laws and regulations concerning issues such as minimum wages, hours of work, occupational safety and health, bans on child labor, forced prison labor, and participation in social insurance programs. Providing for internationally recognized labor standards and effectively enforcing those standards would help ensure that China is not promoting trade at the expense of its workers and that its goods compete on the global market on fairer terms.

Skilled workers are in relatively short supply. Restrictions on labor mobility continue to distort labor costs. China is gradually easing restrictions under the country's household registration system, which has traditionally limited the movement of workers within the country, in part due to the recognition that labor mobility is essential to the continued growth of the economy. Shanghai Municipality and Zhejiang Province both announced revised residency policies in 2009. In February, Shanghai announced an end to the quota system for hukou residency registrations and outlined requirements for converting residency from temporary to permanent status. Zhejiang Province passed new regulations in May requiring migrant workers to apply for resident permits.

#### *Corruption*

Many people expected that China's entry into the WTO, which mandated a significant reduction in tariffs, would in turn reduce incentives for smuggling-related corruption. While WTO membership has increased China's exposure to international best practices and resulted in some overall improvements in transparency, corruption remains endemic. Chinese officials themselves admit that corruption is one of

the most serious problems the country faces, and China's new leadership has called for an acceleration of the country's anticorruption drive with a focus on closer monitoring of provincial-level officials. According to Chinese state media sources, China launched an anticorruption campaign in 2006 targeting Communist Party of China officials and so far has punished more than 97,000 party officials.

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

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

#### *Land Issues*

China's constitution specifies that all land is owned in common by all the people. In practice, agricultural collectives, under the firm control of local Communist Party chairmen, distribute agricultural land to the rural poor, while city governments distribute land for residential and industrial use. The State and collectives can either "grant" or "allocate" land-use rights to enterprises in return for the payment of fees. Enterprises granted land-use rights are guaranteed compensation if the State asserts eminent domain over the land, while those with allocated rights are not. Granted land-use rights cost more, not surprisingly, than allocated rights. However, the law does not define standards for compensation when eminent domain supersedes granted land-use rights. This situation creates considerable uncertainty when foreign investors are ordered to vacate. The absence of public hearings on planned public projects, moreover, can give affected parties, including foreign investors, little advance warning.

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

China's National People's Congress passed a Property Rights Law on March 16, 2007, the first comprehensive legal protection for private property since the founding of the People's Republic in 1949. This law, which generated years of controversy in the Chinese government but was never published in draft form, grants equal legal protection to private, state, and collectively-owned property. This protection

would cover the “means of production,” such as factories, but agricultural land would remain a collective possession subject to 30 year leases. It is unclear at this time how the law will be implemented.

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



# COLOMBIA

## TRADE SUMMARY

The U.S. goods trade deficit with Colombia was \$1.9 billion in 2009, up \$206 million from 2008. U.S. goods exports in 2009 were \$9.5 billion, down 17.3 percent from the previous year. Corresponding U.S. imports from Colombia were \$11.3 billion, down 13.5 percent. Colombia is currently the 23rd largest export market for U.S. goods.

The stock of U.S. foreign direct investment (FDI) in Colombia was \$6.3 billion in 2008 (latest data available), up from \$4.5 billion in 2007. U.S. FDI in Colombia is concentrated primarily in the mining and manufacturing sectors.

## TRADE PROMOTION AGREEMENT

The United States-Colombia Trade Promotion Agreement (CTPA) was signed on November 22, 2006. Colombia's Congress approved the CTPA and a protocol of amendment in 2007. The United States has not yet approved the CTPA.

The CTPA is a comprehensive free trade agreement. When the CTPA enters into force, Colombia will immediately eliminate most of its tariffs on U.S. exports, with all remaining tariffs phased out over defined time periods. The CTPA also includes important disciplines relating to: customs administration and trade facilitation, technical barriers to trade, government procurement, investment, telecommunications, electronic commerce, intellectual property rights, transparency, and labor and environmental protection. Under the CTPA, U.S. firms will have better access to Colombia's services sector than other World Trade Organization (WTO) Members have under the General Agreement on Trade in Services (GATS). All service sectors are covered under the CTPA except where Colombia has made specific exceptions.

## IMPORT POLICIES

### Tariffs

Most of Colombia's duties have been consolidated into three tariff levels: 0 percent to 5 percent on capital goods, industrial goods, and raw materials not produced in Colombia; 10 percent on manufactured goods, with some exceptions; and 15 percent to 20 percent on consumer and "sensitive" goods. Exceptions include: automobiles, which are subject to a 35 percent duty; beef and rice, which are subject to an 80 percent duty; and milk and cream, which are subject to a 98 percent duty through August 11, 2010. Whey is currently subject to a 20 percent duty in-quota (3,000 tons) and a 94 percent duty outside the quota. Other agricultural products fall under the Andean Price Band System (APBS) established by Decision 371 of the Andean Community (AC). The AC includes Bolivia, Colombia, Ecuador and Peru. The APBS protects domestic industry with a variable levy by increasing tariffs when world prices fall, and lowering tariffs when world prices rise.

The APBS includes 14 product groups and covers more than 150 tariff lines. This system can result in duties exceeding 100 percent, depending on world commodity prices, for important U.S. exports to Colombia, including corn, wheat, rice, soybeans, pork, poultry parts, cheeses, and powdered milk. The APBS has been suspended for milk powder and rice, and was reactivated for white corn (Decree 671 of

## FOREIGN TRADE BARRIERS

2009) after a temporary suspension. The APBS also negatively affects U.S. access to Colombian markets for products such as dry pet food, which contains corn. By contrast, processed food imports from Chile and AC Members enter duty-free.

When the CTPA enters into force, Colombia will immediately cease to apply the APBS to imports from the United States. This, coupled with a preference clause included in the CTPA, will help U.S. exports compete more effectively in Colombia's market. Over half of the value of current U.S. agricultural exports to Colombia will enter duty-free upon entry into force of the CTPA, including high-quality beef, an assortment of poultry products, soybeans and soybean meal, cotton, wheat, whey, and most horticultural and processed food products. U.S. agricultural exporters also will benefit from duty-free access through tariff-rate quotas (TRQs) on corn, rice, poultry parts, and dairy products.

Over 80 percent of U.S. exports of consumer and industrial products to Colombia will become duty-free immediately upon implementation of the CTPA, with remaining tariffs phased out within 10 years. Colombia also agreed to join the WTO Information Technology Agreement, which eliminates tariffs on a wide range of information technology products.

### **Nontariff Measures**

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

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

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



## **GOVERNMENT PROCUREMENT**

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

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

## **EXPORT SUBSIDIES**

In a 2008 effort to ease the impact of an appreciating peso, the Colombian government issued tax rebate certificates (known as "CERTs") to exporters in certain sectors. The value of the CERT is equal to 4 percent of the value of exports of designated goods. No CERTs were issued in 2009, although the program remains in place.

## **INTELLECTUAL PROPERTY RIGHTS (IPR) PROTECTION**

Colombia was listed on the Watch List in the 2009 Special 301 report. Key concerns cited in the Report relate to the need for further IPR improvements, including actions to reduce book and optical media piracy and the lack of an effective system to prevent the issuance of marketing approvals for unauthorized copies of patented pharmaceutical products. While enforcement has been slow and weak in Colombia, the Colombian government has made a concerted effort in recent years to combat IPR violations, including through conducting raids seizing counterfeit and pirated products and deterring the counterfeiting of pharmaceuticals.

## **SERVICES BARRIERS**

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

### **Legal Services**

Foreign law firms can operate in Colombia only by forming a joint venture with a Colombian law firm and operating under the licenses of the Colombian lawyers in the firm (Decree 196 of 1971).

### **Financial Services**

Colombian legislation permits 100 percent foreign ownership in financial institutions. It does not allow foreign insurance companies to establish local branch offices except for "general interest" reasons (Decree 663 of 1993). Insurance companies must maintain a commercial presence to sell policies other than those for international travel or reinsurance. Colombia prohibits the sale of maritime insurance by foreign companies. Foreign banks must establish a subsidiary to operate in Colombia (Decree 633 of 1993).

## **FOREIGN TRADE BARRIERS**

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

### **Transportation**

Trans-border transportation services are restricted in Colombia. Land cargo transportation must be provided by Colombian citizens or legal residents with a commercial presence in the country and licensed by the Ministry of Transportation (Law 336 of 1996). Colombian law permits international companies to provide cabotage services (*i.e.*, transport between two points within Colombian territory) "only when there is no national capacity to provide the service." Under the terms of the CTPA, Colombia committed to allow 100 percent foreign ownership of land cargo transportation enterprises in Colombia.

### **Telecommunications**

Colombia currently permits 100 percent foreign ownership of telecommunications providers and has committed to ensure that competitors can interconnect with Colombian dominant suppliers' fixed networks at nondiscriminatory and cost-based rates. There have been complaints about the ability of competitors to obtain non-discriminatory access to the submarine cable landing station owned by incumbent operator Telecom Colombia, and the Colombian government is currently investigating this issue.

The recently passed Postal Services Law allows the Colombian government to cross-subsidize the state-owned postal company, which could give it an unfair competitive advantage over U.S. express courier service companies.

### **INVESTMENT BARRIERS**

Foreign investment in Colombia is accorded national treatment, and 100 percent foreign ownership is permitted in most sectors. Exceptions exist for national security (Decree 356 of 1994), broadcasting, (Law 680 of 2001), and the disposal of hazardous waste (Decree 2080 of 2000). In certain cases, the Colombian government does not include arbitration clauses in contracts to which it is a party. Enforcement of arbitration judgments against the Colombian government, as well as municipal and departmental governments, can be very difficult. The CTPA could be of assistance to U.S. investors in both these regards, when it enters into force.

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

# COSTA RICA

## TRADE SUMMARY

The U.S. goods trade deficit with Costa Rica was \$897 million in 2009, shifting from a surplus of \$1.7 billion in 2008. U.S. goods exports in 2009 were \$4.7 billion, down 17.2 percent. Corresponding U.S. imports from Costa Rica were \$5.6 billion, up 42.2 percent. Costa Rica is currently the 37th largest export market for U.S. goods.

The stock of U.S. foreign direct investment (FDI) in Costa Rica was \$2.5 billion in 2008 (latest data available), up from \$2.3 billion in 2007. U.S. FDI in Costa Rica is led by the manufacturing and the professional, scientific, and technical sectors.

## IMPORT POLICIES

### Free Trade Agreement

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

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

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

### Tariffs

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

However, under the CAFTA-DR, about 80 percent of U.S. industrial and consumer goods now enter Costa Rica duty-free, with the remaining tariffs on these goods phased out by 2015. Nearly all textile and apparel goods that meet the Agreement's rules of origin now enter Costa Rica duty-free and quota-free,

## FOREIGN TRADE BARRIERS

creating economic opportunities for U.S. and regional fiber, yarn, fabric, and apparel manufacturing companies.

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

### **Nontariff Measures**

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

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

### **GOVERNMENT PROCUREMENT**

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

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

### **EXPORT SUBSIDIES**

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

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

### **FOREIGN TRADE BARRIERS**

## **INTELLECTUAL PROPERTY RIGHTS (IPR) PROTECTION**

Costa Rica was listed on the Watch List in the 2009 Special 301 report. Key concerns cited in the report included the need to assign higher priority to, and allocate greater resources for, combating piracy and counterfeiting, and the need to seek deterrent penalties. During 2009, the U.S. Government worked with the Costa Rican government on the latter's efforts to meet its commitments to make certain changes to its IPR laws and to ensure that effective regulations on agricultural chemicals are in place.

The CAFTA-DR provides for improved standards for the protection and enforcement of a broad range of IPR, including protections for patents, trademarks, undisclosed test and other data submitted to obtain marketing approval for pharmaceuticals and agricultural chemicals, and digital copyrighted products such as software, music, text, and videos; and further deterrence of piracy and counterfeiting. To implement its CAFTA-DR IPR obligations, Costa Rica undertook legislative reforms providing for stronger IPR protection and enforcement.

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

## **SERVICES BARRIERS**

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

In 2008, Costa Rica made significant changes in its legal and regulatory framework intended to implement its CAFTA-DR commitments on insurance. The newly established insurance regulator authorized six insurance companies, including one U.S.-owned company, to compete with the former monopoly state insurance provider, and will accept applications from other interested insurers. These new competitors are expected to start operating in the market in 2010.

Under the CAFTA-DR, Costa Rica committed to open important segments of its telecommunications market, including private network services, Internet services, and mobile wireless services. Costa Rica's telecommunications market is now open for private network services and Internet services, and the Costa Rican government recently announced that it will begin an auction process to allocate the radioelectric spectrum necessary to allow for new entrants in the wireless telephony market. Although the announced timeline has since been delayed, it is hoped that the auctions will take place in mid-2010 and that competitors will enter the wireless market by the end of the year.

## **INVESTMENT BARRIERS**

The CAFTA-DR establishes a secure and predictable legal framework for U.S. investors operating in Costa Rica. The investment protection obligations of the CAFTA-DR apply to a broad definition of investments, including enterprises, debt, concessions, contracts, and intellectual property. In almost all sectors, the CAFTA-DR provides U.S. investors the right to establish, acquire, and operate investments in Costa Rica on an equal footing with local investors. Investor rights are protected under the CAFTA-DR by a procedure for dispute settlement that is impartial and transparent.

Notwithstanding the CAFTA-DR's legal framework for investment, the Costa Rican regulatory environment can pose significant barriers to successful investment in Costa Rica. One common problem

## **FOREIGN TRADE BARRIERS**

is inconsistent government action between institutions within the central government or between the central government and the municipal government. Several large U.S. investors have faced the related problem that the central government's approach towards a specific project has changed significantly over time. Another concern for U.S. investors is the frequent recourse to legal challenges before Costa Rica's constitutional court to review whether government authorities have acted illegally or to review the constitutionality of legislation or regulations. Some U.S. investors believe that such challenges have been used at times to thwart their investments or hinder the quick resolution of disputes.

### **ELECTRONIC COMMERCE**

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

### **OTHER BARRIERS**

Some U.S. firms and citizens have found corruption in government, including in the judiciary, to be a concern and a constraint to successful investment in Costa Rica. The general perception is that government agencies and the judicial system are weak and subject to outside influence. Administrative and judicial decision making appear at times to be inconsistent, non-transparent, and very time consuming.

# DEMOCRATIC REPUBLIC OF THE CONGO

## TRADE SUMMARY

The U.S. goods trade deficit with the Democratic Republic of Congo (DRC) was \$251 million in 2009, up \$115 million from 2008. U.S. goods exports in 2009 were \$80 million, down 38.7 percent from the previous year. Corresponding U.S. imports from the DRC were \$331 million, up 24.2 percent. The DRC is currently the 147th largest export market for U.S. goods.

The stock of U.S. foreign direct investment in the DRC was \$21 million in 2006 (latest data available).

## IMPORT POLICIES

### Tariffs

The DRC is a member of the World Trade Organization (WTO), the Central African Economic Community, the Common Market for Eastern and South African Countries (COMESA), and the South African Development Community (SADC). The DRC does not participate in the COMESA or SADC free trade areas, in part due to the DRC government's strong dependency on revenues from tariffs.

According to the WTO, the DRC's average applied tariff rate was 12 percent in 2008. Most tariffs are *ad valorem* and are charged on a cost, insurance, and freight (CIF) basis. The DRC's tariff structure consists of three tariff bands: 5 percent for equipment goods, raw materials, agricultural and veterinary supplies, and unassembled equipment; 10 percent for large consumable food items, industrial inputs, spare parts, and items for social services, such as hospitals and disabled persons; and 20 percent for other finished products. The Office of Congolese Control (OCC), DRC's import-export control authority, charges a 1.5 percent tax (*ad valorem*) on the CIF value of all imports exceeding \$10,000 and uses a sliding scale for imports valued less than \$10,000.

### Customs Procedures

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

## GOVERNMENT PROCUREMENT

The DRC has initiated new procurement procedures with the assistance of the World Bank. A new public procurement law aimed at countering misappropriation of public funds during bidding procedures is pending approval by Parliament.

The government's public administration reforms implemented since 2002 have allowed foreign investors to bid on government contracts. Foreign firms may be favored in the bidding process because they have easier access to international insurance funding guarantees. With the sponsorship and technical assistance

## FOREIGN TRADE BARRIERS

of the World Bank, a tender board now operates under the supervision of the Ministry of Budget. However, contracts are often negotiated directly with the DRC government without the use of an international tender process, thus reducing transparency. Normally, public companies and parastatals do not participate in the bidding process due to the required financing guarantees.

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

## **INTELLECTUAL PROPERTY RIGHTS (IPR) PROTECTION**

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

## **INVESTMENT BARRIERS**

The DRC remains a highly challenging environment in which to do business. Underdeveloped infrastructure, inadequate contract enforcement, limited access to credit, continued insecurity in the eastern part of the DRC, lack of adequate intellectual property rights protection, and high levels of both bureaucracy and corruption continue to constrain private sector development. Despite that, there are no formal impediments *per se* to foreign investment by any private or public company in the DRC. Problems lay on the administrative and/or bureaucratic side since laws and regulations are often ineffectively enforced. Draft laws and regulations are not distributed for public discussion and comment.

In 2007, the government launched a review of 61 mining contracts entered into with the government prior to 2002 that may have been negotiated in less than transparent circumstances. The mining contract review process has been characterized by numerous delays and a lack of transparency, with little information provided by the government to foreign (including American) investors. The government reached agreement in December 2008 with all but six of the companies under review. Subsequently, all but two of these six companies have reached agreement with the government. Of these two companies, the government canceled the mining contract with one of them and is still in protracted negotiations with the other one. The opaque mining contract review process has highlighted the government's inability to guarantee protection of rights already secured by foreign investors, which discourages future investment.

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

In 2008, the DRC became a candidate for membership in the Extractive Industries Transparency Initiative (EITI), a multi-stakeholder effort to increase transparency in transactions between governments and companies in the extractive industries. Though the government has taken some positive steps under EITI,

## **FOREIGN TRADE BARRIERS**



including establishment of a National EITI Committee, implementation of necessary steps toward EITI membership has been slow to date.

## **OTHER BARRIERS**

### **Corruption**

U.S. businesses often complain about corruption in the DRC, citing it as a principal constraint to doing business. Protracted negotiations with numerous officials are mandatory in commercial matters. During the Mobutu regime's 30 year rule, a culture of corruption in the DRC became deeply entrenched and has been difficult to root out.

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

Bribery is illegal in the DRC and in principle, is investigated and prosecuted. Current law calls for imprisonment and fines of both parties involved in bribery no matter what the circumstances. However, law enforcement remains a challenge in this area. In order to enforce anticorruption laws, President Kabila launched a "zero tolerance" campaign in early September 2009. Within this framework, he set up the DRC Financial Intelligence Unit for combating money laundering and misappropriation of public funds.

### **Bureaucracy**

As is the case in much of the Congolese business environment, many of the country's trade barriers result from complex regulations, a multiplicity of overlapping administrative agencies and a frequent lack of professionalism and control by officials responsible for the regulatory environment. The DRC has numerous agencies with legal authority in trade matters. Required signatures are often difficult to obtain, and regulations are complex and poorly codified. Enforcement of regulations varies widely across the country. Many local traders run their own private networks for expediting the movement of goods. The DRC government has formally or informally suspended many regulations as a result of the economic upheaval of the 1990s and the rapid spread of corruption.

### **Deficient Infrastructure**

The DRC is slowly emerging from more than three decades of mismanagement, pillaging, and war. All of these factors have negatively impacted the country's physical infrastructure, which constrains the flow, mobility and security of transportation links.



# DOMINICAN REPUBLIC

## TRADE SUMMARY

The U.S. goods trade surplus with the Dominican Republic was \$1.9 billion in 2009, a decrease of \$676 million from 2008. U.S. goods exports in 2009 were \$5.3 billion, down 20.1 percent from the previous year. Corresponding U.S. imports from the Dominican Republic were \$3.3 billion, down 16.3 percent. The Dominican Republic is currently the 33rd largest export market for U.S. goods.

The stock of U.S. foreign direct investment (FDI) in the Dominican Republic was \$960 million in 2008 (latest data available), up from \$766 million in 2007. U.S. FDI in the Dominican Republic is concentrated primarily in the manufacturing sector.

## IMPORT POLICIES

### Free Trade Agreement

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

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

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

### Tariffs

Under the CAFTA-DR, about 80 percent of U.S. industrial and consumer goods now enter the Dominican Republic duty-free, with the remaining tariffs phased out by 2015. Nearly all textile and apparel goods that meet the Agreement's rules of origin now enter the Dominican Republic duty-free and quota-free, creating economic opportunities for U.S. and regional fiber, yarn, fabric, and apparel manufacturing companies.

## FOREIGN TRADE BARRIERS

Under the CAFTA-DR, more than half of U.S. agricultural exports enter the Dominican Republic duty-free. The Dominican Republic will eliminate its remaining tariffs on nearly all agricultural goods by 2020. For certain agricultural products, tariff-rate quotas (TRQs) will permit some immediate duty-free access for specified quantities during the tariff phase out period, with the duty-free amount expanding during that period. Under the CAFTA-DR, the TRQs are to be made available for the entire calendar year, beginning on January 1 of each year. In 2009, the Dominican Republic did not make the TRQ on dry beans available until May. The United States has raised this concern with Dominican officials and is working to ensure that the Dominican government makes the CAFTA-DR TRQs available in a timely manner.

### **Nontariff Measures**

The Dominican Republic's customs policies and procedures frequently provoke complaints by businesses, and arbitrary clearance requirements sometimes delay the importation of merchandise for lengthy periods of time. On July 1, 2001, the Dominican Republic agreed to apply the World Trade Organization (WTO) Agreement on Customs Valuation (CVA), whereby goods imported from WTO Members are assessed duties based on the transaction value, except under certain specified circumstances. The Dominican Republic requested and received a waiver from the WTO to exclude 31 items from application of the CVA. Duties on the excluded products are assessed on the basis of a minimum "reference value" assigned by the Dominican customs authority. However, U.S. exporters report that the Dominican customs authority has often used the list of reference values for products other than those covered by the WTO waiver.

On July 11, 2006, the Dominican customs authority announced that it would make adjustments to reference values due to high levels of undervaluation by businesses. Since that time Dominican importers and associations have complained to the U.S. Embassy that the Dominican customs authority has increased reference values for many products entering the country and refuses to accept an importer's commercial invoice as proof of the price paid and thus dutiable value. The United States has raised this issue with the Dominican customs authority each time it has been reported.

The 17 percent tax on the first *matricula* (registration document) for all vehicles, which was set by the government in 2006, remains in effect.

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

### **GOVERNMENT PROCUREMENT**

The CAFTA-DR requires that procuring entities use fair and transparent procurement procedures, including advance notice of purchases and timely and effective bid review procedures, for procurement

## **FOREIGN TRADE BARRIERS**

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

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

## **EXPORT SUBSIDIES**

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

## **INTELLECTUAL PROPERTY RIGHTS (IPR) PROTECTION**

The Dominican Republic was listed on the Watch List in the 2009 Special 301 report. Key concerns cited in the report included the need to enhance its IPR enforcement efforts by providing resources for and greater coordination between law enforcement entities.

The CAFTA-DR provides for improved standards for the protection and enforcement of a broad range of IPR, including protections for patents, trademarks, undisclosed test and other data submitted to obtain marketing approval for pharmaceuticals and agricultural chemicals, and digital copyrighted products such as software, music, text, and videos; and further deterrence of piracy and counterfeiting. To implement its CAFTA-DR IPR obligations, the Dominican Republic undertook legislative reforms providing for stronger IPR protection and enforcement.

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

## **OTHER BARRIERS**

Some U.S. firms and citizens have found corruption in government, including in the judiciary, to be a significant concern and a constraint to successful investment in the Dominican Republic. The general perception is that government agencies and the judicial system are weak and subject to outside influence. Administrative and judicial decision making appear at times to be inconsistent, non-transparent, and very time consuming. Successful prosecutions of corrupt individuals and a general reduction in the civil case backlog are beginning to inspire business confidence, however.



# ECUADOR

## TRADE SUMMARY

The U.S. goods trade deficit with Ecuador was \$1.3 billion in 2009, down \$4.3 billion from 2008. U.S. goods exports in 2009 were \$3.9 billion, up 13.8 percent from the previous year. Corresponding U.S. imports from Ecuador were \$5.3 billion, down 41.7 percent. Ecuador is currently the 41st largest export market for U.S. goods.

The stock of U.S. foreign direct investment (FDI) in Ecuador was \$1.3 billion in 2008 (latest data available), up from \$977 million in 2007. U.S. FDI in Ecuador is led by the mining, manufacturing, and wholesale trade sectors.

## IMPORT POLICIES

Ecuador's most recent constitution, promulgated in October 2008, established broad new guidelines for trade, giving priority to local production. Policies based on these provisions are still evolving.

### Tariffs

When Ecuador joined the World Trade Organization (WTO) in January 1996, it bound most of its tariff rates at 30 percent or less, except for agricultural products covered by the Andean Price Band System (APBS). Ecuador applies a four-tiered structure with levels of 5 percent for most raw materials and capital goods; 10 percent or 15 percent for intermediate goods; and 20 percent for most consumer goods. According to the Ecuadorian government, in 2007 and 2008 it reduced tariffs on 3,267 tariff lines and increased them on 1,612 tariff lines. Product categories that benefitted from the tariff reductions included industrial capital goods, raw materials and transportation equipment. Most tariff increases were on durable and non-durable consumer goods and included 940 products (*e.g.*, foodstuffs, household and consumer appliances, paper products and construction materials) for which Ecuador raised the tariff to its WTO bound rate *i.e.*, the rate that generally cannot be exceeded under WTO rules. According to Ecuadorian government statistics, approximately 50 percent of Ecuador's tariff lines are MFN duty-free.

In January 2009, invoking the WTO's balance of payments provisions, Ecuador imposed quantitative restrictions and a tariff surcharge on a large number of imported products, resulting in tariffs in excess of Ecuador's bound tariff rates. In response to concerns raised during meetings of the WTO Committee on Balance of Payment Restrictions, Ecuador agreed to replace most of the quantitative restrictions with price-based measures and to progressively modify the level and scope of the measures as its balance of payments situation improved. Ecuador also committed to remove all trade measures imposed for balance of payments purposes no later than January 22, 2010. In line with these commitments, the Ecuadorian government replaced most but not all of its quantitative restrictions with price-based measures in June 2009. Resolution 487 of Ecuador's Foreign Trade and Investment Council (COMEXI) replaced quantitative restrictions on 251 out of a total of 271 tariff lines. Of the 251 products that will no longer be under quota, 234 must pay a 12 percent tariff charge in addition to the pre-"safeguard" tariff level. The remaining 17 items under quota include: 10 automotive products (parts of car assembly kits) which must pay a 3 percent tariff surcharge; apples, grapes, and pears, which must pay a 10 cents/kilo specific tariff; and four tariff lines for tires which must pay an 80 cents/kilo specific tariff. However, Ecuador did not remove all trade measures imposed for balance of payments purposes on January 22, 2010. On February 11, 2010, Ecuador issued a resolution to phase-out the measures by July 23, 2010. The WTO Committee

## FOREIGN TRADE BARRIERS

on Balance of Payments Restrictions will need to review this action, and consult with Ecuador. The U.S. Government continues to urge the Ecuadorian government to eliminate all balance of payment safeguard measures as soon as possible.

Separate from balance of payments safeguard measures, COMEXI published Resolution 550 on February 23, 2010 to change Ecuador's tariff schedule to reflect a mixed tariff of 10 percent *ad valorem* plus \$6 per pair specific tariff to be applied to 28 tariff lines (at the 8-digit level) corresponding to footwear, effective June 1, 2010. This new mixed tariff would replace Ecuador's current *ad valorem* tariff of 30 percent. The Ecuadorian government has also announced plans to establish a mixed tariff on imported garments and linens of \$5.50 per kilo plus 10 percent *ad valorem* tariff, replacing the current *ad valorem* tariff.

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

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

### **Tariff-Rate Quotas**

When Ecuador became a WTO Member in 1996, Ecuador established tariff-rate quotas (TRQs) for a number of agricultural imports. Products subject to TRQs include wheat, corn, sorghum, barley, barley malt, soybean meal, powdered milk, frozen turkeys, and frozen chicken parts.

### **Nontariff Measures**

Importers must register with the Ecuadorian Central Bank through approved banking institutions to obtain import licenses for all products. Although Ecuador phased out the prior authorization requirement for most imports, it still requires prior authorization from the Ministry of Agriculture (MAG) for imports of more than 80 agricultural items originating in countries other than AC Members (COMEXI Resolution 383 of June 11, 2007). Many of these products are also protected under the APBS (*e.g.*, poultry, beef, dairy, horticultural products, corn, rice, palm oil, and soybean meal). For several types of agricultural imports, the Minister or a designee must provide prior import authorization. The MAG argues that the authorization is to ensure that sanitary standards and tax rules are followed, but in some instances these justifications do not appear to be applicable. Subsequent to a visit by MAG officials to the U.S. Department of Agriculture in Washington in September 2009, the MAG requested assistance in developing a more transparent and quantifiable system of prior import authorization. USDA provided such information and awaits a formal proposal from the MAG to continue cooperating in this area.

Another administrative hurdle for agricultural importers is the MAG's use of "Consultative Committees" for import authorizations. Import authorizations usually are subject to crop absorption programs, which



were to be eliminated as part of Ecuador's WTO accession in 1996. These Committees, mainly composed of local producers, often advise the MAG against granting import authorizations for products such as corn, soybean meal, dairy products, and meats. The MAG often requires that all local production be purchased at high prices before authorizing imports.

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

Ecuador assesses a special consumption tax (ICE) of 32 percent on imported and domestic spirits. However, the taxable base upon which Ecuador assesses the ICE differs for domestic and imported spirits. For imported spirits, the ICE is applied to the customs value, which is then marked up 25 percent (*e.g.*, taxable base = [c.i.f. value + tariff + VAT] x 1.25), *i.e.*, the ICE is assessed on an inflated value for imported spirits. In contrast, for domestic spirits, the ICE is assessed on the factory price, and the 25 percent mark-up, although legally required, is not generally applied (*e.g.*, taxable base = [factory value + VAT]). In both cases, the excise tax is based on arbitrary values and not on actual transaction values.

Effective January 2008, a new tax law increased the ICE tax on a number of products, largely luxury items. The ICE tax increased for products that are largely imported rather than produced domestically, such as perfumes, luxury vehicles, all-terrain vehicles, airplanes, helicopters, and boats.

Since 2007, the Ecuadorian Customs Agency has used a risk analysis system rather than Ecuador's existing pre-shipment inspection regime for imports with f.o.b. values of more than \$4,000. Under this system, low-risk importers benefit from fewer physical inspections and expedited release of their cargo. In 2007, Ecuador also changed certain customs processes and requirements in an effort to reduce costs and minimize delays for importers.

## **GOVERNMENT PROCUREMENT**

Foreign bidders must register and have a local legal representative in order to participate in government procurement in Ecuador. Bidding on government contracts can be cumbersome and relatively non-transparent. The lack of transparency subjects the procurement process to possible manipulation by contracting authorities.

Since August 2008, Ecuador's public contracting law has required that priority be given to locally produced and supplied products and services, although foreign suppliers can compete for the contracts. The government has not yet determined how it will implement the local preference requirement. The law eliminated the requirement for contract awardees to obtain approval from the Attorney General and the Controller prior to being awarded a government contract. The law also created a National Institute of Public Contracting to oversee transparency and timeliness of the contracting process. Bidders are required to register and submit bids for government contracts through an online system ([www.compras.publicas.gov.ec](http://www.compras.publicas.gov.ec)), which the Ecuadorian government expects will improve transparency.

A large number of Ecuadorian government-controlled companies (*e.g.*, fixed-line telephony providers, electric power generators and distributors, hospitals, and clinics) are not subject to Ecuador's rules on government procurement.

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

## **INTELLECTUAL PROPERTY RIGHTS (IPR) PROTECTION**

Ecuador was listed on the Watch List in the 2009 Special 301 report. Key concerns cited in the Report included: weak enforcement of intellectual property rights; lack of effective protection against unfair commercial use of undisclosed test or other data generated to obtain marketing approval for pharmaceutical products; and lack of an effective system to prevent the issuance of marketing approvals for unauthorized copies of patented pharmaceutical products. Although Ecuador has established special IPR units that conduct investigations and executes seizures of pirated and counterfeit products, overall IPR enforcement in Ecuador remains seriously inadequate, resulting in high piracy levels in the software, publishing, recording, and film industries. Ecuador's Intellectual Property Institute (IEPI), assisted by a U.S. Agency for International Development program, has reduced its backlog of applications to register trademarks, decreasing the average time to register a trademark from two years to three months. Trademark and patent archives have been digitized, and IEPI is working to fully automate the application process.

In 2009 President Correa signed two presidential decrees regarding compulsory licenses, one for patented pharmaceutical products, and the other for agricultural chemical products. No compulsory licenses had been issued by the Ecuadorian government as of December 2009. The U.S. Government will continue to monitor developments in this area.

## **SERVICES BARRIERS**

### **Telecommunications**

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

## **INVESTMENT BARRIERS**

The transparency and stability of Ecuador's investment regime are negatively impacted by inconsistent application and interpretation of its investment laws. This legal complexity increases the risks and costs of doing business in Ecuador. A number of U.S. companies operating in Ecuador, notably in regulated sectors such as petroleum and electricity, have recently filed for international arbitration to resolve investment disputes with the government. In addition to dispute settlement under the United States-Ecuador Bilateral Investment Treaty (BIT), U.S. companies have also resorted to local courts, alternative dispute resolution mechanisms such as chambers of commerce, and international commercial dispute settlement mechanisms as provided for in their contracts.

In July 2009, Ecuador notified the World Bank's International Centre for Settlement of Investment Disputes that it was withdrawing from the convention establishing the international arbitration center. In September 2009, the Ecuadorian government requested approval from the country's National Assembly to terminate 13 bilateral investment treaties, including its BIT with the United States. The Ecuadorian government claims that these treaties' provisions on international arbitration for disputes between the State and private investors, as well as their provisions on national treatment of foreign investment, are in

## **FOREIGN TRADE BARRIERS**

conflict with the country's 2008 constitution. The constitution also contains provisions that would allow the government to "direct" foreign investment according to objectives identified in the country's National Development Plan.

Certain sectors of Ecuador's economy are reserved to the State. For example, all foreign investment in petroleum exploration and development must be carried out under contract with the state. A number of disputes have arisen related to these contracts and the laws regulating petroleum exploration and development generally.

Several oil companies have been involved in disputes with the government of Ecuador relating to the refund of value added taxes. In 2004, one of the disputing U.S. companies won a \$75 million arbitration award against the government of Ecuador, which the Ecuadorian government paid in March 2008. In 2006, Ecuador's solicitor general initiated an investigation of the same company for allegedly transferring assets to another foreign company without obtaining the required government authorization. The Ecuadorian government nullified the company's contract and seized the company's considerable assets in Ecuador. The U.S. company initiated arbitration proceedings related to this matter under the U.S.-Ecuador BIT; notwithstanding objections to jurisdiction, the Ecuadorian government has participated in the proceedings. In September 2008, an arbitral panel ruled that it had jurisdiction over the case.

In 2006, Ecuador amended its hydrocarbons law, unilaterally increasing the share of extraordinary petroleum revenues owed to the government under existing oil production sharing contracts to 50 percent. In October 2007, Ecuador issued an executive decree increasing this share to 99 percent in a "windfall tax." Foreign oil companies in Ecuador argued that operations would not be feasible under this scenario. In December 2006, April 2008, and June 2008, three U.S. companies initiated international arbitration proceedings challenging these changes (while continuing to pursue negotiated solutions), as have other foreign oil companies. One of the U.S. companies reached an agreement with the Ecuadorian government to buy out its contract in July 2008 and has since left the country. The government subsequently reduced the windfall tax to 70 percent. In July 2009, the government took over the operations of one foreign oil company as part of a continuing dispute over the windfall tax.

The Ecuadorian government is currently pursuing a policy that will require all contracts in extractive industries to be in the form of service, or "for fee," contracts, rather than production sharing agreements. U.S. and other foreign oil and gas companies are currently evaluating proposed legislation and a new model for the service contracts; negotiations to transition existing contracts to the new model have not begun yet.

Other barriers include equity caps (foreign investment is limited to 49 percent in domestic fishing operations, with some exceptions, and 25 percent in broadcast stations) and a chronic pattern of underpayment in the electricity sector, principally due to delays in the Ecuadorian government's central process for clearing electricity sector accounts.



# EGYPT

## TRADE SUMMARY

The U.S. goods trade surplus with Egypt was \$3.2 billion in 2009, a decrease of \$432 million from 2008. U.S. goods exports in 2009 were \$5.3 billion, down 12.4 percent from the previous year. Corresponding U.S. imports from Egypt were \$2.1 billion, down 13.2 percent. Egypt is currently the 34th largest export market for U.S. goods.

The stock of U.S. foreign direct investment (FDI) in Egypt was \$8.8 billion in 2008 (latest data available), up from \$7.1 billion in 2007. U.S. FDI in Egypt is concentrated primarily in the mining sector.

## IMPORT POLICIES

In recent years, the government of Egypt has gradually liberalized its trade regime and economic policies, although the reform process has been somewhat halting. Under the leadership of Prime Minister Ahmed Nazif and a ministerial economic team in place since 2004, the government has adopted a wide range of reform measures. However, a number of challenges to opening Egypt's markets remain, including a need to reduce corruption, reform the cumbersome bureaucracy, and eliminate non-science based health and safety standards.

### Tariffs

As part of the government's stimulus package in February 2009, Presidential Decree 51/2009 amended the customs tariff schedule for 250 additional items, lowering tariffs on many items and eliminating tariffs on some raw materials and capital and intermediate goods such as inputs for spun and woven products. The decree also increased applied tariff rates on a few items including a number of basic chemicals, manufactured rubber and bamboo products, and a limited group of machinery products and medical equipment.

The reforms of the past three years have reduced the overall weighted tariff average from 14.6 percent to 5.5 percent. Tariffs on the vast majority of goods entering Egypt are below 15 percent. Vehicles, alcohol, and tobacco are the only items on which tariffs are still 40 percent or higher. Passenger cars with engines under 1,600cc are taxed at 40 percent; cars with engines over 1,600cc at 135 percent. In addition, cars with engines over 2,000cc are subject to an escalating sales tax of up to 45 percent. Clothing also faces relatively high tariffs, although the 2007 decree reduced the rate from 40 percent to 30 percent.

Most key U.S. agricultural product exports to Egypt now enter at tariffs of 5 percent or lower; however, a number of processed food products face tariff rates ranging from 20 percent to 30 percent.

In 2006, the tariff rate on poultry was reduced from 32 percent to zero percent, but in 2007, the government imposed a 30 percent tariff, which remains in place today. Finished confectionary products face tariffs of 20 percent to 30 percent. There is a 300 percent duty on alcoholic beverages for use in the tourism sector, including hotels, plus a 40 percent sales tax. The general tariff for alcoholic beverages ranges from 1200 percent on beer to 1800 percent on wine to 3000 percent on sparkling wine and spirits.

Additionally, the government often makes abrupt changes to its import regime without prior notice or opportunity for comment.

## FOREIGN TRADE BARRIERS

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

### **Customs Procedures**

The Ministry of Finance has committed to a comprehensive reform of Egypt's customs administration and is reorganizing the Customs Authority to meet international standards. Modern customs centers are being established at major ports to test new procedures, such as risk management, and new information technology systems are being implemented to facilitate communications among ports and airports. These systems were planned to become fully operational in 2009, but were delayed and are now estimated to be completed by April 2010.

The Ministry of Finance in August 2008 finalized the draft of a new customs law to streamline procedures and facilitate trade, but the proposed legislation has yet to be submitted to parliament for consideration, and it is unlikely that the legislation will be introduced in the near future.

### **Import Bans and Barriers**

Passenger vehicles may only be imported into Egypt by their original owners, and the owner must have purchased the car within the first 12 months of its production for it to be eligible for importation.

The Egyptian Ministry of Health and Population (MOHP) prohibits the importation of natural products, vitamins, and food supplements. These items can only be marketed in Egypt by domestic companies that manufacture them under license or prepare and pack imported ingredients and pre-mixes according to MOHP specifications. Only domestic factories are allowed to produce food supplements and to import raw materials used in the manufacturing process.

The Nutrition Institute and the Drug Planning and Policy Center of the MOHP register and approve all nutritional supplements and dietary foods. The government attempts to complete the approval process in 6 weeks to 8 weeks, but some products face waiting periods of 4 months to 12 months for approval. Importers must apply for a license for dietary products and annual renewal of the license costs approximately \$1,000. However, if a similar local dietary product is available in the local market, registration for an imported product will not be approved.

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

### **GOVERNMENT PROCUREMENT**

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

## **FOREIGN TRADE BARRIERS**

A 1998 law regulating government procurement requires that technical factors, not just price, be considered in awarding contracts. A preference is granted to parastatal companies whose bids are within 15 percent of the price in other bids. In the 2004 Small and Medium-Sized Enterprises (SMEs) Development Law, Egyptian SMEs were given the right to supply 10 percent of the goods and services in every government procurement.

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

## **INTELLECTUAL PROPERTY RIGHTS (IPR) PROTECTION**

Although Egypt has improved its IPR regime, the United States still has significant concerns about IPR protection and enforcement in Egypt. The Egyptian government has made progress in strengthening some IPR laws and enforcement procedures, and engagement between the United States and Egypt on IPR issues is ongoing.

The United States was encouraged by the Egyptian government's introduction in 2008 of a new streamlined drug registration procedure, although the United States continues to monitor the full implementation of this system. The United States continues to seek written clarification that Egypt's Ministry of Health and Population provides adequate and effective protection against reliance on test and other data submitted for marketing approval of pharmaceutical products, and will continue to raise this issue in discussions with Egyptian IPR officials.

The U.S. copyright industry continues to report high levels of piracy of movies, sound recordings, printed material, and computer software in Egypt, but significant improvements have been made particularly with respect to improving protection of computer software and ensuring that civilian government departments and schools use legitimate software. The establishment in 2008 of special economic courts, which handle IPR cases with specially-trained judges, has also been a major reform.

## **SERVICES BARRIERS**

Egypt restricts foreign equity in construction and transport services to 49 percent. In the computer services sector, larger contributions of foreign equity may be permitted, such as when the Ministry of Communication and Information Technology determines that such services are an integral part of a larger business model and will benefit the country. Egypt limits the employment of non-nationals to 10 percent of an enterprise's general workforce and in computer related industries requires that 60 percent of top level management must be Egyptian within 3 years of the start-up date of the venture.

### **Banking**

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

Since banking reform began in 2004, the government has divested itself from many joint venture banks and privatized the fully government owned Bank of Alexandria in 2006. However, efforts to restructure the remaining three state-owned banks have been mixed and the Central Bank rejected privatization for

## **FOREIGN TRADE BARRIERS**

the three banks in 2009 on the grounds that market conditions were not right. The three remaining state-owned banks still control at least 40 percent of the banking sector's total assets. The banking reforms in the past five years have succeeded in significantly reducing the share of non-performing loans.

### **Telecommunications**

Telecom Egypt continues to hold a *de facto* monopoly. Despite Egypt's WTO commitments to issue additional licenses, the National Telecommunications Regulatory Authority (NTRA) postponed a plan to issue a second license in mid-2008, citing a lack of interest by potential applications. However, in October 2009, the NTRA began accepting local and international bids for licenses to offer "triple play" services of data, voice, and video to consumers, for which there is greater interest on the part of foreign telecommunications operators. The licenses for "triple-play" services are slated to be issued in 2010.

There is more competition in the mobile phone sector in Egypt with three private companies – Etisalat, Mobinil, and Vodafone – serving the market.

### **Transportation**

Egypt and the United States concluded an Air Transport Agreement in 1964, and the countries have modified the agreement only twice since then, adding a security provision in 1991, and in 1997 adding an amended route schedule, a limited agreement on cooperative marketing arrangements, and a safety provision. The agreement remains very restrictive and has no provisions on charter services. Private and foreign air carriers are not able to operate charter flights to and from Cairo without the approval of the national carrier, Egypt Air. The United States remains interested in replacing the restrictive 1964 agreement with an Open Skies air services agreement.

### **Courier and Express Delivery Services**

Private courier and express delivery service suppliers seeking to operate in Egypt must receive special authorization from the Egyptian National Postal Organization (ENPO). In addition, although express delivery services constitute a separate for-profit, premium delivery market, private express operators are required to pay ENPO a "postal agency fee" of 10 percent of annual revenue on shipments under 20 kilos. In 2009, the government of Egypt granted ENPO even more extensive regulatory oversight over the private express delivery sector by increasing considerably the fees paid to ENPO and requiring private express delivery companies to receive prior ENPO authorization for their prices and other policies. Given that ENPO is not an independent regulator, there are strong concerns that this new proposed contract will negatively impact competition in the express delivery sector.

### **Other Services Barriers**

Egypt maintains several other barriers to the provision of certain services by U.S. and other foreign firms. Foreign motion pictures are subject to a screen quota and distributors may import only five prints of any foreign film. According to the Egyptian labor law, foreigners cannot be employed as export and import customs clearance officers or as tourist guides.

### **INVESTMENT BARRIERS**

Egypt maintains discriminatory restrictions in the tourism and courier sectors.

## **FOREIGN TRADE BARRIERS**



## **OTHER BARRIERS**

### **Pharmaceutical Price Controls**

The Egyptian government controls prices in the pharmaceutical sector to ensure that drugs are affordable to the public. The government does not have a transparent mechanism for pharmaceutical pricing. The Pharmaceutical Committee in the Ministry of Health and Population reviews prices of various pharmaceutical products and negotiates with companies to adjust prices based on a cost-plus formula. This method, however, does not allow price increases to compensate for inflation and the pricing policy has failed to keep pace with the rising cost of raw materials. In 2007, the government granted price increases for selected pharmaceutical products, but the approved increases were minimal.



# EL SALVADOR

## TRADE SUMMARY

The U.S. goods trade surplus with El Salvador was \$197 million in 2009, a decrease of \$37 million from 2008. U.S. goods exports in 2009 were \$2.0 billion, down 18.0 percent from the previous year. Corresponding U.S. imports from El Salvador were \$1.8 billion, down 18.2 percent. El Salvador is currently the 55th largest export market for U.S. goods.

The stock of U.S. foreign direct investment (FDI) in El Salvador was \$3.2 billion in 2008 (latest data available), up from \$1.6 billion in 2007.

## IMPORT POLICIES

### Free Trade Agreement

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

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

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

### Tariffs

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

However, under the CAFTA-DR, about 80 percent of U.S. industrial and consumer goods now enter El Salvador duty-free, with the remaining tariffs phased out by 2015. Nearly all textile and apparel goods that meet the Agreement's rules of origin now enter El Salvador duty-free and quota-free, creating economic opportunities for U.S. and regional fiber, yarn, fabric, and apparel manufacturing companies.

## FOREIGN TRADE BARRIERS

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

### **Nontariff Measures**

Under the CAFTA-DR, El Salvador committed to improve transparency and efficiency in administering customs procedures, including the CAFTA-DR rules of origin. El Salvador also committed to ensuring greater procedural certainty and fairness in the administration of these procedures, and all the CAFTA-DR countries agreed to share information to combat illegal transshipment of goods. In addition, El Salvador has negotiated agreements with express delivery companies to allow for faster handling of their packages, but the Salvadoran customs administration and U.S. express delivery companies disagree on whether the agreements have been implemented. In particular, U.S. express delivery companies have raised concerns regarding customs clearance delays, acceptance of electronic documents, duty-free treatment of minimum value merchandise, and the submission of a single manifest covering all goods contained in an express delivery shipment.

In 2009, El Salvador amended its law regulating the production and sale of alcoholic beverages. These amendments would apply a new *ad valorem* tax (initially set at five percent) on domestic products and imports as well as increase existing taxes that are applied by percentage of alcohol by volume. This tax structure appears to apply a lower rate per percentage of alcohol on alcoholic beverages that are typically produced locally (*e.g., aguardiente*) than on alcoholic beverages that are imported (*e.g., whiskey and gin*). The U.S. Government has raised concerns with the new legislation with the government of El Salvador and continues to work with that government in an effort to address those concerns.

### **EXPORT SUBSIDIES**

El Salvador provides a 6 percent tax rebate on exports shipped outside Central America if the goods have undergone a transformation process that adds at least 30 percent to the original value. In late 2009, the government announced plans to phase out the rebate by June 2010. Firms operating in free trade zones enjoy a 10 year exemption from income tax as well as duty-free privileges.

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

### **INTELLECTUAL PROPERTY RIGHTS (IPR) PROTECTION**

The CAFTA-DR provides for improved standards for the protection and enforcement of a broad range of IPR, including protections for patents, trademarks, undisclosed test and other data submitted to obtain marketing approval for pharmaceuticals and agricultural chemicals, and digital copyrighted products such as software, music, text, and videos; and further deterrence of piracy and counterfeiting.

## **FOREIGN TRADE BARRIERS**

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

### **SERVICES BARRIERS**

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

Since July 2008, El Salvador has imposed a \$0.04 per minute tax on international telephone calls that terminate in El Salvador. Some telephone traffic from other Central American countries is exempt under an existing regional telecommunications agreement. The tax must be paid within the first 10 business days of the beginning of the month subsequent to the month in which the calls were terminated. U.S. telecommunications operators have raised concerns that the increased cost of terminating calls into El Salvador will result in an increase in long distance rates, which will negatively impact U.S. consumers.

### **INVESTMENT BARRIERS**

There are few formal investment barriers in El Salvador, except as noted in the services section above. However, the United States has expressed concerns regarding the impact of duplicative regulations and seemingly arbitrary regulatory decision making processes and how these impact U.S. electric energy investments in El Salvador.

### **OTHER BARRIERS**

Some U.S. firms and citizens have found corruption in government, including in the judiciary, to be a significant concern and a constraint to successful investment in El Salvador. The general perception is that government agencies and the judicial system are weak and subject to outside influence. Administrative and judicial decision making appear at times to be inconsistent, non-transparent, and very time consuming.



# ETHIOPIA

## TRADE SUMMARY

The U.S. goods trade surplus with Ethiopia was \$163 million in 2009, an increase of \$14 million from 2008. U.S. goods exports in 2009 were \$276 million, down 8.5 percent from the previous year. Corresponding U.S. imports from Ethiopia were \$113 million, down 25.9 percent. Ethiopia is currently the 105th largest export market for U.S. goods.

The stock of U.S. foreign direct investment in Ethiopia was \$2 million in 2008 (latest data available), the same as in 2007.

## IMPORT POLICIES

Ethiopia is not a Member of the World Trade Organization (WTO), but is in the process of acceding to the WTO. Ethiopia has made modest progress in drafting new legislation and implementing capacity building measures relevant to accession with the help of technical assistance from a number of donors, including the United States Government.

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

## Tariffs

According to the WTO, Ethiopia's average applied tariff rate was 17.3 percent in 2008. Revenue generation, not protection of local industry, appears to be the primary purpose of Ethiopia's tariffs. However, high tariffs are applied to protect certain local industries, such as the textile and leather industries. Goods imported from COMESA members are granted a 10 percent tariff preference. *Ad valorem* tariffs range from 0 percent to 35 percent, with a simple average of 16.8 percent. In February 2007, the government levied a 10 percent surtax on selected imported goods, with the proceeds designated for distribution of subsidized wheat in urban areas. In July 2008, the government of Ethiopia introduced an export tariff on raw and semi-processed hides and skins in an effort to shift domestic production to focus more on higher-value finished leather, hides and skins.

## Foreign Exchange Controls

Importers are facing increasing difficulty in obtaining foreign exchange, particularly those importing goods or inputs destined for domestic sales. Ethiopia's central bank administers a strict foreign currency control regime and has a monopoly on all foreign currency transactions. Ethiopia's currency (birr) is not freely convertible. While larger firms, state-owned enterprises, and enterprises owned by the ruling party have not typically faced major problems obtaining foreign exchange, less well connected importers, particularly smaller, new-to-market firms, increasingly face burdensome delays in arranging trade related payments. An importer must apply for an import permit and obtain a letter of credit for the total value of the imports before an order can be placed. Even then, import permits are not always granted. Ethiopia currently maintains four requirements and potential restrictions for payments and transfers of international transactions, which include: (1) a tax certification requirement for repatriation of dividend and other investment income; (2) regulations covering the repayment of legal external loans and foreign partner

## FOREIGN TRADE BARRIERS

credits; (3) rules for the issuance of import permits by commercial banks; and (4) a requirement to provide a clearance certificate from the National Bank of Ethiopia (central bank) to obtain import permits.

An acute shortage in Ethiopia's foreign exchange market has stalled overall business in both the private and public sectors. Whereas firms seeking bank letters of credit for imports requiring hard currency previously could acquire them upon demand and with an initial 30 percent deposit, such requests now routinely face waits in excess of 3 months and require 100 percent of the payments. The government's recent tightening of the banking regulations to manage its limited foreign exchange reserves has consequently dampened the supply of desired consumer and industrial imports. The limited supply of foreign exchange in Ethiopia's banks has continued to negatively impact U.S. commercial interests as companies have had increasing difficulty in importing essential consumer inputs and industrial capital goods from abroad. As a result, some prominent U.S. and other foreign business interests in Ethiopia may be forced to suspend business operations in Ethiopia.

## **GOVERNMENT PROCUREMENT**

A high proportion of Ethiopian import transactions are conducted through government tenders, reflecting the heavy involvement of the government in the overall economy. The tender announcements are usually made public to all interested potential bidders, regardless of the nationality of the supplier or the origin of the products or services. Bureaucratic procedures and delays in the decision-making process sometimes impede foreign participation in tenders. U.S. firms have complained about the abrupt cancellation of some tenders, a perception of favoritism toward Chinese vendors, and a general lack of transparency in the procurement system. Business associations have complained that state-owned and ruling party-owned enterprises have enjoyed *de facto* advantages over private firms in the government procurement process. Several U.S. firms have complained of pressure to offer vendor financing or other low-cost financing in conjunction with bids. Several significantly large contracts have been signed in recent years between government enterprises and Asian companies without a tender process.

Ethiopia is not a Member of the WTO and, therefore, is not a signatory to the WTO Agreement on Government Procurement.

## **INTELLECTUAL PROPERTY RIGHTS (IPR) PROTECTION**

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

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

## **SERVICES BARRIERS**

The state-run Ethiopian Telecommunications Corporation (ETC) maintains a monopoly on telecommunications and Internet service and is closed to private investment. An August 2005 directive

## **FOREIGN TRADE BARRIERS**



allows private companies to provide Internet service through the government's infrastructure, but implementing regulations have yet to be promulgated and ETC maintains a *de facto* monopoly on Internet services. There are no regulations on international data flows or data processing use. In late 2009, Ethiopia released a tender soliciting an international firm to overhaul ETC's management operations.

## **INVESTMENT BARRIERS**

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

The government is privatizing a large number of state-owned enterprises. Most, but not all, of the tenders issued by the Privatization and Public Enterprises Supervising Agency are open to foreign participation. Some investors bidding on these properties have complained about a lack of transparency in the process. Others who have leased land or invested in formerly state-owned businesses subject to privatization have experienced political impediments to assuming full control of acquired firms (*e.g.*, transferring title, delay in evaluating tenders, and tax arrears).

All land in Ethiopia belongs to the state; there is no private land ownership. Land may be leased from local and regional authorities for up to 99 years. An ongoing border dispute with Sudan has resulted in investors, including foreign investors, who had been granted land usage rights in the area to have their land and all assets forcibly taken by Sudanese authorities without recourse or response from the Ethiopian government.

## **OTHER BARRIERS**

### **Parastatal and Party-affiliated Companies**

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

### **Judiciary**

Companies attempting to transact business in Ethiopia assert that its judicial system remains inadequately staffed and inexperienced, particularly with respect to commercial disputes. While property and contractual rights are recognized, and there are commercial and bankruptcy laws, judges often lack an understanding of commercial matters and scheduling of cases often suffer from extended delays. Contractual enforcement remains weak. There is no guarantee that the award of an international arbitral tribunal will be fully accepted and implemented by Ethiopian authorities. Ethiopia has signed, but never ratified, the 1965 Convention on the Settlement of Investment Disputes between States and Nationals of Other States. The Ministry of Justice and the Federal Ethics and Anti-Corruption Commission (FEACC) are the government entities with primary responsibility to combat corruption. FEACC has arrested many officials, including managers of the Privatization Agency, Ethiopian Revenue and Customs Authority, National Bank of Ethiopia and the state-owned Commercial Bank of Ethiopia, and charged them with

## **FOREIGN TRADE BARRIERS**

corruption. In 2009, FEACC actively arrested officials of private financial institutions allegedly involved in unlawful business practices and individual businesspersons accused of tax evasion.

# EUROPEAN UNION

## TRADE SUMMARY

The U.S. goods trade deficit with the European Union was \$60.5 billion in 2009, down \$35.3 billion from 2008. U.S. goods exports in 2009 were \$220.8 billion, down 18.8 percent from the previous year. Corresponding U.S. imports from the European Union were \$281.3 billion, down 23.5 percent. The European Union countries together would have ranked as the largest export market for the United States in 2009.

U.S. exports of private commercial services (*i.e.*, excluding military and government) to the European Union (25) were \$195.8 billion in 2008 (latest data available), and U.S. imports were \$139.4 billion. Sales of services in the European Union by majority U.S.-owned affiliates were \$494.1 billion in 2007 (latest data available), while sales of services in the United States by majority European Union owned firms were \$366.2 billion.

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

## OVERVIEW

The U.S. economic relationship with the European Union (EU) is the largest and most complex economic relationship in the world. The enormous volume of trade and investment promotes economic prosperity both in the United States and Europe.

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

## MARKET ACCESS ISSUES

### WTO Information Technology Agreement

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

as well as a portion of the third-party session, were open for public observation. The United States expects the WTO panel to make its decision in 2010.

### **Pharmaceutical Products**

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

### **Uranium**

The United States is concerned that EU policies may unjustifiably restrict the import into the EU of enriched uranium, the material from which nuclear power reactor fuel is fabricated. Since 1992, the EU has maintained strict quantitative restrictions on imports of enriched uranium. Since 1994, these restrictions have been applied in accordance with the terms of the Corfu Declaration, a joint European Council and European Commission policy statement that has never been made public or notified to the WTO. The Corfu Declaration appears to limit the acquisition of non-EU sources of supply of enriched uranium, imposing explicit quotas on imports of enriched uranium. The EU's Euratom Supply Agency (ESA) continues to pursue a policy that appears to favor two European enrichers. The United States has raised concerns about the justification for the import quotas and the nontransparent nature of the Corfu Declaration and its application. Furthermore, the United States will closely monitor whether EU agreements under negotiation with Russia in the nuclear area alter EU application of the Declaration and follow WTO rules.

## **AGRICULTURAL AND FOOD PRODUCTS**

### **Bananas**

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

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

## **Husked Rice Agreement**

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

## **Meursing Table Tariff Codes**

Many processed food products – such as confectionary products, baked goods, and miscellaneous food preparations – are subject to a special tariff code system in the EU. Under this system, often referred to as the Meursing table, the EU charges a tariff on each imported product based on the product's content of milk protein, milk fat, starch, and sugar. As a result, products that the United States and other countries might consider equivalent for tariff classification purposes would each receive a different rate of duty in the EU depending on the particular mix of ingredients in each product. The difficulty in calculating Meursing duties imposes an unnecessary administrative burden on, and creates uncertainty for, exporters, especially those seeking to ship new products to the EU.

## **EU Enlargement**

In December 2006, the United States entered into negotiations with the EU – within the framework of the GATT 1994 provisions relating to the expansion of customs unions – regarding compensation for certain tariff increases related to Romania and Bulgaria's EU accession on January 1, 2007. Upon accession to the EU, Romania and Bulgaria were required to change their tariff schedules to conform to the EU's common external tariff schedule, which resulted in increased tariffs on the importation of certain products, mainly agricultural products. Under GATT Articles XXIV:6 and XXVIII, the United States is entitled to compensation from the EU to offset these tariff increases. In 2010, the United States will continue to seek conclusion of an appropriate bilateral compensation agreement with the EU and to ensure that the agreement is implemented as soon as possible.

## **INTELLECTUAL PROPERTY RIGHTS (IPR) PROTECTION**

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

In recent years, the European Commission issued communications on strengthening the criminal law framework to combat intellectual property infringement, and undertook a renewed effort to introduce an EU-wide patent, known as a Community patent. Despite the fact that patent filing costs have decreased in the EU, patent filing and maintenance fees in the EU and its Member States remain significantly higher than in other countries, including the United States.

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

The United States continues to have concerns about the EU's system for the protection of Geographical Indications (GIs). In a WTO dispute launched by the United States, a WTO Panel found that the EU regulation on food-related GIs was inconsistent with EU obligations under the TRIPS Agreement and GATT 1994. In its 2005 report, the Panel determined that the EU regulation impermissibly discriminated against non-EU products and persons, and agreed with the United States that the EU could not create broad exceptions to trademark rights guaranteed by the TRIPS Agreement. In response to the DSB's recommendations and rulings, the EU published an amended GI regulation, Council Regulation (EC) 510/06, in March 2006 (amended by Council Regulation (EC) 179/2006 and Commission Regulation 417/2008). The United States continues to have some concerns about this amended regulation, about the recently promulgated Council Regulation (EC) 479/08, which relates to wines, and about Commission Regulation (EC) 607/09, which relates, *inter alia*, to GIs and traditional terms of wine sector products. The United States is carefully monitoring the application of these regulations.

### ***Member State Measures***

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

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

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

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

*Greece:* Greece was on the Watch List in the 2009 Special 301 Report. The key concern cited in the Report is that IPR enforcement in Greece remains weak and uneven. The report also cited the need for Greece to improve its IPR enforcement regime, including undertaking sustained enforcement actions against street vendors, more effective raids and seizures, investigations and legal actions against on-line

infringers, increased prosecutions, deterrent-level penalties, and strengthened border enforcement. Greece also has an emerging problem with Internet piracy. Greece established an Inter-ministerial Coordinating Committee on IPR in 2008. The Committee, led by the Ministry of Foreign Affairs, published a National Action Plan for IPR in February 2009 to address IPR protection and enforcement. U.S. copyright industries reported that Greek law enforcement officials improved cooperation with the private sector in 2008. The United States will continue to work cooperatively with Greece on the measures outlined in its National Action Plan to improve IPR protection and enforcement.

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

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

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

*Romania:* Romania was on the Watch List in the 2009 Special 301 Report. Key concerns cited in the Report included delays and obstacles to criminal investigations, the lack of vigorous prosecution of IPR cases, and the lack of deterrent-level sentences against IPR infringers. Although authorities have made gradual improvements in enforcement, the copyright piracy rates in Romania remained high in 2008,

## FOREIGN TRADE BARRIERS

according to industry reports. Romania also established a dedicated IPR department in the General Prosecutor's Office (GPO), which serves as the national IPR enforcement coordinator. However, few IPR cases have been prosecuted to conclusion.

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

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

## **SERVICES BARRIERS**

### **Telecommunications**

The WTO commitments of EU Member States covering telecommunications services and the EU's Common Regulatory Framework for Electronic Communications Networks and Services (Framework Directive) have encouraged liberalization and competition in the European telecommunications sector. All EU Member States made WTO commitments to provide market access and national treatment for voice telephony and data services. The Framework Directive imposed additional liberalization and harmonization requirements on Member States, and the Commission has acted against Member States that were not implementing the Framework Directive. Implementation of these requirements has been uneven across Member States, however, and significant problems remain in many markets, including with the provisioning and pricing of unbundled local loops, line-sharing, co-location, and the provisioning of leased lines. A major EU telecommunications reform package adopted in December 2009, however, is designed to resolve many of these issues.

Enforcement of existing telecommunications legislation by national regulatory authorities (NRAs) has been characterized by unnecessarily lengthy and cumbersome procedures in France, Italy, and Austria, among others. The European Commission has also found that incumbents in Germany, Greece, Spain, Italy, Ireland, Austria, Finland, and Sweden have slowed the development of competition by systematically appealing their national regulators' decisions. The new EU telecommunications reform package will help address these concerns by strengthening the Commission's oversight of national regulators.

### ***Member State Measures***

*Austria:* Austria has moved toward a more open and competitive telecommunications market and implemented the relevant EU directives. The Austrian NRA carries out market reviews and imposes



remedies where necessary. However, the NRA is not pro-active in imposing remedies and in preventing delays in the implementation of proposed remedies and decisions. The incumbent Telekom Austria offers fixed-line networks, mobile telephony, and Internet access, including broadband, and is the market leader in all of these areas. Telekom Austria's strong market position appears to be an increasing hurdle to entry for other firms.

The Austrian mobile market is highly competitive, in contrast to the more concentrated fixed-line market, although the number of mobile operators has declined from six to four from April 2006 to April 2008. Retail rates for mobile communications have continued to decrease; however, the NRA has reported an increase in the number of consumer complaints. Regarding broadband lines, the market share of operators other than Telekom Austria has dropped. Price pressure on the wholesale broadband access market is very intense, with alternative operators losing market share. In October 2009, the European Commission raised doubts about the compatibility of Austrian regulatory provisions defining the Austrian wholesale broadband access market – the so-called bit stream access market – with EU law, and called on the NRA to suspend the adoption of regulatory measures. The Commission doubted that Austrian regulators had provided sufficient evidence to support its finding that mobile broadband connections can be considered as substitutes to fixed-line DSL and cable connections, and expressed further doubts regarding the scope of regulators' wholesale market definition for bit stream access.

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

*Germany:* Germany has made slow progress in introducing competition to some sectors of its telecommunications market. New entrants report they continue to face difficulties competing with the partially state-owned incumbent, Deutsche Telekom AG (DT), which retains a dominant position in a number of key market segments, including local loop and broadband connections. On the positive side, the passage of the Telecommunications Act in 2003, as well as subsequent amendments, has led to some increase in competition in the German market, enabling competitors to gain more than 21 percent of the fixed-line telecommunications market (excluding cable and VoIP) and around 42 percent of broadband connections (including DT DSL bit stream and DT DSL resale, but excluding broadband delivered via cable, fiber optic, power line, and satellite).

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

One U.S. trade association representing competitive telecommunications carriers has complained that competitive carriers continue to experience long delays in obtaining access to, and use of, wholesale Internet protocol (IP) and asynchronous transfer mode (ATM) bit stream access, services DT is required to offer to competitors. Although DT's reference interconnection offers for both services have been

approved by the German federal regulatory agency, *Die Bundesnetzagentur*, and some contracts have been signed between DT and competitive carriers, there continue to be technical problems in actually obtaining the services, a situation that hampers the ability of competitors to compete in the German market.

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

### **Television Broadcasting and Audiovisual Services**

December 19, 2009 marked the implementation deadline for the EU Directive on Audiovisual Media Services (AVMS), which amends and extends the scope of the Television without Frontiers Directive (which already covered traditional broadcasting, whether delivered by terrestrial, cable or satellite means) to also cover audiovisual media services provided on-demand, including via the Internet. European content quotas for broadcasting remain in place. On-demand services are subject to somewhat less restrictive provisions than traditional broadcasting under the AVMS Directive, which does not set any strict content quota but still requires Member States to ensure that on-demand services encourage production of, and access to, European works. This could be interpreted to refer to the financial contribution made by such services to the production and rights acquisition of European works or to the prominence of European works in the catalogues of video-on-demand services.

#### ***Member State Measures***

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

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

In addition to the broadcasting quotas, cinemas must reserve five weeks per quarter for the exhibition of French feature films and this is reduced to four weeks per quarter for theaters that include a French short-subject film during six weeks of the preceding quarter. Operators of multiplexes may not screen any one film with more than two prints, or through staggered and interlocking projection techniques, in such a way as to account for more than 30 percent of the multiplex's weekly shows. Theatrically released feature films are not allowed to advertise on television.

*Italy:* In July 2009, Italy implemented Broadcasting Law article 44, which reserves 50 percent of the monthly programming time for EU works. Ten percent of monthly “prime time” transmissions (20 percent for RAI) must be reserved for EU works produced during the last five years. Within this quota, 20 percent of the time must be reserved for Italian movies. For telecommunications companies that receive revenue from audiovisual content, new investment quotas stipulate that five percent of revenues from audiovisual content must be invested in the production and acquisition of EU works.

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

*Spain:* For every three days that a film from a non-EU country is screened – in its original language or dubbed into one of Spain’s languages – one EU film must be shown. This ratio is reduced to four to one if the cinema screens a film in an official language of Spain and keeps showing the film in that language during all sessions of the day. In addition, broadcasters and providers of other audiovisual media services must annually invest five percent of their revenues in the production of European and Spanish films and audiovisual programs.

### **Postal and other Delivery Services**

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

#### ***Member State Measures***

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

*Germany:* By the end of 2007, Germany had abolished all entry hurdles to the domestic post/mail and postal services market, becoming one of the first EU Member States to end its postal monopoly. Deutsche Post AG (DPAG) has remained the dominant player since the postal market was opened, but it is no longer the only supplier of standard letter mail below 50 grams. Despite full liberalization of the mail market, competition is still adversely affected by some restraints and entry barriers. In April 2009, the European Court of Justice found that the VAT exemption for DPAG conferred an unfair advantage. The European Commission subsequently initiated infringement procedures against Germany, and the

German government prepared proposals to amend the VAT exemption. These will likely lead to VAT exemptions only for services used by individual consumers, such as over-the-counter parcels. Business and bulk mail will become subject to VAT following the European Court of Justice's verdict. The German legislation is not expected to enter into force until July 1, 2010, prolonging DPAG's advantage for another six months.

## **Legal Services**

Austria, Cyprus, Greece, Hungary, Lithuania, Malta, and Slovakia require EU nationality for full admission to the Bar, which is necessary for the practice of EU and Member State law. Belgium and Finland require EU nationality for legal representation services.

*Austria:* U.S. nationals cannot represent clients before Austrian courts and authorities, and cannot establish a commercial presence in Austria. Informal cooperation with Austrian partners is possible, however.

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

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

*Czech Republic:* U.S.-educated lawyers may register with the Czech Bar and take an equivalency exam, but they are limited to practicing home country (U.S.) law and international law. U.S. firms may only establish in association with local firms and lend them their names; as a result, firms that operate in the country do so as independent Czech branches. These firms may employ U.S. attorneys that are employed as "advisors."

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

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

recognition agreements is limited to those that can establish as branches of firms registered elsewhere in the EU.

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

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

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

### **Accounting and Auditing Services**

*Greece:* A 1997 presidential decree established a method for fixing minimum fees for audits, established restrictions on the use of different types of personnel in audits, and prohibited auditing firms from doing multiple tasks for a client, thus raising the cost of audit work. While the restrictions in the 1997 Decree apply equally to Greek and foreign accountants, the restrictions are especially burdensome to U.S. and other foreign accounting firms because they make it difficult for those firms to take full advantage of the capabilities of their staffs and the diversity of their practice areas.

### **Financial Services**

*Poland:* Foreign service providers have requested that Poland treat a grouping of independent legal persons as a single taxable person (*i.e.*, VAT grouping), as allowed by the EU VAT Directive. VAT grouping is already employed by the United Kingdom, the Netherlands, Ireland, Germany, Austria, Denmark, Finland, Sweden, Romania, Belgium, Hungary, and the Czech Republic. (Since January 1, 2008, groups of companies established in Spain have also been able to opt for the new regime of VAT grouping). VAT grouping would allow financial service providers to recover VAT charges that they incur when making intra-company payments for supplies, including labor costs. As of 2009, there have been no changes, but this issue is on the agenda of an upcoming tax conference to be held in Warsaw in March, 2010.

### **Energy Services**

The ownership of the Public Company for Natural Gas (PCNG) is currently split between the government of Cyprus and the semi-governmental Electricity Authority of Cyprus (EAC) (56 percent to 44 percent, respectively). In the future, to open the market to newcomers, it will be possible for private investors to take a five percent stake in the government's share of PCNG. On October 13, 2009, the Ministerial Board of the government appointed the PCNG Board of Directors. Its chair, until recently, was the Energy Regulator for the Cyprus Energy Regulatory Authority and previously was the General Manager of the

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

## **EU Enlargement**

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

## **INVESTMENT BARRIERS**

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

Prior to the adoption of the Lisbon Treaty in December 2009, the European Commission shared competence with Member States on investment issues; Member States negotiated their own bilateral investment treaties (BITs) and generally retained responsibility for their investment regimes, while the EU negotiated investment provisions in EU economic agreements.

Article 207 of the Lisbon Treaty brings foreign direct investment (FDI) under the umbrella of Europe's common commercial policy, making it the exclusive competence of the EU. However, FDI is not defined in the Treaty, leaving the practical implications for EU external investment policy to be defined. If FDI is defined broadly, the EU could have greater authority to negotiate investment agreements and set EU investment rules. If Member States and the Commission cannot agree on a common definition of FDI treatment under the Lisbon Treaty, it would fall to the European Court of Justice to provide clarity.

EU Treaty Articles 43 (establishment) and 56/57 (capital movements) have helped the EU to achieve one of the most hospitable climates for U.S. investment in the world, but some restrictions on foreign investment persist. The Commission currently is reviewing Member State investment laws and proposals for compliance with EU Treaty language on the free movement of capital and the right of establishment.

### ***Member State Measures***

*Bulgaria:* Local companies in which foreign partners have controlling interests must obtain licenses to engage in certain activities, including the production and export of arms and ammunition; banking and insurance; exploration, development, and exploitation of natural resources; and the acquisition of property in certain geographic areas. The insolvency rules in Bulgaria's Commercial Code, and changes to the Law on Public Offering of Securities (2005), have greatly improved minority shareholder protection, but enforcement of the Commercial Code is inadequate and corporate governance remains weak.

## **FOREIGN TRADE BARRIERS**

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

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

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

The Financial Market Authority (AMF) modified disclosure requirements for corporate takeovers in July 2009. In most cases, the new rules lower the shareholding threshold at which potential acquirers have to make a mandatory tender offer. New AMF regulations add two new thresholds of 15 percent and 25 percent of shares or voting rights to the existing 33 percent threshold. New AMF regulations include creation of tender offer thresholds of 50 percent and 95 percent of shares or voting rights for companies listed on Alternext, the new unregulated market created in 2005. The new regulations took effect on August 1, 2009. The Finance Ministry becomes involved in mergers and acquisitions when the government uses its "golden share" in state-owned firms to protect national interests (currently Thales and Gaz de France only).

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

*Greece:* Prospective non-EU investors in Greece’s mining, maritime, air transport, broadcast, and banking sectors are required to obtain licenses and other approvals that are not required of Greek or other EU investors. Specifically, non-EU investors in the mining industry need special approval from the Greek cabinet for the use and exploitation of mines and foreign investors who want to purchase land in border areas and on certain islands need an additional approval from the Ministry of Defense. Greek authorities also consider local content and export performance criteria when evaluating applications for tax and investment incentives, although such criteria are not prerequisites for approving investments

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

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

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

## **GOVERNMENT PROCUREMENT**

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

The EU does not cover all of its government procurement under the GPA. Accordingly, Member States maintain their own national practices in certain areas, including in defense procurement, where several Member States require offsets. The GPA defines an offset as a condition or undertaking that encourages local development or improves a Party’s balance of payments accounts – such as requirements for domestic content, technology licensing, investment, and countertrade. U.S. suppliers participate in EU government procurement tenders, but it is difficult to accurately assess the level of U.S. and non-EU participation.

## **FOREIGN TRADE BARRIERS**



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

### ***Member State Measures***

*Austria:* U.S. firms continue to report a strong pro-EU bias in government contract awards. U.S. industry repeatedly asserts that invitations for bids for the Austrian government's vehicle fleet are tailored for German competitors. Additionally, offset requirements can reach up to 200 percent of the value of the contract for major defense purchases. Defense offsets in Austria are reportedly linked to political considerations and transparency remains limited.

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

*France:* The French government continues to maintain shares in several major defense contractors. It is difficult for non-European firms to participate in the French defense market and, even where the competition is among European suppliers, French companies are often selected as prime contractors.

*Greece:* Greece imposes onerous qualification requirements on companies seeking to bid on public procurement tenders. Companies must submit documentation from competent authorities indicating that they have paid taxes, have not been in bankruptcy, and have paid in full their social security obligations for their employees. All managing directors and board members of companies that want to participate in procurements must submit certifications from competent authorities that they have not engaged in fraud, money laundering, criminal activity, or similar activities. It is difficult for U.S. firms to comply with these requirements because there are no competent authorities in the United States that issue these types of certifications. The U.S. Embassy in Athens and the Greek Ministry of Development reached an agreement at the end of 2008 that would allow U.S. companies to submit sworn, notarized, and translated statements from corporate officers, along with an official statement from the U.S. Embassy in Athens stating that no U.S. federal authority issues the documents otherwise required under Greek procurement law. Despite this agreement, there remains considerable confusion among Greek authorities as to how U.S. firms may comply with these requirements. Greece also continues to require offsets as a condition for the awarding of defense contracts.

*Hungary:* A 2009 Hungarian government-funded study confirmed the long, widely held assumption that public procurements in Hungary are neither open nor transparent. The study revealed that as many as two-thirds of all public procurements are affected by corruption, increasing the price of procurements by

25 percent on average and that politically motivated tendering decisions are common. Hungarian non-governmental organizations advocate reform of campaign finance laws to help make public procurements more transparent and competitive. While the current government has proposed a new package of anti-corruption measures, the package does not include campaign finance reform.

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

*Italy:* Procurement authority is widely dispersed, with over 22,000 contracting agencies at the national, regional, and local level, including municipalities, hospitals, and universities. Italy's public procurement sector is noted for its lack of transparency and its corruption, which have created obstacles for some U.S. firms. Laws implemented in the mid-1990s have reduced corruption, but industry asserts that it still exists, especially at the local level.

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

*Portugal:* There is a general lack of transparency in Portuguese public procurement procedures. U.S. firms continue to face stiff competition when bidding against EU firms, with the Portuguese government tending to favor EU firms, even when bids from U.S. firms are technically superior or lower in price. U.S. firms appear to be more successful when bidding as part of a consortium or as part of a joint venture with Portuguese or other EU firms.

*Romania:* Romania adopted the EC Utilities Directive into national legislation in January 2007. Under the ordinance, public tenders in the water, transportation, energy, and postal services sectors, should give preference to bids containing at least 50 percent content from EU Member States or from countries with reciprocal bilateral agreements with the EU –when the difference in price is less than 3 percent. In addition, Romania requires offsets as a condition for the awarding of defense contracts.

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

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

## FOREIGN TRADE BARRIERS

*United Kingdom (UK):* The UK requires offsets in its defense procurement, but has no set percentage for them. Bidders are free to determine their own level of “industrial participation,” as well as with whom to do business. The UK defense market is, to an increasing extent, defined by the terms of the December 2005 Defense Industrial Strategy (DIS), which highlights specific sectors and capabilities that the government believes are necessary to retain in the United Kingdom. In these areas, procurement will generally be based on partnerships between the Ministry of Defense and selected companies. The DIS does not preclude partnerships with non-UK companies, and U.S. companies with UK operations may be invited by the Ministry of Defense to form partnerships in key programs in the future. Outside of those areas of partnership highlighted in the DIS, defense procurement is to a large extent an open and competitive process. However, there have been examples of noncompetitive procurements in recent years.

## **SUBSIDIES**

### **Government Support for Airbus**

Over many years, the governments of France, Germany, Spain, and the United Kingdom have provided subsidies to their Airbus-affiliated companies to aid in the development, production, and marketing of Airbus large civil aircraft. These governments have financed between 33 percent and 100 percent of the development costs for all Airbus aircraft models (launch aid) and have provided other forms of support, including equity infusions, debt forgiveness, debt rollovers, and marketing assistance, including political and economic pressure on purchasing governments. The EU’s aeronautics research programs are driven significantly by a policy intended to enhance the international competitiveness of the European civil aeronautics industry. EU governments have spent hundreds of millions of Euros to create infrastructure for Airbus programs, including 751 million Euros spent by the City of Hamburg to drain the wetlands that Airbus is currently using as an assembly site for the A380 "superjumbo" aircraft. French authorities also spent 182 million Euros to create the AeroConstellation site, which contains additional facilities for the A380. The beneficiary of more than \$6 billion in subsidies, the Airbus A380 is the most heavily subsidized aircraft in history. Some EU governments have also made legally binding commitments of launch aid for the new Airbus A350 aircraft, even though Airbus has barely begun to repay the financing it received for the A380.

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

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

On May 31, 2005, the United States submitted a WTO panel request. The WTO established the panel on July 20, 2005. In September 2009, the dispute settlement panel issued a confidential interim report to both parties. The United States has consistently noted its willingness to negotiate a new bilateral

agreement on large civil aircraft, even while the WTO litigation proceeds, but it has insisted that any such agreement must end launch aid and other direct subsidies for the development and production of such aircraft.

### **Government Support for Airbus Suppliers**

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

*France:* In addition to the launch aid that the French government provided for the development of the A380 and A350 aircraft, France provides aid in the form of reimbursable advances to assist the development by French manufacturers of products such as planes, aircraft engines, helicopters, and on-board equipment. French appropriations supporting new programs in these areas in 2008 totaled 214.4 million Euros, of which 20.1 million Euros were committed to the A380 (the last advance to the A380). Based on preliminary estimates, overall 2009 appropriations, including 74 million Euros in support of research and development in the aeronautical sector, amount to 209 million Euros. In July 2008, Airbus, the parastatal Caisse des Dépôts et Consignations, and the Safran Group, announced the launch of the AEROFUND II equity fund, capitalizing 75 million Euros destined for the French aeronautical sector. The equity fund's objective is to support the development of the small- and medium-sized subcontractors that supply the aeronautical sector. In March 2009, the state's investment fund (FSI) and AEROFUND I and II bought nearly 20 percent in DAHER, for 80 million Euros, to help that private aerospace group speed up its development and seize strategic opportunities.

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

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

## **Government Support for Aircraft Engines**

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

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

*France:* In 2005, the French government-owned engine manufacturer, Snecma SA, merged with Sagam, a technology and communications firm, to form the SAFRAN Group. The government supports the SAFRAN SaM146 propulsive engine program with a reimbursable advance of 140 million Euros.

## **Regional Aircraft**

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

## **CUSTOMS ADMINISTRATION**

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

On some questions, where the customs agencies in different Member States administer EU law differently, the matter may be referred to the Customs Code Committee (Committee). The Committee is an entity established by the Community Customs Code to assist the European Commission (Commission). The Committee consists of representatives of the Member States and is chaired by a representative of the Commission. While, in theory, the Committee exists to help reconcile differences

among Member State practices and thereby help to achieve uniformity of administration, in practice its success in this regard has been limited.

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

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

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

## **ELECTRONIC COMMERCE**

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

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

The Safe Harbor Program provides U.S. companies with a simple, streamlined means of complying with the EU rules. It is the result of an agreement that allows U.S. companies that commit to a series of data protection principles (based on the EU Data Protection Directive), and that publicly state their

## **FOREIGN TRADE BARRIERS**

commitment by “self-certifying”, on a dedicated website (<http://www.export.gov/safeharbor>), to continue to receive and transfer personal data from the EU. Signing up to the Safe Harbor is voluntary, but the rules are binding on signatories. A failure to fulfill commitments made under the Safe Harbor framework is actionable either as an unfair or deceptive practice under Section V of the Federal Trade Commission Act or, for air carriers and ticket agents, under a concurrent Department of Transportation statute.

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

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

The United States actively supports the Safe Harbor framework and encourages EU institutions and Member States to continue to use the flexibility offered by the EU Data Protection Directive to avoid unnecessary interruptions in data flows to the United States. Furthermore, the United States expects the EU and Member States to fulfill their commitment to inform the United States if they become aware of any actions that may interrupt data flows to the United States.





# GHANA

## TRADE SUMMARY

The U.S. goods trade surplus with Ghana was \$500 million in 2009, an increase of \$113 million from 2008. U.S. goods exports in 2009 were \$634 million, up 4.2 percent from the previous year. Corresponding U.S. imports from Ghana were \$135 million, down 39.3 percent. Ghana is currently the 85th largest export market for U.S. goods.

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

## IMPORT POLICIES

### Tariffs

Ghana is a Member of the World Trade Organization (WTO) and the Economic Community of West African States (ECOWAS). According to the WTO, Ghana's average MFN applied tariff rate is 13 percent. In 2008, along with other ECOWAS countries, Ghana adopted a common external tariff (CET) that requires members to simplify and harmonize *ad valorem* tariff rates into five bands: zero duty on social goods (*e.g.*, medicine, publications); 5 percent on imported raw materials; 10 percent on intermediate goods; 20 percent on finished goods; and 35 percent on goods in certain sectors. Ghana currently maintains 190 exceptions to the CET, and the highest tariff charged is 20 percent. The tariff rates for the items covered under these exceptions will require some changes to align with the CET.

### Nontariff Measures

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

All imports are subject to destination inspection and an inspection fee of one percent of cost, insurance and freight (CIF). Importers have indicated that they would prefer a flat fee on each transaction based on the cost of the services rendered. The destination inspection companies (DICs) licensed by the Ghanaian government account for the longest delay in import clearance. In response to importers' concerns, Ghana Customs established a Customs Management System (CMS) to take over the valuation and classification of imported goods from the DICs. The new system is designed to reduce the time for goods clearance through the automation of key steps associated with customs entry processing, payments, and clearance. However, implementation of the CMS has been delayed due to the extension of an agreement with one of the DICs.

In December 2009, the Ghanaian government introduced a bill in Parliament to change Ghana's excise tax regime from the current specific excise tax to an *ad valorem* excise tax on certain non-alcoholic beverages, spirits, imported beer, and tobacco products. This amendment would equalize the difference

in tax treatment of malt drinks and carbonated soft drinks. If passed, non-alcoholic beverages would be taxed at 20 percent of the wholesale price, excluding transportation costs.

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

Each year, between May and October, there is a temporary ban on the importation of fish (not including canned fish) to protect local fishermen during their peak season.

Certificates are required for agricultural, food, cosmetics, and pharmaceutical imports. Permits are required for the import of poultry and poultry products. At the time the permit is issued, a non-standard quantity limit is imposed. Ghana prohibits the importation of meat with a fat content by weight greater than 25 percent for beef, 42 percent for pork, 15 percent for poultry products (including chicken, duck, turkey, etc.) and 35 percent for mutton.

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

## **EXPORT SUBSIDIES AND OTHER EXPORT PROMOTION PROGRAMS**

Ghana uses preferential credits and tax incentives to promote exports. The Export Development Investment Fund administers financing at below market rates. Agricultural export subsidies were eliminated in the mid-1980s. The Export Processing Zone (EPZ) Law, enacted in 1995, allows for corporate profits to be tax-exempt for the first 10 years of business operation in an EPZ, after which the tax rate climbs to 8 percent (the same rate for non-EPZ companies). Seventy percent of production in the EPZ zones must be exported. The corporate tax rate for non-exporting companies is 25 percent.

## **GOVERNMENT PROCUREMENT**

The Public Procurement Authority, established in 2004, administers the public procurement law to enhance transparency and efficiency in the procurement process. Individual government entities have formed tender committees and tender review boards to conduct their own procurement. Large public procurements are made by open tender and foreign firms are allowed to participate. A draft guideline applied to current tenders gives a margin of preference of 7.5 percent to 20 percent to domestic suppliers of goods and services in international competitive bidding. Notwithstanding the public procurement law, companies do not experience complete transparency in locally funded contracts. Vendor or foreign-government subsidized financing arrangements appear in some cases to be a crucial factor in some government procurement actions. Allegations of corruption in government procurement are also fairly common.

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

## **INTELLECTUAL PROPERTY RIGHTS (IPR) PROTECTION**

Industry estimates on the scale of counterfeiting and piracy range from 40 percent to 90 percent for certain sectors, such as pharmaceuticals and computer software. Although IPR owners can turn to local

## **FOREIGN TRADE BARRIERS**

courts, they have filed very few trademark, patent, and copyright infringement cases in recent years. Companies that do initiate cases report prolonged timelines for resolution (a possible factor in discouraging other companies from filing cases).

Government-initiated enforcement remains relatively rare, but the Copyright Office, which is under the Attorney General's Office, periodically initiates raids on markets for pirated works. The Customs Service has collaborated with concerned companies to inspect import shipments.

Since December 2003, Parliament passed six bills designed to implement provisions of the WTO TRIPS Agreement. These laws pertain to copyright, trademarks, patents, layout-designs (topographies) of integrated circuits, geographical indications, and industrial designs. Ghana has not yet promulgated many IP-related regulations, although it did promulgate copyright regulations in July 2008.

### **SERVICES BARRIERS**

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

Ghana allows foreign telecommunications firms to provide basic services, but requires that these services be provided through joint ventures with Ghanaian nationals. The National Communications Authority has yet to become effective in resolving complaints that Ghana Telecom, the state-owned national telecommunications operator, is engaging in anticompetitive practices.

In the insurance sector, Ghana limits foreign ownership to 60 percent, except for auxiliary insurance services, where 100 percent foreign ownership is permitted. Although foreign investors may participate in Ghana's market for banking and other non-insurance financial services, discriminatory treatment applies to companies owned by non-resident investors. Specifically, under the central bank's new minimum capital requirement for banks, existing banks with Ghanaian majority share ownership (local banks) have until 2012 to fully increase their capital base to GHC 60 million (about \$41 million) from GHC 7 million. By contrast, banks with majority foreign ownership need to meet the target by 2009.

### **INVESTMENT BARRIERS**

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

### **OTHER BARRIERS**

The effects of a highly regulated economy, a politicized business community, and lack of transparency in certain government operations create an added element of risk for potential investors. Entrenched local interests sometimes have the ability to derail or delay new entrants. The political leanings of the Ghanaian partners of foreign investors are often subject to government scrutiny, and ensuring compliance with the U.S. Foreign Corrupt Practices Act remains a challenge.

## **FOREIGN TRADE BARRIERS**

Foreign investors have experienced sustained difficulties and delays in securing required work visas for non-Ghanaian employees. Work permits that are generated can unpredictably take several months from application to delivery. At least one company received only a fraction of the total number of work permits required, leading to the cancellation of an infrastructure project worth more than \$150 million. Ghana's complex land tenure system creates challenges for establishing clear title on real estate. Non-Ghanaians can have access to land only on a leasehold basis.

Port inefficiencies increase import and export costs. The Customs Service phased in an automated customs declaration system during the last quarter of 2002 to facilitate customs clearance. Although the new system has reduced the number of days for clearing goods through the ports, inefficiencies remain because complementary services from Ghanaian government agencies, banks, destination inspection companies, and security services have not been established.

# GUATEMALA

## TRADE SUMMARY

The U.S. goods trade surplus with Guatemala was \$763 million in 2009, a decrease of \$493 million from 2008. U.S. goods exports in 2009 were \$3.9 billion, down 17.3 percent from the previous year. Corresponding U.S. imports from Guatemala were \$3.1 billion, down 9.4 percent. Guatemala is currently the 42nd largest export market for U.S. goods.

The stock of U.S. foreign direct investment (FDI) in Guatemala was \$915 million in 2008 (latest data available), up from \$614 million in 2007.

## IMPORT POLICIES

### Free Trade Agreement

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

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

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

### Tariffs

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

However, under the CAFTA-DR, about 80 percent of U.S. industrial and consumer goods enter Guatemala duty-free, with the remaining tariffs phased out by 2015. Nearly all textile and apparel goods that meet the Agreement's rules of origin now enter Guatemala duty-free and quota-free, promoting new opportunities for U.S. and regional fiber, yarn, fabric, and apparel manufacturing companies.

## FOREIGN TRADE BARRIERS

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

### **Nontariff Measures**

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

U.S. companies have raised concerns that the Guatemalan customs authority has not provided adequate advance notice regarding administrative changes in documentation requirements for imported shipments, such as information needed on certifications of origin. The United States raised this issue with the customs authority and received assurances that future changes will be communicated in advance and will be available on the tax and customs website: <http://portal.sat.gob.gt/sitio/>.

### **GOVERNMENT PROCUREMENT**

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

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

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

### **EXPORT SUBSIDIES**

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

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

## **INTELLECTUAL PROPERTY RIGHTS (IPR) PROTECTION**

Guatemala was listed on the Watch List in the 2009 Special 301 report. Key concerns cited in the Report included the need to provide higher priority to, and greater resources for, combating piracy and counterfeiting and to enhance enforcement efforts by pursuing raids and prosecutions against not just small scale sellers but also against the manufacturers of pirated and counterfeit goods.

The CAFTA-DR provides for improved standards for the protection and enforcement of a broad range of IPR, including: protections for patents, trademarks, undisclosed test and other data submitted to obtain marketing approval for pharmaceuticals and agricultural chemicals, and for digital copyrighted products such as software, music, text, and videos; and further deterrence of piracy and counterfeiting. To implement its CAFTA-DR IPR obligations, Guatemala undertook legislative reforms providing for stronger IPR protection and enforcement.

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

## **SERVICES BARRIERS**

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

The Guatemalan Congress is considering an insurance law that would strengthen supervision of the insurance sector and allow foreign insurance companies to open branches in Guatemala. This law would also require foreign insurance companies to fully capitalize in Guatemala.

Guatemala has agreed to ensure reasonable and nondiscriminatory access to essential telecommunications facilities. It also has agreed to ensure that major suppliers provide interconnection at cost oriented rates. Concerns remain over the ability of the Guatemalan telecommunications regulator – the Superintendency of Telecommunications – to do so. The United States continues to work with the Guatemalan government to ensure compliance with its obligations under the CAFTA-DR.

In addition, some other market access issues remain. Public notaries must be Guatemalan nationals. Foreign enterprises may provide licensed professional services in Guatemala only through a contract or other relationship with an enterprise established in Guatemala. Under the CAFTA-DR, U.S. insurance companies may establish wholly owned subsidiaries and joint ventures and will be allowed to establish branches by July 1, 2010.

## **FOREIGN TRADE BARRIERS**

## **INVESTMENT BARRIERS**

The CAFTA-DR establishes a secure and predictable legal framework for U.S. investors operating in Guatemala. The investment protection obligations of the CAFTA-DR apply to a broad definition of investments, including enterprises, debt, concessions, contracts, and intellectual property. In most circumstances, the CAFTA-DR guarantees U.S. investors the right to establish, acquire, and operate their investments in Guatemala on an equal footing with domestic investors. Investor rights are protected under the CAFTA-DR by a procedure for dispute settlement that is impartial and transparent.

Notwithstanding the CAFTA-DR's legal framework for investment, some U.S. companies operating in Guatemala have complained that complex and unclear laws and regulations continue to constitute practical barriers to investment.

## **OTHER BARRIERS**

Some U.S. firms and citizens have found corruption in government, including in the judiciary, to be a significant concern and a constraint to successful investment in Guatemala. The general perception is that government agencies and the judicial system are weak and subject to outside influence. Administrative and judicial decision making appear at times to be inconsistent, non-transparent, and very time consuming.



# HONDURAS<sup>1</sup>

## TRADE SUMMARY

The U.S. goods trade surplus with Honduras was \$60 million in 2009, down \$745 million from 2008. U.S. goods exports in 2009 were \$3.4 billion, down 30.2 percent from the previous year. Corresponding U.S. imports from Honduras were \$3.3 billion, down 17.7 percent. Honduras is currently the 44th largest export market for U.S. goods.

The stock of U.S. foreign direct investment (FDI) in Honduras was \$700 million in 2008 (latest data available), up from \$640 million in 2007.

## IMPORT POLICIES

### Free Trade Agreement

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

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

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

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<sup>1</sup> In light of the political crisis in Honduras, the U.S. Government was not able to engage with Honduras on trade matters for much of 2009. However, the U.S. Government continued to engage in monitoring to ensure the safety of food and other agricultural items imported from Honduras.

## **Tariffs**

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

However, under the CAFTA-DR, approximately 80 percent of U.S. industrial and consumer goods now enter the region duty-free, with the remaining tariffs to be phased out by 2015. Nearly all textile and apparel goods that meet the agreement's rules of origin became duty-free and quota-free immediately, thus creating new opportunities for U.S. fiber, yarn, fabric, and apparel manufacturers.

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

## **Nontariff Measures**

Under the CAFTA-DR, Honduras committed to improve transparency and efficiency in administering customs procedures, including the CAFTA-DR's rules of origin. Honduras also committed to ensuring greater procedural certainty and fairness in the administration of these procedures, and all CAFTA-DR countries agreed to share with each other information to combat illegal transshipment of goods.

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

## **GOVERNMENT PROCUREMENT**

Under the current version of the Government Contracting Law, which originally entered into force in October 2001 and was amended based on the CAFTA-DR, all public contracts over one million Lempiras (approximately \$53,000) must be offered through public competitive bidding. Public contracts between 500,000 and 1 million Lempiras (approximately \$26,000 - \$53,000) can be offered through a closed bid, and contracts less than 500,000 Lempiras (approximately \$26,000) are exempt from the bidding requirements. The CAFTA-DR eliminated the requirement that foreign firms act through a local agent (with at least 51 percent Honduran ownership) to participate in public tenders.

The CAFTA-DR requires fair and transparent procurement procedures, including advance notice of purchases and timely and effective bid review procedures. Under the CAFTA-DR, U.S. suppliers are permitted to bid on procurements covered by the agreement for most Honduran government entities, including key ministries, on the same basis as Honduran suppliers. The anticorruption provisions in the CAFTA-DR require each government to ensure that bribery in matters affecting trade and investment, including in government procurement, is treated as a criminal offense, or is subject to comparable penalties, under its law. Since the CAFTA-DR came into effect, government agencies have routinely declared "emergencies" to circumvent competitive bidding procedures for public procurements, including for large infrastructure projects.

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

## **EXPORT SUBSIDIES**

There are no known export subsidies provided by the Honduran government, but it provides tax exemptions to firms in free trade zones. Under the CAFTA-DR, Honduras may not adopt new duty waivers or expand existing duty waivers that are conditioned on the fulfillment of a performance requirement (*e.g.*, the export of a given level or percentage of goods). However, Honduras may maintain such duty waiver measures for such time as it is an Annex VII country for the purposes of the WTO Agreement on Subsidies and Countervailing Measures (SCM Agreement). Thereafter, Honduras must maintain any such measures in accordance with Article 27.4 of the SCM Agreement.

## **INTELLECTUAL PROPERTY RIGHTS (IPR) PROTECTION**

Honduras previously had an independent IPR prosecutor's office, although it consisted of only two staff members. The IPR prosecutor's office was merged into the common crimes office in 2009 and is no longer an independent entity within the Public Ministry. After the U.S. Government raised concerns that Honduran cable television operators were using copyrighted U.S. programming without permission, in early 2009, the IPR prosecutor investigated the allegation, found and confiscated the illegal equipment, and disbanded the pirating network.

The CAFTA-DR provides for improved standards for the protection and enforcement of a broad range of IPR, including: protections for patents, trademarks, undisclosed test and other data submitted to obtain marketing approval for pharmaceuticals and agricultural chemicals, and digital copyrighted products such as software, music, text, and videos; and further deterrence of piracy and counterfeiting. To implement its CAFTA-DR IPR obligations, Honduras undertook legislative reforms providing for stronger IPR protection and enforcement.

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

## **SERVICES BARRIERS**

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

Hondutel, the government-owned incumbent telecommunications operator officially lost its monopoly on fixed-line telephony services on December 25, 2005. Although there are regulations in place that allow the government to grant licenses, permits, and concessions for different telecommunications services in Honduras, many services continue to be provided through sub-operator agreements signed between Hondutel and private companies. A multi-year effort to introduce a new telecommunications law created uncertainty about the country's regulatory regime, with several proposed provisions of the new law potentially in conflict with the trade commitments undertaken by Honduras in the CAFTA-DR. Given the recent political turmoil following the removal of the President from office, the telecommunications bill appears to have been placed on hold. The United States will continue to monitor efforts to introduce new telecommunications legislation to ensure that any new legislation is consistent with Honduras' obligations under the CAFTA-DR.

## **FOREIGN TRADE BARRIERS**

## **INVESTMENT BARRIERS**

The CAFTA-DR establishes a secure and predictable legal framework for U.S. investors operating in Honduras. The investment protection obligations of the CAFTA-DR apply to a broad definition of investments, including enterprises, debt, concessions, contracts, and intellectual property. In most circumstances, the CAFTA-DR guarantees U.S. investors the right to establish, acquire, and operate their investments in Honduras on an equal footing with domestic investors. Investor rights are protected under the CAFTA-DR by a procedure for dispute settlement that is impartial and transparent.

Upon entry into force of the CAFTA-DR, the 2001 United States-Honduras Bilateral Investment Treaty (BIT) was suspended. For a period of 10 years, however, U.S. investors may choose dispute settlement either under the BIT or the CAFTA-DR. Investors will continue to maintain important investment rights and protections under the investment provisions of the CAFTA-DR.

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

Notwithstanding the CAFTA-DR's legal framework for investment, inadequate land title procedures have led to numerous investment disputes involving U.S. nationals who are landowners. Resolution of disputes in court often takes several years. There have been claims of widespread corruption in land sales and in registry and in the dispute resolution process, including claims against attorneys, real estate companies, judges and local officials. Property registration is often out of date and the results of title searches are not reliable. In addition, the lack of implementing regulations in certain regions can lead to long delays in the awarding of titles. A law passed in April 2008 authorized the government to award certain agricultural lands that have been under dispute for more than two years to squatters with only nominal compensation to legal titleholders. A number of properties owned by U.S. citizens are potentially subject to confiscation under this law.

## **OTHER BARRIERS**

Some U.S. firms and citizens have found corruption in government, including in the judiciary, to be a significant concern and a constraint to successful investment in Honduras. The general perception is that government agencies and the judicial system are weak and subject to outside influence. Administrative and judicial decision making appear at times to be inconsistent, non-transparent, and very time consuming. Corruption appears to be prevalent in the areas of government procurement, the buying and selling of real estate (particularly land title transfers), performance requirements, and the regulatory system. Telecommunications and energy are sectors that have proved most problematic. These issues have affected Honduras's ability to attract foreign investment.

Honduras is implementing an anticorruption plan, which includes elements such as civil service reform, external audits of public utilities (especially electricity and telecommunications), strengthening police capabilities, and implementation of the transparency law. Progress reports are public documents, are shared with members of the international donor community, and are available online. A commission was established to implement the transparency law, but the head commissioner resigned and the other two

## **FOREIGN TRADE BARRIERS**

were fired by the Honduran Congress. As of the end of 2009, the Honduran Congress was in the process of selecting new commissioners.

U.S. industry has expressed concern that some investors in Honduras have at times been subject to practices that might be considered anticompetitive. In 2006, the Honduran Congress enacted a competition law, establishing an anti-trust enforcement commission to combat such conduct. Commissioners commenced operations in 2007. In 2007 and 2008, six complaints were filed with the commission and all six cases were investigated. The commission ruled in favor of one petition, ruled against three, and dismissed the remaining two cases. During the same period, the commission initiated eight investigations, of which five were closed and three continued into 2009.



# HONG KONG, SAR

## TRADE SUMMARY

The U.S. goods trade surplus with Hong Kong was \$17.6 billion in 2009, an increase of \$2.5 billion from 2008. U.S. goods exports in 2009 were \$21.1 billion, down 1.8 percent from the previous year. Corresponding U.S. imports from Hong Kong were \$3.6 billion, down 45.0 percent. Hong Kong is currently the 13th largest export market for U.S. goods.

U.S. exports of private commercial services (*i.e.*, excluding military and government) to Hong Kong were \$6.1 billion in 2008 (latest data available), and U.S. imports were \$7.8 billion. Sales of services in Hong Kong by majority U.S.-owned affiliates were \$28.2 billion in 2007 (latest data available), while sales of services in the United States by majority Hong Kong-owned firms were \$3.6 billion.

The stock of U.S. foreign direct investment (FDI) in Hong Kong was \$51.5 billion in 2008 (latest data available), up from \$50.2 billion in 2007. U.S. FDI in Hong Kong is concentrated largely in the nonbank holding companies, finance/insurance, and wholesale trade sectors.

## IMPORT POLICIES

Hong Kong, China is a special administrative region (SAR) of the People's Republic of China. However, for trade and immigration purposes, Hong Kong is a distinct entity with its own tariffs, trade laws, regulations, and is a separate Member of the WTO. The Hong Kong government pursues a market-oriented approach to commerce. Hong Kong is a duty-free port with few barriers to trade in goods and services and few restrictions on foreign capital flows and investment. Hong Kong had traditionally maintained excise duties on certain goods, particularly alcoholic beverages, which were among the highest in the world. However, on February 27, 2008, the Hong Kong Financial Secretary announced that the 40 percent excise tax on wine and the 20 percent excise tax on beer and liquor containing less than 30 percent alcohol would be eliminated immediately. The U.S. Government was pleased with this development and is actively working with like-minded governments to encourage Hong Kong to eliminate the remaining 100 percent tax on spirits (more than 30 percent alcohol content).

## INTELLECTUAL PROPERTY RIGHTS (IPR) PROTECTION

The Hong Kong government continues to maintain a robust IPR protection regime. Hong Kong has strong IPR laws in place, a dedicated and effective capacity for enforcement, a judicial system that supports enforcement efforts with deterrent fines and prison sentences, and youth education programs that discourage IPR-infringing activities. Hong Kong remains vulnerable, however, to some forms of IPR infringement particularly with respect to Internet piracy. The U.S. Government continues to monitor the situation to ensure that Hong Kong sustains its IPR protection and enforcement efforts and addresses remaining problem areas.

Hong Kong's IPR enforcement efforts have helped to reduce losses by U.S. companies, but the rapid growth of unauthorized file sharing over peer-to-peer networks on the Internet, end-user software piracy, and the illicit importation and transshipment of pirated and counterfeit goods, including optical media and name-brand apparel from mainland China, raise concerns. To tackle the Internet-related problems, Hong Kong officials have established a joint task force with copyright industry representatives to track down online pirates that are using peer-to-peer networks for unauthorized file sharing.

## FOREIGN TRADE BARRIERS

Hong Kong Customs routinely seizes IPR infringing products arriving from mainland China and elsewhere. Further, Hong Kong Customs enforcement efforts, including raids on underground production facilities, have closed most large-scale pirate manufacturing operations, prompting many producers of pirated optical media to switch to computers or compact disc burners to produce illicit copies and forcing retailers to rely increasingly on smuggled goods.

The lack of a copyright register in Hong Kong continues to make it difficult for law enforcement officials and prosecutors to identify original copyright owners in infringement cases, effectively increasing the burden of proof that rights holders need to present to prove infringement. Although Hong Kong judges, law enforcement officials, and IP industry stakeholders have complained repeatedly about the lack of a copyright register, the government has declined to establish one, citing concerns about cost effectiveness and divergent views among different copyright owners' associations about the scope of registrations.

## **SERVICES BARRIERS**

In November 2005, all banks in Hong Kong were permitted modest increases in the scope of Chinese renminbi (RMB) business they can offer to clients, including providing services related to deposit taking, exchange, remittances, and credit cards. In July 2009, PRC authorities further relaxed restrictions on RMB transactions, for the first time allowing trade settlement in RMB between selected Chinese entities and banks licensed in Hong Kong. Hong Kong banks also are allowed to provide RMB trade finance for approved transactions, though only for periods not exceeding 90 days. U.S. banks, as long as they are licensed to do business in Hong Kong, may also participate.

Foreign law firms may practice foreign law in Hong Kong. Foreign law firms that wish also to offer their clients services involving Hong Kong law may do so by entering into an association relationship with a Hong Kong law firm. Hong Kong imposes certain requirements governing this relationship, such as the requirement that the number of foreign lawyers employed by the association not exceed the number of Hong Kong lawyers. In addition, a foreign law firm may establish itself as a Hong Kong law firm after continuously operating as a foreign law firm in Hong Kong for at least three years. Hong Kong imposes certain requirements that must be met in order for a foreign law firm to transition to a Hong Kong law firm, including a requirement that at least one partner be qualified as a Hong Kong lawyer, and the number of foreign lawyers employed by the firm still may not exceed the number of Hong Kong lawyers. Such firms may be affiliated with, or even branches of, overseas law firms if they meet certain criteria (*e.g.*, at least one partner of the Hong Kong firm must also be a partner in the overseas firm).



# INDIA

## TRADE SUMMARY

The U.S. goods trade deficit with India was \$4.7 billion in 2009, down \$3.3 billion from 2008. U.S. goods exports in 2009 were \$16.5 billion, down 6.9 percent from the previous year. Corresponding U.S. imports from India were \$21.2 billion, down 17.6 percent. India is currently the 17th largest export market for U.S. goods.

U.S. exports of private commercial services (*i.e.*, excluding military and government) to India were \$10.5 billion in 2008 (latest data available), and U.S. imports were \$12.1 billion. Sales of services in India by majority U.S.-owned affiliates were \$7.6 billion in 2007 (latest data available), while sales of services in the United States by majority India-owned firms were \$5.0 billion.

The stock of U.S. foreign direct investment (FDI) in India was \$16.1 billion in 2008 (latest data available), up from \$14.5 billion in 2007. U.S. FDI in India is led by the information, and manufacturing sectors.

## IMPORT POLICIES

U.S. exporters continue to encounter tariff and nontariff barriers that impede imports of U.S. products, despite the government of India's ongoing economic reform efforts. The United States has actively sought market-opening opportunities in India, both bilaterally and multilaterally. The USTR and India's Minister of Commerce and Industry chair the United States-India Trade Policy Forum (TPF), which meets regularly, including through its five Focus Groups – Agriculture, Innovation and Creativity (*i.e.*, intellectual property rights), Investment, Services, and Tariff and NonTariff Barriers – to discuss the full range of bilateral trade and investment issues outlined in this chapter. Other bilateral dialogues, such as the Information Communication Technology Working Group and the Commercial Dialogue, also work to increase U.S. exports by resolving day-to-day doing-business issues.

### Tariffs and other Charges on Imports

India's tariff regime is characterized by pronounced disparities in bound rates, *i.e.*, the rates that under WTO rules generally cannot be exceeded, versus applied rates, the actual rates charged. According to the WTO, India's average bound tariff rate was 48.6 percent, while its applied tariff for FY2008 (latest data available) was 11.5 percent across all goods. India has bound all agricultural tariff lines in the WTO, while over 30 percent of India's non-agricultural tariffs remain unbound, *i.e.*, there is no WTO ceiling on the rate. India's bound industrial tariffs average approximately 35 percent, compared to an average applied rate of 10.1 percent on industrial goods in 2008 (latest data available).

India's average applied tariff on industrial goods remains high due high tariffs on automobiles, motorcycles, natural rubber, textiles and apparel, and fish. In November 2008, India increased tariffs on certain steel products from zero percent to 5 percent. Also, the U.S. textile industry continues to have concerns about the nontransparent application of tariffs and taxes. Over the past several years, however, the government has steadily reduced MFN tariffs applied to non-agricultural goods, including a reduction in the applied duty on most industrial products from 15 percent in FY2005-06, to 12.5 percent in FY2006-07, and to 10 percent in FY2007-08. The government of India's FY2008-09 and FY2009-10 budgets maintained the applied duty on these products at 10 percent. In order to boost the local manufacturing

## FOREIGN TRADE BARRIERS

sector, India has taken steps to reduce and simplify the general rate of central excise duty for domestic products (CENVAT) and “additional duty” for imported goods (to be applied on top of import tariffs). In December 2008, India reduced excise duties on most products from 14 percent to 10 percent. In February 2009, as part of an economic stimulus package, India again cut the excise duty on most products, this time to 8 percent. In July 2009, to further simplify the tariff structure, India implemented dual excise tax rates of 4 percent and 8 percent *ad valorem*. However, the rate of duty actually increased from 4 percent to 8 percent on several items (*e.g.*, manmade textiles, ceramic tiles, plywood, wood products, writing ink, zip fasteners, and MP3/MP4 players). Because India imposes a separate charge on imports equivalent to the excise tax, the total assessment for imported products changes as these excise taxes change.

Many of India’s bound tariff rates on agricultural products are among the highest in the world, ranging between 100 percent and 300 percent, and averaging 114.2 percent. While many of India’s applied tariffs are lower (averaging 32.2 percent on agricultural goods in 2008), they still represent a significant barrier to trade in agricultural goods. Tariffs on potatoes, apples, grapes, pistachios, and citrus, as well as processed foods (*e.g.*, chocolate and confectionery, frozen french fries and other prepared foods used in quick-service restaurants, cookies, savory snacks, canned soup, and mixed vegetable juice) remain high at 30 percent or more. Further, given the large disparities between bound and applied rates, U.S. exporters face greater uncertainty, because India has considerable flexibility to change tariff rates at any time. For example, in April 2008, India, in an effort to curb inflation, reduced applied duties on crude edible oils from 20 percent to zero percent, refined oils from 20 percent to 7.5 percent, and butter from 40 percent to 30 percent. However, in November 2008, India raised crude soy oil duties back to 20 percent; then, it reduced them again to zero percent in March 2009. Benefitting from the lower duty and other supply factors, U.S. soybean oil exports to India from October 2008-September 2009 totaled about \$140 million, up from virtually zero since 2002.

With the exception of wine, spirits, and other alcoholic beverages, the government applies an “additional duty” (AD) at a rate equal to the CENVAT rate applicable to domestic products. The AD is calculated on top of the tariff. In July 2007, after the United States initiated WTO dispute settlement procedures to challenge the AD on alcoholic beverages, India issued a customs notification exempting alcoholic beverages from the rates of additional duty set forth in a prior customs notification. Under the prior customs notification, imports of alcoholic beverages were subject to rates of additional duty ranging from 20 percent to 150 percent *ad valorem* (and in some cases higher specific duties). On the same date it exempted alcoholic beverages from the rates of additional duty, the government raised the applied tariff on wine from 100 percent to India’s WTO bound rate of 150 percent. The applied tariff on distilled spirits remained at 150 percent. When India exempted alcoholic beverages from the AD, it announced it was doing so *in lieu* of applying state-level excise duties on wine and spirits. The European Union has requested WTO dispute settlement consultations regarding several of these state-level taxes alleging that they result in imported wine and spirits being taxed at a higher rate than like domestic products. The United States is continuing to monitor the situation.

In October 2008, the WTO Appellate Body ruled in favor of the United States with respect to its challenge to the AD on alcoholic beverages and the “extra additional duty” (EAD) on a variety of imports. The Appellate Body agreed with the United States that any import charges aimed at offsetting internal taxes cannot result in a higher amount being charged to imports than to like domestic products and considered that to the extent either the AD or the EAD result in charges on imports in excess of charges on like domestic products it would be inconsistent with India’s WTO tariff commitments.

Currently, imports also are subject to state-level value added taxes (with a few exceptions, such as entertainment and luxury taxes) and the Central Sales Tax, as well as various local taxes and charges. In

March 2006, the government established a 4 percent *ad valorem* EAD. The EAD (also referred to as the “extra additional duty”) applies to all imports, including alcoholic beverages, except those exempted from the duty pursuant to a customs notification. The EAD is calculated on top of the tariff and AD. In September 2007, the government issued a customs notification allowing importers to apply for a refund of the EAD paid on imports subsequently sold within India and for which the importer has paid state-level value added taxes. Importers report that the refund procedures are cumbersome and time consuming. India announced its intention to implement a national goods and services tax (GST) by April 2011 that would replace most indirect taxes and various charges on imports.

The government publishes applied tariff and rates of other duties and charges applicable to imports. To determine the applied tariff or rate of other duty or charge applicable to a particular product, importers must consult separate customs and excise tax schedules and cross reference these schedules with any applicable customs or excise notification that may subject the product to higher or lower rates than set forth in the schedules (assuming the importer is able to determine that any such notification exists). This system lacks transparency and imposes significant burdens on importers. India is currently developing an online database with searchable applied tariff and other duties and charges rates, but it is not yet available.

### **Import Licensing**

India maintains a “negative list” of imported products subject to various forms of nontariff regulation. The “negative list” is currently divided into three categories: banned or prohibited items (*e.g.*, tallow, fat, and oils of animal origin); restricted items that require an import license (*e.g.*, livestock products, certain chemicals); and “canalized” items (*e.g.*, petroleum products, some pharmaceuticals, and bulk grains) importable only by government trading monopolies subject to cabinet approval regarding timing and quantity. India, however, often fails to observe customary transparency requirements, such as publication of information in the Official Gazette or notification to WTO Committees, which in practice, presents a barrier to trade.

The government allows imports of second-hand capital goods by the end users without requiring an import license, provided the goods have a residual life of at least five years. Refurbished computer spare parts can only be imported if an Indian chartered engineer certifies that the equipment retains at least 80 percent of its residual life, while refurbished computer parts from domestic sources are not subject to this requirement. The government has required import licenses for all imports of remanufactured goods since 2006. India’s Foreign Trade Policy provides no criteria for different levels of transformation that would distinguish remanufactured, refurbished, reconditioned, and second-hand goods. As with licensing requirements on other products, U.S. industry representatives report that the requirement is onerous as implemented: the license application requires excessive details; quantity limitations are set on specific part numbers; the delay between application and grant of the license is long and creates uncertainty; and in some cases industry representatives report that they have been unable to obtain a license. The U.S. Government has raised concerns about these issues in the TPF, including in October 2009, and at the WTO.

Since 2004, India has subjected imported boric acid to stringent regulatory requirements that should be applied only to imports used as insecticide. Traders (*i.e.*, wholesalers) of boric acid for non-insecticidal use remain unable to import boric acid for resale because they are not end users of the product and cannot obtain no-objection certificates (NOCs) from ministries. NOCs are required before applying for import permits from the Ministry of Agriculture’s Central Insecticides Board & Registration Committee. Instead, traders fall under the stringent regulations applicable to insecticidal boric acid. Meanwhile, local refiners continue to be able to produce and sell non-insecticidal boric acid, with a requirement only to

maintain records showing they are not selling to insecticidal end users. The United States continues to engage the government, requesting that India end its practice of treating all industrial boric acid imported by traders as an insecticide and to withdraw the import permit system for this product. This issue has been raised in the WTO Committee on Import Licensing Procedures as well as in the October 2009 TPF and in follow-up communication.

### **Customs Procedures**

Issues have emerged regarding the application of customs valuation criteria to import transactions. Valuation procedures allow India's customs officials to reject the declared transaction value of an import when a sale is deemed to involve a lower price compared to the ordinary competitive price. U.S. exporters have reported that India's customs valuation methodologies do not reflect actual transaction values and effectively increase tariff rates. The United States is working through the WTO Committee on Customs Valuation and through other bilateral channels to address this issue.

U.S. industry has reported a number of difficulties with India's customs valuation methodologies and the lack of transparency provided by its customs valuation process. U.S. companies have complained that, since September 2007, India has inappropriately included certain royalties in the customs valuation of imported digital video disc (DVD) analog master tapes and digital linear tapes and has assessed customs duties, (going back as far as five years for some importers), using a revised valuation methodology. In addition, U.S. industry has noted that the customs valuation issues have resulted in the detention of these products at the border by India's customs officials. The United States is especially concerned about reports that customs valuation investigations by Indian Customs have, in some cases, led to excessive searches of property and severe harassment of U.S. company representatives. The United States has raised questions about India's valuation methodology and procedures in the WTO Committee on Customs Valuation, the TPF, and the U.S.-India Information and Communications Technology (ICT) Working Group, including during a November 2009 meeting in Washington.

India's customs officials generally require extensive documentation, which inhibits the free flow of trade and leads to frequent and lengthy processing delays. In large part this red tape is a consequence of India's complex tariff structure and multiple exemptions, which may vary according to product, user, or intended use. While difficulties persist, India has shown improvement in this area through automation of trade procedures and other initiatives. According to the World Bank, over the past four years, the number of days needed to complete an import transaction in India has been halved to 20 days (compared with 11 for the OECD average), and there have been some reductions in the number of required documents.

Motor vehicles may be imported through only three specific ports and only from the country of manufacture. Only right-hand drive vehicles may be imported.

### **GOVERNMENT PROCUREMENT**

Government procurement in India is decentralized, and all state (sub-central) and public sector agencies have their own procurement organizations. Different procurement practices are applied at the central level and at the state level, and by public sector agencies and enterprises. At the central (federal) level, procurement is regulated through executive directives and administered by the government agencies. The Ministry of Finance's General Financial Rules (GFR) sets out central government general rules and procedures for financial management, procurement of goods and services, and contract management. The GFR also includes a Manual on Policies and Procedures for Purchase of Goods. A number of instructions, issued by the Central Vigilance Commission (the Indian government's oversight body for

government employees) supplement these regulations. The individual government agencies also sometimes issue more detailed instructions and their own handbooks, model forms, and model contracts.

India does not have an authority responsible for regulating procurement policies and overseeing compliance with the procurement procedures. However, a central purchasing agency, the Directorate General of Supplies and Disposal, and state-level central purchasing organizations enter contracts with registered suppliers for goods and standard items in conformity with the GFR. Sector-specific procurement policies apply in certain areas, such as defense procurement. India's defense "offsets" program requires companies to invest 30 percent or more of the value of contracts above a certain value in Indian produced parts, equipment, or services. These offset requirements are often so onerous that they dissuade foreign companies from bidding.

India's government procurement practices and procedures are not transparent. Foreign firms rarely win Indian government contracts due to the preference afforded to Indian state-owned enterprises in the award of government contracts and the prevalence of such enterprises.

India is not a signatory to the WTO Agreement on Government Procurement (GPA) but obtained "observer" status in the WTO Committee on Government Procurement in February 2010.

## **EXPORT SUBSIDIES**

The tax exemption for profits from export earnings has been completely phased out, but tax holidays continue for export-oriented enterprises and exporters in Special Economic Zones. In addition to these programs, India continues to maintain several duty drawback programs that appear to allow for drawback in excess of duties levied on imported inputs. India also provides pre-shipment and post-shipment export financing to exporters at a preferential rate. India's textile industry enjoys subsidies through modernization schemes, such as the Technology Upgradation Fund Scheme and the Scheme for Integrated Textile Parks. India has not submitted a notification to the WTO Committee on Subsidies and Countervailing Measures since 2001.

There is a special initiative for agricultural exports in India's Foreign Trade Policy 2009-2014, including a scheme called *Vishesh Krishi Gram Upaj Yojana* (VKGUY – "Special Agriculture Produce Scheme"), aimed at boosting exports of fruits, vegetables, flowers, some forest products, and related value added products. Under the plan, exports of these items qualify for a duty-free credit that is equivalent to five percent of the product's free-on-board (FOB) export value. The credit is freely transferable and can be used to import a variety of inputs and capital goods. To mitigate the impact of the global economic slowdown on exports, the government has made several additional agricultural products eligible under VKGUY, such as corn, barley, soybean meal, cotton, marine products, and meat and meat products.

## **INTELLECTUAL PROPERTY RIGHTS (IPR) PROTECTION**

India was listed on the Priority Watch List in the 2009 Special 301 report. India needs to improve its IPR regime by providing stronger protection for copyrights, trademarks and patents, as well as effective protection against unfair commercial use of undisclosed test and other data generated to obtain marketing approval for pharmaceutical and agrochemical products. In addition, India has not yet enacted legislation to implement the provisions of the WIPO Internet Treaties. Large-scale copyright piracy, especially in the software, optical media, and publishing industries, continues to be a major problem. While India continues to consider optical disc legislation to combat optical disc piracy, it has not taken steps to introduce such legislation. India's criminal IPR enforcement regime remains weak, especially at the

## **FOREIGN TRADE BARRIERS**

federal level, but enforcement at the state level has improved through enhanced coordination with industry. More police action against those engaged in manufacturing, distributing, or selling pirated and counterfeit goods as well as expeditious judicial dispositions for criminal IPR infringement actions and imposition of deterrent-level sentences, is needed.

## **SERVICES BARRIERS**

Indian government entities have a strong ownership presence in some major services industries such as banking and insurance, while private firms play a preponderant or exclusive role in a number of rapidly growing parts of the services sector, including the information technology sector, advertising, car rental, and a wide range of business consulting services. While India has submitted initial and revised offers for improved services commitments in the WTO Doha Round, these offers do not remove existing limitations or promise new liberalization in such key sectors as distribution, express delivery, telecommunications, financial services, and the professions.

### **Insurance**

Foreign equity participation in the Indian insurance sector is limited to 26 percent of paid-up capital. India introduced legislation in late 2008 that would allow foreign equity participation to 49 percent and also allow for participation in the market by foreign re-insurers, but the legislation was not passed before Parliament adjourned prior to elections in the first half of 2009. After a new government was formed in May 2009, the Insurance Bill was referred to the Standing Committee on Finance for report preparation but is still awaiting re-introduction to Parliament.

### **Banking**

Entry of foreign banks in the Indian market remains highly constrained. Under India's branch authorization policy, foreign banks are required to submit their internal branch expansion plans on an annual basis, but their ability to expand is severely limited by nontransparent quotas on branch office expansion.

Foreign banks may not own more than 5 percent of an Indian private bank without approval of the RBI. Total foreign ownership of a private Indian bank cannot exceed 74 percent. In 2005, RBI developed a roadmap that would allow foreign banks to enter into merger and acquisition transactions with any private sector bank in India starting in April 2009. However, the roadmap was not implemented due to coordination problems between the RBI and Ministry of Finance.

### **Audiovisual and Communications Services**

Although India has removed most barriers to the import of motion pictures, U.S. companies have continued to experience difficulty in importing film/video publicity materials and are unable to license movie related merchandise due to royalty remittance restrictions. U.S. companies also continue to face difficulties with a "Downlink Policy" issued by India in 2005. The Downlink Policy applies to international content providers that downlink programming from a satellite into India and requires that they establish a registered office in India or designate a local agent. The government reportedly implemented this rule to ensure greater oversight over programming content. However, U.S. companies note that most other countries (including the United States) do not require a license for the downlinking of programming and that India can control content through its licensed entities (such as cable companies or "Direct-to-Home" (DTH) satellite providers). Companies claim that this policy is overly burdensome,

results in a taxable presence in India and should be amended to avoid the taxable presence. The United States continues to raise this issue with India's Ministry of Information and Broadcasting, including most recently at the United States-India ICT Working Group meeting in Washington in November 2009.

All pay television content providers are required to make their content available to all cable and satellite television system operators. The Telecom Regulatory Authority of India (TRAI) continues to impose price controls on cable television until it determines that other television platforms (*e.g.*, satellite, Internet) are widely adopted. While TRAI has recently opened a public consultation on the pricing of channels carried by DTH platforms, it is not clear if it will also conduct a similar consultation for cable television.

### **Accounting**

Foreign accounting firms can practice in India if their home country provides reciprocity to Indian firms. Only firms established as a partnership may provide financial auditing services, and foreign licensed accountants may not be equity partners in an Indian accounting firm. India also maintains burdensome restrictions on the use of foreign firm names, the number of firm partners, and the number of trainees per partner. Additional restrictions include limits on the number of the banking and insurance sector clients an auditing firm may serve simultaneously as well as the requirement for firms to "rotate off" clients every few years. Finally, there is a lack of independent oversight in the accounting industry. A quality review board established in 2006 is funded with industry money but has yet to carry out any investigations. India's Limited Liability Partnership (LLP) Act, 2008, took effect in March 2009. The law aims to give professionals such as chartered accountants, lawyers, and venture capitalists more flexibility in setting up LLP firms.

### **Legal Services**

Foreign law firms are not authorized to open offices in India. Foreign legal service providers may be engaged as employees or consultants in local law firms, but they cannot sign legal documents, represent clients, or be appointed as partners. India has not made any offers for liberalizing foreign access to the legal services sector at the WTO. The United States-India Legal Services Working Group, an initiative created at the TPF meeting in December 2006, has faced difficulty in starting a substantive dialogue due to opposition within certain quarters of the Indian legal profession. With U.S. Government assistance, U.S. and Indian panel members met informally during a legal conference in India in early 2009. However, in June 2009, the Bar Council of India (BCI), the legal governing body in India (membership in BCI is mandatory to practice law in India), passed a resolution (No. 66/2009) confining all discussions regarding legal services to representatives of the American Bar Association (ABA) and members of BCI – and that the ABA should constitute a committee for the purpose of these discussions. This resolution appeared to be a withdrawal of Indian participation from the Working Group on Legal Services established by the two governments. During the October 2009 TPF Services Focus Group discussion, Ministry of Commerce and Industry officials reported no progress on legal services in part due to opposition from BCI.

In December 2009, the Bombay High Court ruled that under existing law – principally, the 1961 Advocates Act and the 1973 Foreign Exchange Regulation Act – foreign law firms may not establish offices in India and that foreign lawyers may not engage in legal practice in India, including corporate advisory and other "non-litigious" activities. The court directed the Indian central government to clarify the scope of work foreign law firms could undertake.

## Telecommunications

Despite India's positive steps towards liberalizing and introducing private investment and competition in its telecommunications services market, concerns remain regarding India's weak multilateral commitments in basic and value added telecommunications services. In addition, many pro-competition recommendations of the TRAI have been delayed or rejected by India's Department of Telecommunications (DOT) without adequate explanation.

India's national telecommunications policy allows up to 74 percent foreign participation for wireless and fixed national and international long distance services, and several U.S. companies have obtained licenses to provide these services. However, other U.S. companies complain that India's licensing fee for these services (approximately \$500,000 per service) serves as a barrier to market entry for smaller market players.

India maintains limits on foreign direct and foreign indirect investment in several areas: cable networks (49 percent); satellite uplinking (49 percent); DTH broadcasting (49 percent with FDI limited to 20 percent); and the uplinking of news and current affairs television channels (26 percent). TRAI, in August 2008 recommendations to the DOT, suggested that foreign direct investment for cable networks, DTH and satellite uplinking should be increased to 74 percent. The current limits negatively impact the ability of U.S. companies to invest in this sector.

India has been working for over a year to formalize its policies for the allocation of wireless spectrum to serve India's rapidly expanding and lucrative wireless telecommunications industry. The auction of spectrum for providing third generation (3G) services has been postponed several times, with the latest announcements indicating that India hopes to conclude the auction on April 9, 2010, though this deadline appears to be difficult for the government to meet. This auction will be open to existing operators, license holders, and foreign companies. However, even if spectrum is won at auction, any new companies would need to first obtain a Unified Access Service (UAS) license, which carries a burdensome licensing fee of approximately \$360 million. This puts U.S. companies interested in entering into partnerships to obtain spectrum at a competitive disadvantage *vis-à-vis* companies that are already in the market and were not required to pay the high UAS fee. A pre-bid conference for the auction of 3G Spectrum was held in New Delhi on November 16, 2009, but DOT has yet to respond to bidders nor clarified the process' next steps.

DOT's recently released 3G spectrum auction "Information Memorandum" permits foreign companies to participate in the auction without first obtaining a telecommunications license or securing a joint venture partner. Only those operators that are successful in the upcoming auctions will have to obtain a license and find an Indian partner with which to establish a joint venture (existing regulations restrict foreign holdings to 74 percent and mandate that an Indian entity hold the remaining 26 percent). However, under India's current mergers and acquisition (M&A) policy, a three-year waiting period is required before a license holder can merge with another operator. This disadvantages foreign entities seeking to enter the market and bid in the upcoming auction, because after winning 3G spectrum they would have to choose from a more limited pool of potential joint venture candidates, since some license holders would be restricted from merging with foreign entities under the current M&A policy. The Information Memorandum does not address many important issues that could impact the participation of foreign companies in the upcoming auction, such as: the method of future spectrum allocation and assignment (2G or 3G); spectrum sharing and trading rules; and spectrum and licensing fees.

The Indian government continues to hold equity in three telecommunications firms: a 26 percent interest in the international carrier, VSNL; a 56 percent stake in MTNL, which primarily serves Delhi and



Mumbai; and the 100 percent ownership of BSNL, which provides domestic services throughout the rest of India. These ownership stakes have caused private competitive carriers to express concern about the fairness of India's general telecommunications policies. By way of example, valuable wireless spectrum has been allocated and will be set aside for MTNL and BSNL and not subject to competitive bidding, potentially giving these companies an advantage.

India does not allow a company to provide Internet telephony over networks connected to the public switched telecommunications network, unless it obtains a telecommunications license. U.S. industry views India's requirement as overly burdensome for companies interested only in providing Internet telephony. Following a public consultation process initiated in May 2008, TRAI forwarded recommendations to the DOT in August 2008, suggesting that the barriers to the provision of Internet telephony be eliminated entirely. Although the DOT has told the United States that it is reviewing the recommendations on a priority basis, to date, the DOT has not ruled on them.

U.S. satellite operators have long complained about the closed and protected satellite services market in India. In practice, even though current Indian regulations do not preclude the use of foreign satellites, foreign satellite capacity must be provided through the Indian Space Research Organization (ISRO). That is, the foreign operator must sell its capacity to ISRO, a direct competitor, who then resells it to the customer. This middleman scenario raises a number of concerns: first, it creates additional costs for the consumer (a markup added by ISRO); second, it allows ISRO to negotiate contract terms with the goal (explicitly stated at times) of moving the service to one of ISRO's satellites once capacity is available; and third, the market grows at a rate determined by ISRO. The United States began a bilateral discussion with India on satellite services in October 2009 to discuss the concerns raised by its industry with respect to the provision of satellite capacity to Indian entities.

In the past, TRAI has recommended that India adopt an "open skies" policy and allow competition in the satellite services market, noting that India had already instituted a partial open skies policy with respect to international, very small aperture terminal (VSAT) services connected to the U.S. Internet backbone for Indian Internet service providers. However, to date, India has not adopted TRAI's recommendations for further liberalization.

### **Distribution Services**

The retail sector in India is largely closed to foreign investment. In January 2006, the government began allowing FDI in single brand retail stores, subject to a foreign equity cap of 51 percent and government approval and FDI of 100 percent in cash and carry (wholesale) outlets. Multi-brand retail, however, is completely closed to foreign direct investment, even as Indian multi-brand retail outlets are expanding dramatically. Direct selling companies face uncertainty due to periodic government efforts to incorrectly interpret their activities as a violation of the Prize Chits and Money Circulation Schemes (Banning) Act of 1978. Industry groups would like to see the Department of Industrial Policy and Promotion issue a press note that would establish the definition of direct selling and clarify any ambiguity. Allegedly arbitrary legal actions (including raids and seizures of property) were taken in 2006 against a U.S. direct selling company operating in India with Foreign Investment Promotion Board approval. The case remains with the courts and could go to trial at any time.

### **Postal and Express Delivery**

India's Department of Post supports amending the 1898 Post Office Act. An amendment introduced in 2006 included several provisions with potentially negative effects for private express delivery companies,

such as: a provision requiring private delivery companies to contribute to financing the postal operator's universal service obligation; expansion of the postal monopoly to cover all "letters" up to 300 grams; and new limitations on foreign investment in private delivery services, which might force foreign owned express delivery companies to divest from their current levels of investment in India. The proposed legislation was officially withdrawn in January 2009 due to opposition from many stakeholders, including courier services companies. In mid-2009, the Indian Department of Post requested that the Administrative Staff College of India (ASCI) prepare another comprehensive postal bill to replace the India Postal Act of 1898. The United States continues to urge India to adopt postal reforms that draw on global best practices, including the promotion of free competition and a level playing field for foreign express delivery and other courier services suppliers, and to pursue reforms in an open and transparent manner.

## **Education**

Foreign providers of higher education services face a number of market access barriers, including a requirement that states sit on university governing boards; quotas limiting enrollment; caps on tuition and fees; policies that create the potential for double-taxation; and difficulties repatriating salaries and income from research. The draft Foreign Education Providers Bill may address some of these issues, but it remains under review by Parliament.

## **INVESTMENT BARRIERS**

India and the United States announced the launch of Bilateral Investment Treaty negotiations in September 2008 and both sides have committed to taking further initiatives to create a more conducive environment for bilateral investment flows. In November 2009, the U.S. Department of Commerce International Trade Administration's "Invest in America" program and "Invest India," a Joint Venture of the Ministry of Commerce and Industry's Department of Industrial Policy and Promotion (DIPP), signed a Memorandum of Intent to facilitate exchange of information on FDI in their respective countries for investors of the other country.

## **Equity Restrictions**

Most sectors of the Indian economy are now at least partially open to foreign investment, although with certain important exceptions. As noted above, the government continues to prohibit or severely restrict FDI in certain politically sensitive sectors, such as agriculture, multi-brand retailing, railways, and real estate. At the same time, the government has liberalized other aspects of foreign investment and eliminated various government approval requirements. In February 2009, the DIPP issued guidelines ("Press Notes"), which asserted that a company majority-owned or controlled by resident Indians, but with some foreign investment, could conduct "downstream" investments within existing sectoral caps. However, the new guidelines created much confusion, which an additional Press Note has done nothing to dispel. The extent to which downstream investments by foreign-invested joint ventures is permitted is therefore not yet clear. After the formation of its new coalition government in June 2009, India clarified that its existing FDI norms would remain in effect. DIPP has requested public comment on a Press Note it intends to publish on April 1, 2010, and then every six months thereafter, consolidating all of the rules governing FDI. In early 2008, India's National Security Council suggested umbrella legislation, called the National Security Exception Act that would authorize the government to suspend or prohibit any foreign acquisition of, merger with, an Indian company that could be considered damaging to national interest. However, legislation has not yet been introduced to Parliament.

## **FOREIGN TRADE BARRIERS**

India's regulations and procedures governing local shareholding are often stringent and nontransparent, inhibiting inbound investment and increasing risk for new market entrants. Attempts by non-Indians to acquire 100 percent ownership of a locally traded company, permissible in principle, face regulatory hurdles that render full ownership unobtainable under current practice. Price control regulations undermine incentives for foreign investors to increase their equity holdings in certain sectors. In the power sector, some companies have reported forced renegotiation of contracts as a result of changes of government at the state and central levels.

### **Investment Disputes**

India has had a poor track record in honoring and enforcing agreements with U.S. investors in the energy sector, but there has been some progress in recent years. In November 2008, India finally issued a settlement payment to a U.S. company for work performed for an Indian parastatal in the 1980s, following a 2006 Supreme Court of India decision in favor of the U.S. firm. The settlement payment was significantly less than the amount awarded under the Court's order.

India has also recently been helpful in convincing its state governments to settle commercial disputes involving matters under the primary jurisdiction of its states. The United States continues to urge India to create a more reliable investment climate by providing a secure legal and regulatory framework at all levels of government, as well as institutionalized dispute resolution mechanisms to expedite resolution of commercial disputes. The Government Law Ministry signed an agreement in 2007 with The Permanent Court of Arbitration, The Hague, to open a regional center in India, however, no further progress has been observed in this regard.

### **ANTICOMPETITIVE PRACTICES**

In 2009, India took several positive steps toward implementing the Competition Act and making the Competition Commission of India (CCI) operational as an effective deterrent to anticompetitive practices. The government of India appointed a new chairperson and four new members to the CCI, established the Competition Appellate Tribunal, and notified in the Official Gazette the Act's provisions relating to anticompetitive agreements and abuse of dominant position, which are now in effect. The Act's merger provisions have not been notified in the Official Gazette pending CCI efforts to issue revised draft combination regulations. Additionally, the CCI issued other regulations, began to hire staff, and initiated some initial inquiries into alleged anticompetitive acts. The United States continues to work with India to assist the CCI in its efforts to implement the Act, including its merger control provisions, in a manner consistent with international recommended practices.

### **OTHER BARRIERS**

India has an unwritten policy that favors countertrade (a form of trade in which imports and exports are linked in individual transactions). The Indian Minerals and Metals Trading Corporation is the major countertrade body, although the State Trading Corporation also handles a small amount of countertrade. Private companies also are encouraged to use countertrade. Global tenders usually include a clause stating that, all other factors being equal, preference will be given to companies willing to agree to countertrade.

In June 2008, India enacted export tariffs of 15 percent on all grades of iron ore, pig iron, and ferrous scrap. India revised its exports tariffs again in October and November 2008: the export tariff on pig iron has been revoked, but tariffs on iron ore and ferrous scrap remain in place. In addition, India maintains

## **FOREIGN TRADE BARRIERS**

restrictions on the export of certain high-grade iron ore. These restrictions reduce Indian exports of these inputs, and may reduce supplies on international markets for raw materials used in steel production. The Indian government appears to be using these measures to improve the availability and lower prices of inputs used by India's rapidly growing steel industry. Meanwhile, India announced increased duties on imports of certain steel products in late 2008, and added certain steel items to the list of products requiring mandatory certification. The implementation date for certification of the additional products, which include some important U.S. exports, was delayed until February 2010 due to concern from India's trading partners. On December 24, 2009, India raised the export duty on two categories of iron ore. Effective immediately, the government has raised export duties on iron ore lumps to 10 percent from five percent and on iron ore fines to five percent from zero.

# INDONESIA

## TRADE SUMMARY

The U.S. goods trade deficit with Indonesia was \$7.8 billion in 2009, down \$2.3 billion from 2008. U.S. goods exports in 2009 were \$5.1 billion, down 9.5 percent from the previous year. Corresponding U.S. imports from Indonesia were \$12.9 billion, down 18.1 percent. Indonesia is currently the 35th largest export market for U.S. goods.

U.S. exports of private commercial services (*i.e.*, excluding military and government) to Indonesia were \$1.5 billion in 2008 (latest data available), and U.S. imports were \$543 million. Sales of services in Indonesia by majority U.S.-owned affiliates were \$2.2 billion in 2007 (latest data available), while sales of services in the United States by majority Indonesia-owned firms were \$76 million.

The stock of U.S. foreign direct investment (FDI) in Indonesia was \$17.9 billion in 2008 (latest data available), up from \$17.7 billion in 2007. U.S. FDI in Indonesia is concentrated largely in the energy and mining sectors.

## IMPORT POLICIES

### Tariffs

In 2009, Indonesia changed applied tariffs for some products, including for chemical and milk products, for which rates increased. In 2008, Indonesia's simple average bound tariff, *i.e.*, the rate which generally cannot be exceeded under WTO rules, was 37 percent, while its simple average applied tariffs were around 8 percent. Most Indonesian tariffs are bound at 40 percent, although bound tariff levels exceed 40 percent or remain "unbound" on automobiles, iron, steel, and some chemical products. U.S. motorcycle exports remain severely restricted by the combined effect of a 60 percent tariff, a luxury tax of 75 percent, a 10 percent value added tax, and the prohibition of motorcycle traffic on Indonesia's highways.

In the agricultural sector, tariffs on more than 1,300 products have bindings at or above 40 percent. Tariffs on fresh potatoes, for instance, are bound at 50 percent, although the applied rate is 25 percent. Local agriculture interests continue to lobby the Indonesian government to increase tariff rates above bound WTO levels on sensitive agricultural products, such as sugar, soybeans, and corn.

Indonesia has extensive preferential trade relationships with other Asian countries. Under the ASEAN Free Trade Agreement, import duties from ASEAN countries are applied at zero percent to 5 percent, except for products included in an Exclusion List. In addition, Indonesia accords preferential access to its market to Australia, China, Japan, Korea, India, and New Zealand (under ASEAN free trade agreements) and to Japan (under a bilateral Economic Partnership Agreement).

### Import Licensing

In 2009, the Indonesian government implemented sweeping new non-automatic import licensing procedures on a broad range of products, including electronics, household appliances, textiles and footwear, toys, and food and beverage products. The measure, known as Decree 56, includes a requirement for pre-shipment verification by designated surveyors at importers' expense and a restriction on imports to five designated ports and airports. The Indonesian government was considering extending

## FOREIGN TRADE BARRIERS

these licensing provisions to additional products; however, it has informally limited application of the decree to “final consumer goods.” The Indonesian government also appears to be exempting select registered importers from certain requirements of this decree. However, the approval process to qualify as a registered importer is opaque, ill-defined, and potentially discriminatory. The United States and other WTO Members have expressed concern about the decree and are seeking its withdrawal.

Since 2002, Indonesia has continued to maintain other additional non-automatic licensing requirements on textiles, clothing, and other “made-up goods” such as curtains and blankets, which limit market access for a wide range of products. Only approved local producers are authorized to import products covered by this regulation, and these products are permitted to be used only as inputs in domestic production, not for resale or transfer. Approval must be obtained for both the quantity and timing of imports. The United States continues to press Indonesia to eliminate these requirements.

In May 2008, Indonesia introduced new import restrictions for plantation white sugar. The United States is concerned that the new regulation will further limit sugar imports, which already are highly restricted as a result of existing regulations and has urged Indonesia to remove these restrictions.

### **Pharmaceutical Market Access**

The United States continues to have serious concerns about barriers to entering Indonesia’s pharmaceuticals market. Following a 2008 Health Ministry decree requiring foreign pharmaceutical companies operating in Indonesia to manufacture locally in order to get drug approvals, the Indonesian food and drug agency (BPOM) has been rejecting or delaying the approval of new applications for drug registrations by some companies, including wholesalers and distributors that do not have manufacturing operations in Indonesia. If these rules are not modified, some foreign firms may be forced to leave the market as their drug approvals, generally valid for two years, gradually expire. The United States and other WTO Members have repeatedly expressed their serious concern about this regulation, which effectively discriminates against companies that manufacture overseas. We will continue to urge Indonesia to resolve the issue so that the affected firms can continue to make their products available to the people of Indonesia.

### **Quantitative Restrictions**

The Indonesian government requires an import permit from the Directorate General of Livestock Services for imports of animal-based food products. In approving import permits, the Indonesian government retains discretion to alter the quantity it allows to enter. U.S. industry estimates the annual trade impact of this restriction to be between \$10 million and \$25 million. The United States will continue to raise concerns about these practices with the Indonesian government.

Indonesia bans salt imports during the harvest season. It requires salt importers to be registered and to source locally. Indonesia also maintains a seasonal ban on imports of sugar.

Indonesia applies quantitative import limits to imported wines and distilled spirits. Only one registered importer, a state-owned enterprise, is authorized to import alcoholic beverages, with an annual quota set by the Ministries of Trade and Industry.

As a result of new mining legislation, mining firms operating in Indonesia will face new restrictions in exporting unprocessed ore. The legislation requires them to process ore locally in Indonesia before

shipping it abroad. The United States will closely monitor implementation of the law to ensure that it does not constitute an export ban on raw materials.

### **Product Registration**

Beginning in late 2008 and continuing throughout 2009, BPOM slowed its process of reviewing applications for the registration of food, beverage, health supplements and other products including cosmetics. Combined with an aggressive enforcement campaign in which large quantities of imported products were seized and destroyed, the process for registering products has become inefficient, burdensome, opaque, and costly to U.S. exporters. Some companies have discontinued or reduced sales to Indonesia as a result of BPOM's enforcement of this requirement.

### **Customs Barriers**

U.S. firms continue to report that Indonesia's Customs Service uses a schedule of "check prices" rather than actual transaction prices to assess duties on food product imports as it committed to do under the WTO Customs Valuation Agreement. Customs makes a valuation assessment based on the perceived risk status of the importer and the average price of a same or similar product imported during the previous 90 days. In addition, the U.S. Government has received complaints from importers about costly delays in customs processing and requests for unofficial payments to customs officers.

### **Luxury Taxes**

The luxury sales tax on 4,000cc sedans and 4x4 Jeeps or vans is 75 percent, compared with the luxury tax on automobiles with engine capacities of 1500cc or less, which ranges from 10 percent to 30 percent. Passenger cars with engine displacement less than 1500cc comprise 40 percent of the market, including a large group of vehicles predominantly produced in Indonesia that are taxed at a rate of 10 percent.

In addition to a 10 percent VAT and an import duty of 150 percent, Indonesia charges luxury taxes on imported distilled spirits of 40 percent to 75 percent. The combined effect of these measures, which produces an effective rate of protection of more than 200 percent, is to place imports at a significant disadvantage in Indonesia's market.

### **State Trading**

In April 2008, the Indonesian government announced that the National Logistics Agency (BULOG) would have exclusive authority to import rice. This action was based on food security and price management considerations. Imports are not permitted before, during, and immediately after the main harvest period, effectively the first quarter of the year. Private firms can import rice for special purposes only, such as for seed and specialty rice, but they must obtain a special importer identification number issued by the Ministry of Agriculture.

## **GOVERNMENT PROCUREMENT**

Indonesia grants special preferences to encourage domestic sourcing and to maximize the use of local content in government procurement. It also instructs government departments, institutes, and corporations to utilize domestic goods and services to the maximum extent feasible. In February 2009, the Minister of Industry issued a circular "recommending" that civil servants purchase domestic goods and services in their official capacities, as well as their private purchasing, in order to "improve domestic

product usage.” Foreign firms bidding on high value government sponsored projects report that they have been asked to purchase and export the equivalent value of selected Indonesian products. Indonesia is not a signatory to the WTO Agreement on Government Procurement.

## **INTELLECTUAL PROPERTY RIGHTS (IPR) PROTECTION**

Indonesia was elevated to the Special 301 Priority Watch List in 2009 because of growing concerns about IPR protection and enforcement in Indonesia as well as new market access barriers on intellectual property products. In particular, U.S. companies have serious concerns that widespread optical disc piracy and counterfeiting of consumer goods, including pharmaceuticals, not only causes significant economic losses for rights holders, but also poses significant health and safety risks. Cable signal piracy and the illegal downloading of copyright works using mobile devices also remain pervasive. In addition, Indonesia has implemented policies that undermine the protection afforded by the country’s IPR regime and thereby increase harm to U.S. rights holders. Two such policies – a regulation issued by the Ministry of Health preventing foreign pharmaceutical companies from registering drugs if they do not manufacture in Indonesia and a regulation issued by BPOM – could severely restrict the registration and availability in Indonesia of pharmaceutical products containing alcohol or ingredients of porcine (pork) origin, including vaccines and products delivered in gelatin capsules. The United States continues to raise these concerns with Indonesia and to urge Indonesia to strengthen its IPR protection and enforcement regime.

## **SERVICES BARRIERS**

Indonesia maintains significant and far-reaching trade and investment barriers in many key services sectors.

### **Legal Services**

Only Indonesian citizens may obtain a full license to practice as lawyers. Foreign lawyers are permitted only to work in Indonesia as “legal consultants” and must first obtain the approval of the Ministry of Justice and Human Rights. A foreign law firm seeking to enter the market must establish a relationship with a local firm.

### **Express Delivery and Logistics Services**

In September 2009, the Indonesian legislature introduced new restrictions on postal services, broadly defined to include courier, express delivery, and other logistics services. The law requires that postal service providers be majority-owned by Indonesians and that foreign providers limit their activities to provincial capitals with international airports and seaports.

### **Health Services**

Hospital services are mostly closed to foreign investment, though Indonesia does allow for up to 65 percent foreign ownership in hospital services in the cities of Medan and Surabaya. Indonesia also restricts foreign health care professionals from practicing in Indonesia. Foreign trained physicians are only allowed to supervise and perform procedures in the course of educating Indonesian physicians.



## **Distribution**

Some U.S. direct selling companies raised concerns that Indonesia's market is generally closed to investment in the direct selling industry. Although Indonesia allows up to 100 percent foreign equity in the distribution and retail sectors, investors must enter into a "partnership agreement" with a small scale Indonesian enterprise.

## **Financial Services**

Indonesia allows 99 percent foreign ownership in the banking sector. Financial service providers may not establish as a branch. In the insurance sector, the 2007 investment law introduced a new foreign equity cap of 80 percent for new investors.

## **Energy Services**

In 2009, the Indonesian Ministry of Industry enacted a regulation requiring foreign bidders for energy services contracts to use a minimum of 35 percent domestic content in their operations. From the perspective of foreign energy services companies, such discriminatory policies severely undermine their ability to make successful bids on contracts and to make decisions about sourcing and personnel that would allow them to function efficiently and profitably in the Indonesian market. Foreign energy services companies that cannot document their compliance appear to be subject to substantial fines, even though it is unclear that Indonesia has the capacity to provide the level of domestic content required by the regulation.

## **Audit and Accounting Services**

Foreign firms cannot practice under international firms' names, although terms such as "in association with" are permissible. Foreign accounting firms must operate through technical assistance arrangements with local firms. Foreign agents and auditors may act only as consultants and cannot sign audit reports. Foreign directors, managers, and technical experts/advisors, are allowed a maximum stay of two years, with a possible one-year extension. Licensed accountants must hold Indonesian citizenship. Auditors practicing in the capital markets are prohibited from delivering specified non-audit services such as consulting, bookkeeping, and information system design.

## **Film**

A September 2009 law provides for screen quotas permitting no more than 60 percent of screen time for foreign films, unspecified import restrictions to achieve that quota, prohibitions against the dubbing of foreign films, and prohibitions against foreign companies distributing or exhibiting films. In December 2009, the Minister of Culture and Tourism announced its intention to re-issue a previously suspended regulation requiring all local and imported movies – both theatrical prints and home video copies – to be duplicated locally with penalties on exhibitors for failing to do so. The United States continues to work with Indonesia to try to address these concerns.

## **Construction, Architecture and Engineering**

Foreign construction firms are only allowed to be subcontractors or advisors to local firms in areas where the government believes that a local firm is unable to do the work. In addition, for government financed projects, foreign companies must form joint ventures with local firms.

## **Telecommunications Services**

Indonesia permits up to 65 percent foreign ownership in value added and mobile telecommunications services and up to 49 percent for fixed networks. While this foreign ownership level goes beyond Indonesia's current commitments in its WTO GATS schedule, the new limits on fixed services represent a step backward from recent practice where up to 95 percent ownership was permitted. A Ministry of Communications and Informatics decree issued in 2008 restricts the construction, management, and ownership of cell towers to domestic companies and would force existing investors to exit the market within two years. The United States has registered its serious concerns to Indonesia about the decree and is seeking its withdrawal.

## **Education**

Indonesia's Law on Education Legal Entities does not allow FDI in higher education in the form of a limited liability company, contrary to the existing Investment Law. In addition, foreign educational personnel require permission from both the Ministry of Education and the Ministry of Manpower. The permission is granted on a case-by-case basis and is only given when there are no Indonesian instructors capable of filling the position.

## **INVESTMENT BARRIERS**

Indonesia maintains significant and far-reaching foreign investment restrictions. Its investment climate continues to be characterized by legal uncertainty, economic nationalism, and disproportionate influence of business interests seeking control and ownership of existing enterprises and new market opportunities. Both through formal regulation and indirect guidance, foreign companies are compelled to do business with local partners and to purchase goods and services locally.

In an attempt to improve its foreign investment climate in 2007, Indonesia introduced a new investment law intended to provide improvements in transparency, as well as a range of investor protections, including non-discriminatory treatment, protection against expropriation, and recourse to international arbitration in disputes against the government. At the same time, however, the new law significantly increased the number of sectors in which foreign investment is restricted, and increased foreign equity limitations in sectors of interest to U.S. investors, including in telecommunications, pharmaceuticals, film and creative industries, and construction. An ongoing process of decentralization, intended to reduce burdensome bureaucratic procedures by moving decisions to provincial and district-level governments, has led to some improvements but has also resulted in new restrictive measures that appear to conflict with other national laws.

Indonesia continues to review the 2007 investment law and "negative list" of restricted sectors. Although Indonesian officials have in the past provided assurances that the more restrictive provisions of the investment law would apply only to new investments, Indonesia appears to allow retroactive application in practice. Moreover, despite the fact that one of the intended purposes of the new law is to enhance transparency, it is unclear whether the negative list represents the full range of sectors where investment restrictions apply. Several ministries, including the Ministry of Communications and Informatics, the Ministry of Health, and the Ministry of Culture and Tourism, have issued decrees that introduce additional new investment restrictions in their respective sectors. The United States continues to strongly urge Indonesia to enhance the transparency and openness of its investment regime, and to address specific problems and concerns of U.S. investors.

## **Pharmaceuticals**

The United States has serious concerns about the deteriorating business climate in Indonesia's pharmaceutical sector. Although Indonesia's 2007 investment law grandfathered existing investments, Indonesian authorities are asserting that any changes in the shareholding capital or ownership structure of an existing company will trigger new foreign equity restrictions, thus requiring that foreign equity in firms be reduced to 75 percent and a domestic partner identified to acquire the remaining 25 percent.

## **Energy and Mining**

Several regulatory changes have recently been introduced to increase government control in the energy and mining sectors and to generate higher royalties for the government.

Indonesia enacted a new mining law in December 2008, replacing a "Contract of Work" system with a system of licensing. The legislation creates new risks and burdens for investors. The new law subjects investments to unpredictable changes in tax and royalties policy and allows central and local governments to cancel licenses. Mining companies must give preference to local subcontractors and service companies and are required to process and smelt ore domestically. The new law also reintroduces divestment requirements that have led to investment disputes in the past. While not requiring the conversion of existing contracts to licenses, the new legislation mandates unspecified changes to existing contracts. The Indonesian government has indicated that it does not intend to honor contractually mandated extensions to contracts of work. To date, the only implementing regulations for the new law have been those mandating preferences for domestic subcontractors.

The Indonesian government also has attempted to unilaterally alter the terms of energy and mining contracts in its favor. In 2008, certain foreign coal purchasers saw their long term contracts nullified when the Energy and Mineral Resources Department ordered private Indonesian coal mining firms to renegotiate sales contracts with foreign buyers if the contracts involved long term fixed price arrangements and the sale prices were below a government-determined benchmark price. Indonesian coal mining firms have stopped shipments in cases where foreign buyers have been unwilling or unable to renegotiate their contracts. In addition, throughout the mining sector, companies have reported problems importing exploration and production equipment free of duties or VAT, as provided for in their contracts. Separately, the oil and gas regulator BP MIGAS has threatened to penalize oil and gas firms that do not meet arbitrary production goals.

## **Telecommunications**

In 2009, the Indonesian government enacted more onerous local content requirements in the telecommunications sector. In October 2009, the Ministry of Communications and Informatics announced a new decree requiring all telecommunications operators to expend a minimum of 40 percent of their total capital expenditures for network development on locally sourced components or services. In July 2009, the same ministry issued a decree imposing local content requirements on operating and capital expenditures of 30 percent to 50 percent in the wireless broadband sector. The United States continues to press Indonesian to address its concerns about the decrees.

## **OTHER BARRIERS**

The Indonesian government and in particular the Corruption Eradication Commission, which coordinates anti-corruption efforts and has the authority to investigate and prosecute high level corruption cases,

continues to address the widespread corruption problem in the country. Still, foreign companies continue to report corruption-related difficulties, including demands for unwarranted fees to obtain required permits or licenses, to expedite processes, or to influence government awards of contracts and concessions. Indonesian courts have a reputation for being inefficient and corrupt, creating serious problems for companies drawn into disputes with local partners and threatening the viability of U.S.-invested enterprises.

U.S. industry reports that illegal logging activity in Indonesia results in lost trade opportunities for U.S. producers in Indonesia and third country markets. In addition, the illegal activity results in lost revenue to the Indonesian government as well as significant environmental damage. Indonesia recognizes the seriousness of the issue and is taking steps to address it, including by working with the United States under the auspices of a 2006 Memorandum of Understanding on Combating Illegal Logging and Associated Trade. The United States and Indonesia meet regularly in the context of a bilateral working group and last year took an important step in expanding our cooperation by co-convening a first-ever regional dialogue to explore regional solutions to the illegal logging problem with other Asia-Pacific countries. A second meeting of the regional dialogue is planned for 2010.

# ISRAEL

## TRADE SUMMARY

The U.S. goods trade deficit with Israel was \$9.2 billion in 2009, up \$1.3 billion from 2008. U.S. goods exports in 2009 were \$9.6 billion, down 34.0 percent from the previous year. Corresponding U.S. imports from Israel were \$18.7 billion, down 16.1 percent. Israel is currently the 22nd largest export market for U.S. goods.

U.S. exports of private commercial services (*i.e.*, excluding military and government) to Israel were \$3.7 billion in 2008 (latest data available), and U.S. imports were \$3.7 billion. Sales of services in Israel by majority U.S.-owned affiliates were \$1.9 billion in 2007 (latest data available), while sales of services in the United States by majority Israel-owned firms were \$1.6 billion.

The stock of U.S. foreign direct investment (FDI) in Israel was \$10.2 billion in 2008 (latest data available), up from \$9.5 billion in 2007. U.S. FDI in Israel is concentrated primarily in the manufacturing sector.

### **The United States-Israel Free Trade Area Agreement**

Under the United States-Israel Free Trade Area Agreement (FTA), signed in 1985, the United States and Israel agreed to implement phased tariff reductions culminating in the complete elimination of duties on all products by January 1, 1995. Most tariffs between the United States and Israel have been eliminated as agreed, although tariff and nontariff barriers continue to affect a significant number of key U.S. agricultural product exports.

To address temporarily the differing views between the two countries over how the FTA applies to trade in agricultural products, in 1996 the United States and Israel signed an Agreement on Trade in Agricultural Products (ATAP), establishing a program of gradual and steady market access liberalization for food and agricultural products effective through December 31, 2001. Negotiation and implementation of a successor ATAP was successfully completed in 2004. This agreement was effective through December 31, 2008, and granted improved access for select U.S. agricultural products. The ATAP agreement was extended twice, through December 31, 2010, to allow time for the negotiation of a successor agreement. The ATAP provides U.S. food and agricultural products access to the Israeli market under one of three different categories: unlimited duty free access, duty free tariff-rate quotas (TRQs), or preferential tariffs, which are set at least 10 percent below Israel's Most Favored Nation (MFN) rates. The agreement also provided for annual increases in the in-quota quantity under the TRQs through 2008.

## IMPORT POLICIES

### **Agriculture**

*Market Access:* Approximately 90 percent of U.S. agricultural exports (by value) enter Israel duty and quota free as a result of Israel's implementation of commitments under the WTO, the FTA, and the current ATAP. Remaining U.S. agricultural exports, which consist of consumer-oriented goods, face restrictions such as a complicated TRQ system and high tariffs. The ability of U.S. exporters to utilize available TRQ in-quota quantities can be hampered by problems with transparency and other issues with the administration of Israel's TRQs. TRQ-related problems include a lack of data on quota fill-rates and

## FOREIGN TRADE BARRIERS

license allocation issues, such as allocation of small non-commercially viable quota quantities, and administrative difficulties in obtaining licenses for in-quota imports. Under the current ATAP, Israel committed to take steps to improve the administration of TRQs, including engaging in regular bilateral consultations. Israel failed to address problems related to TRQ administration during a mid-year reallocation of unused quotas. The negotiations for a successor ATAP will seek to address the outstanding issues with respect to Israel's administration of the TRQs.

Restrictions remain on other U.S. agricultural exports, including high-value goods that are sensitive for the Israeli agricultural sector, such as dairy products, fresh fruits, fresh vegetables, almonds, wine, and some processed foods. According to industry estimates, elimination of levies on processed foods, including a broad range of dairy products, could result in increased sales by U.S. companies in the range of \$25 million to \$50 million. Removal of quotas and levies on dried fruits could result in increases in sales by U.S. exporters of up to \$10 million. U.S. growers of apples, pears, cherries, and stone fruits estimate that elimination of Israeli trade barriers would lead to an increase of \$5 million to \$25 million in export sales of these products. Industry estimates that free trade in agriculture could result in U.S. almond exports growing by as much as \$10 million. Removing these levies on food products inputs used in U.S.-based restaurant chains operating in Israel could save these chains millions annually and allow for their expansion.

*Wine and Spirits Imports:* Under the current ATAP, Israel granted U.S. wine exports an annual TRQ of 200,000 liters of duty-free imports of wine. In addition, U.S. exports in excess of the quota limit are charged a tariff lower than Israel's MFN rate. However, the current method of quota allocation for wine creates a significant challenge for importers of U.S. wine. Quotas are issued arbitrarily, sometimes through a lottery system to groups that do not make use of the licenses they are allocated. Further compounding the problem, the reallocation of quotas at the end of a period often occurs too late to make it commercially viable for another importer to utilize the remaining quota. Wine importers note that the Israeli government does not require Israeli wine producers to follow the detailed labeling requirements of the official standard for wine, while these rules are strictly enforced on imported wines. Sales of U.S. wines to Israel are about \$700,000 per year. Industry estimates that the elimination of trade barriers could result in increased exports worth up to \$10 million per year.

Whiskey and other imported spirits to Israel face a tax known as the *tama*. These concerns have been discussed at length with the Israeli authorities, and there is currently legislation in draft form to end the *tama* by 2014.

### **Customs Procedures**

Some U.S. exporters have reported difficulty in claiming preferences under the FTA. Israel has cited concerns about the U.S. method for issuing certificates of origin as the basis for sometimes delaying entry of, or delaying preferential tariff treatment for, U.S. goods entering Israel. In 2009, the United States Government engaged in discussions with Israel to clarify and resolve the situation surrounding the difficulty in claiming preferences under the FTA.

### **GOVERNMENT PROCUREMENT**

Israel is a signatory to the WTO Agreement on Government Procurement (GPA), which covers most Israeli government entities and government-owned corporations. Most of the country's international public tenders are published in the local press.

U.S. firms encounter difficulties in accessing the Israeli government procurement market. Government-owned corporations make extensive use of selective tendering procedures. In addition, the lack of transparency in the public procurement process discourages U.S. companies from participating in major projects and disadvantages those that choose to compete. A proposed regulation not yet passed in the Knesset could impede transparency further by allowing an internal committee within each Israeli government ministry to exempt up to four million shekels (\$1 million) of procurement from public tenders. Enforcement of public procurement laws and regulations in Israel is not consistent.

Israel also has offset requirements that it implements through international cooperation (IC) agreements. Under IC agreements, foreign companies are required to offset government contracts by agreeing to invest in local industry, co-develop or co-produce with local companies, subcontract to local companies, or purchase from Israeli industry. As of January 1, 2009, the IC offset percentage for procurements covered by Israel's GPA obligations is 20 percent of the value of the contract; for procurements excluded from GPA coverage, including most military procurements, the offset is 35 percent.

U.S. suppliers suspect that the size and nature of their IC proposals can be a decisive factor in close tender competitions, despite an Israeli court decision that prohibits the use of offset proposals in determining the award of a contract. Because small and medium-sized U.S. exporters are often reluctant to commit to make purchases in Israel in order to comply with the IC requirements, their participation in Israeli tenders is limited.

In addition, the inclusion of unlimited liability clauses in many government tenders discourages U.S. firms from competing. When faced with the possibility of significant legal costs for unforeseeable problems resulting from a government contract, most U.S. firms are forced to insure against the risk, which raises their overall bid price and reduces their competitiveness.

The United States-Israel Reciprocal Defense Procurement Memorandum of Understanding (MOU), extended in 1997, is intended to facilitate defense cooperation in part by allowing companies from both countries to compete on defense procurements in both countries on as equal a basis as possible, consistent with national laws and regulations. U.S. suppliers have expressed concern about the lack of transparency and apparent lack of justification for excluding U.S. suppliers from various Ministry of Defense tendering opportunities. The MOU, which has benefited Israeli defense industries by opening up the U.S. procurement market to their products, has not resulted in significantly opening the market for U.S. suppliers interested in competing for MOD procurements funded by Israel.

## **INTELLECTUAL PROPERTY RIGHTS (IPR) PROTECTION**

The United States and Israel reached an understanding on February 18, 2010 that resolves several longstanding issues with Israel's intellectual property rights (IPR) regime for pharmaceutical products. These issues include improving data protection, the terms of patents on pharmaceuticals, and provisions on the publication of patent applications in Israel.

Although not part of the new understanding, Israel has also signaled a new willingness to make progress on other IPR issues of concern, such as meeting the core requirements of World Intellectual Property Organization (WIPO) "Internet Treaties," (*i.e.*, the WIPO Copyright Treaty and the WIPO Performances and Phonograms Treaty). The United States welcomes this step, and encourages Israel to proceed with full accession to, and implementation of, the WIPO Internet Treaties.

## **SERVICES BARRIERS**

### **Audiovisual and Communications Services**

Only selected private Israeli broadcast television channels are allowed to advertise. These channels received broadcast licenses and the advertising privilege in exchange for certain local investment commitments. Israeli law largely prohibits other broadcast channels, both public and private, from advertising. Foreign channels that air through the country's cable and satellite networks are permitted a limited amount of advertising aimed at a domestic Israeli audience. Currently, the regulations allow foreign channels no more than 25 percent of their total advertising time to target the Israeli market.

## **INVESTMENT BARRIERS**

Investments in regulated sectors, including electronic commerce, banking, insurance, and defense industries, require prior government approval in Israel.

## **ELECTRONIC COMMERCE**

Israel's Electronic Signature Bill regulates signatures on electronic media. Loopholes in the law allow the consumer to decline to pay for any merchandise for which he or she did not physically sign, which serves as a disincentive to the establishment of online businesses. The Ministry of Justice maintains a register of entities authorized to issue electronic certificates attesting to the signature of the sender of an electronic message. The Registrar of Databases, which falls under the authority of the Ministry requires that any firm or individual holding a client database secure a license to do so.



# JAPAN

## TRADE SUMMARY

The U.S. goods trade deficit with Japan was \$44.8 billion in 2009, down \$29.4 billion from 2008. U.S. goods exports in 2009 were \$51.2 billion, down 21.4 percent from the previous year. Corresponding U.S. imports from Japan were \$96.0 billion, down 31.1 percent. Japan is currently the 4th largest export market for U.S. goods.

U.S. exports of private commercial services (*i.e.*, excluding military and government) to Japan were \$41.2 billion in 2008 (latest data available), and U.S. imports were \$24.5 billion. Sales of services in Japan by majority U.S.-owned affiliates were \$60.0 billion in 2007 (latest data available), while sales of services in the United States by majority Japan-owned firms were \$93.3 billion.

The stock of U.S. foreign direct investment (FDI) in Japan was \$79.2 billion in 2008 (latest data available), down from \$81.9 billion in 2007. U.S. FDI in Japan is concentrated largely in the finance/insurance, manufacturing, and wholesale sectors.

## REGULATORY REFORM OVERVIEW

### The United States-Japan Regulatory Reform and Competition Policy Initiative

The U.S. Government has been engaging with Japan through the United States-Japan Regulatory Reform and Competition Policy Initiative (Regulatory Reform Initiative) to seek changes in Japanese regulations and practices that have hindered access to Japan's market, limited competition, and prevented the introduction of innovative products and services offered by U.S. companies and exporters. This work has focused on a broad range of industry sector-specific issues, as well as a variety of cross-sectoral issues affecting the overall business environment.

The governments of the United States and Japan concluded the Eighth Report to the Leaders under the Regulatory Reform Initiative in July 2009. The Report documented progress made under the Regulatory Reform Initiative through working-level and high-level meetings that took place following an exchange of recommendations between the two governments in October 2008.

The following sections on Sectoral Regulatory Reform and Structural Regulatory Reform outline some of the key reform and market access issues on which the U.S. Government has been seeking progress by Japan under this Initiative.

## SECTORAL REGULATORY REFORM

### Telecommunications

In its Regulatory Reform Initiative recommendations, the U.S. Government has continued to urge that Japan ensure fair market opportunities for emerging technologies and business models, ensure a regulatory framework appropriate to addressing converged and Internet-enabled services, and strengthen competitive safeguards on dominant carriers. The U.S. Government also has continued to request that Japan improve transparency in rulemaking and ensure the impartiality of its regulatory decision making,

including by abolishing the legal requirement that the government own one-third of the dominant carrier, Nippon Telegraph and Telephone (NTT).

*Fixed-line Interconnection:* In July and November 2008, Japan revised its rules to extend non-discriminatory and cost-oriented interconnection to Internet Protocol (IP)-enabled networks and services. This included classifying the Next-Generation Networks (NGN) of NTT East and NTT West as Category I Designated Telecommunications Facilities, which subjects them to access and pricing provisions that promote competition. In March 2009, Japan's Ministry of Internal Affairs and Communications (MIC) authorized rates for the termination of Voice-over-Internet-protocol (VoIP) calls onto NTT East and NTT West fiber optic networks. Although MIC continued to push NTT to lower interconnection rates, they still remain high by international standards.

*Dominant Carrier Regulation:* NTT continues to dominate Japan's fixed line market through its control over almost all "last-mile" connections. As Japan's broadband users transition from digital subscriber line (DSL) (where competition, ensured through regulation, was vibrant) to optical fiber, NTT's competitors fear NTT will expand its dominant position through control of the fiber-to-the-home (FTTH) market, where it holds a market share of about 75 percent, and by bundling NTT fixed-line services with those of NTT DoCoMo, the dominant wireless operator. While NTT asserts that there is adequate competition in FTTH service and that consequently unbundling rules should be relaxed, NTT's share of that market has steadily increased over the past few years. The U.S. Government has urged Japan to remain committed to ensuring competition in the telecommunications market, both in light of the upcoming review of the overall legal structure of NTT and the development of a new broadcasting law, which affect all players participating in markets for converged services.

*Universal Service Program:* Japan approved a system, beginning in January 2007, for NTT East and NTT West and their competitors to collect a universal service fee from voice services subscribers. MIC has undertaken periodic reviews to determine whether this amount should be adjusted to more accurately reflect costs and has endorsed a proposal to increase significantly the universal service fees. NTT regional carriers, the only carriers able to benefit from the fund, then receive these fees through the universal service fund to offset the costs of providing services in rural areas. The U.S. Government has urged Japan to broaden the base of this fund's potential beneficiaries and ensure it is implemented in a competitively neutral manner. Current cross-subsidization of NTT West by NTT East using interconnection revenue (ostensibly to address NTT West's higher network costs resulting from the higher number of rural subscribers) appears redundant given the existence of the fund, and the U.S. Government has urged the abolition of this cross-subsidy.

*Mobile Termination:* As in most countries, Japan uses the "Calling Party Pays" system, imposing the entire cost of termination on the calling party (enabling mobile subscribers to benefit from free incoming calls). NTT DoCoMo, the dominant incumbent mobile carrier, announced in March 2009, that it would lower its termination rates by over 10 percent, continuing incremental rate reductions implemented over the past 10 years. Mobile interconnection rates, however, still remain high by international standards and also compared to fixed-line rates in Japan. Despite recognizing DoCoMo as a dominant carrier in 2002, MIC does not require DoCoMo to publish its costs or explain how its rates are calculated. With new entrants now in the mobile sector, the U.S. Government has continued to monitor actions both by DoCoMo and MIC to ensure effective competition and has continued to urge MIC to consider the advantages of moving to a "bill-and-keep" system that is more economically efficient where interconnection payments are not exchanged between carriers.

*New Mobile Wireless Licenses:* Starting in 2005, MIC began opening the market to new mobile providers beyond the three main incumbents by auctioning blocks of spectrum to a limited number of new wireless entrants. In December 2007, MIC awarded two additional licenses for wireless broadband services. However, the complexity of the factors MIC selected in determining how to evaluate applications raised questions about whether it achieved its stated goal of awarding these licenses based on objective criteria. Given the scarcity of spectrum and high demand for new technologies, the U.S. Government has urged MIC to consider alternative mechanisms, including auctions, to assign commercial spectrum in a timely, transparent, objective, and nondiscriminatory manner that adheres to principles of technology neutrality, particularly for spectrum expected to become available as broadcasters switch to digital television by July 2011. The U.S. Government has also stressed to Japan the importance of ensuring reasonable “roaming” rates for competitors and Mobile Virtual Network Operators (MVNOs), an issue where MIC is making noticeable progress through policies and dispute mediation.

### **Information Technologies (IT)**

*Health IT:* Government policies that fail to encourage interoperability, technology neutrality, and international harmonization, in addition to insufficient reimbursement incentives, inhibit the expansion of Japan’s health IT services sector, an important market for U.S. companies. The U.S. Government has urged Japan to foster interoperability and technology neutrality, facilitate vendor participation in government-sponsored projects that develop health IT systems, and implement reimbursement systems that reward use of innovative IT.

*IT-Related Financial Reform:* The U.S. Government welcomed passage by the Diet of the “Payment Services Act” in June 2009 allowing non-banking entities to provide fund transfer services without a banking license, as long as they are registered, and clarifying their financial liabilities. As the government of Japan continues to develop and implement regulations covering online payments, it should continue to consider private sector views and ensure that rules are consistent, clear, and workable.

*Privacy:* Separate and inconsistent privacy guidelines among Japanese ministries have created an unnecessarily burdensome regulatory environment for U.S. business with regard to the storage and general treatment of personally identifiable information in Japan. The U.S. Government welcomed a Japanese government announcement in July 2008 of 37 guidelines, a subsequent review by ministries and agencies concerning rules for protecting personal information, as well as continued engagement on these topics in international fora.

*IPR Protection:* The U.S. Government continues to urge Japan to adopt a number of new measures to improve and strengthen IPR protection. These include: improving copyright protection and enforcement; improving the efficacy of the patent application process; and actively working with the United States to develop ways to promote greater protection of IPR worldwide, especially in Asia. (See also “Intellectual Property Rights Protection” in this section.)

*Government IT Procurement:* Lack of transparency, excessive reliance on sole-source contracting, and restrictions on intellectual property ownership, among other factors, hinder the participation of U.S. companies in Japan’s government IT procurement. The U.S. Government therefore has urged Japan to expand disclosure of procurement information, broaden participation in evaluation committees, make it easier for companies to own intellectual property they develop through government contracts, apply competitive bidding rules to independent administrative entities and government-sponsored firms, and ensure contracts are swiftly concluded after bidders are chosen and are not backdated.

*IT and Electronic Commerce Policymaking:* Insufficient transparency in Japan's policymaking process for IT and electronic commerce has constrained U.S. company access. The U.S. Government has urged Japan to improve its policymaking process by seeking and considering industry input at all stages of policymaking. This will help foster development of programs that promote technology neutrality, facilitate private sector participation in government-appointed advisory groups, and provide companies with adequate time to offer public comments and adjust to rule changes.

### **Medical Devices and Pharmaceuticals**

Japan's market for medical devices and pharmaceuticals continues to be one of the world's largest. In 2007, the Japanese market for medical devices and materials was just over \$18 billion, with total imports by Japan of U.S. medical devices exceeding \$5 billion, a 27 percent market share. The pharmaceuticals market in Japan is valued at \$60 billion and American pharmaceutical firms have achieved a market share approaching 20 percent, or total sales worth \$12 billion. Despite the size of these markets, many globally available pharmaceuticals and medical devices have not yet been introduced in Japan. There is an average lag time of over four years when introducing pharmaceuticals into Japan compared to the United States. Similarly with medical devices, only about half of all European and American medical devices are available in Japan. Japanese authorities have recognized the need to address this pharmaceutical and medical device "lag", which prevents timely patient access to innovative and life-saving technologies. As a result, Japan has issued policy papers that propose measures to improve access to innovative pharmaceuticals and medical devices. The U.S. Government continues to urge Japan to ensure that its policies foster the private sector's development of innovative products and improve patients' access to such products. Moreover, the U.S. Government supports Japan's efforts to improve the overall regulatory environment for these industries through bilateral government talks and other vehicles.

Although changes implemented by Japan are expected to improve the regulatory environment, its reimbursement pricing policies have also traditionally hindered the introduction of innovative medical technology to the market. In the upcoming biennial price revision of April 1, 2010, the Japanese government will again tighten enforcement of Foreign Average Pricing (FAP). Japan will reduce reimbursement prices for new devices to 1.5 times the average price of devices in the United States, Britain, France, and Germany from the current 1.7. In a positive development, Japan will implement, on a trial basis, a new premium system that would minimize downward price revisions for new drugs for which there are no corresponding generics. To qualify for this premium, manufacturers will be required to fulfill requests from the Japanese government to bring to market products that address unmet medical needs in Japan. The U.S. Government urges Japan to ensure that decisions made regarding the new pricing system are transparent and that industry is given ample opportunities to provide input into the process being established for assessing unmet medical needs.

The U.S. Government recognizes and welcomes the goal of Japan's new drug price maintenance premium, which is to promote the introduction of innovative products in Japan. Other facets of Japan's reimbursement pricing system, however, run counter to this goal. The United States continues to urge Japan to refrain from implementing reimbursement policies that hinder the development and introduction of innovative medical devices and pharmaceuticals. Transparency of drug and medical device reimbursement decision making processes, including on potential further systemic changes, continues to be a major concern. The U.S. Government has been urging Japan to build further on recent improvements in this area to foster a more open, predictable market.

*Blood Products:* Japan's 2002 Blood Law established a principle of "self-sufficiency" and includes a Supply and Demand Plan for the government to manage the blood market. The U.S. Government has

been urging Japan to increase patient access to life-saving blood plasma therapies by refraining from restricting imports of plasma protein products. In addition, the United States continues to encourage Japan to increase the efficiency of product reviews and ensure that labeling of plasma protein products is non-discriminatory. With respect to reimbursement, the U.S. Government has been urging Japan to develop a reimbursement system for blood products that accounts for the unique nature of plasma protein therapy.

*Nutritional Supplements:* Japan has taken steps to streamline import procedures and to open its \$10 billion nutritional supplements market, although many significant market access barriers remain. Unusually burdensome restrictions on health and nutrition claims are a major concern. Only those products approved as Foods for Specified Health Uses (FOSHU) or Foods with Nutrient Function Claims (FNFC) are allowed to have health or structure/function claims. Producers of most nutritional supplements, however, are unable to obtain FOSHU or FNFC approval due to FOSHU's costly and time consuming approval process and to the limited range of vitamins and minerals that qualify for FNFC. Other concerns include: long lead times for food additive applications; high levels of import duties for nutritional supplements compared to duties on pharmaceuticals containing the same ingredient(s); stopping of shipments at quarantine stations due to naturally occurring traces of substances such as benzoic acid and sorbic acid, which Japan classifies as food additives; lack of transparency in new ingredient classification; and a lack of transparency in the development of health food-regulations.

*Cosmetics and Quasi-Drugs:* Japan is the world's second largest market for cosmetics and "quasi-drugs" after the United States. In 2008, U.S. exports of cosmetics and personal care products to Japan were estimated at \$350 million, second only to U.S. exports to France valued at \$549 million. Despite a successful U.S. market presence, regulatory barriers continue to limit consumer access to safe and innovative products. Unlike the U.S. over-the-counter drug monograph system, Japan requires premarket approval for certain products classified as quasi-drugs under the Pharmaceutical Affairs Law. The approval process includes requirements that are burdensome, lack transparency, and do not appear to enhance product safety, quality, or efficacy. In addition, restrictions on advertising claims for cosmetics and quasi-drugs prevent companies from conveying product benefits to consumers. The U.S. Government appreciates Japan's willingness to communicate with industry on these issues. Enhanced communication between both the U.S. and Japanese governments and industries has led to some improvements in the Japanese regulatory system. For example, in the fall of 2009, the Japanese government agreed to reduce the amount of paperwork required to import cosmetic products. The United States continues to urge Japan to address these and other issues.

*Proprietary Ingredient Disclosure Requirement for Food and Dietary Supplements:* As part of its product classification process for new-to-market food and dietary supplement products, Japan mandates that all ingredients and food additives be listed by name, along with content percentages, and include a description of the manufacturing process. In addition to being burdensome, this process runs the risk that proprietary information may be obtained by competitors. The U.S. Government has raised this issue under the Regulatory Reform Initiative.

## **Financial Services**

The U.S. Government welcomes recent progress on reforms in Japan's financial services sector. For example, in June 2009, Japan enacted a new law providing the legal framework necessary for non-bank providers to offer electronic fund transfer services in Japan. In July 2009, Japan also passed legislation raising the defined contribution pension employer contribution limit from ¥46,000 (\$505) to ¥51,000 (\$560) per month, and the government will reportedly propose legislation in the 2010 parliamentary

session to allow employee contributions. In addition, Japan's Financial Services Agency has remained committed to its Better Markets Initiative to improve the attractiveness of Tokyo as a financial center, which includes promoting competition and improving the regulatory environment.

The U.S. Government has urged Japan to continue with such reforms, including in the areas of online financial services, defined contribution pensions, credit bureaus, and sharing of customer information. In addition, the U.S. Government has urged Japan to improve transparency in this sector by taking steps such as enhancing the effectiveness of the no-action letter and related systems, providing written interpretations of Japan's financial laws, and soliciting input from all interested parties on concerns and potential improvements related to the inspection process.

## **Agriculture**

Japan maintains many high tariffs and other nontariff barriers against trade in the agricultural sector. As noted above, the U.S. Government's recent submissions to Japan under the Regulatory Reform Initiative have included several recommendations to enhance the efficiency of the trading environment for agricultural products and the transparency of trade-related rules and regulations.

## **STRUCTURAL REGULATORY REFORM**

### **Antimonopoly Law and Competition Policy**

Although Japan has taken significant positive steps in recent years to bolster its competition regime, cartel activity and bid rigging persist. Additional measures to combat anticompetitive behavior would improve the business environment and further attention is needed to ensuring enforcement procedures are fair and transparent.

*Improving Antimonopoly Compliance and Deterrence:* Japan's Antimonopoly Act (AMA) provides for both administrative and criminal sanctions against cartel violators. Administrative penalty ("surcharge") levels against hard-core violations have been too low, however, and criminal prosecutions, which should have the strongest deterrent effect against anticompetitive behavior, have been few and penalties against convicted company officials have been weak. The U.S. Government has urged Japan to take steps to maximize the effectiveness of enforcement against hard-core violations of the AMA, including by augmenting administrative and criminal penalties, extending the statute of limitations, and strengthening the effectiveness of the Japan Fair Trade Commission's (JFTC) leniency program (which eliminates or reduces penalties for whistle blowing companies). The government of Japan has taken certain steps to address these concerns, particularly through AMA amendments enacted on June 3, 2009. These amendments increase surcharge rates for enterprises that played a leading role in cartel activities by 50 percent, extended the statute of limitations for both cease and desist orders and surcharge payment orders to five years, increased maximum prison sentences and the statute of limitation for criminal violations of Article 89 to five years, and revised the leniency program to allow two or more enterprises within the same group, under certain conditions, to jointly file a leniency application. Most of these amendments became effective in January 2010. The 2009 AMA amendments also provide for mandatory surcharges on enterprises that engage in exclusionary private monopolization, abuse of superior bargaining position and repeat violations of certain unfair trade practices. The JFTC issued guidelines on exclusionary private monopolization on October 28, 2009, after considering public comments. The JFTC's ability to enforce the AMA effectively continues to be hindered by a lack of employees with post-graduate economics training, a factor that undermines JFTC ability to engage in the careful economic analysis

necessary to properly evaluate non-cartel behavior. The U.S. Government continues to urge the JFTC to improve its economic analysis capabilities.

*Improving Fairness and Transparency of JFTC Procedures:* Japan introduced a system in January 2006 that empowered the JFTC to make determinations of AMA violations without a formal administrative hearing, with respondents being afforded the right to seek administrative review of the decision only after the decision was put into place. Although the JFTC allows companies subject to a proposed cease-and-desist or surcharge payment order to review the evidence relied upon by JFTC staff and to submit evidence and make arguments in their defense prior to a final order being issued, questions have been raised as to whether this system provides sufficient due process protections. To ensure further credibility for, and transparency of, JFTC hearing procedures, the U.S. Government has asked Japan to review the *ex post* hearing system and take necessary measures to ensure that respondents are afforded procedural fairness in the JFTC decision making and appeals process, as well as to ensure that JFTC investigatory processes are conducted in accordance with generally accepted notions of fundamental procedural fairness. In December 2009, Japan's government announced its plan to introduce legislation to the Diet in 2010 that would eliminate the *ex post* hearing system and instead allow appeals of JFTC orders directly to the Tokyo District Court.

*Broadening Measures to Combat Bid Rigging:* Japanese officials have implemented a series of measures to address the problem of frequent and persistent bid rigging. Apart from several cases in which the JFTC invoked the 2003 law against bureaucrat-led bid rigging (so-called *kansei dango*), the Ministry of Land, Infrastructure, Transport and Tourism (MLIT) has strengthened administrative sanctions against companies found by JFTC to have engaged in unlawful bid rigging. As of April 2009, MLIT and 13 other central government entities have also introduced an administrative leniency program to complement the JFTC leniency program (designed to help encourage individuals and companies to report anticompetitive acts). Japan has also put in place a series of measures aimed at ensuring a competitive bidding process for project contracts tendered at the central and local government levels. In June 2007, the Japanese Diet passed legislation, which became effective on December 31, 2009, aimed at controlling post-retirement employment by Japanese government officials in companies they previously helped regulate or were otherwise involved with while in government service, the so-called "descent from Heaven" (*amakudari*), which has been a factor in many bid rigging conspiracies. The U.S. Government has recommended that Japan strengthen measures to: prevent conflicts of interest in government procurement; improve efforts to eliminate involvement in bid rigging by government officials; expand administrative leniency programs; and further improve procurement practices to ensure open and competitive bidding.

## **Transparency**

Transparency issues remain a top concern of U.S. companies operating in Japan's market. The U.S. Government has strongly urged Japan to adopt new measures to achieve a higher degree of transparency in governmental regulatory and policy making processes.

*Advisory Groups:* Although advisory councils and other government-commissioned study groups are accorded a significant role in the development of regulations and policies in Japan, the process of forming these groups can be opaque and nonmembers are too often not uniformly offered meaningful opportunities to provide input into these groups' deliberations. The U.S. Government continues to urge Japan to ensure the transparency of advisory councils and other groups convened by the government by adopting new requirements to ensure ample and meaningful opportunities are provided for all interested parties, as appropriate, to participate in, and directly provide input to, these councils and groups.

*Public Comment Procedures (PCP):* Many U.S. companies remain concerned by inadequate implementation of the PCP by Japanese ministries and agencies. Examples include cases where comment periods appear unnecessarily short, as well as cases suggesting comments are not adequately considered given the brief time between the end of the comment period and the issuance of a final rule or policy. The U.S. Government has stressed the need for Japan to ensure its existing PCP is being fully implemented and to make additional revisions to further improve the system.

*Transparency in Regulation and Regulatory Enforcement:* To ensure the private sector has sufficient information about regulations and official interpretations of those regulations that require compliance, the U.S. Government is urging Japan to specifically require its ministries and agencies to make public their regulations and any statements of policy of generally applicable interpretation of those regulations.

## **Privatization**

The United States does not have a position on whether Japan Post should be privatized or otherwise restructured. However, as modifications to the postal financial institutions and network subsidiary could have serious ramifications for competition in Japan's financial market, the U.S. Government continues to carefully monitor the Japanese government's postal reform efforts and to call on the Japanese government to ensure that all necessary measures are taken to achieve a level playing field between the Japan Post companies and private sector participants in Japan's banking, insurance, and express delivery markets.

In the area of express carrier services, the U.S. Government remains concerned by unequal conditions of competition between Japan Post Service and international express delivery providers. The U.S. Government urges Japan to enhance fair competition, including by ensuring that Japan Post Service is subject customs clearance procedures and costs for competitive services similar to those of other international express delivery service suppliers, and that subsidization of Japan Post Service's international express service by revenue from monopoly postal services is also prevented. (*For discussion of Japan Post privatization and the postal insurance corporation, see "Insurance" under the Services Barriers section.*)

The U.S. Government also continues to emphasize the importance of transparency and disclosure in the postal reform process. As a result, the U.S. Government has continued to urge the Japanese government to ensure that the postal reforms process is fully transparent, including by providing full and meaningful use of public comment procedures and opportunities for interested parties to express views to related officials and advisory bodies before decisions are made. Timely and accurate disclosure of financial statements and related notes serves a key function in the privatization process, as does the continued public release of meeting agendas, meeting minutes, and other documents relevant to the process.

## **Commercial Law**

Japan undertook a major reform of its commercial law by enacting a new Corporate Code, which entered into force May 1, 2006. Among other provisions, the code now permits the use of certain modern merger techniques, including domestic and cross-border triangular mergers. These new provisions, however, have not yet been as effective as had been hoped in facilitating foreign investment into Japan. This may reflect the limited range of tax-advantaged merger tools and corporate governance systems that do not adequately reflect the interests of shareholders.

Through the Regulatory Reform Initiative, the U.S. Government has been urging Japan to improve further its commercial law and corporate governance systems to promote efficient business practices and



management accountability to shareholders in accordance with international best practices. Specifically, the U.S. Government has urged Japan to identify and eliminate impediments to cross-border mergers and acquisitions, including the availability of reasonable qualifying rules for tax-deferred treatment for many such transactions, and to take measures to ensure that shareholder interests are adequately protected when Japanese companies adopt anti-takeover measures or engage in cross-shareholding arrangements.

The U.S. Government also continues to encourage Japan to identify legislation and other measures necessary to strengthen corporate governance mechanisms, including by: facilitating and encouraging active and appropriate proxy voting by institutional investors such as pension and mutual funds; ensuring the independence of outside directors; allowing the boards of directors of Japanese corporations to delegate certain decision making functions to committees composed solely of independent directors; strengthening protection of minority shareholders by clarifying fiduciary duties of directors and controlling shareholders; and encouraging the stock exchanges to adopt listing rules and guidelines that will improve the corporate governance of listed companies and ensure that the interests of minority shareholders are protected when the board of directors decides to issue new shares, conduct a reverse stock split or allocate shares to third parties. The government of Japan has convened several groups to examine these and other measures.

The U.S. Government continues to look to Japan to amend Article 821 of the Company Law to prevent adverse effects on U.S. companies seeking to legitimately conduct their primary business in Japan through Japanese branch offices.

### **Legal System Reform**

Japan imposes restrictions on the ability of foreign lawyers to provide international legal services in Japan in an efficient manner. The U.S. Government continues to urge Japan to further liberalize the legal services market by allowing foreign lawyers to form professional corporations and establish multiple branch offices in Japan whether or not they have established a professional corporation, counting all of the time foreign lawyers spend practicing law in Japan toward the three year experience requirement for licensure as a foreign legal consultant, and speeding up the registration process for new foreign legal consultants. The U.S. Government has also requested that Japan take measures to ensure that no legal or Bar Association impediments exist to Japanese lawyers becoming members of international legal partnerships with lawyers outside Japan, and to ensure that foreign legal consultants can legally provide alternative dispute resolution (ADR) services and represent parties in any international ADR proceedings taking place in Japan.

In order to encourage victims of trade secret theft to cooperate with prosecutors in bringing criminal charges against wrongdoers, the U.S. Government is urging Japan to adopt necessary procedures that will ensure that the content of a trade secret will not be disclosed to the public in the criminal trial.

### **Distribution**

Through this initiative, the U.S. Government has recommended that Japan take a variety of steps to improve customs processing and to facilitate other faster and lower-cost solutions in the distribution sector. In this regard, the U.S. Government is encouraged by and welcomes Japan's work to formulate an Authorized Economic Operator (AEO) system, which allows exporters with good compliance records to process goods more expeditiously through Customs. To facilitate more efficient cargo flows, the U.S. Government has been recommending that Japan exempt AEO exporters from paying the 5 percent consumption tax for cleared cargo. Currently, Japan Customs refunds this tax, but an exemption would

reduce the administrative burden of filing for a refund. The U.S. Government has also been recommending that Japan raise the Customs Law *de minimis* ceiling from 10,000 yen (about \$100) to a higher level, such as 20,000 yen or higher, in line with international best practice.

## **IMPORT POLICIES**

*Rice Import System:* Japan's highly regulated and non-transparent importation and distribution system for imported rice limits meaningful access to Japanese consumers. In 1999, Japan established a tariff-rate quota (TRQ) of approximately 682,000 metric tons (milled basis) for imported rice. The Staple Food Department (SFD) of the Ministry of Agriculture, Forestry and Fisheries (MAFF) manages imports of rice within the TRQ through periodic ordinary minimum access (OMA) tenders and through simultaneous buy-sell (SBS) tenders. Imports of U.S. rice under the OMA tenders are destined almost exclusively for government stocks. MAFF releases these stocks exclusively for non-table rice users in the industrial food processing or feed sector and for re-export as food aid. In calendar year 2009, U.S. rice exports to Japan were valued at \$423 million, representing approximately 400,000 metric tons. Only a small fraction of this rice reaches Japanese consumers identified as U.S. rice, despite industry research showing Japanese consumers would buy U.S. high quality rice if it were more readily available. The United States expects Japan to continue meeting its WTO import volume commitments.

*Wheat Import System:* Japan requires wheat to be imported through MAFF's Food Department, which then resells the wheat to Japanese flour millers at prices substantially above import prices. These high prices discourage wheat consumption by increasing the cost of wheat based foods in Japan. In 2007, MAFF revised the wheat import regime to allow more frequent adjustment to the resale price and therefore more closely reflect international price movements. However, the U.S. Government remains concerned by Japan's operation of a state trading entity for wheat and its potential to distort trade.

*Pork Import Regime:* Japan is the largest export market for U.S. pork on both a volume and a value basis (importing 401,000 metric tons in 2009, worth \$1.5 billion). The import tariff for pork is established by a gate price system that applies a 4.3 percent *ad valorem* tariff when the import value is equal to, or higher than, the administratively established reference price. Imports that fall below the reference price pay an additional duty equal to the difference between the import value and the reference price.

*Beef Safeguard:* Japan negotiated a beef safeguard during the Uruguay Round to protect domestic producers in the event of an import surge. The safeguard is triggered when the import volume of beef increases by more than 17 percent from the level of the previous Japanese fiscal year on a cumulative quarterly basis. Once triggered, the safeguard remains in place for the rest of the fiscal year. When triggered, beef tariffs would rise to 50 percent from 38.5 percent.

*Fish and Seafood Products:* While U.S. fish and seafood exports to Japan have decreased since 1999, Japan remains an important export market for U.S. products, representing 18 percent of total U.S. seafood exports in 2008. An overall decrease in Japanese seafood consumption and therefore imports, as well as the growing demand for seafood in the United States, the EU, and other countries, help to explain the downturn in U.S. fish and seafood exports to Japan.

Japan's tariffs on seafood imports are generally low, although tariffs on certain products remain an impediment to U.S. exports, making the products too expensive for Japanese importers in an increasingly competitive global marketplace. However, some market access issues remain. For example, Japan maintains import quotas on Alaska Pollock, Pacific Cod, Pacific Whiting, mackerel, sardines, squid and herring. Japan also maintains quotas on specific products such as pollock and cod roe, and surimi.

## **FOREIGN TRADE BARRIERS**

Administration of Japan's import quota system has improved considerably over the years and it is expected that obstacles to U.S. exports of fish and seafood products will continue to be reduced. While Japan cut tariffs as a result of the Uruguay Round of multilateral trade negotiations, it did not change its import quotas at that time. Since then, administrative burdens of the system have been eased. As part of ongoing WTO Doha negotiations, Members including the United States and Japan have committed to clarify and improve rules on fisheries subsidies.

*High Tariffs on Beef, Citrus, Dairy, and Processed Food Products:* Japan maintains high tariffs on a number of food products that are important exports for the United States, including red meat, citrus, wine, and a variety of processed foods. Examples of double digit import tariffs include 38.5 percent on beef, 32 percent on oranges during winter months (16 percent in the summer), 40 percent on processed cheese, 29.8 percent on natural cheese, 22.4 percent on shredded mozzarella cheese, 20 percent on dehydrated potato flakes, 17 percent on apples, 10.5 percent on frozen sweet corn, 20.4 percent on cookies, up to 17 percent on table grapes depending on the season of the year, and 15 percent to 57.7 percent on wine depending on the Harmonized Tariff System (HTS) classification. These high tariffs generally apply to food products where Japan has domestic production. Tariff reductions on these and other products continue to be a high priority for the U.S. Government in the WTO Doha Development Agenda agriculture negotiations.

*Wood Products and Building Materials:* Japan continues to restrict imports of certain manufactured wood products through tariff escalation (*i.e.*, progressively higher tariffs based on the level of processing of the wood product). The elimination of tariffs on wood products remains a long standing U.S. Government objective.

*Leather/Footwear:* Japan continues to apply a TRQ on leather footwear that substantially limits imports into Japan's market and establishes these quotas in a nontransparent manner. The U.S. Government continues to seek elimination of these quotas.

## **GOVERNMENT PROCUREMENT**

Japan is a signatory to the WTO Agreement on Government Procurement (GPA). For procurement of construction services by sub-central and government enterprises covered under the GPA, Japan applies a threshold of approximately \$23 million, which is three times the threshold applied by the United States.

### **Construction, Architecture, and Engineering**

U.S. companies annually obtain far less than 1 percent of projects awarded in Japan's massive public works market, valued at \$195 billion in 2009. Two bilateral public works agreements are in effect: the 1988 United States-Japan Major Projects Arrangements (MPA) (updated in 1991); and the 1994 United States-Japan Public Works Agreement, which includes the Action Plan on Reform of the Bidding and Contracting Procedures for Public Works (Action Plan). The MPA includes a list of 42 projects in which international participation is encouraged. Under the Action Plan, Japan must use open and competitive procedures for procurements valued at or above the thresholds established in the GPA. The United States raises public works issues in the annual Expert-Level Meetings on Public Works under the United States-Japan Trade Forum.

Problematic practices continue to limit the participation of U.S. design/consulting and construction firms in Japan's public works sector, including bid rigging (*dango*), under which companies consult and

prearrange a bid winner. The U.S. Government continues to press Japan to take more effective action to address this pervasive problem.

The U.S. Government has raised its concerns with Japan's use of excessively narrow Japan-specific qualification and evaluation criteria that preclude U.S. firms from competing for projects. The U.S. Government has also continued to urge Japan to: (1) ensure that all project-related qualification requirements are made public, as required by the GPA and the bilateral agreements; (2) address problems related to the treatment of joint venture members; and (3) remove or narrowly apply the operational safety exemption for railroad procurements covered by the GPA.

The U.S. Government is paying special attention to several major projects covered by the public works agreements that are of particular interest to U.S. companies; these projects should provide important opportunities for U.S. firms. These include: major expressway projects, including the Gaikan Expressway Project and Metropolitan Expressway Shinagawa Route Project; major public buildings, railroad procurements, urban development and redevelopment projects; planned port facilities expansion projects; major Private Finance Initiative (PFI) projects; and the MPA projects still to be undertaken or completed. The U.S. Government is also monitoring developments related to "Green" building, design, and procurement.

## **INTELLECTUAL PROPERTY RIGHTS (IPR) PROTECTION**

The U.S. Government continues to engage with Japan on efforts to improve IPR protection and enforcement through bilateral consultations and cooperation, as well as in multilateral and regional fora. Japan continues to make progress in improving the protection and enforcement of IPR.

Japan provides a 70 year term of protection for cinematographic works and 50 years for all other works protected by copyright and related rights. In 2009, the U.S. Government continued to encourage Japan to extend the term of protection for all the subject matter of copyright and related rights in line with international trends among other countries with which Japan shares a similar advanced level of economic development.

In June 2009, the Japanese Diet passed a bill revising the Copyright Law, which went into effect on January 1, 2010. The bill amends Japan's statutory private use exception to make clear that the private use exception does not apply in cases where a downloaded musical work or a motion picture is obtained from an infringing source where the download is made with the knowledge that the source is infringing. The U.S. Government encourages the Japanese government to expand this limitation to cover all works protected by copyright and related rights.

The U.S. Government has also urged Japan to continue efforts to reduce piracy rates, including adopting methods to protect against piracy in the digital environment. Police and prosecutors lack *ex officio* authority to prosecute IPR crimes on their own initiative, without the requirement of rights holders consent. Japan's Internet Service Provider liability law needs to improve adequate protection for the works of rights holders on the Internet. In addition, Japan's law should provide better protection against the unauthorized circumvention of technological measures used by copyright owners to protect their works by providing criminal remedies for unauthorized circumvention of these measures and for the trafficking in tools used to circumvent them.

## **SERVICES BARRIERS**

### **Insurance**

## **FOREIGN TRADE BARRIERS**

Japan's private insurance market is the second-largest in the world, after that of the United States, with direct net premiums of an estimated 34.7 trillion yen (approximately \$335 billion) in Japan fiscal year 2008. In addition to the offerings of Japanese and foreign private insurers, substantial amounts of insurance are also provided to Japanese consumers by insurance cooperatives (*kyosai*) and the Japan Post Insurance Co., Ltd., a wholly government-owned entity of the Japan Post Group. Given the size and importance of Japan's private insurance market as well as the scope of the obstacles that remain, the U.S. Government continues to place a high priority on ensuring that the Japanese government's regulatory framework fosters an open and competitive insurance market.

*Postal Insurance:* Japan's postal life insurance system remains a dominant force in Japan's insurance market. At the end of Japan fiscal year 2008, there were approximately 52 million postal life and postal annuity insurance policies in force, with approximately 2.7 million having been issued by the new Japan Post Insurance Co., Ltd., after it began operations on October 1, 2007, and the remainder held as assets of the Public Successor Corporation. In comparison, 128 million life and annuity policies were in force with all other life insurance companies combined. The U.S. Government has long standing concerns about the postal insurance company's impact on competition in Japan's insurance market and is continuing to monitor closely the implementation of reforms. The critical objective, from the U.S. Government perspective, is to establish equivalent conditions of competition between the Japan Post companies and the private sector, consistent with Japan's international obligations. A level playing field between the postal insurance company and private sector insurers is critical to cultivate competition, enhance consumer choices, encourage more efficient resource allocation, and stimulate economic growth.

The U.S. Government continues to urge Japan to take a number of steps to ensure equivalent treatment, including, but not limited to: (1) ensuring equal supervisory treatment of Japan Post's financial institutions, including Japan Post Insurance, and private sector companies; (2) implementing adequate measures to prevent cross-subsidization among the newly created Japan Post businesses and related entities, including by ensuring the Japan Post companies' strict compliance with the Insurance Business Law's arm's length rule and requiring adequate financial disclosures to demonstrate that cross-subsidization is in fact not occurring; and (3) ensuring that the company established to manage Japan's post office network will provide private companies access to its network in a manner that is comparable to that given to Japan Post entities and will select and distribute financial products of private providers transparently and without discrimination.

The U.S. Government continues to call on Japan to ensure a level playing field between the postal insurance company and private insurers before the postal insurance company introduces new or altered insurance products. The process for approving new products should be transparent and open to all parties. It is also critical that the process include careful analysis of, and full consideration given to, actual competitive conditions in the market and that private sector views are actively solicited and considered before decisions are made.

As modifications to the postal financial institutions and the postal network subsidiary could have serious ramifications to competition in Japan's financial market, adequate transparency in implementation of legislation passed by the Diet is essential. The U.S. Government has urged Japan to continue to take a variety of steps to ensure transparency, including providing meaningful opportunities for interested parties to exchange views with related government officials as well as members of government-commissioned advisory committees and groups before decisions, including those on new products, are made; and fully utilizing public comment procedures with respect to drafting and implementing

regulations, guidelines, Cabinet Orders, and other measures. Timely and accurate disclosure provides important information as well as independent means to track and validate the reform process.

*Kyosai*: Insurance businesses run by cooperatives, or *kyosai*, hold a substantial share of insurance business in Japan. Some *kyosai* are regulated by their respective agencies of jurisdiction (the Ministry of Agriculture, Forestry and Fisheries or the Ministry of Health, Labor and Welfare, for example) instead of by the Financial Services Agency (FSA), which regulates all private sector insurance companies. These separate regulatory schemes undermine the ability of the Japanese government to provide companies and policyholders a sound, transparent regulatory environment and afford *kyosai* critical business, regulatory, and tax advantages over their private sector competitors. The U.S. Government believes *kyosai* must be subject to the same regulatory standards and oversight as their private sector counterparts to ensure a level playing field and to protect consumers.

The Japanese government has taken some important steps since 2006 to bring more oversight to unregulated *kyosai*. Under these regulatory reforms, previously unregulated *kyosai* were required to apply to the FSA for new legal status by April 2008. Some of the cooperatives, which elected to become full-fledged insurance companies, have been held to the same regulatory standards as private sector insurers. Others opted to become Small Amount Short Term Insurance Providers (SASTIP), which limits their product range and size and holds the firms to different requirements than those applied to private sector insurance companies. The remaining unregulated *kyosai* that were required to close their businesses by the end of March 2009 have done so. The FSA is to review the SASTIP system within five years from the date of its enforcement (before April 2011) and in doing so, the FSA will, as necessary, provide information on the review and meaningful opportunities for input from insurance companies, including foreign insurance companies, and other parties concerned. With respect to *kyosai* regulated by ministries and agencies other than the FSA, the U.S. Government remains concerned by their continued expansion in Japan's insurance market and continues to call on Japan to bring these *kyosai* under FSA supervision.

*Policyholder Protection Corporations*: The Life and Non-life Policyholder Protection Corporations (PPCs) are mandatory policyholder protection systems created to provide capital and management support to insolvent insurers. Legislation was introduced in Japan's Diet in late 2008 to renew the life insurance PPC system prior to its scheduled expiration in April 2009. The new legislation, which passed the Diet in December 2008, will renew the protection system for three additional years. It was passed without full deliberations on the effectiveness of the current system, which continues to rely on pre-funding of the PPC by its members and a government "fiscal commitment" in case industry funding is insufficient, instead of adopting a system where an insolvency would result in members contributing funds to the PPC as needed (post-funding). The U.S. Government continues to urge Japan to consider more fundamental changes in the PPC systems, including through full and meaningful deliberations with interested parties before renewal legislation is required.

*Bank Sales*: In December 2007, the Japanese government fully liberalized the range of insurance products eligible for sale through banks. As a follow-up, the U.S. Government promptly asked Japan to review market conduct rules, including the limits on sales of first and third sector products and treatment of customer data (including Insurance Business Law Enforcement Rules, Article 212), to ensure they do not limit the effectiveness of bank sales of insurance or impede consumer convenience and choice. While the FSA has committed to conduct a review of market conduct rules within three years, the U.S. Government has called for a more expedited review.

*Domestication of Foreign Insurance Operations*: The U.S. Government has recommended that Japan take measures to ensure foreign incorporated companies operating branches in Japan that wish to transfer

business operations to a Japan-incorporated entity be able to do so in a seamless manner that protects policyholders and creditors while ensuring business continuity. The U.S. Government urged that the portfolio and transfer provisions of the Insurance Business Law be revised accordingly.

### **Other Services**

*Medical Services:* Restrictive regulation limits foreign access to the medical services market. The U.S. Government continues to urge Japan to open this sector to foreign service providers and allow new opportunities for commercial entities to provide full-service, for-profit hospitals (including through Japan's special economic zones).

*Educational Services:* Regulations related to administrative requirements and restrictions on pedagogical choices discourage foreign universities from operating branch campuses in Japan. Under the United States-Japan Investment Initiative, the Japanese government established a new category – "Foreign University, Japan Campus" – for foreign accredited institutions of higher education. Under this designation U.S. branch campuses derive some benefits similar to those accorded Japanese educational institutions (*e.g.*, student eligibility for student rail passes and student visas). However the designation does not extend the tax benefits provided to Japanese universities and their students to foreign branch institutions. The U.S. Government continues to urge Japan's Ministry of Education, Culture, Sports, Science and Technology to work with foreign universities to find a nationwide solution that grants tax benefits comparable to Japanese schools and allows foreign universities to continue to provide their unique contributions to Japan's educational environment.

### **INVESTMENT BARRIERS**

Despite being the world's second largest economy, Japan continues to have the lowest inward FDI as a proportion of total output of any major OECD country. Inward foreign merger and acquisition (M&A) activity, which accounts for up to 80 percent of FDI in other OECD countries, also lags in Japan, though on an upward trend.

The Japanese government has recognized the importance of FDI to revitalizing the country's economy. In September 2006, the Japanese government set a goal of doubling the stock of FDI in Japan by 2010 to the equivalent of 5 percent of Gross Domestic Product (GDP). Japan has also taken several steps to improve the FDI environment, including revision of the Corporate Code to permit the use of triangular stock swaps for international M&A deals. With only one cross border stock transaction occurring under the new rules, however, the adequacy of measures taken to date to promote cross border M&A rules remains unclear. Cross border M&A is more difficult in Japan than in other countries, partly because of attitudes toward outside investors, inadequate corporate governance mechanisms that protect entrenched management over the interest of shareholders, and a relative lack of financial transparency and disclosure.

The United States-Japan Investment Initiative, initiated in 2001 and co-chaired by the U.S. Department of State and Japan's Ministry of Economy, Trade and Industry, has worked to promote policy changes that improve the overall environment for foreign (and domestic) investment and to focus on specific barriers in certain sectors, including educational and medical services.

## **OTHER BARRIERS**

### **Autos and Auto Parts**

A variety of nontariff barriers have traditionally impeded access to Japan's automobile and automotive parts market, and overall sales of North American made vehicles and parts in Japan remain low. Japan Automobile Importers Association (JAIA) data indicates that registrations in Japan of U.S. produced motor vehicles fell from 12,666 units in 2008 to 9,314 units in 2009, reflecting a trend that remains a source of serious concern.

In June 2009, Japan instituted an Environmentally-Friendly Vehicle Purchase Program that provides subsidies to consumers for the purchase of a new vehicle, with differing subsidy amounts available depending upon the class of the vehicle and whether a qualifying used vehicle is traded-in. The Program was made retroactive to purchases beginning April 10, 2009, and is scheduled to expire on March 31, 2010. Japan is expected to extend this program for six additional months, starting April 1, 2010. The U.S. Government raised strong concern with the Program because, as originally structured, U.S. automobiles imported into Japan using the Preferential Handling Procedure (PHP) certification process were unable to qualify. On January 19, 2010, Japan announced it would open its program to qualifying automobiles imported using the PHP process. While a welcome step, the actual number of U.S. models that qualified was greatly limited by Japan's decision to use the U.S. Environmental Protection Agency (EPA) "city" mileage fuel economy rating, instead of the EPA "combined" mileage fuel economy rating, as a criterion for qualification. The U.S. Government continues to urge the Japanese government to reconsider this decision and instead apply the EPA "combined" rating.

The U.S. Government also has expressed concern with the overall lack of market access to Japan's automotive market, as well as with specific aspects of Japan's regulatory system that limit the ability of U.S. automobile and related companies to expand their business in the market. For example, U.S. automakers seeking to introduce, for testing and demonstration purposes, automobiles using new technology (*i.e.* fuel cell vehicles) face a lack of transparency and other barriers to certifying these new products in a timely and efficient manner. The U.S. Government is urging Japan to address other regulatory barriers and to take into full consideration global harmonization efforts as it develops and implements standards and regulations.

### **Aerospace**

Japan is among the largest foreign markets for U.S. civil aerospace products. The civil aerospace market in Japan is generally open to foreign firms and some Japanese firms have entered into long term relationships with American aerospace firms.

Military procurement by the Ministry of Defense (MOD) accounts for approximately half of the domestic production of aircraft and aircraft parts and continues to offer the largest source of demand in the aircraft industry. Although U.S. firms have frequently won contracts to supply defense equipment to Japan (over 90 percent of the annual foreign defense procurement is from the United States), the MOD has a general preference for domestic production or the licensing of U.S. technology for production in Japan to support the domestic defense industry.

Although Japan has considered its main space launch vehicle programs as indigenous for many years, U.S. firms continue to participate actively in those space systems, including Japan's primary space launch vehicle, the HII-A. The U.S. Government has welcomed Japan's plans to develop a Global Positioning



System (GPS) navigation satellite constellation known as the "quasi-zenith" system. The U.S. Government is working closely at the technical level with Japanese counterparts to ensure the Japanese and U.S. systems remain compatible and anticipates U.S. companies will have the opportunity to supply major components.

### **Business Aviation**

Japan's regulatory framework coupled with infrastructure shortages impedes the development of business aviation in Japan. Because of the lack of guidelines specific to business aviation, regulations for commercial airline safety, maintenance, and repair issues administered by the Japan Civil Aviation Bureau (JCAB) of the Ministry of Land, Infrastructure, Transport and Tourism (MLIT) also apply to business aircraft. This situation in turn raises the costs of qualification, operation, and maintenance of business aircraft to uneconomical levels. In addition to the regulatory environment, landing rights for business aircraft in Japan are difficult to obtain because of rules that hamper flexible scheduling, especially in the Tokyo area. These factors greatly limit business opportunities in this sector for sales of U.S. aircraft in Japan.

Certain Chubu and Kansai region airports have begun to attract business aircraft, although with modest results thus far. Regional airports are attempting to provide many of the same services business aircraft operators receive in the United States and Europe. Severely restricted hours for landings and take-offs at Haneda Airport in Tokyo, a preferred business destination and the lack of services for private business aircraft at both Narita and Haneda continue to significantly limit travel to and within Japan.

The U.S. Government has continued to urge the JCAB to reexamine the application of airline-specific commercial civil aviation regulations to business aviation and develop appropriate regulations specific to the business aviation industry that are consistent with the treatment of business aviation in North America, Europe, and other developed economies. Immediate improvements in the overall regulatory framework for business aviation are needed in advance of an additional runway opening at Haneda planned for 2010.

During 2008, the JCAB took some initial and positive steps, including engaging in greater dialogue with the U.S. Government and other stakeholders. A May 2008 JCAB report highlighted the importance of business jets in Japan's aviation future and noted that Japan lags noticeably behind other countries in business aviation development. The JCAB also laid out a road map for a new business aviation policy, calling for improvements in facilitation, regulatory framework, facilities, and air fields. In July 2008, in its first actual deregulation involving business aviation, the JCAB extended its ETOPS (Extended-range Twin-engine Operational Performance Standard) requirement from 60 minutes to 180 minutes, which permits JA (Japan) registered aircraft with two engines to fly routes far longer than they could previously. In the spring of 2009, the JCAB conducted follow-up research on business aviation, but no announcement has been made regarding the results and any responding measures.

### **Civil Aviation**

Japan is our largest aviation partner in the Asia-Pacific region. Consistent with its longstanding policy to promote competition and market access in civil aviation, the U.S. Government initialed the text of an Open Skies agreement with Japan on December 11, 2009.

Our previous agreement with Japan dates from 1952, though it was significantly amended and supplemented on various occasions in the past, including in 1998 and 2007. Under the 1952 agreement,

U.S. airlines serving Japan were subject to restrictions on pricing, code-sharing, and – except for three “incumbent” carriers” – on the number of flights they could operate. Some U.S. airlines were barred from entering the market. The new agreement contains all essential Open Skies elements and will be a pro-consumer, pro-competition, pro-growth accord. Specifically, Open Skies will remove the current restrictions on cities that can be served, traffic that can be carried, the number of flights that can be operated, the number of U.S. airlines that can enter the market, and the prices that can be charged, as well as expanding opportunities for cooperative marketing arrangements, including code-sharing. Japan will not sign the agreement, however, until after the U.S. Department of Transportation (DOT) has considered applications for anti-trust immunity from U.S. and Japanese airlines.

The U.S. Government welcomes the Japanese government’s willingness to negotiate an Open Skies agreement and for the planned expansion of landing and take-off slots at Tokyo’s Narita and Haneda airports. Once signed, the new agreement will provide assured opportunities for growth of U.S. airline operations at Narita airport and ensure fair competition for U.S. airlines when Tokyo’s Haneda airport opens to scheduled international air service in October 2010. The U.S. Government is encouraged by the steps that Japan is taking in 2010 to increase the number of slots at Tokyo’s Narita and Haneda airports and urges Japan to continue to take further steps to increase capacity and reduce overall congestion at these airports.

### **Transport/Ports**

The U.S. Government continues to raise longstanding concerns about barriers to entry to, and the competitiveness of, Japanese ports. Foreign shipping companies servicing Japan are locked into long-term relationships with specific Japanese stevedoring companies, which reportedly collude within the industry association to keep newcomers out and costs high. Stevedoring businesses owned and operated by foreign firms do not exist at major Japanese ports. Foreign companies are concerned that a lack of transparency in Japanese laws and regulations related to ports creates a barrier to entry. As part of the Regulatory Reform Initiative, the U.S. Government has made recommendations on transparency that are applicable to the rulemaking process. Japanese laws and regulations could be reviewed to facilitate new entrants and greater competition in the stevedoring business. Because conditions at Japanese ports are a continuing concern to the Federal Maritime Commission (FMC), it has kept open an active formal proceeding pursuant to which it requires Japanese-flag and United States-flag vessel operating common carriers to semi-annually report on developments relating to those conditions.

Since 1999, the U.S. Government has continued to express concern that reforms have not lessened the Japan Harbor Transportation Association’s (JHTA) ability to inhibit new entry and restructuring in the ports sector. The Port Transportation Business Law (effective November 2000) introduced requirements that run counter to the need for efficient port operations and discriminate against new entrants wishing to offer port services. In addition, MLIT has not addressed concerns about the prior consultation process conducted by the JHTA nor about the apparent threat of illegal strikes against foreign carriers who obtain permission to operate their own container terminals. The U.S. Government has raised with the Japanese government its failure to implement important aspects of the wide-ranging port deregulation promised in 1997 and continues to encourage Japan to share further information about changes in Japanese law made in 2006 that may be relevant to the FMC’s ongoing review.

# JORDAN

## TRADE SUMMARY

The U.S. goods trade surplus with Jordan was \$269 million in 2009, shifting from a deficit of \$197 million in 2008. U.S. goods exports in 2009 were \$1.2 billion, up 26.9 percent from the previous year. Corresponding U.S. imports from Jordan were \$924 million, down 18.8 percent. Jordan is currently the 70th largest export market for U.S. goods.

The stock of U.S. foreign direct investment (FDI) in Jordan was \$121 million in 2008 (latest data available), up from \$119 million in 2007.

## The United States-Jordan Free Trade Agreement

Under the terms of the United States-Jordan Free Trade Area Agreement (FTA) which entered into force on December 17, 2001, the United States and Jordan completed the final phase of tariff reductions on January 1, 2010. This resulted in the complete elimination of duties on nearly all products, except for alcoholic beverages and mature subject materials.

## IMPORT POLICIES

### Tariffs and other Charges

Jordan is a member of the WTO and is in the process of reducing its tariffs in compliance with its WTO accession commitments. Currently, Jordan's simple average applied tariff is 10.8 percent with a maximum rate of 180 percent on certain products. Most raw materials and intermediate goods used in industry face a zero percent tariff.

Jordan's General Sales Tax law allows the government to impose a "Special Tax" at the time of importation or local production. For example, the government currently imposes a 17.5 percent tax on automobiles and trucks.

### Agriculture

Import licenses, or advance approval to import goods, are required for specific food and agricultural goods. The authorities granting such licenses and approvals are the Ministry of Agriculture and the Ministry of Health.

### Import License

In addition to the special requirements for certain agricultural products, Jordan requires that importers of commercial goods be registered traders or commercial entities. The Ministry of Industry and Trade occasionally issues directives requiring import licenses for certain goods or categories of goods, products in newly emerging or protected sectors.

## **GOVERNMENT PROCUREMENT**

In 2002, Jordan initiated the process for joining the WTO Government Procurement Agreement (GPA), with the submission of its initial entity offer. Although negotiations on its accession have continued, they did not make as much progress in 2009 as had been anticipated. It is hoped that Jordan will complete its accession to the GPA in 2010.

## **EXPORT SUBSIDIES**

All exporters are granted the following incentives:

- Net profits generated from most export revenue are fully exempt from income tax. The mining sector is excluded, as are exports governed by specific trade protocols, and foreign debt repayment schemes. Under the WTO, the tax exemption was initially set to expire on January 1, 2008, but at the request of Jordan, the WTO granted an extension through December 2015, subject to an annual review by the WTO.
- Foreign inputs used in the production of exports are exempt from customs duties; all additional import fees are assessed on a reimbursable basis.

## **INTELLECTUAL PROPERTY RIGHTS (IPR) PROTECTION**

Over the past few years, Jordan has steadily sought to improve its IPR laws and IPR enforcement but further improvements are still needed to strengthen Jordan's IPR enforcement regime.

Jordanian agencies responsible for IPR enforcement lack resources and capacity and enforcement mechanisms and prosecution efforts still need to be strengthened, particularly with respect to *ex officio* authority to bring criminal cases. A sizeable portion of videos and software sold in the marketplace are pirated. The Jordanian government continues to examine means to provide more comprehensive protection of IPR, including through more stringent enforcement of existing laws, introduction of new regulations based on existing laws, and the creation of an independent IP body.

## **INVESTMENT BARRIERS**

The government continues to revamp its investment promotion system. It is re-examining investment incentives with the consolidation of all investment promotion activities under a renewed Jordan Investment Board. These developments will likely lead to expanded investment opportunities in Jordan for U.S. investors.

Jordan's investment laws treat U.S. and local investors equally, with the following exceptions (as per regulation No. 54 of 2000, entitled "Non Jordanian Investments Promotion Regulation"):

- Under the terms of the United States-Jordan FTA, ownership of periodical publications is restricted to Jordanian natural persons or Jordanian juridical entities wholly owned by Jordanians;
- Under the same agreement, foreign investors are limited to 60 percent ownership in printing/publishing and in aircraft or vessel maintenance and repair services; and

## **FOREIGN TRADE BARRIERS**

- Also under the FTA, foreign investors are limited to 50 percent ownership in a specified list of businesses and services.

In general, foreign investors may not have whole or partial ownership of investigation and security services, sports clubs(except for health clubs), stone quarrying for construction purposes, customs clearance services, and land transportation of passengers and cargo using trucks, buses and taxis.

While Jordanian laws set limitations on foreign ownership in certain sectors, the laws also allow for the government to grant exceptions to these limitations where it deems appropriate. This exceptions policy is viewed as being too selective by some potential U.S. investors.

## **ELECTRONIC COMMERCE**

Jordan has adopted some legislation to manage electronic commerce, although there is no composite body of regulations and tax laws covering electronic commerce transactions. Specifically, there is an immediate need for regulation on electronic signatures. No tariffs are collected on electronic transactions.



# KAZAKHSTAN

## TRADE SUMMARY

The U.S. goods trade deficit with Kazakhstan was \$946 million in 2009, up \$329 million from 2008. U.S. goods exports in 2009 were \$600 million, down 39.2 percent from the previous year. Corresponding U.S. imports from Kazakhstan were \$1.5 billion, down 3.6 percent. Kazakhstan is currently the 86th largest export market for U.S. goods.

The stock of U.S. foreign direct investment (FDI) in Kazakhstan was \$6.7 billion in 2008 (latest data available), up from \$6.4 billion in 2007.

## WTO Accession

Kazakhstan has been negotiating the terms for its membership in the WTO since January 29, 1996, and by 2009 measurable progress had been made. Kazakhstan has signed bilateral agreements on market access for goods and services with twenty three WTO members, and is close to completion with three more, the United States, EU, and Chinese Taipei. Working Party deliberations are focused on a draft Working Party report, and Kazakhstan has prepared or had submitted draft legislation to implement WTO agreements in many key areas, *e.g.*, customs practices, sanitary and phytosanitary (SPS) regulation, technical barriers to trade (TBT), and licensing. Progress towards completion of the accession process, however, all but halted in June 2009 after Kazakhstan announced its intent to enter a customs union with Russia and Belarus and to establish harmonized tariff commitments in WTO with these two countries. While the United States continues to support Kazakhstan's individual accession to the WTO, these actions have greatly complicated work on the accession.

## IMPORT POLICIES

In 2006, Kazakhstan, Russia, and Belarus announced plans for the formation of a trilateral customs union. Russia, Belarus, and Kazakhstan intensified consultations and negotiations in early 2009, and officially signed legal agreements for the creation of the customs union on November 27, 2009 in Minsk. Based on the agreements, a common external tariff (CET) was enacted effective January 1, 2010. As a result of its membership in the customs union, Kazakhstan increased the tariff rate on some 5,400 tariff lines.

According to the customs union agreements, Kazakhstan will retain some flexibility in applying the CET regime. For example, according to officials from the Ministry of Industry and Trade, Kazakhstan will have zero percent tariffs on over 900 individual tariff lines, including modern aircraft, certain types of engines, and raw materials needed in the food processing industry, such as tropical fruits. Kazakhstan is allowed to apply tariffs that differ from the CET for 409 tariff lines, but must bring them in line with the CET after a transition period. All tariffs must be at the CET by 2015. These tariffs cover pharmaceuticals, medical equipment, processed aluminum products, raw materials for the petrochemical industry, paper products, rail wagons, combines, tractors, and other products. In some specific cases, customs union member states can increase tariffs on selected goods without the consent of the other customs union members. As part of the new customs union, Kazakhstan announced in the fall of 2009 that it will implement tariff-rate quotas (TRQs) beginning January 1, 2010 on poultry, beef, and pork in light of Russia's TRQs on these products. U.S. exporters are concerned about the possible trade limiting effects of these TRQs, as well as the lack of information on how they will be implemented.

## FOREIGN TRADE BARRIERS

The Law on Investments, enacted in January 2003, provides customs duty exemptions for imported equipment and spare parts, but only if Kazakhstani-produced stocks are unavailable or not up to international standards.

U.S. exporters to Kazakhstan have consistently identified the requirement to obtain a “transaction passport” (providing information on, *inter alia*, the importer, contract details, the local bank of the importer/exporter, and the foreign partner) to clear goods through customs as a significant barrier to trade. The transaction passports are designed to stem capital outflows and money laundering by requiring importers to show documents that verify the pricing of import/export transactions. Kazakhstan amended the Law on Currency Control in August 2009, thereby changing the ceiling on transactions from \$10,000 to \$50,000. Despite some internal Kazakhstani opposition to the transaction passport system, the National Bank of Kazakhstan insists that it is necessary to control capital movement and prevent capital flight.

Although Kazakhstani officials are addressing the problematic structure of Kazakhstan’s customs control agencies, customs administration and procedural implementation remains a significant barrier to trade. Kazakhstan continues to work to streamline its customs process while preparing for implementation of the customs union Customs Code. Recent reforms include customs declaration rights for foreign citizens (bypassing the current legal requirement for the participation of domestic brokers), *ex officio* authority for customs officials, and standardized practices for the valuation of goods. These amendments were approved on December 9, 2009, and came into force on January 1, 2010.

## **GOVERNMENT PROCUREMENT**

Some potential U.S. suppliers have raised concerns about the lack of transparency and efficiency in Kazakhstan’s government tender process. Corruption and lack of transparency remain major challenges for both local and foreign companies.

During the first half of 2009, Kazakhstan adopted regulations and amendments to several laws, including the Law on Government Procurement, designed to increase the proportion of local content in government procurement procedures. The exact proportion of the required purchase of local goods and services is calculated according to a specific formula which was approved by Kazakhstan’s Foreign Investor Council. It will be applied to domestic and foreign operators in Kazakhstan, including government agencies, state-owned enterprises, national holding companies such as Samruk-Kazyna, and subsoil users. According to new tender requirements, proposals that include significant proportions of locally produced goods and services will receive preferential treatment. Conversely, those making tenders without them will be charged administrative fees and may face administrative prosecution. The Kazakhstani government is elaborating its official concept for the development of Kazakhstani content. A mandate of substantial increases by 2014 in the local content share of Kazakhstani-produced goods (up to 50 percent) and Kazakhstani-produced services (up to 90 percent) is expected.

Kazakhstan’s largest national companies, governed under the umbrella of the Samruk-Kazyna national holding company, including Kazakhstan TemirZholy (national railway), KazMunaiGas (national oil and gas company), KEGOC (electricity transmission company), and other companies with their subsidiaries, are subject to these local content requirements, but are thus far exempted from the Law on Government Procurement.



## **INTELLECTUAL PROPERTY RIGHTS (IPR) PROTECTION**

As part of its efforts to accede to the World Trade Organization, Kazakhstan is modernizing its IPR legal regime. In 2009, Kazakhstan adopted several amendments to its IPR law, including the legal recognition of vendors who own rights for the distribution of print and digital media. This amendment allows licensed vendors to seek damages from unauthorized dealers selling pirated merchandise. Kazakhstan also amended its patent law to re-define a patent holder, including detailed descriptions of the relationship between an employer and an employee with respect to an employee's invention.

Although domestically produced pirated films and music are available in Almaty and Astana, largely as a result of decreasing costs of making copies, the vast majority of pirated goods in these regions appear to be imported predominantly from Russia and China. Pursuant to statutes enacted in November 2005 that authorize stiffer penalties for infringers, the authorities have conducted numerous raids against distributors of pirated products. The government's efforts have helped to expand the Kazakhstani market for licensed, non-infringing products. Customs controls could be applied more effectively against imported infringing goods. Further progress is needed in the realm of civil enforcement, which is serving as an increasingly prevalent method of IPR enforcement in Kazakhstan. Although civil courts have been used effectively to stem IPR infringement, judges often lack expertise in the area of IPR, which is a significant obstacle to further improvement in Kazakhstan's IPR climate.

## **SERVICES BARRIERS**

In accordance with Kazakhstan's law "On National Security," foreign ownership in telecommunications services may not exceed 49 percent and foreign ownership of individual mass media companies, including news agencies, is limited to 20 percent. Foreign banks and insurance companies are limited to operating in Kazakhstan through joint ventures with Kazakhstani companies. For certain professional services, including auditing, architectural, urban planning, engineering, integrated engineering, and veterinary services, commercial presence is allowed only in the form of a juridical person.

The U.S. satellite industry has complained that the government of Kazakhstan has given preferential treatment to Kazakhstan's national satellite (Kazsat 1, now defunct) in the past and may adopt licensing procedures for VSAT (very small aperture) antennas that would be overly burdensome and expensive. Kazakhstan plans a new national satellite in 2011 or 2012. The U.S. satellite industry also argues that Kazakhstan should not restrict the transport of video programming via foreign satellites, or limit the entities with whom it can contract directly for these services.

## **INVESTMENT BARRIERS**

Kazakhstan's 2003 Law on Investments provides the legal basis for foreign investment in Kazakhstan. In general, U.S. investors have concerns about the law's narrow definition of investment disputes, its lack of clear provisions for access to international arbitration, and certain aspects of investment contract stability guarantees.

The vast majority of foreign investment in Kazakhstan is in the oil and gas sector. The government remains eager to do business with international companies, but increasingly has emphasized the importance of "local content" in purchases of goods and services for petroleum operations. For example, a new draft Law on Subsoil and Subsoil Use, which may be adopted in early 2010, contains explicit requirements regarding the local purchase of goods and services for all investments in offshore oil and gas

## **FOREIGN TRADE BARRIERS**

exploration and production. The methodology to calculate local content is not well defined and Kazakhstani goods and services do not always fully comply with international standards. The draft subsoil law would also require that U.S. companies enter into a joint venture with KazMunayGas, the national oil company, which would own a minimum 51 percent share in all new exploration and production contracts.

The proposed legislation would also require separate contracts for exploration and production operations, put shorter time limits on exploration contracts, enhance the government's authority to terminate contracts not in compliance with the law, and require tax stability clauses in individual contracts to be approved by parliament. In addition, under the terms of the legislation, no future contracts would be structured as production sharing agreements (PSAs), which allow companies to recoup capital expenditures before making royalty payments to the government.

The draft law also includes a preemption clause that guarantees Kazakhstan the right of first refusal when a party seeks to sell any part of its stake in a mineral resource extraction project. The proposed draft also fully incorporates an October 2007 amendment to the current subsoil law which allows the government to amend existing subsoil contracts deemed to be of "strategic significance" – or even to terminate such contracts – where the economic interests of Kazakhstan are deemed to create a "national security risk."

On August 1, 2009, the government passed Decree No.1213 on "Approving the List of Subsoil Fields having Strategic Significance." The list includes over 100 oil and gas fields, including Tengiz, Kashagan, and Karachaganak. This Decree authorizes the government to amend contracts if it determines that the actions of a subsoil user could lead to a substantial change in Kazakhstan's economic interests or could threaten Kazakhstan's national security. The Decree provides no further guidance on how the government will determine whether there is a substantial change in economic interests or whether there is a threat to national security.

Kazakhstan's law allows citizens of Kazakhstan and foreigners to own land under commercial and noncommercial buildings, including dwellings and associated land. Such land may also be leased for up to 49 years. The land code, enacted in June 2003, for the first time allows private ownership by Kazakhstan's citizens of agricultural land, in addition to industrial, commercial, and residential land. An amendment enacted in July 2007 extends the right to own agricultural land to Kazakhstani owned businesses as well. Foreigners still may only lease agricultural land for up to 10 years.

## **OTHER BARRIERS**

There are other structural barriers to investment in Kazakhstan, including a weak system of business law, a lack of an effective judicial system for breach of contract resolution, and an unwieldy government bureaucracy.

In addition, there is a burdensome tax monitoring system for all companies operating in Kazakhstan. Many companies report the need to maintain excessively large staffs in Kazakhstan to deal with the cumbersome tax system and frequent inspections. The actions of tax and various regulatory authorities, as well as actions to enforce environmental regulations, can be unpredictable. The government has, on occasion, initiated criminal cases against local employees of foreign firms. Kazakhstani authorities often require, as part of a foreign firm's contract with the government, that the firm contribute to social programs for local communities.

Widespread corruption at all levels of government is also seen as a barrier to trade and investment in Kazakhstan. It reportedly affects nearly all aspects of doing business in Kazakhstan, including customs clearance, registration, employment of locals and foreigners, payment of taxes, and the judicial system.



# KENYA

## TRADE SUMMARY

The U.S. goods trade surplus with Kenya was \$374 million in 2009, an increase of \$275 million from 2008. U.S. goods exports in 2009 were \$654 million, up 47.9 percent from the previous year. Corresponding U.S. imports from Kenya were \$281 million, down 18.3 percent. Kenya is currently the 83rd largest export market for U.S. goods.

The stock of U.S. foreign direct investment in Kenya was \$183 million in 2008 (latest data available), down from \$193 million in 2007.

## IMPORT POLICIES

### Tariffs

Kenya is a member of the World Trade Organization (WTO), the Common Market for Eastern and Southern Africa (COMESA), and the East African Community (EAC). High import tariffs and Kenya's value added tax (VAT) impede trade, especially in the agricultural sector. Kenya's import regulations on agricultural products are sometimes altered to reflect fluctuations in domestic supply and demand as well as political factors. According to the WTO, Kenya's average applied tariff rate was 12.6 percent in 2008.

Kenya applies the EAC Customs Union Common External Tariff, which includes three tariff bands: zero duty for raw materials and inputs; 10 percent for processed or manufactured inputs; and 25 percent for finished products. A selected list of sensitive items, comprising 58 tariff lines, has rates above 25 percent, including milk and milk products, corn, popcorn, rice, wheat, and wheat flour. For a few products, the tariff varies in different EAC countries.

Due to continuing concerns about food security, the Kenyan government is permitting duty-free importation of white maize through June 2010. Corn imported from outside COMESA is normally assessed a 50 percent *ad valorem* tariff, a rate which is not bound in the WTO. The Minister of Agriculture also set the value added tax on bread, wheat flour, milk, rice, and corn flour at zero. In an effort to ensure sufficient cornmeal, in mid-October 2008, the government placed a ban on the export of maize to prevent a further shortfall in supply. The export ban on maize is scheduled to end in June 2010.

While the U.S. Government welcomed the simplification of the tariff system that resulted from the establishment of the EAC Customs Union in 2005, the United States has raised concerns with Kenya and other EAC members about tariff increases introduced on several U.S. exports. The increased tariffs included a 10 percent tariff on previously duty-free unshelled almonds and a 25 percent tariff for shelled almonds and other nuts that had previously been 15 percent. In addition, in June 2009, the Kenyan government raised the duty on imported wheat from 10 percent to 25 percent *ad valorem*. However, the import tariff on secondhand clothing was reduced from \$0.30/kg or 45 percent, whichever is higher, to \$0.20/kg or 35 percent.

### Nontariff Measures

Kenya has removed many nontariff measures that affect U.S. exports. Kenya justifies those import controls still in existence as necessary to address health, environmental, and security concerns. All

## FOREIGN TRADE BARRIERS

Kenyan importers pay an import declaration fee set at 2.25 percent of the customs value of imports and are required to have the following documents: Pre-export Verification of Conformity, a Certificate of Conformity, International Standard Mark, and valid *pro forma* invoices from the exporting firm.

Kenyan law stipulates that all licensed importers of petroleum products participate in a crude processing scheme. As a result, the Kenya Petroleum Refinery Ltd, a parastatal entity, is assured of receiving 1.6 million tons of crude oil for refining each year. This represents approximately half of the total petroleum demand in Kenya. Of the remaining demand, 35 percent is purchased using a tendering system, and 15 percent is purchased outside of tendering requirements.

### **Customs Procedures**

Numerous bureaucratic procedures at the Port of Mombasa significantly increase the cost of imported goods. Importers are subjected to excessive inspection and clearance procedures by multiple agencies including customs, police, ports, and standards inspection agencies. These inspection and clearance procedures also create additional opportunities for graft. Each day's delay for a truck costs its owner approximately \$400 and for a ship costs its owner about \$25,000.

### **EXPORT SUBSIDIES AND OTHER EXPORT PROMOTION PROGRAMS**

Kenya maintains a Manufacturing Under Bond (MUB) program that is designed to encourage manufacturing for export by exempting enterprises operating under the program from import duties and VAT on imported plant, machinery, equipment, raw materials, and other imported inputs. The program also provides a 100 percent investment allowance on plant, machinery, equipment, and buildings. Goods produced under the MUB system are expected to be exported. If not, they are subject to a surcharge of 2.5 percent and imported inputs used in their production are subject to all other tariffs and other import charges. The program is open to both local and foreign investors.

Firms operating in Kenya's Export Processing Zones (EPZ) are provided a 10 year corporate tax holiday and 25 percent tax rate thereafter; a 10 year withholding tax holiday on dividend remittance; duty and VAT exemption on all inputs except motor vehicles; 100 percent investment deduction on capital expenditures within 20 years; stamp duty exemption; exemption from various Kenyan laws; exemption from pre-shipment inspection; on-site customs inspection; and work permits for senior expatriate staff. Manufacturers and service providers are allowed to sell up to 20 percent of their output on the domestic market. However, they are liable for all taxes on products sold domestically plus a 2.5 percent penalty.

### **GOVERNMENT PROCUREMENT**

In 2005, Kenya enacted the Public Procurement and Disposal Act, which provides for a Public Procurement Oversight Authority. The Authority was established on January 1, 2006. Its nine member Oversight Advisory Board is appointed by the Minister of Finance and approved by Parliament.

The Public Procurement and Disposal Act is designed to make procurement more transparent and accountable and establishes penalties for violations of its provisions. It is a response to a number of recent national security-related procurements that turned into high profile corruption cases. The Act provides that procurement agencies may carry out an annual update of pre-qualified firms. It allows for exclusive preferences to Kenyan citizens where the funding is 100 percent from the government of Kenya or a Kenyan state-related entity and the amounts are below 50 million Kenyan shillings (approximately \$650,000) for goods or services and 200 million Kenyan shillings (approximately \$2.6 million) for public

## **FOREIGN TRADE BARRIERS**

works. It also sets margins of preference: 15 percent in evaluation of bids for goods manufactured, mined, extracted, or grown in Kenya; 6 percent in cases where locals have below 20 percent of shareholdings; and 8 percent in cases where locals have shareholdings between 20 percent to 50 percent. The Act allows for restricted tendering under certain conditions, such as when the complex or specialized nature of the goods or services requires the pre-qualification of contractors. Restrictions can also be imposed if the time and costs required to examine and evaluate a large number of tenders would be disproportionate to the value of the tender.

The Supplies Management and Practitioners Bill of 2006 became law in October 2007. It addresses a loophole left by the Public Procurement and Disposal Act by specifying that only a procurement professional may be entrusted with the responsibility of procurement in any public entity.

U.S. firms have experienced little success in bidding on government projects in Kenya despite technical proficiency and reasonably priced bids. Foreign firms, some without track records, that have won government contracts have partnered with well-connected Kenyan firms.

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

## **INTELLECTUAL PROPERTY RIGHTS (IPR) PROTECTION**

Kenyan government enforcement of IPR continues to be a serious challenge. Pirated and counterfeit products in Kenya, mostly imported from Asia, present a major impediment to U.S. business interests in the country. Imported drugs, shoes, textile products, office supplies, tubes and tires, batteries, shoe polish, soaps, and detergents are the most commonly counterfeited items.

According to a survey released by the Kenya Association of Manufacturers (KAM) in late October 2008, piracy and counterfeiting of business software, music, consumer goods, and pharmaceuticals in Kenya cost firms about \$715 million in lost sales annually. KAM estimates the government loses over \$270 million in potential taxes.

The Pharmaceutical Society of Kenya contends that over 50 percent of anti-malaria drugs sold in Kenya are counterfeit. A random survey by the National Quality Control Laboratories and the Pharmacy and Poisons Board concluded that 30 percent of all drugs in Kenya are counterfeit.

Kenya's EPZs have served as a conduit for counterfeit and sub-standard goods. These products enter the EPZ ostensibly as sub-assembly or raw materials, but are actually finished products. These counterfeit and sub-standard goods also end up in the Kenyan marketplace without paying the necessary taxes. Batteries, in particular, have been a problematic product in the EPZs.

The Kenya Copyright Board (KCB) has the authority to inspect, seize, and detain suspect articles and to prosecute offenses. The KCB is severely understaffed with only three prosecutors and two police officers detailed to the organization. The KCB continues to work jointly with U.S. rights holders in conducting raids.

Kenyan artists have formed organizations to raise the awareness of intellectual property rights and to lobby the government for better enforcement. Two of the most active groups are the Music Copyright Society of Kenya and Kopiken. Kenya's Music Copyright Society claimed in September 2008 that 90 percent of its potential earnings are lost to piracy and urged the Kenya Revenue Authority (KRA) to

## **FOREIGN TRADE BARRIERS**

require authentication stickers on musicians' releases. IPR enforcement against pirated Kenyan and foreign works remains weak.

The Anti-Counterfeit Bill of 2008 passed Parliament in December 2008. Long sought by the business community, the bill provides for the creation of an Anti-Counterfeit Agency (ACA) and strengthens the ability of law enforcement agencies to investigate and prosecute manufacturers and distributors of counterfeit and pirated goods. However, allegedly due to political infighting, the ACA has not been established. KAM continues its strenuous efforts to increase government focus on the counterfeit and piracy issues which impact virtually every legitimate manufacturer in Kenya. In response, local authorities working with U.S. rights holders have seized more than 9,000 counterfeits in Kenya since November 2008.

## **INVESTMENT BARRIERS**

Although Kenya's judicial system is working to improve its efficiency and timeliness, the system is still burdened by a backlog of cases, including those that are investment-related. Perceived corruption further reduces the credibility of the judicial system in Kenya. Companies cite these deficiencies as an obstacle to investment, especially since these problems make financial institutions reluctant to provide loans and charge higher interest rates when they do.

A law passed in 2007 reduced the limit on foreign ownership (personal or corporate) of firms listed on the Nairobi Stock Exchange (NSE) from 75 percent to 60 percent. A grandfather clause allows firms that exceed the new limits to maintain (or reduce) but not to increase its share. Foreign investors are allowed to increase their investment with prior written approval from the Capital Market Authority if the shares reserved for local investors are not fully subscribed.

Foreign brokerage companies and fund management firms must be locally registered companies, with Kenyan ownership of at least 30 percent and 51 percent, respectively. Foreign ownership of equity in insurance and telecommunications companies is restricted to 66.7 percent and 80 percent, respectively. However, telecommunications companies are given a three year grace period to find local investors to achieve the local ownership requirements and the local ownership policy may be scrapped entirely. Foreign equity in companies engaged in fishing activities is restricted to 49 percent of the voting shares as stipulated by the Fisheries Act of 1991.

Foreigners are not permitted to hold a freehold land title anywhere in the country, but can be granted leasehold titles, normally 99 years for land in towns or cities and coastal beachfronts and 999 years elsewhere. The cumbersome and opaque process required to purchase land raises concerns about security of title due to past abuses relating to the distribution and redistribution of public land.

Kenya has been slow to open public infrastructure to competition because the state-owned companies that control infrastructure are considered "strategic" enterprises. The reform and partial privatization of the telecommunications, power, and rail sectors have fallen behind schedule but are proceeding. A new Public-Private Partnership law failed to pass Parliament in 2008. However, the Treasury ministry has developed some rules and regulations and is in the process of developing a Secretariat to help review and regulate the partnerships.

Kenya applies fees and security bonds in an attempt to discourage the employment of foreign labor. New foreign investors with expatriate staff are required to submit plans for the gradual phasing out of non-Kenyan employees. The Licensing Act of 2007 has so far eliminated and/or simplified 694 business

## **FOREIGN TRADE BARRIERS**



license requirements. In 2008, the government also reduced the number of licenses to set up a business from 300 to 16 and is reviewing another 337 business license requirements. The Business Regulation Act of 2007 established a Business Regulatory Reform Unit within the Ministry of Finance to continue the deregulation process. In 2009, Kenya launched a national electronic registry to ease business license processing and help improve transparency.

### **OTHER BARRIERS**

Corruption remains a substantial trade barrier in Kenya. U.S. firms faced with corrupt practices in foreign countries cannot effectively compete with other firms who are willing to turn a blind eye to corruption. A number of U.S. firms have exited Kenya at least in part due to corruption issues. The 2008 Business Climate Index of the East African Business Council revealed a deteriorating business environment in the region with over \$10 million paid in bribes to police and customs officials every year.

According to the International Finance Corporation's Investment Climate Assessment for Kenya, corruption was rated as a severe or major obstacle by three-quarters of firms surveyed, with two-thirds of respondents stating they were expected to pay bribes for government contracts.



# KOREA

## TRADE SUMMARY

The U.S. goods trade deficit with Korea was \$10.6 billion in 2009, down \$2.8 billion from 2008. U.S. goods exports in 2009 were \$28.6 billion, down 17.4 percent from the previous year. Corresponding U.S. imports from Korea were \$39.2 billion, down 18.4 percent. Korea is currently the 8th largest export market for U.S. goods.

U.S. exports of private commercial services (*i.e.*, excluding military and government) to Korea were \$14.3 billion in 2008 (latest data available), and U.S. imports were \$7.2 billion. Sales of services in Korea by majority U.S.-owned affiliates were \$10.8 billion in 2007 (latest data available), while sales of services in the United States by majority Korea-owned firms were \$5.3 billion.

The stock of U.S. foreign direct investment (FDI) in Korea was \$27.7 billion in 2008 (latest data available), up from \$26.9 billion in 2007. U.S. FDI in Korea is led by the manufacturing, finance/insurance, and wholesale trade sectors.

## FREE TRADE AGREEMENT (FTA)

The United States and the Republic of Korea signed the United States-Korea Free Trade Agreement (KORUS FTA) on June 30, 2007. The KORUS FTA is the most commercially significant free trade agreement the United States has concluded in 17 years. If approved and implemented, the KORUS FTA would provide preferential access for U.S. businesses, farmers, ranchers, services providers, and workers to the United States' 8th largest export market, help solidify the two countries' long-standing alliance, and underscore the U.S. commitment to, and engagement in, the Asia-Pacific region. The Administration believes this FTA has the potential to bring significant economic and strategic benefits for the United States and is committed to working together with Korea to move the KORUS FTA forward. This will involve working through a number of outstanding issues, particularly related to autos and beef. Concerns have also been raised regarding nontariff measures more generally. In 2009, the United States Government initiated a thorough review of the FTA and is currently consulting closely with Congress and U.S. stakeholders to identify the most effective approaches for dealing with these concerns.

Under the FTA, nearly 95 percent of bilateral trade in consumer and industrial products would become duty free within three years of the date the FTA enters into force, and most remaining tariffs would be eliminated within 10 years. The U.S. International Trade Commission estimates that the reduction of Korean tariffs and tariff-rate quotas on goods alone would add \$10 billion to \$12 billion to annual U.S. Gross Domestic Product and around \$10 billion to annual merchandise exports to Korea. For agricultural products, the FTA would immediately eliminate or phase out tariffs and quotas on a broad range of products, with almost two-thirds (by value) of Korea's agriculture imports from the United States becoming duty free upon entry into force. For services, the FTA would provide meaningful market access commitments that extend across virtually all major service sectors, including greater and more secure access for international delivery services and the opening up of the Korean market for foreign legal consulting services. In the area of financial services, the FTA would increase access to the Korean market and ensure greater transparency and fair treatment for U.S. suppliers of financial services.

The FTA would address nontariff barriers in a wide range of sectors and includes strong provisions on competition policy, labor and environment, and transparency and regulatory due process. The KORUS

## FOREIGN TRADE BARRIERS

FTA would also provide U.S. suppliers with greater access to the Korean government procurement market.

## **IMPORT POLICIES**

### **Tariffs and Taxes**

According to data obtained through the WTO, Korea's average MFN applied tariff rate in 2008 was 12.2 percent for all products (49 percent for agricultural products and 6.6 percent for non-agricultural products) and Korea has bound 94.5 percent of its tariff lines.

Korea maintains particularly high tariffs on a number of high value agricultural and fishery products. Korea imposes tariff rates of 30 percent on most nuts and 35 percent and higher on most dairy products. Pears, table grapes, juices, starches and peanut butter are subject to tariffs from 45 to 54 percent. Peanuts and tea are subject to some of the highest tariffs ranging from 230 percent tariff for peanuts to 513 percent and 754 percent respectively for green tea and red ginseng tea. Korea also imposes high tariffs on other products of interest to U.S. industry despite having little or no domestic production, including cherries, certain distilled spirits, frozen corn, frozen French fries, pepperoni, and prepared or mashed potatoes.

Korea has established tariff-rate quotas (TRQs) intended to provide minimum access to previously closed markets or to maintain pre-Uruguay Round access. In-quota tariff rates may be very low or zero, but the over-quota tariff rates are often prohibitive. For example, natural and artificial honey are subject to an over-quota tariff rate of 243 percent; skim and whole milk powder - 176 percent; barley - 324 percent; malting barley - 513 percent; potatoes and potato preparations - more than 304 percent; and popcorn - 630 percent. In addition, for some agricultural products, such as corn grits, popcorn, and soy flakes, Korea aggregates raw and value added products under the same quota. Korean domestic industry groups, which administer the quotas, frequently allocate the more favorable in-quota tariff rate to their larger members that import raw ingredients

Korea uses "adjustment tariffs" and compounded taxes on some agricultural, fishery, and plywood products, which increase the applied tariff rates. Most of the adjustment tariffs are imposed on agricultural and seafood products, including frozen croaker, which are products of interest to U.S. exporters. In 2009, Korea renewed adjustment tariffs on 15 items and reduced the tariff rates for 6 of these 15 items.

Korea has eliminated tariffs on most or all products in the following sectors: paper, toys, steel, furniture, agricultural equipment, construction equipment, and information technology products (as defined by the WTO Information Technology Agreement). Korea has harmonized its chemical tariffs to rates of zero percent, 5.5 percent, or 6.5 percent, depending on the product. Bound tariffs, *i.e.*, the level that generally cannot be exceeded under WTO rules, on textile and apparel products remain relatively high: 30 percent on several man-made fibers and yarns; 30 percent on many fabrics and most made-up and miscellaneous goods (e.g., pillow cases and floor coverings); and 35 percent on most apparel items.

### **Rice**

In the Uruguay Round, Korea negotiated a 10-year exception to "tariffication" of rice imports in return for establishing a Minimum Market Access (MMA) quota that was set to expire at the end of 2004. Korea subsequently negotiated a 10-year extension of the MMA arrangement that was approved by its trading partners in April 2005. The extension called for Korea to increase its total rice imports over the next 10

years, from 225,575 metric tons in 2005 to 408,700 metric tons in 2014. Along with the country specific quota commitments to purchase minimum amounts of imports from China, Thailand, and Australia, Korea also agreed to purchase at least 50,076 metric tons annually from the United States until 2014. In addition, the quality of access has improved as rice marketed to consumers as table rice was for the first time included as a portion of the MMA quota. The table rice portion increases from 10 percent of the quota in 2005 to 30 percent in 2010.

Access to the Korean rice market for U.S. exports has improved significantly under this agreement. Under the 2009 MMA, the U.S. rice industry obtained 27 percent of Korea's total MMA imports by winning tenders for 81,000 metric tons (milled), valued at \$64 million. This amount is 62 percent over the United States' baseline of 50,076 metric tons for the country specific quota. In addition, from the total U.S.-awarded amount, nearly 24,000 metric tons were sold as table rice in 2009.

## **Beef**

Korea reopened its market for imports of U.S. beef in June 2008 and since then has provided reliable market access for U.S. beef and beef products. In 2009, U.S. exports of beef and beef products to Korea reached 55,540 metric tons, valued at \$216 million, making Korea our fourth largest beef export market.

## **GOVERNMENT PROCUREMENT**

Korea is a signatory to the WTO Agreement on Government Procurement (GPA). For procurement of construction services by sub-central and government enterprises covered under the GPA, Korea applies a threshold of over \$23 million, which is three times the threshold applied by the United States.

### **Encryption Technology for Public Procurement of VoIP Equipment**

In December 2008, the Korean government announced long term plans to switch its government wire line telephone systems from a standard circuit-switched system to an Internet protocol based system (Voice over Internet Protocol, or VoIP). To ensure that this transition does not result in diminished security, Korea also issued guidelines recommending that agencies procure and use encryption-capable systems. The Korean government's plans in this regard would place them out in front internationally in large-scale government adoption of VoIP systems.

As part of its VoIP plan, the Korean government considered mandating that government agencies purchase equipment that contains encryption technology based on a Korean encryption standard called "ARIA," despite the availability and wide use of international standards for encryption of VoIP.

Given the considerable time expense it would require for U.S. suppliers to comply with the proposed ARIA mandate, since their equipment and software are built to international standards and Korea is the only country to use ARIA for such systems, the U.S. Government raised these concerns with the Korean government. In May 2009, the Korean government announced it would limit mandatory use of ARIA to ten Korean government agencies responsible for foreign and national security affairs and would allow other public entities to use other encryption algorithms. Furthermore, the Korean government decided that in implementing the encryption policy, the ten national security agencies required to use ARIA for VoIP would be responsible for ensuring their ability to communicate with entities not using ARIA (i.e. there would be no need for other public agencies to obtain ARIA-based equipment in order to ensure interoperability with those nine agencies).

Despite the May 2009 announcement, U.S. equipment suppliers are continuing to face difficulties in selling VoIP equipment to Korean public sector entities, due in part to a continued widespread perception among procuring offices that ARIA is required. We will continue to work with Korea to ensure U.S. suppliers have fair, transparent access to the public sector market.

In July 2009, Korea also implemented a new regulation stipulating that encrypted network equipment must be certified by Korea's National Intelligence Service (NIS) in order to be procured by public sector agencies and that NIS will only certify encryption modules based on ARIA and SEED encryption algorithms, not the AES algorithm that is in most widespread use worldwide. Some U.S. suppliers have been unable to sell virtual private network and firewall systems due to this restriction. We will continue to urge Korea to ensure that widely used international standard-based equipment has full access to Korea's public sector market.

### **INDUSTRIAL SUBSIDY POLICY**

Korea's past promotion and support for its semiconductor industry, which eventually resulted in the imposition of countervailing duties by the United States, the European Union, and Japan, is emblematic of concerns in this area.

Historically, the Korea Development Bank (KDB), which as a government-owned entity is not necessarily bound by the same constraints as commercial institutions, has been one of the government's main sources of policy-directed lending to favored industries. The Lee Myung-bak Administration plans to privatize a wide range of state-owned enterprises, including the KDB. As a first step, Korea adopted a holding company system in October 2009 and divided the Korean Development Bank (KDB) into two new companies: (1) KDB; and (2) the Korea Finance Corporation (KFC). While still government-owned, the KDB is to operate as a commercial bank under this restructuring plan and the KFC will operate as a policy lending bank. The Korean government plans to list the KDB on the Seoul bourse in 2011 and float stock in the foreign exchange in 2012. The U.S. Government will continue to monitor the lending policies of the KDB and other government-owned or affiliated financial institutions.

### **INTELLECTUAL PROPERTY RIGHTS (IPR) PROTECTION**

Korea's progress on Intellectual Property Rights protection and enforcement led to its removal from the Special 301 Watch List in 2009. The importance the Korean government places on IPR protection has increased dramatically in recent years, a development that has accompanied Korea's shift to become a significant creator of intellectual property. Nevertheless, concerns remain with elevated levels of online piracy, corporate end-user software piracy, book piracy in universities, counterfeiting of consumer products, and a lack of coordination between Korean health and IPR authorities to prevent the issuance of marketing approvals for patent infringing products.

The digitization of Korea's economy has significantly enhanced the ability to produce and spread unauthorized reproductions of copyrighted materials. Korea's Ministry of Culture, Sports and Tourism (MCST) amended the Copyright Law in July 2009 to include a "Three Strikes" program against illegal file-sharing. Under the amended law, users who download illegally will be sent a warning letter, which counts as a "strike". According to the law, three "strikes" will lead to a suspension of that user's internet account by the Internet Service Provider. In December 2009, MCST reported that the Korea Copyright Commission has issued 19,800 corrective recommendations since the law was amended. No corrective orders to suspend a user's internet account have reportedly been issued.

## **FOREIGN TRADE BARRIERS**

In 2009, Korea's government, led by MCST, continued its progress on IPR enforcement in several areas. MCST has made efforts to ensure that all central and municipal government agencies are using properly licensed software and next year plans to carry out a similar review at the corporate level. Additionally, MCST held its second annual 100-day campaign against off-line pirated copyrighted material, known as the "100 Day Seoul Clean Project," from April until August of 2009. MCST noted it plans to continue this project on an annual basis. During the 100 Day Seoul Clean Project, MCST and Korean law enforcement raided street vendors and stores selling pirated DVDs, CDs, software, and books. According to MCST's statistics, seizures of pirated material increased 24 percent to 214,199 illegal items, and prosecutions increased 46 percent to 544 cases, compared to the numbers from last year's campaign.

Korea has also demonstrated a renewed commitment to investigating and prosecuting "topsites" (password-protected sites that are the initial depository of pirated material, where other pirates go to access the pirated material) and has indicated a commitment to carrying out additional enforcement activities against book piracy on Korean campuses.

## **SERVICES BARRIERS**

### **Screen and Broadcast Quotas**

Korea maintains a screen quota for films requiring that any movie screen show domestic films at least 73 days per year – a 50 percent cut from the quota of 146 days that existed until July 2006. Korea also maintains a variety of foreign content quotas for terrestrial, cable and satellite television, radio broadcasting, and Internet Protocol television. Overall, foreign programs may not exceed 20 percent of terrestrial television or radio broadcast time or 50 percent of cable or satellite broadcast time on a quarterly basis. Within those overall quotas, Korea maintains annual quotas that further limit broadcast time for foreign films to 75 percent of all films for terrestrial, cable, and satellite broadcasts; foreign animation to 55 percent of all animation content for terrestrial broadcast and 65 percent of all animation content for cable and satellite broadcasts; and popular music to 40 percent of all music content. Another quota, on a quarterly basis, limits content from any one country to 60 percent of the quota available to foreign films, animation, or music.

### **Restrictions on Voiceovers and Local Advertisements**

The Korean Broadcasting Commission's guidelines for implementation of the Broadcasting Act contain restrictions on voiceovers (dubbing) and local advertising for foreign retransmission channels. These prohibitions continue to be of concern to U.S. industry, as they limit the profitability of such channels in the Korean market.

### **Legal Services**

On February 27, 2009, the Korea National Assembly passed the Foreign Legal Consultant Act (FLCA), creating a partial opening of the domestic legal services. Under the new law, law firms from countries that have a free trade agreement with South Korea will be able to start consultancy businesses in Korea. The laws allow foreign attorneys with a minimum of three years of work experience to provide consulting services on the law of the jurisdiction in which they are licensed. Before the FLCA, only Korean-licensed lawyers could provide any form of legal advice in Korea, including advice on foreign law.

The Korean government plans to open its legal services market in several stages. The first step created a legal status for foreign legal consultants and allowed foreign law firms to open offices in Korea.

## **FOREIGN TRADE BARRIERS**

Subsequent liberalization stages would address the ability of foreign-licensed lawyers and firms to associate with, partner with, and hire Korean-licensed lawyers.

### **Insurance and Banking**

Korea is the second largest insurance market in Asia and the seventh largest in the world. Korea's laws and regulations permit foreign financial service providers to establish subsidiaries or branches in Korea. Financial services providers see Korea's restrictions on cross-border financial services and unwillingness to liberalize this sector as hindering Korea's progress toward becoming a regional financial hub.

Insurance suppliers remain concerned that Korea Post (a government agency), the National Agricultural Cooperative Federation, and the National Federation of Fisheries Cooperative continue to operate at an advantage in the Korean insurance market because, unlike private insurers, they are not regulated by the Korean Financial Services Commission or the Financial Supervisory Service. This can provide these entities with a competitive advantage over private insurers.

Lack of transparency in the financial regulatory system is a widespread problem and continues to affect financial services suppliers. Improvement in notice and comment periods is necessary for foreign providers to have input into the regulations that will be imposed upon them. Financial services suppliers also remain concerned about regulatory oversight in the form of vague "administrative guidance." Although Korea made some changes in issuing administrative guidance in 2007, financial services suppliers seek additional transparency in the process. The National Assembly adopted the Investment Services and Capital Markets Act in June 2007 and most provisions of the Act entered into force on February 4, 2009. The Korean government responded to U.S. concerns and delayed implementation of some portions of the Act while launching a process intended to address potential barriers to cross-border financial transactions. The Act allows financial services companies to introduce new products unless explicitly prohibited by law and establishes a clear legal basis for newcomers to apply for commercial licenses. In the amendments to the Enforcement Decree of the Financial Investment Services and Capital Markets Act, the government relaxed its requirements regarding private equity funds and introduced a special purpose Acquisition Company in September 2009.

Korea's strict data privacy rules require financial services providers to locate their servers physically in Korea, thus hampering foreign suppliers' ability to take advantage of economies of scale in the region to perform data processing in their daily business activity.

### **Telecommunications**

Korea currently prohibits foreign satellite service providers from selling services (e.g., transmission capacity) directly to end users without going through a company established in Korea. Given investment restrictions in place (see below), and the fact that establishing a local presence may not make economic sense, this prohibition significantly restricts the ability of foreign satellite service providers to compete in the Korean market.

The National Assembly passed legislation in December 2007 to regulate the convergence technology Internet Protocol television (IPTV). In 2008, the newly-formed Korea Communications Commission (KCC) began issuing implementing regulations. The U.S. Government is closely monitoring this process with regard to transparency and due process. U.S. companies view some of the licensing requirements under discussion as market restricting, (e.g., applying content quotas to real-time IPTV).



## **INVESTMENT BARRIERS**

During his fall 2007 presidential election campaign, one of the key planks of President Lee Myung-bak's economic platform was to take steps to attract more foreign investment to Korea. Since President Lee assumed office in February 2008, foreign investors have noted a greater interest in addressing issues of concern and in removing barriers or disincentives to investment in Korea. The Korean government has maintained this policy despite the increasing global financial and economic turmoil that began in the second half of 2008 and continued into 2009.

Capital market reforms have eliminated or raised ceilings on aggregate foreign equity ownership, individual foreign ownership, and foreign investment in the government, corporate, and special bond markets. These reforms have also liberalized foreign purchases of short-term financial instruments issued by corporate and financial institutions. Some U.S. investors have raised concerns about a lack of transparency in investment-related regulatory decisions, including by tax authorities, raising concerns about possible discrimination.

Korea maintains a 49 percent limit on foreign shareholdings of facilities-based telecommunications operators. Foreign investment is not permitted in terrestrial broadcast television operations and the Korean government also restricts foreign ownership of cable television-related system operators, network operators, and program providers to 49 percent. For satellite broadcasts, foreign participation is limited to 33 percent. Foreign satellite retransmission channels are limited to 20 percent of the total number of operating channels.

In addition to the numerous investment restrictions in key services sectors described above, as well as in the telecommunications sector, Korea maintains other important restrictions on foreign investment. Specifically, Korea prohibits foreign investment in rice and barley farming and imposes a 50 percent foreign equity limitation on meat wholesaling. Moreover, Korea limits foreign investment in electric power generation, distribution, and sales to 50 percent. It also restricts foreign investment in the areas of news agency services and publishing and printing, where it has foreign equity limitations of 30 percent for enterprises publishing newspapers and 50 percent for enterprises publishing other types of periodicals.

On July 31, 2009, the Finance Ministry announced plans to sell a number of state-owned companies, including the Korea Real Estate (KOREIT), Grand Korea Leisure Corporation, Farmland Improvement & Modernization, Korea Asset Investment Trust Co. Ltd., Korea District Heating Corp., and Korea Power Engineering Co. (*See the Industrial Subsidies section for further detail on developments related to the Korea Development Bank.*).

The Korean government also operates several Free Economic Zones (FEZs) and has provided a range of investment incentives including tax breaks, tariff free importation, relaxed labor rules, and improved living conditions for expatriates in areas such as housing, education, and medical services. The Korean government has promoted these zones as an important step in making Korea's business environment more open, liberal, and responsive to economic needs.

## **ANTICOMPETITIVE PRACTICES**

The Korea Fair Trade Commission (KFTC) has played an increasingly active role in enforcing Korea's competition law and in advocating for regulatory reform and corporate restructuring. In addition to its authority to conduct investigations and to impose penalties, including broad authority over corporate and

## **FOREIGN TRADE BARRIERS**

financial restructuring, the KFTC can levy heavy administrative fines for violations or for failure to cooperate with investigations.

A number of U.S. companies have expressed concerns that respondents in KFTC investigations have not been afforded a sufficient opportunity to review and respond to the evidence against them, including an opportunity to cross examine those who testify in KFTC investigatory hearings. Concerns have also been raised that procedural rules for KFTC hearings have not been sufficiently transparent and that the KFTC lacks authority to enter into settlement agreements with respondents by mutual agreement.

The KFTC has taken some steps to address these concerns. In March 2009, the KFTC amended its regulations to expand the rights of respondents by allowing respondents to request a resumption of hearings to submit new evidentiary material or if the complexity of the case warrants additional hearings. Furthermore, the examiner's recommended sanction (including details of the surcharge calculation) is now as a rule provided to the respondent along with the examiner's report. The KFTC also amended regulations to increase its operational transparency, requiring examiners to inform claimants promptly of its conclusions and the grounds for those conclusions. To increase transparency for respondents, the KFTC began implementing new procedures in February 2007, requiring the KFTC to provide a respondent with an official notice of investigation in writing, to provide the respondent with detailed information on the purpose, scope, and length of the investigation, and to entitle the respondent to refuse aspects of the investigation it believes goes beyond the notified scope and report any misconduct on the part of examiners.

## **OTHER BARRIERS**

### **Regulatory Reform and Transparency**

Korea has made some improvements to its rulemaking and regulatory system over the past few years. However, there remains a lack of transparency that cuts across various issues affecting U.S. firms in many different sectors. This continues to be one of the principal problems cited by U.S. businesses seeking to compete in the Korean market.

Korea's Administrative Procedures Act (APA) stipulates that the public comment period for draft regulations subject to the APA shall be no less than 20 days. However, in many cases, the 20-day minimum is insufficient. In addition, in many instances the final versions of regulations do not reflect the comments provided and often offer no explanation for why they were rejected.

### **Motor Vehicles**

Increased access to Korea's automotive market for U.S. suppliers remains a key priority for the U.S. Government. Korea maintains an eight percent tariff and a range of nontariff barriers, such as discriminatory taxes based on engine size, unique standards, inadequate regulatory transparency, and inadequate ability of stakeholders to provide input at an early stage into the development of regulations and standards.

In 2008, the Korean government implemented amendments to its system for certifying compliance with automotive emissions requirements. The amended regulation allows foreign automakers to certify that they meet Korean emissions requirements via submission of the manufacturers' own test data, eliminating the requirement for in-country testing or overseas tests witnessed by Korean regulators. The new certification process also applies to imports of off-road equipment.

## **FOREIGN TRADE BARRIERS**

The Korean government submitted the Low Carbon Green Growth Act to the National Assembly in early 2009. It was passed on December 29, 2009. Among other things, it requires the Korean government to begin regulating automotive CO2 emissions. On July 6, 2009, in anticipation of eventual passage of the Act, the Presidential Green Growth Committee (GGC) proposed raising Korea's fuel efficiency standard and introducing a carbon dioxide emissions standard for automobiles in order to implement the Act. The GCC proposal introduces a national average auto emission standard of 140 g/km of CO2 and an average fuel economy level of 17 km/l. Manufacturers and importers would be able to choose either standard to satisfy the requirement. Under the GGC recommendation, this new regime would be gradually phased in between 2012 and 2015.

U.S. automobile manufacturers have raised concerns with the GCC proposals. They have noted that at 17 km/l, the proposed new Korean fuel economy standard would be more stringent than the new proposed U.S. combined car and truck standard of 15.1 km/liter and that the GCC proposal's four year phase in period is shorter than the five year phase in period foreseen under the proposed U.S. regulation.

The Korean government is still at the initial stages of developing the regulations that would implement the Low Carbon Green Growth Act and the GGC's recommendations. While the U.S. Government supports Korea's efforts to respond effectively to the challenge of global climate change and energy conservation, it held several discussions with the Korean government in 2009, including at senior levels, to ensure that the specific implementing regulations are developed transparently, with full participation of U.S. and other foreign automakers, and include sufficient flexibility mechanisms to ensure that the final regulations are realistic, achievable, and fair. The Korean government has assured us that it will work closely with the U.S. government, as well as with U.S. and other foreign stakeholders, as it develops the implementing regulations.

### **Motorcycles**

Although progress has been made over the past several years to resolve U.S. concerns over Korea's noise standard on motorcycles, several market access issues remain, including a highway ban on motorcycles, tariff and tax levels, and the inability of motorcycle owners to obtain ownership titles and obtain financing for a motorcycle purchase that uses the motorcycle as collateral. The Korean National Police have commissioned a study on the safety of motorcycles on highways and results are expected in 2010. The U.S. Government continues to press Korea to eliminate the ban on riding large motorcycles on highways and to urge Korea to complete the study expeditiously and objectively.

### **Pharmaceuticals**

Cost containment measures under the Drug Expenditure Rationalization Plan (DERP), enacted in December 2006, continue to subject pharmaceutical products to downward price revisions. This affects not only drugs that have entered the market since DERP was adopted, but also products that were approved for reimbursement prior to DERP's adoption. The U.S. Government continues to urge Korea to refrain from implementing reimbursement policies that hinder the development and introduction of innovative pharmaceutical products and medical devices. Such policies not only discourage companies from efficiently introducing advanced medical products to the Korean market, but may also serve as a disincentive to investment in research and development.

In 2009, Korea's Ministry for Health, Welfare and Family Affairs (MHWFA) launched a Task Force on Drug Pricing and Distribution, and in February 2010, the Task Force announced its proposed measures to eliminate unethical business practices and to reduce reimbursement prices for drugs. While these

proposals have not yet been implemented, U.S. industry has raised concerns regarding transparency of the Task Force.

### **Medical Devices**

U.S. companies have continued to express concern that the lack of adequate transparency in the pricing and reimbursement decision making and regulatory processes has been an impediment to efficiently bringing medical devices to the Korean market.

In 2009, MHWFA announced its intention to replace the current reimbursement system for medical devices (which reimburses a new medical device at 90 percent of the present market price of the most similar product already in the domestic market) with a new re-evaluation system based on a single price for each “functional category” of products, with the stated goal of allowing premium pricing to reward innovation and improvement. To date, MHWFA has not yet released a final proposal. The U.S. Government has urged that MHWFA to develop and implement the new system in a transparent manner, with meaningful opportunities for affected stakeholders to provide input.

In July 2008 Korea adopted a healthcare technology assessment system for determining reimbursement eligibility for new medical devices. U.S. industry has raised concerns regarding the lack of adequate transparency regarding the criteria and methodology of the system and limited opportunities for stakeholder participation in developing and refining the system.

### **Distilled Spirits**

On July 1, 2008, Korea’s Liquor Tax Law was revised to provide a 50 percent tax reduction for certain “traditional liquors” including some forms of distilled and diluted spirits. This amendment raised concerns in U.S. industry because of its potential impact on trade by disadvantaging imported competing liquors that do not fall under the narrow category of “traditional liquors.” The Korean government provided assurances that the tax reductions apply only to small-volume producers of designated traditional liquors, that the total of potentially qualifying liquors amounts to less than 2 percent of Korea’s beverage alcohol market, and that there are no plans to expand the categories of beverage alcohol that would qualify for such tax reductions. The U.S. Government will continue to monitor Korean actions in this area.

# KUWAIT

## TRADE SUMMARY

The U.S. goods trade deficit with Kuwait was \$1.8 billion in 2009, down \$2.6 billion from 2008. U.S. goods exports in 2009 were \$2.0 billion, down 28.2 percent from the previous year. Corresponding U.S. imports from Kuwait were \$3.8 billion, down 46.7 percent. Kuwait is currently the 57th largest export market for U.S. goods.

The stock of U.S. foreign direct investment (FDI) in Kuwait was \$1.5 billion in 2008 (latest data available).

## IMPORT POLICIES

### Tariffs

As a member of the Gulf Cooperation Council (GCC), Kuwait applies the GCC common external tariff of 5 percent for most products, with a limited number of GCC-approved country-specific exceptions. Kuwait's exceptions include tobacco products, which are subject to a 100 percent tariff, and 417 food and agriculture items, which are duty-free.

Kuwait is not a signatory to the WTO Information Technology Agreement.

### Import Prohibitions and Licensing

Kuwait prohibits the importation of alcohol and pork products, and requires a special import license for firearms. Used medical equipment and automobiles over five years old cannot be imported. Also prohibited are any books, periodicals, or movies that insult religion and public morals, and all materials that promote political ideology.

### Documentation Requirements

The import clearance process in Kuwait has historically been time consuming, requiring extensive paperwork and involving numerous redundancies.

## GOVERNMENT PROCUREMENT

The "Public Tenders Law" (Law No. 37 of 1964) requires that any government procurement in Kuwait greater than KD5,000 (approximately \$18,500) be conducted through the Central Tenders Committee. The Kuwaiti government requires the purchase of local products where available and allows a 10 percent price advantage for local firms. Although the Council of Ministers increased this price advantage to 15 percent in 2004, it has not yet been implemented because the increase requires amendment of the GCC unified agreement, which has not yet occurred. Over the past few years several government tenders, including Kuwait Petroleum Corporation's fourth refinery project, have been cancelled or retendered, often at significant cost to the companies participating in the procurement.

Kuwait transformed its offset program into a mechanism for promoting foreign investment in 2002. Offset obligations apply to military contracts equal to or greater than KD3 million (approximately \$11

## FOREIGN TRADE BARRIERS

million), civilian contracts equal to or greater than KD10 million (approximately \$37 million), and oil and gas contracts (with the exception of exploration and production contracts). Offset obligations amount to 35 percent of contract value with offset multipliers being established to target investment in specified sectors of the Kuwaiti economy. Foreign contractors are subject to an unconditional financial guarantee equal to 6 percent of the contract value. Kuwait established the National Offset Company in 2006 to manage, enforce, and review all offset proposals. The National Offset Company launched the Offset Fund in 2007 with variable capital up to KD1 billion (approximately \$3.7 billion).

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

## **INTELLECTUAL PROPERTY RIGHTS (IPR) PROTECTION**

Kuwait was listed on the Watch List in the 2009 Special 301 report. Key concerns cited in the Report included Kuwait's failure for many years to draft and implement revised IPR legislation to implement the WTO TRIPS Agreement in areas such as copyrights, patents, trademarks, geographical indications, customs, and the protection of undisclosed test or other data generated to obtain marketing approval for pharmaceutical products. Concerns also include a lack of deterrent criminal penalties, high rates of piracy and counterfeiting, and the use of unauthorized computer software in private enterprises.

As part of the GCC Customs Union, the six Member States are preparing a common trademark law, as well as a common unfair competition law to protect from unfair commercial use undisclosed information submitted for marketing approval of pharmaceutical products. The United States is engaged in a dialogue with GCC technical experts to ensure that the trademark law and unfair competition law will facilitate Member States' implementation of international and bilateral obligations.

## **SERVICES BARRIERS**

### **Banking**

The Central Bank has granted licenses to ten foreign banks, eight of which have active operations in Kuwait. Foreign-owned banks are limited to one branch office and the branches are not allowed to compete in the retail banking sector but can only offer investment banking services. Foreign banks are subject to a maximum credit concentration equivalent to less than half the limit of the largest local bank, and are expressly prohibited from directing clients to borrow from branches of the bank located outside Kuwait or taking any other steps to facilitate such borrowing.

### **Agent and Distributor Rules**

According to Kuwait's Commercial Agencies Law of 1964, only Kuwaiti nationals and corporations may act as agents and distributors for foreign companies and exporters.

## **INVESTMENT BARRIERS**

Kuwait's investment climate is marked by major barriers to foreign direct investment, including limitations on foreign entities participating in the petroleum and real estate sectors, long bureaucratic delays in starting new enterprises, and a local business culture based on family relationships that often preclude foreign participation. The Parliament is skeptical of major deals involving foreign companies and can significantly delay or derail major projects. During 2009, a \$17.4 billion joint venture agreement between a U.S. investor and a subsidiary of the state-owned Kuwait Petroleum Corporation was canceled

## **FOREIGN TRADE BARRIERS**

by the Kuwaiti government after several weeks of relentless criticism by a number of Members of Parliament.

## **OTHER BARRIERS**

### **Corporate Tax Policies**

A number of U.S. companies received income tax bills from Kuwaiti tax authorities in 2005 although the companies had no commercial presence in Kuwait. Bills were typically sent to the companies' Kuwaiti distributors and often included years of back taxes. Some companies have challenged the tax in court, and others are working with the U.S. and Kuwaiti governments to seek a legislative or regulatory solution. Kuwaiti law and judicial decisions are ambiguous in defining what does or does not constitute a taxable presence in the country.





# LAOS

## TRADE SUMMARY

The U.S. goods trade deficit with Laos was \$23 million in 2009, down \$1 million from 2008. U.S. goods exports in 2009 were \$20 million, up 11.4 percent from the previous year. Corresponding U.S. imports from Laos were \$43 million, up 2.2 percent. Laos is currently the 181st largest export market for U.S. goods.

## IMPORT POLICIES

### Tariffs

Under the terms of the Agreement between the United States and the Lao People's Democratic Republic on Trade Relations or United States-Lao Bilateral Trade Agreement (BTA), which entered into force on February 4, 2005, the United States granted Normal Trade Relations treatment to products of Laos, and Laos committed to provide U.S. exports with preferential tariff rates on a range of products and to apply Laos' most-favored nation tariff treatment to the remainder of imports from the United States.

The United States continues to closely monitor the application of BTA and MFN tariff rates to U.S. products.

### Nontariff Barriers

Laos continues to implement provisions of the BTA in an effort to modernize its economy and adopt policies supportive of the private sector. In some areas, implementation of the BTA has been slow and several key nontariff barriers have been identified.

*Import Restrictions and Licensing Requirements:* All imports are subject to licensing requirements, and most licenses are non-automatic. Among the wide range of products subject to these non-automatic licensing requirements are food and animal feeds, fuels and lubricants, steel bars for construction, print and audiovisual material, cement, and motor vehicles. Only firms licensed as import companies are permitted to import goods into Laos.

*Customs:* Nearly every container that enters Laos at a formal border checkpoint is inspected, and foreign businesses regularly complain of irregularities and corruption in the clearance process. A large proportion of goods entering Laos do so informally as border control is weak. Customs procedures in Laos have improved since the introduction of the ASEAN Harmonized Tariff System, but a large number of approvals and informal payments are often still required to get through the process.

*Taxes:* All goods and services are subject to a turnover tax of either 5 percent or 10 percent. Laos appears to apply turnover tax rates to many domestic products that are lower than those applied to imported products, or to apply turnover tax exemptions to domestic products that it does not apply to imported products. The United States has worked with Laos to ensure its tax regime complies with its BTA obligations and conforms with obligations to provide national treatment in the application of all internal taxes. In addition to the turnover tax, certain goods are subjected to an additional excise tax.

## FOREIGN TRADE BARRIERS

## **INTELLECTUAL PROPERTY RIGHTS (IPR) PROTECTION**

Laos has undertaken work to create a more modern IPR regime, but currently provides uneven levels of IPR protection. Laos promulgated its first Intellectual Property Law in January 2008, but implementing regulations have yet to be issued and the law itself will need further amendments in order fully implement Lao BTA obligations. Laos became a member of the World Intellectual Property Organization (WIPO) in 1995 and a member of the WIPO Paris Convention for the Protection of Industrial Property in 1998. It has also signed the WIPO Rome Convention for the Protection of Performers, Producers of Phonograms and Broadcasting Organizations, but has not yet acceded to that Convention. As a member of ASEAN, Laos has acceded to all of ASEAN's framework agreements, including the ASEAN Framework Agreement on Intellectual Property Cooperation.

Laos issued a trademark decree in 1995, which places the recently reorganized Science and Technology Agency (STA), a ministry-level agency within the office of the Prime Minister, in charge of the issuance of trademarks. There are currently about 20,400 trademarks registered in Laos. A decree protecting patents, petty patents, and industrial designs was issued in January 2002. Laos developed a draft copyright law in 2005, but it has not yet been enacted, so copyrights and related rights are unprotected in Laos.

STA also is responsible for IPR administration and enforcement in Laos. While STA personnel are well-trained, they have little authority, and IPR enforcement remains weak. In particular, STA lacks the authority to arrest and does not effectively coordinate with the police. Effective IPR enforcement at the border also is lacking due to Laos' porous borders controls.

## **INVESTMENT BARRIERS**

Laos has a challenging investment climate due to weak rule of law, opaque regulations, and inefficient infrastructure and services sectors, particularly financial services. Documentation required for foreign businesses remains burdensome and effectively segregates foreign firms into a separate category of business activity from domestic firms. Investment by foreign businesses in Laos requires a feasibility study.

The required annual renewal of a Lao business license is contingent on certification that all taxes have been paid. Foreign investors have complained that taxes are often assessed in an inconsistent and nontransparent manner. Moreover, U.S. companies have been denied necessary local business licenses despite possessing valid national long-term investment permits. The United States continues to urge the Lao government to address this issue.

Corruption remains a significant and growing concern for investors in Laos. Informal payments to low level officials to expedite time-sensitive applications, such as for business licenses or importation of perishable items, are not uncommon and the problem is reported to be growing for certain industries. While the National Assembly passed an anti-corruption law in 2005, to date no implementing regulations have been enacted.

Lao's underdeveloped legal system also creates barriers for foreign investors. Judgments in commercial cases against foreigners lack transparency and predictability. Many areas of business and finance are covered by ill-defined statutes. New draft laws are gradually emerging, however, and the Lao government is receiving assistance from the United States and other international organizations to develop the legal framework in the country.

## **FOREIGN TRADE BARRIERS**

# MALAYSIA

## TRADE SUMMARY

The U.S. goods trade deficit with Malaysia was \$12.9 billion in 2009, down \$4.9 billion from 2008. U.S. goods exports in 2009 were \$10.4 billion, down 19.7 percent from the previous year. Corresponding U.S. imports from Malaysia were \$23.3 billion, down 24.3 percent. Malaysia is currently the 21st largest export market for U.S. goods.

U.S. exports of private commercial services (*i.e.*, excluding military and government) to Malaysia were \$2.0 billion in 2008 (latest data available), and U.S. imports were \$1.3 billion. Sales of services in Malaysia by majority U.S.-owned affiliates were \$3.7 billion in 2007 (latest data available), while sales of services in the United States by majority Malaysia-owned firms were \$422 million in 2007.

The stock of U.S. foreign direct investment (FDI) in Malaysia was \$13.3 billion in 2008 (latest data available), up from \$13.0 billion in 2007. U.S. FDI in Malaysia is led by the manufacturing and mining sectors.

## IMPORT POLICIES

### Tariffs and Import Licensing Requirements

Almost all of Malaysia's tariffs are imposed on an *ad valorem* basis, with a simple average applied tariff rate of 7.4 percent in 2009. Duties for tariff lines where there is significant local production are often higher. In general, the level of tariffs is lower on raw materials than for value added goods. U.S. companies believe that tariff reductions on such products as frozen French fried potatoes, restaurant equipment, and food and confectionary products would allow them to increase their exports significantly.

On roughly 80 products – most of which are agricultural goods – Malaysia charges specific duties that represent extremely high effective tariff rates. These tariffs appear to be aimed at protecting small and rural farmers from foreign competition. The simple average *ad valorem* equivalent across all products with a specific tariff is 392 percent. Beverages, alcohol, and wine are subject to an effective tariff of up to 500 percent when import duties and excise taxes are combined. In addition, adjustments to excise taxes made each year as part of the budget process can raise costs sharply and make it difficult for U.S. companies to negotiate long-term supply contracts in the beverage, alcohol and wine sector.

A large number of Malaysian tariff lines related to import-sensitive or strategic industries (principally in the construction equipment, agricultural, mineral, and motor vehicle sectors) are subject to non-automatic import licensing. Malaysia also maintains performance requirements that must be met to receive a customs waiver for operations in Foreign Trade Zones.

Malaysia has an extensive network of preferential trade relationships. In addition to being a member of the Association of Southeast Asian Nations (ASEAN), Malaysia has bilateral trade agreements with Japan, Pakistan, and New Zealand as well as regional agreements, as part of ASEAN, with China, Korea, Japan, India, Australia, and New Zealand. Malaysia is currently negotiating additional preferential trade agreements with Australia, Chile, India, and members of the Organization of the Islamic Conference.

## FOREIGN TRADE BARRIERS

## **Tariff-Rate Quotas on Selected Agricultural Products**

The Malaysian government maintains tariff-rate quota (TRQ) systems for 17 tariff lines, which include products such as live poultry, poultry meat, milk and cream, pork, and round cabbage. These products incur in-quota duties between 10 percent and 25 percent and out-of-quota duties as high as between 40 percent and 168 percent.

## **Import Restrictions on Motor Vehicles**

Malaysia has applied tariffs and nontariff barriers in the automobile sector for more than 20 years. In addition, Malaysian government policies distinguish between “national” cars, (*e.g.*, domestic producers Proton and Perodua) and “non-national” cars, which include most vehicles manufactured in Malaysia by non-Malaysian owned firms. Malaysia has traffic restrictions and noise standards that affect the usage of large motorcycles.

The Malaysian government has started to slowly dismantle some of its measures in order to implement its commitments under the WTO and the ASEAN Free Trade Agreement (AFTA). It cut Malaysia’s automobile import duty from 40 percent to 5 percent by 2006 to meet its AFTA commitments, but then imposed steep excise taxes to compensate for the lost revenue. In January 2007, the ceiling on excise taxes for most vehicle categories was reduced from 125 percent to 105 percent and on motorcycles from 50 percent to 30 percent. In November 2008, the Malaysian Deputy Prime Minister stated that Malaysia would review the National Auto Policy (NAP) to consider liberalizing the sector. It implemented new measures in this sector in January 2010. The new policy reduced the intra-ASEAN duty rate from 5 percent to zero percent in January 2010. It lifted the freeze on manufacturing licenses for luxury vehicles, pick-up trucks, commercial vehicles, and hybrid electric vehicles, and promotes green technology by providing a duty exemption and a 50 percent excise tax reduction for the manufacture of hybrid electric vehicles.

In the new policy, Malaysia retained a system of approved permits (APs) that provides holders with the right to import cars and motorcycles and distribute them locally. The revised NAP extends the phase out dates for APs to December 31, 2020 from the previous 2010 date. The AP system was designed to provide *bumiputera* (ethnic Malay) companies easy entry into the automobile and motorcycle distribution and service sector. The AP system acts as a quota by restricting the total number of vehicles that can be imported in a given year, which is currently capped at 10 percent of the market. Moreover, many AP holders sell their permits, with the associated costs passed on to consumers, increasing the price of imported vehicles.

Malaysia continues using an industrial adjustment fund to provide for locally assembled vehicles. Components sourced from locally registered components manufacturing companies are eligible for tax reductions, raising concerns that this fund revives the local content program that had been abolished in 2004.

## **Meat Import Licenses**

Malaysia requires all meat imports to be licensed and restricts the types of pork and poultry cuts that may be imported. These import permits can, and often are, used to restrict imports of chicken meat and pork cuts when domestic prices are low. The Department of Veterinary Services will often provide import licenses for less than the quantity requested. Malaysia also requires import licenses for wheat flour, liquid

milk, other dairy products such as cheese, yogurt, milk powder, ice cream and butter, eggs, wine, seafood, and rice.

## **EXPORT TAXES**

Malaysia taxes exports of palm oil, rubber, and timber products in order to protect domestic processing production. Malaysia is the second largest producer and largest exporter of palm oil and products made from palm oil, which account for approximately 15 percent of world production and 30 percent of world trade in vegetable oils. Malaysia uses export taxes of 10 percent to 30 percent *ad valorem* to discourage the export of crude palm oil and to encourage development of the local refinery sector. Refined palm oil and products are not subject to export taxes. The Malaysian government waives export taxes on exports of crude palm oil to Malaysia-invested foreign vegetable oil refineries, giving Malaysia-invested plants an advantage in foreign markets, including the United States.

## **GOVERNMENT PROCUREMENT**

Malaysia's official policy is to use procurement to support national public policy objectives. These objectives include encouraging greater participation of *bumiputera* in the economy, transferring technology to local industries, reducing the outflow of foreign exchange, creating opportunities for local companies in the services sector, and enhancing Malaysia's export capabilities. International tenders generally are invited only where domestic goods and services are not available. In domestic tenders, preferences are provided for *bumiputera* suppliers and other domestic suppliers. In most procurements, foreign companies are required to take on a local partner before their tenders will be considered. The U.S. Government continues to raise concerns about the nontransparent nature of the procurement process in Malaysia. Malaysia is not a signatory to the WTO Agreement on Government Procurement.

## **EXPORT SUBSIDIES**

Malaysia maintains several programs that appear to provide subsidies for exports. Under the Central Bank's export credit refinancing scheme, commercial banks and other lenders provide financing to all exporters at a preferential rate for both pre-shipment and post-shipment. Malaysia also provides a series of tax and investment incentives to exporters, including those through the Pioneer Status and Investment Tax Allowance programs. Malaysia notified these subsidies to the WTO Committee on Subsidies and Countervailing Measures in 2009. The United States has submitted questions to Malaysia, pursuant to Article 25.8 of the WTO Agreement on Subsidies and Countervailing Measures, requesting that Malaysia provide further information regarding these programs. As of the end of 2009, Malaysia has not responded.

The revised National Automotive Policy increases the income tax exemption for high value added exports of motor vehicles and parts. The income tax exemption is based on the percentage increase in value added of exports. If the value added is at least 30 percent, then 30 percent of the export value is exempt from income tax; if the value added is at least 50 percent, then 50 percent is exempt.

## **INTELLECTUAL PROPERTY RIGHTS (IPR) PROTECTION**

Despite efforts to strengthen its IPR regime over the past few years, including by creating an IPR court in 2007, Malaysia has remained on the Special 301 Watch List since 2001 because of continuing concerns including its failure to substantially reduce pirated optical disc production and exports.

## **SERVICES BARRIERS**

Malaysia's services sector constitutes 45 percent of the national economy and has been a key driver of economic and job growth in Malaysia for several years. In an effort to establish a knowledge-based services economy less reliant on manufactured exports, the government aims to increase the share of the services sector to GDP to around 60 percent by 2020. In support of this objective, in May 2009, the Najib administration announced a limited set of liberalization measures covering some 27 service subsectors. Further reforms reportedly are being considered.

### **Telecommunications**

Malaysia made limited GATS commitments on most basic telecommunications services and partially adopted the WTO reference paper on regulatory commitments. Based on Malaysia's GATS commitments, foreign companies are entitled to acquire only up to a 30 percent equity stake in existing licensed public telecommunications operators and foreign participation is limited to facilities-based suppliers. These limitations are not reflected in Malaysian law, however, but in ministerial policy. In certain instances Malaysia has allowed greater than 30 percent equity participation in the telecommunications market, but the manner in which such exceptions are administered is nontransparent and is perceived by foreign suppliers as arbitrary. In some cases, firms permitted to invest up to a certain equity limit are subsequently asked to divest to lower foreign equity levels. The United States will continue to urge Malaysia to bind foreign equity limits to the full extent permissible under Malaysian law, *i.e.*, to 100 percent, to foster a more predictable and hospitable investment climate.

### **Distribution Services, including Direct Selling**

Guidelines governing distribution services include requirements for the use of locally-produced products. Among other provisions, department stores, supermarkets, and hypermarkets must reserve at least 30 percent of shelf space in their premises for goods and products manufactured by *bumiputera*-owned small and medium size industries. The guidelines also require that at least 30 percent of a store's sales consist of *bumiputera* products. These guidelines are currently under review by the Malaysian government.

Locally incorporated direct selling companies must allow for 30 percent *bumiputera* equity. The Malaysian government also "recommends" local content targets, which effectively translates into a requirement. Local companies that seek direct selling licenses require paid-in capital of RM1.5 million (approximately \$397,000), while companies with foreign shareholders must have paid-in capital of RM5 million (approximately \$1.3 million).

### **Legal Services**

Foreign lawyers may not practice Malaysian law, nor may they affiliate with local firms or use the name of an international firm. Foreign law firms may not operate in Malaysia except as minority partners with local law firms and their stake in any partnership is limited to 30 percent. The Attorney General has authority to grant limited exceptions on a case-by-case basis under the law restricting the practice of

## **FOREIGN TRADE BARRIERS**

Malaysian law to Malaysian citizens or permanent residents who have apprenticed with a Malaysian lawyer, are competent in *Bahasa Malaysia* (the official language), and have a local law degree or are accredited British Barristers at Law, provided the applicant has seven years of legal experience. Malaysian law does not allow for foreign legal consultancy except on a limited basis in the Labuan International Offshore Financial Center (see section on “Financial Services” below).

### **Architectural Services**

A foreign architectural firm may operate in Malaysia only as a joint venture participant in a specific project with the approval of the Board of Architects. Malaysian architectural firms may not have foreign architectural firms as registered partners. Foreign architects may not be licensed in Malaysia, but are allowed to be managers, shareholders, or employees of Malaysian firms.

### **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 the project. In general, a foreign engineer must be registered as a professional engineer in his or her home country, have a minimum of 10 years 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, a Malaysian company often must demonstrate to the Board that they cannot find a Malaysian engineer for the job. Foreign engineers are not allowed to operate independently of Malaysian partners or serve as directors or shareholders of an engineering consulting company. A foreign engineering firm may establish a non-temporary commercial presence if all directors and shareholders are Malaysian. Foreign engineering companies may collaborate with a Malaysian firm but only the Malaysian company may submit the plans for domestic approval.

### **Accounting and Taxation Services**

All accountants seeking to provide auditing and taxation services in Malaysia must register with the Malaysian Institute of Accountants (MIA) before they may apply for a license from the Ministry of Finance. Citizenship or permanent residency is required for registration with the MIA. Foreign accountants and auditors are only allowed to practice with registered Malaysian accountants, with foreigners permitted to hold no more than 40 percent of shares.

### **Financial Services**

In 2009, the Malaysian government announced a liberalization package for the conventional and Islamic financial sectors. As part of this package, foreign equity limits were increased from 49 percent to 70 percent for domestic Islamic banks, investment banks, insurance companies, and Islamic insurance operators. Foreign equity above 70 percent is considered on a case-by-case basis for insurance companies if the investment is determined to facilitate the consolidation and rationalization of the insurance industry. Foreign equity of 70 percent is allowed for unit trust management companies providing retail services and for stock broking companies. Foreign equity of 100 percent is allowed for fund management companies providing wholesale services.

## **Advertising**

Foreign content in commercials in Malaysia is limited to 20 percent. The Malaysian government relaxed enforcement of regulations governing the appearance of foreign actors in commercials shown in Malaysia in 2007.

## **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 and 60 percent of radio programming must be of local origin. Foreign investment in terrestrial broadcast networks is prohibited and is limited to a 20 percent equity share in cable and satellite operations. As a condition for obtaining a license to operate, video rental establishments are required to have 30 percent local content in their inventories.

## **INVESTMENT BARRIERS**

As part of a strategy to “move up the value chain,” Malaysia encourages foreign direct investment in export-oriented manufacturing and high-technology industries, for example, through special tax abatements not available in other industries. The government retains considerable discretionary authority over individual investments in these sectors, however, while foreign investment in other sectors is heavily restricted. Among the restrictions imposed by the Malaysian government are limitations of foreign equity (generally capped at 30 percent) and requirements that foreign firms enter into joint ventures with local partners, especially in the production of goods or services for the local market.

## **OTHER BARRIERS**

### **Transparency**

The lack of transparency in government decision-making and procedures in Malaysia has impeded U.S. firms’ access to the Malaysian market. The Malaysian government has taken steps to fight corruption, including through the Anti-Corruption Agency (ACA) which is part of the Office of the Prime Minister. The ACA is authorized to conduct investigations and prosecute cases with the approval of the Attorney General. Few senior officials or politicians have been prosecuted for corruption, however. Malaysia has signed, but not yet ratified, the UN Convention against Corruption.



# MEXICO

## TRADE SUMMARY

The U.S. goods trade deficit with Mexico was \$47.5 billion in 2009, down \$17.2 billion from 2008. U.S. goods exports in 2009 were \$129.0 billion, down 14.7 percent from the previous year. Corresponding U.S. imports from Mexico were \$176.5 billion, down 18.2 percent. Mexico is currently the 2nd largest export market for U.S. goods.

U.S. exports of private commercial services (*i.e.*, excluding military and government) to Mexico were \$24 billion in 2008 (latest data available), and U.S. imports were \$15.8 billion. Sales of services in Mexico by majority U.S.-owned affiliates were \$34.7 billion in 2007 (latest data available), while sales of services in the United States by majority Mexico-owned firms were \$2.6 billion.

The stock of U.S. foreign direct investment (FDI) in Mexico was \$95.6 billion in 2008 (latest data available), up from \$91.3 billion in 2007. U.S. FDI in Mexico is concentrated largely in the manufacturing, nonbank holding companies, and finance/insurance sectors.

## North American Free Trade Agreement

The North American Free Trade Agreement (NAFTA), signed by the United States, Canada, and Mexico, entered into force on January 1, 1994. Under this free trade agreement, NAFTA countries progressively eliminated tariffs and nontariff barriers to trade in goods between them, provided improved access for services, established strong rules on investment, and strengthened protection of intellectual property rights. After signing the NAFTA, the United States, Canada, and Mexico concluded supplemental agreements on labor and environment. Under these agreements, the parties are, among other things, obligated to effectively enforce their environmental and labor laws. The agreements also provide frameworks for cooperation among the parties on a wide variety of labor and environmental issues.

## IMPORT POLICIES

### Tariffs and Market Access

Pursuant to the terms of the NAFTA, on January 1, 2003, Mexico eliminated tariffs on all remaining industrial and most agricultural products imported from the United States. On January 1, 2008, Mexico eliminated remaining tariffs and tariff-rate quotas on all U.S. agricultural exports. (*See the section on agriculture below for additional details on specific farm products.*)

On March 18, 2009, Mexico imposed retaliatory tariffs on 89 U.S. goods totaling about \$2.4 billion in exports from 40 states in response to the cancellation of the United States-Mexico Cross Border Trucking Demonstration Project. Only about 1.5 percent of U.S. exports to Mexico are affected by these new tariffs. Among the goods affected, 53 are finished products, including shampoo, books, and jewelry, and 36 are agricultural goods. Retaliatory tariffs range from 10 percent on many goods, including onions, pet food, and toilet paper, to 45 percent on table grapes.

Mexico imposes a value added tax (VAT) on sales of goods and services. Certain food products are exempt from the VAT. U.S. producers have complained that, while Mexico imposes the VAT on imports of U.S. nutritional supplements, it does not collect the VAT on sales of similar domestic products.

## FOREIGN TRADE BARRIERS

## **Agricultural Products**

The United States exported \$12.9 billion in agricultural products to Mexico in 2009, compared to \$16.6 billion in 2008. Since 2004, Mexico has been the United States' second largest agricultural export market. On January 1, 2008, Mexico lifted the final tariffs and tariff-rate quotas on corn, dry beans, nonfat dry milk, orange juice, and sweeteners. In addition, the terms of a separate safeguard agreement on chicken leg quarters were eliminated.

Antidumping duties continue to hamper U.S. meat exports, with Mexican policies in this area having reduced the number of U.S. suppliers and altered product trading patterns. Industry representatives assert that significant revenue is lost each year due to antidumping duties in the beef sector. On April 24, 2006, Mexico's Secretariat of Economy (SECON) announced that it would continue to apply the antidumping duties imposed on imports of U.S. beef and beef by-products from certain U.S. exporters and producers for another five years following an expiry review investigation. Following several requests for review of the measure by a major U.S. producer, on April 21, 2009, SECON initiated a changed-circumstance review with respect to that producer. As of February 2010, SECON had not yet issued a determination in the review.

Mexico is the largest export market for U.S. apples, and U.S. apple exporters have expressed concerns regarding the complex process by which Mexico applied antidumping duties on imports of Red and Golden Delicious apples from the United States. Since the original investigation was launched in 1997, a series of court challenges and redeterminations by SECON ultimately excluded all but certain Northwest Fruit Exporters members from the antidumping measure. On October 15, 2009, a NAFTA panel convened at the request of U.S. apple exporters ordered SECON to revise its final determination to account for significant deficiencies in SECON's methodology. SECON was given until December 15, 2009, to comply with the NAFTA panel's decision. SECON unilaterally announced it would issue its remand determination by March 2010. On March 2, 2010, SECON published a notice in the Mexican *Diario Oficial* that it would lift that the compensatory duties imposed on U.S. Red and Golden Delicious apples effective the following day. The United States will continue to monitor the implementation of the decision.

## **Administrative Procedures and Customs Practices**

U.S. exporters continue to be concerned about Mexican customs' administrative procedures, including: insufficient prior notification of procedural changes; inconsistent interpretation of regulatory requirements at different border posts; alleged under-invoicing of agricultural products; and uneven enforcement of Mexican standards and labeling rules. There have been relatively few specific complaints, however, and Mexican customs has been putting procedures in place to address issues of non-uniform application of requirements at border ports of entry. Agricultural exporters note that Mexican inspection and clearance procedures for some agricultural goods are long, burdensome, nontransparent, and unreliable. Customs procedures for express packages continue to be burdensome, although Mexico has raised the *de minimis* level from \$1 to \$50. Mexican regulations still hold the courier 100 percent liable for the contents of shipments. U.S. exporters have highlighted the benefits of harmonizing the hours of customs operation on the U.S. and Mexican sides of the border, but they cite the delays stemming from the lack of pre-clearance procedures, which the Mexican government claims are not permitted under current law.

To be eligible to import well over 400 different items, including agricultural products, textiles, chemicals, electronics, and automotive parts, Mexican importers must apply to the Secretariat of Finance and Public

Credit and be listed on a special Importers Sectorial Register. U.S. exporters complain that registering is bureaucratically difficult, and this requirement sometimes causes costly customs clearance delays when new products are added to the list of subject items with immediate effect, thereby denying importers sufficient notice to apply. They also report that certain importers have been summarily dropped from the registry without prior notice or subsequent explanation, effectively preventing some U.S. exporters from shipping goods to Mexico. On March 31, 2008, the Mexican government issued a decree simplifying or eliminating several burdensome customs regulations. Beginning April 14, 2008, the decree exempts importers from registry in the Importers Sectorial Register, except when the merchandise poses a national security risk or a public health risk. Such goods include firearms, ammunition, knives and other weapons, explosives, chemicals and chemical compounds, and radioactive and nuclear products.

Beginning in October 2000, the Mexican government imposed a burdensome guarantee system for goods subject to estimated prices. Importers could not post bonds to guarantee the difference in duties and taxes if the declared value of an entering good was less than the official estimated price. Instead they were required to deposit the difference in cash at a designated Mexican financial institution or arrange one of two alternative sureties (a trust or line of credit). The March 31, 2008 decree noted above also eliminated the system of reference pricing for all products, with the exception of used cars. As of April 14, 2008, no guarantee, bond, or any other form of payment has been required of importers. However, the U.S. footwear industry has reported that many of its footwear imports from China remain subject to a reference pricing scheme, which severely impacts the sale of U.S. brand products in Mexico. The United States will continue to monitor the implementation of the decree.

In May 2008, without prior notification of procedural changes, the Mexican government implemented a new requirement to test all chemical samples and shipments being sent to Mexico in gas, liquid, or powder form. Some chemical exporters are reporting fees of \$500 charged by the customs broker. Previously, samples could be sent by express delivery service companies. Now, however, this is prohibited, necessitating the additional incurred cost of using a broker. In addition, there is only one laboratory in Mexico certified to test these products, thus causing a lengthy delay in customs clearance. This new barrier is having a detrimental effect on the competitiveness of U.S. exports of these products. The United States is working with Mexico and the Chemical Industry Association of Mexico to offer alternatives to this burdensome and expensive process. In 2009, to reduce delays and lower export costs, Mexico deployed devices at all 49 ports of entry along the U.S.-Mexico border in order to test chemical samples. Mexican customs is also considering the use of an importer registry for samples difficult to identify.

## **GOVERNMENT PROCUREMENT**

Mexico's efforts to make its government procurement regime more transparent through policy reform and the application of technology have resulted in increased competition as well as savings for the government. The Mexican government has established several "electronic government" Internet sites to increase transparency of government processes and to provide guidelines for the conduct of government officials. "Compranet" provides an online interface for conducting government procurement and contracting. Despite these reforms, there is still a need for further regulatory and technological improvements throughout the Mexican government.

The NAFTA limits the total value of contracts that Mexico's parastatal petroleum and electricity monopolies, PEMEX and the Federal Electricity Commission (CFE), respectively, may exclude from coverage under the NAFTA. Mexico provides an annual notice of the calculation of the procurement that

it sets aside for domestic suppliers, along with the methodology used in the calculation, to the United States and Canada. The 2008 value of the set-aside for PEMEX and CFE was \$2 billion.

## **INTELLECTUAL PROPERTY RIGHTS (IPR) PROTECTION**

Mexico was listed on the Watch List in the 2009 Special 301 report. Key concerns cited in the Report included a need to improve enforcement efforts against persistently high levels of piracy and counterfeiting, including by enhancing coordination among enforcement agencies at the federal and sub-federal levels. The report also noted the importance of strengthening Mexico's IPR regime through the enactment of legislation that would provide *ex officio* authority to law enforcement and customs authorities, criminalize camcording in theaters, and fully implement the WIPO Internet Treaties.

Mexico's lower house of Congress passed legislation in April 2008 that would provide the Office of the Attorney General (PGR) with *ex officio* authority to prosecute intellectual property crimes and an amended version of the legislation passed the Senate in May 2009. That version awaits review and approval by the lower house.

The United States has urged Mexico to provide effective protection against unfair commercial use of undisclosed test or other data generated to obtain marketing approval for pharmaceutical products, and to provide an effective system to prevent the issuance of marketing approvals for unauthorized copies of patented pharmaceutical products.

## **SERVICES BARRIERS**

### **Telecommunications**

The OECD's Communications Outlook 2009 reports that Mexico remains one of the OECD countries with the highest telecommunications charges. Previous OECD surveys of Mexico have recommended improving mandatory access to the local loop, regulating fixed-to-mobile termination charges, and introducing mandatory roaming to enable smaller mobile companies to use Telcel's (Mexico's largest mobile phone company) network at a regulated price. The OECD and Mexican telecommunications commentators also suggest that industry regulator Cofetel (Federal Telecommunications Commission) needs greater independence from both leading companies in the sector and its parent ministry, the Secretariat of Communications and Transportation (SCT).

The Calderón Administration and the PRI, Mexico's ascendant opposition party, agree that increasing competition in Mexico's telecommunications sector is a priority, but implementing policies to this end continues to be a challenge. The Mexican company Telmex and its wireless affiliate Telcel dominate the Mexican telecommunications market and are perceived as exercising disproportionate influence over the legislative process, the courts, and government regulators.

High interconnection rates in both fixed and mobile service remain a problem. While Cofetel has made numerous recent attempts to set lower long distance and mobile termination rates, the companies involved have filed injunctions that delay implementation of Cofetel's actions. Often frustrated in court on its regulatory efforts, the regulators sometimes resort to other means to achieve their goals. For example, SCT, Cofetel, and President Calderón appear determined to withhold modifications to Telmex's concession that would allow the company to provide television services (where Telmex sees its future in voice/video/data convergence) until Telmex makes concessions to further competition in telecommunications.

## **FOREIGN TRADE BARRIERS**

The Federal Competition Commission (Cofeco) has nearly finalized the findings of a formal investigation into Telmex and Telcel market dominance. Once finalized, and if the investigation concludes that these companies have market dominance, Cofetel will have a mandate to issue asymmetrical regulations, which are regulations that impose more stringent requirements on companies that have market dominance. Cofetel had previously proposed such asymmetrical regulations, but Telmex and Telcel challenged them in court, necessitating the investigation before Cofeco.

Although there have been several recent legislative attempts to open the Mexican fixed line telecommunications sector to increased foreign investment, which could increase opportunities for competitive providers, Telmex has also opposed such efforts. Currently the Foreign Investment Law limits foreign ownership in the wireline segment to 49 percent. The restriction helps shield Telmex in an area (local telephony) where the firm already controls 90 percent of the market.

Under Mexican law, foreign companies must form joint ventures with Mexican partners to obtain authorizations (called “concessions” under Mexican law) to provide satellite-based services in Mexico. Mexico also requires mobile satellite service operators to deploy gateway earth stations, ostensibly to satisfy security policies. This requirement serves as a barrier to market entry, since such a requirement may make many services economically infeasible.

### **Television and Radio**

As in telecommunications, there are concerns that Televisa and TV Azteca, which share a duopoly in the television market, continue to exercise influence over Mexican legislative, policy, and regulatory bodies in order to prevent competition. The Radio and Television Law passed in April 2006 has been criticized by some industry representatives as catering to the interests of the dominant companies by imposing permanent disadvantages on new entrants (*e.g.*, with respect to access to spectrum).

### **INVESTMENT BARRIERS**

Mexico’s oil and gas sector remains closed to private investment, with the exception of the liquefied natural gas sector and in the marketing of petroleum products. Only Mexican nationals may own gas stations.

The Mexican constitution mandates state ownership of hydrocarbons and provides that no concessions or other types of production sharing agreements or risk contracts shall be granted in regard to hydrocarbon exploitation. With declining production, the government of Mexico has recently sought to promote reform of the hydrocarbons sector through legislation to increase the independence and performance of Pemex, the national oil company.

Other laws limit participation in certain sectors or activities (*e.g.*, forestry) to Mexican nationals. Investment restrictions prohibit foreign ownership of residential real estate within 50 kilometers of the nation’s coasts and 100 kilometers of its land borders (though foreigners may acquire use of residential property in these zones through trusts administered by Mexican banks). A national foreign investment commission reviews foreign investment in Mexico’s restricted sectors, as well as investments in unrestricted sectors that exceed 49 percent equity in an investment and have a value greater than \$165 million (adjusted annually based on Mexico’s nominal GDP).

## **ANTICOMPETITIVE BARRIERS**

Mexico passed a competition law in June 2006 that gave Cofeco additional authority to regulate market concentration and anticompetitive behavior in both the private and public sectors. Cofeco has administrative enforcement powers but no criminal enforcement powers. The head of Cofeco and key members of the Calderón administration have called for opening up sectors of the Mexican economy currently dominated by monopolies or duopolies, and some progress has occurred (see section on services barriers). It remains to be seen whether the law and the administration will be able to make these sectors truly competitive.

# MOROCCO

## TRADE SUMMARY

The U.S. goods trade surplus with Morocco was \$1.1 billion in 2009, an increase of \$581 million from 2008. U.S. goods exports in 2009 were \$1.6 billion, up 11.9 percent from the previous year. Corresponding U.S. imports from Morocco were \$468 million, down 46.7 percent. Morocco is currently the 61st largest export market for U.S. goods.

The stock of U.S. foreign direct investment (FDI) in Morocco was \$252 million in 2008 (latest data available), up from \$249 million in 2007.

## FREE TRADE AGREEMENT

The United States-Morocco Free Trade Agreement (FTA) entered into force on January 1, 2006, eliminating duties on more than 95 percent of all goods. In addition to key U.S. export sectors gaining immediate duty-free access to Morocco, the Agreement includes commitments for increased regulatory transparency and commitment to the protection of intellectual property rights. Through foreign assistance programs, the United States continues to provide Morocco targeted technical assistance supporting FTA compliance and Moroccan regulatory reform. U.S. negotiators have pressed repeatedly for changes to Morocco's system of administering tariff-rate quotas (TRQs) for U.S. wheat, which has created significant difficulties for U.S. wheat producers seeking to benefit from the access granted under the FTA.

## IMPORT POLICIES

Under the FTA, goods of key U.S. sectors, such as information technology, machinery, construction equipment, chemicals, and textiles, enjoy either duty-free or preferential duty treatment when entering Morocco. Certain other originating products are subject to TRQs, which increase over time. Morocco's textile and apparel goods receive preferential duty treatment according to a 10 year tariff reduction schedule. Specified originating apparel products that do not conform to the FTA's rules of origin may still qualify under a Tariff Preference Level quota established for non-originating articles.

### **Agriculture**

#### *Wheat TRQs*

The FTA provides for access to Morocco for U.S. durum and common wheat exports through two TRQs. The Moroccan government's administration of these wheat TRQs through an auction mechanism has led to significant difficulty for U.S. producers attempting to benefit from the preferential access provided under the FTA. The U.S. Government is continuing its efforts to improve access for U.S. wheat producers and to determine the viability of auctioning as the system for administering Morocco's wheat TRQs.

## GOVERNMENT PROCUREMENT

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

## FOREIGN TRADE BARRIERS

The FTA requires the use of fair and transparent procurement procedures, including advance notice of purchases and timely and effective bid review procedures for covered procurement. Under the FTA, U.S. suppliers are permitted to bid on procurements for most Moroccan central government entities, as well as the vast majority of Moroccan regional and municipal governments, on the same basis as Moroccan suppliers. However, the 90 day timeframe given to foreign companies to answer government tenders is often too short, and channels for distributing information are limited to local newspapers and circulars sent to foreign embassies. Because the Moroccan government does not have an official website for government tenders, foreign companies often find it difficult to identify and bid on tenders.

## **SERVICE BARRIERS**

Prior to the entry-into-force of the FTA, Morocco effectively prevented U.S. services firms from competing in large segments of its services sector. The government imposed bans on foreign participation in the domestic services market and included onerous ownership requirements and business operating practices.

The FTA accords U.S. firms substantial market access across Morocco's services sector. Key services sectors covered by the Agreement include audiovisual, express delivery, financial, insurance, telecommunications, distribution, computer, mining, construction, and engineering. The FTA provides benefits for businesses wishing to supply cross-border services, as well as businesses wishing to establish a local presence in the other country.

Although U.S. companies enjoy the same treatment in the insurance market as their Moroccan counterparts, the policies and practices of Morocco's insurance regulatory body have effectively prevented U.S. insurance companies from introducing competing products. In practice, only applications that bring new products or “added value” to the sector are likely to be approved, as they must first be reviewed by a Consultative Committee composed principally of other companies active in the sector. While this committee’s recommendation is not binding, in practice, the Ministry of Economy and Finance has followed its advice.

During this year's Joint Committee Meeting under the FTA, the Governments exchanged letters correcting omissions related to certain measures affecting trade in services. The letters amended Morocco's schedule in respect to Annex I and II of the FTA. The amendment took effect on November 18, 2009.

## **INVESTMENT BARRIERS**

The United States and Morocco have a Bilateral Investment Treaty (BIT) that entered into force in 1991. The FTA also contains investment provisions. All forms of investment – such as enterprises, debt, concessions, contracts, and intellectual property – are subject to the FTA investment chapter obligations. The FTA requires Morocco to remove certain restrictions and prohibits the imposition of other restrictions, such as requirements to buy Moroccan rather than non-Moroccan inputs for goods manufactured in Morocco. Although foreigners are prohibited from owning agricultural land, Morocco does allow for long-term leases of up to 99 years and permits agricultural land to be purchased for non-agricultural purposes.



## **INTELLECTUAL PROPERTY RIGHTS (IPR) PROTECTION**

The FTA includes strong intellectual property provisions and has led Morocco to strengthen its IPR laws. The Agreement includes strong antipiracy provisions and provides for authorities to seize, forfeit, and destroy counterfeit and pirated goods, as well as the equipment used to make them. The FTA also requires each government to provide criminal liability for Internet piracy, even if there is no motivation of financial gain.

Pursuant to its FTA obligations, Morocco enacted legislation that increased protection of trademarks, copyrights, patents, and undisclosed test data. This legislation included state-of-the-art elements such as provisions concerning disputes over Internet domain names, strong anti-circumvention provisions to prohibit tampering with technologies designed to prevent copyright infringement, and specific protections for temporary copies, which are critical in the digital environment. Despite the progressive elements contained in the new legislation, the Moroccan Copyright Office has identified weaknesses in the ability of the country's enforcement mechanisms to adequately detect and address internet-based IPR violations. The Moroccan government has requested further technical assistance from the United States and other partners in order to bring its capacity to address copyright infringement up to international standards.

## **OTHER BARRIERS**

The greatest obstacles to trade in Morocco are irregularities in government procedures, lack of transparent governmental and judicial bureaucracies, inefficient transport systems, language and other practical barriers, and low-level corruption. Morocco lags particularly in areas relating to its cumbersome tax and employment regimes, property registration, and investor protections. Although the government is diligently working to liberalize the business environment and improve its business efficiency, foreign corporations still complain about these market access issues.



# NEW ZEALAND

## TRADE SUMMARY

The U.S. goods trade deficit with New Zealand was \$397 million in 2009, down \$240 million from 2008. U.S. goods exports in 2009 were \$2.2 billion, down 14.7 percent from the previous year. Corresponding U.S. imports from New Zealand were \$2.6 billion, down 19.3 percent. New Zealand is currently the 52nd largest export market for U.S. goods.

U.S. exports of private commercial services (*i.e.*, excluding military and government) to New Zealand were \$1.8 billion in 2008 (latest data available), and U.S. imports were \$1.7 billion. Sales of services in New Zealand by majority U.S.-owned affiliates were \$3.3 billion in 2007 (latest data available), while sales of services in the United States by majority New Zealand-owned firms were \$184 million.

The stock of U.S. foreign direct investment (FDI) in New Zealand was \$5.3 billion in 2008 (latest data available), down from \$5.4 billion in 2007. U.S. FDI in New Zealand is mostly in the manufacturing and finance/insurance sectors.

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

## IMPORT POLICIES

Tariff rates in New Zealand are generally low as a result of several rounds of unilateral tariff cuts that began in the mid-1980s. New Zealand now has one of the lowest average Most Favoured Nation (MFN) applied tariff rates among industrialized countries at just 2.4 percent (down from 4.1 percent in 2002). The average applied MFN agricultural tariff was 1.8 percent in 2009. In 2008, more than 73 percent of imports by value to New Zealand entered duty-free.

New Zealand has also taken significant steps to simplify its tariffs. In October 2008, a new tariff schedule was introduced, which consists mainly of three *ad valorem* rates (free, 5 percent, and 12.5 percent) and six specific rates. On industrial products, 195 specific tariffs were replaced with *ad valorem* rates.

## GOVERNMENT PROCUREMENT

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

## INTELLECTUAL PROPERTY RIGHTS (IPR) PROTECTION

New Zealand generally has a strong record on IPR protection and is an active participant in international efforts to strengthen IPR enforcement globally. It is a party to nine World Intellectual Property

## FOREIGN TRADE BARRIERS

Organization (WIPO) treaties and actively participates in the TRIPS Council. The United States continues to encourage the government of New Zealand to accede to and implement the WIPO Performance and Phonograms Treaty and the WIPO Copyright Treaty.

In April 2008, New Zealand's Parliament passed the Copyright (New Technologies) Amendment Act 2008, No 27 ("the 2008 Act"), which amends the Copyright Act 1994. The 2008 Act is intended to update the country's original copyright law in light of advances in digital technology. Among other things, the 2008 Act seeks to clarify the liability of Internet Service Providers (ISPs) regarding online infringement. Section 92A of the Copyright Act 1994, as added by the 2008 Act, has not yet been implemented. This provision would have required ISPs to adopt and reasonably implement a policy that provides for the termination of the accounts of repeat IP infringers. However, discussions among the ISPs and copyright holders failed to reach consensus on a code of practice in this area. The New Zealand government is now redrafting Section 92A. It is expected that the legislation will be introduced in Parliament in early 2010.

In July 2008, a bill to update New Zealand's patent regime was introduced in Parliament which, if enacted, will replace the current Patents Act 1953. The proposed legislation includes a number of changes, including modifications to patent examination and opposition procedures, the establishment of a Maori Advisory Committee to advise the Commissioner of Patents where patent applications involve traditional knowledge and indigenous plants and animals, and reforms of the regulatory environment for patent lawyers. U.S. industry continues to urge the New Zealand government to include provisions in the legislation that would provide for the restoration of the effective patent term for pharmaceutical products lost due to delays related to regulatory approval. The current draft legislation does not contain such provisions.

## **SERVICES BARRIERS**

### **Telecommunications**

New Zealand's dominant telecommunication companies, Vodafone and Telecom, have historically had fixed-to-mobile termination rates that were among the highest of all industrialized countries. In 2007, these companies voluntarily committed to reduce their rates by 2011. The Commerce Commission made a recommendation on both fixed-to-mobile and mobile-to-mobile termination rates in February 2010. The Minister responsible for telecommunications is expected to make a final decision on that recommendation in early 2010. Some restrictions exist on foreign ownership and control of Telecom.

## **INVESTMENT BARRIERS**

### **Investment Screening**

New Zealand generally maintains an open door to foreign investment, and the United States is New Zealand's second largest source of foreign investment. There are no tax advantages for domestic firms over foreign investors and there are no restrictions on the repatriation of funds. However, New Zealand screens foreign investment that falls within certain criteria, based on the requirements of the Overseas Investment Act 2005. New Zealand's Overseas Investment Office (OIO) screens foreign investments that would result in the acquisition of 25 percent or more ownership of, or a controlling interest in, "significant business assets" (defined as assets valued at more than NZ\$100 million). In addition, OIO screens foreign investors or entities that acquire 25 percent or more of a fishing quota, either directly or through the acquisition of a company that already possesses a quota, and acquisitions of land defined as "sensitive" by the Overseas Investment Act 2005. As part of this screening, investors are required to

## **FOREIGN TRADE BARRIERS**

satisfy an ‘investor test’, which includes a determination that they are of good character, are not excluded from entering New Zealand under the Immigration Act, and can display both financial commitment and business acumen. The New Zealand government is currently reviewing the Overseas Investment Act 2005 for ways to improve its design and implementation, to make it more transparent and predictable for investors.

## **OTHER BARRIERS**

### **Pharmaceuticals**

The U.S. pharmaceutical industry has voiced strong concerns over access to New Zealand’s pharmaceutical market and some U.S. pharmaceutical companies have left the market since the Pharmaceutical Management Agency (PHARMAC) was created in 1993. PHARMAC administers the Pharmaceutical Schedule, which lists medicines that are entitled to subsidies from the New Zealand government.

Among other things, industry representatives criticize PHARMAC’s lack of transparency and predictability in the reference pricing process and the onerous approval processes and delays in reimbursing new products. While New Zealand does not restrict the sale of approved pharmaceuticals that do not receive a pricing subsidy, most private medical insurance companies will not cover the cost of these medicines and doctors are often reluctant to prescribe them. As a result, pharmaceutical companies may choose not to market a medicine in New Zealand if it does not receive a government price subsidy. Because of such concerns, PHARMAC is working to improve transparency and increase stakeholder involvement in its processes.



# NICARAGUA

## TRADE SUMMARY

The U.S. goods trade deficit with Nicaragua was \$896 million in 2009, up \$287 million from 2008. U.S. goods exports in 2009 were \$715 million, down 34.7 percent from the previous year. Corresponding U.S. imports from Nicaragua were \$1.6 billion, down 5.4 percent. Nicaragua is currently the 79th largest export market for U.S. goods.

The stock of U.S. foreign direct investment (FDI) in Nicaragua was \$162 million in 2008 (latest data available), down from \$237 million in 2007.

## IMPORT POLICIES

### Free Trade Agreement

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

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

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

### Tariffs

As a member of the Central American Common Market, Nicaragua applies a harmonized external tariff on most items at a maximum of 15 percent with some exceptions. In response to rising prices, in 2007, Nicaragua issued a series of decrees to unilaterally eliminate or reduce to 5 percent tariffs on many basic foodstuffs and consumer goods. These decrees have been extended every six months and are currently in effect through June 30, 2010.

However, under the CAFTA-DR, approximately 80 percent of U.S. industrial and consumer goods now enter Nicaragua duty-free, with remaining tariffs phased out by 2015. Nearly all textile and apparel goods

## FOREIGN TRADE BARRIERS

that meet the Agreement's rules of origin now enter Nicaragua duty-free and quota-free, promoting new opportunities for U.S. and regional fiber, yarn, fabric, and apparel manufacturing companies.

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

### **Nontariff Measures**

The Nicaraguan government levies a "selective consumption tax" on some luxury items that is 15 percent or less, with a few exceptions. The tax is not applied exclusively to imports; however, domestic goods are taxed on the manufacturer's price, while imports are taxed on the cost, insurance, and freight value. Alcoholic beverages and tobacco products are taxed on the price billed to the retailer.

### **GOVERNMENT PROCUREMENT**

Procurement by government entities not covered by the CAFTA-DR, such as the National Electricity Company, the National Assembly, the National Basic Foods Company, the Ministry of Tourism, the Supreme Court, the Ministry of Energy and Mines, and some public universities, remains subject to highly nontransparent and irregular practices.

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

### **EXPORT SUBSIDIES**

Nicaragua does not provide export financing. However, all exporters receive tax benefit certificates equivalent to 1.5 percent of the free-on-board value of the exported goods. Under the CAFTA-DR, Nicaragua may not adopt new duty waivers or expand existing duty waivers that are conditioned on the fulfillment of a performance requirement (*e.g.*, the export of a given level or percentage of goods). However, Nicaragua may maintain such duty waiver measures for such time as it is an Annex VII country for the purposes of the WTO Agreement on Subsidies and Countervailing Measures (SCM Agreement). Thereafter, Nicaragua must maintain any such measures in accordance with Article 27.4 of the SCM Agreement.

### **INTELLECTUAL PROPERTY RIGHTS (IPR) PROTECTION**

To implement its CAFTA-DR IPR obligations, Nicaragua undertook legislative reforms providing for stronger IPR protection and enforcement. Despite these efforts, the piracy of optical media and trademark violations continue to be concerns. The United States has expressed concern to the Nicaraguan government about inadequate enforcement.

The CAFTA-DR provides for improved standards for the protection and enforcement of a broad range of IPR, including: protections for patents, trademarks, undisclosed test and other data submitted to obtain marketing approval for pharmaceuticals and agricultural chemicals; and for digital copyrighted products such as software, music, text, and videos; and further deterrence of piracy and counterfeiting.

## **FOREIGN TRADE BARRIERS**



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

### **SERVICES BARRIERS**

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

Under the CAFTA-DR, Nicaragua committed to opening its telecommunications sector to U.S. investors and services suppliers. The executive branch has proposed legislation that would strengthen the enforcement capacity of the telecommunications regulator (TELCOR) and improve competitive conditions in Nicaragua's telecommunications market. The United States will monitor this process, as well as TELCOR's efforts to implement new telecommunications regulations.

### **INVESTMENT BARRIERS**

The CAFTA-DR establishes a secure and predictable legal framework for U.S. investors operating in Nicaragua. The investment protection obligations of the CAFTA-DR apply to a broad definition of investments, including enterprises, debt, concessions, contracts, and intellectual property. In most circumstances, the CAFTA-DR guarantees U.S. investors the right to establish, acquire, and operate their investments in Nicaragua on an equal footing with domestic investors. Investor rights are protected under the CAFTA-DR by a procedure for dispute settlement that is impartial and transparent.

During the 1980s, the Nicaraguan government confiscated some 28,000 real properties. Since 1990, thousands of individuals have filed claims for the return of their property or to receive compensation. Where granted, compensation is most commonly provided via low interest bonds issued by the government. As of October 2009, the Nicaraguan government had settled more than 4,600 U.S. citizen claims relating to confiscated property. A total of 563 U.S. claims registered with the U.S. Embassy remain outstanding. The United States continues to press the Nicaraguan government to resolve these outstanding claims.

Notwithstanding the CAFTA-DR's legal framework for investment, the ongoing occurrence of disputes involving the government of Nicaragua suggests a systemic concern that may negatively impact the investment climate. For example, in 2009, the government of Nicaragua cancelled a provisional license for electricity generation granted to a wind energy consortium that included a U.S. partner. The government claimed the consortium had violated the terms of its license by beginning construction. After a six week delay, the government granted a permanent license, and the consortium resumed construction.

### **OTHER BARRIERS**

Some U.S. firms and citizens have found corruption in government, including in the judiciary, to be a significant concern and a constraint to successful investment in Nicaragua. The general perception is that government agencies and the judicial system are weak and subject to outside influence. Administrative and judicial decision-making appear at times to be inconsistent, non-transparent, and very time consuming. Courts have frequently granted orders (called an "amparo") to protect individuals suspected of white collar crime that enjoin official investigatory and enforcement actions indefinitely. Foreign investors are not specifically targeted but often find themselves at a disadvantage in any dispute with Nicaraguan nationals.

## **FOREIGN TRADE BARRIERS**

## **Law 364**

U.S. companies and the U.S. Chamber of Commerce have concerns that Nicaraguan Law 364, enacted in 2000 and implemented in 2001, retroactively imposes liability on foreign companies that manufactured or used the chemical pesticide DBCP in Nicaragua. DBCP was banned in the United States after the Environmental Protection Agency cancelled its certificate for use (with exceptions) in 1979. U.S. companies and courts have expressed concern that the law and its application under Nicaragua's judicial system lack due process, transparency, and fundamental fairness. In particular, the law allows for retroactive application of no-fault liability related to a specific product, waiver of the statute of limitations, irrefutable presumption of causality, truncated judicial proceedings, the imposition of a \$100,000 nonrefundable bond per defendant as a condition for firms to mount a defense in court, and escrow requirements of approximately \$20 million earmarked for payment of awards and minimum liabilities as liquidated damages (ranging from \$25,000 to \$100,000). Some plaintiffs seek to lay claim to U.S. company assets in other countries. In 2009, a California State court dismissed with prejudice two Nicaraguan DBCP cases, and a Federal district court denied recognition of a \$97 million Nicaraguan judgment under Law 364 because the "case did not arise out of proceedings that comported with the international concept of due process." The Federal court also found "the presumption of causation in Special Law 364 contradicts known scientific fact." The U.S. Government has been working with the affected U.S. companies and the Nicaraguan government to facilitate resolution of this issue.

# NIGERIA

## TRADE SUMMARY

The U.S. goods trade deficit with Nigeria was \$15.5 billion in 2009, down \$18.5 billion from 2008. U.S. goods exports in 2009 were \$3.7 billion, down 10.8 percent from the previous year. Corresponding U.S. imports from Nigeria were \$19.1 billion, down 49.8 percent. Nigeria is currently the 43rd largest export market for U.S. goods.

The stock of U.S. foreign direct investment (FDI) in Nigeria was \$3.4 billion in 2008 (latest data available), up from \$1.4 billion in 2007. U.S. FDI in Nigeria is concentrated in mining and nonbank holding companies.

## IMPORT POLICIES

### Tariffs

Nigeria is a member of the World Trade Organization (WTO) and the Economic Community of West African States (ECOWAS). Nigeria's average applied tariff rate in 2008 was 12 percent but ranged as high as 50 percent on specific tariff lines. In September 2008, the Nigerian government issued the 2008-2012 Common External Tariff (CET) Book that harmonizes its tariffs with those of its West African neighbors under the ECOWAS Common External Tariff. The tariff regime has five tariff bands and import duties were reduced on a number of items, such as rice, cigars, and manufactured tobacco. The five CET tariff bands are: zero duty on social goods (*e.g.*, medicine, publications); 5 percent on imported raw materials; 10 percent on intermediate goods; 20 percent on finished goods; and 35 percent on goods in certain sectors. The fifth band – proposed by Nigeria – was accepted in 2008 by ECOWAS member countries as part of the CET, but products to be covered under the 35 percent tariff band are still under negotiation among member countries. Adoption of the CET is part of ongoing economic reforms aimed at improving Nigeria's trade and investment environment and harmonization of economic policies in the sub-region. There is some resistance within the government of Nigeria and the private sector to deepening trade reforms.

Non-transparent implementation of the tariff system – including arbitrary valuation procedures, frequent policy changes, and unclear interpretations by the Nigerian Customs Service (NCS) – has presented problems for importers.

### Nontariff Measures

Nigeria continues to ban certain imports, citing the need to protect local industries. The CET book reduced the number of items on the import prohibition list from 44 to 26. Items removed from the list include corn, sorghum, millet, wheat flour, crude vegetable oil, biscuits, sugar confectioneries (including white chocolate), fresh and dried fruit, flowers (both fresh and plastic), toothpaste, envelopes, diaries, greeting cards, exercise books, bentonites, barites, calendars, cutlasses, axes, pick axes, spades, shovels, fully built mudguards, wheel barrows, and electric generating sound proof casings.

Items remaining on the import prohibition list include: eggs, cocoa butter, powder and cakes, pork, beef, live birds, frozen poultry, refined vegetable oil and fats, cassava, bottled water, spaghetti, noodles, fruit juice in retail packs, non-alcoholic beverages (excluding energy drinks), certain textile products, and

## FOREIGN TRADE BARRIERS

bagged cement. A new cement policy was announced in October 2009. The policy bans the importation of bagged cement, while providing some incentives to cement producers, including duty exemptions on imported machinery and raw materials such as gypsum.

### **Customs Procedures**

Nigeria's port practices continue to present major obstacles to trade. The country's list of items prohibited for import, coupled with incorrect declarations of goods by some importers, result in 95 percent of containers being physically examined. This delays the clearing process and increases costs. Nigeria's uneven application of import and labeling regulations makes importing high-value perishable products difficult. Disputes between Nigerian agencies over the interpretation of regulations often cause delays, and frequent changes in customs guidelines slow the movement of goods through Nigerian ports. Importers report erratic application of customs regulations, lengthy clearance procedures, high berthing and unloading costs, and corruption. These factors can contribute to product deterioration and may result in significant losses for importers of perishable goods. Realizing that delays at the ports significantly increase the cost of doing business in Nigeria, the government plans to implement a 48 hour cargo clearance policy at the ports.

Roads coming in and out of the ports are decaying, and overuse results in around-the-clock traffic congestion. There is no rail system for transporting freight in and out of ports. This congestion leads to ships queuing up to berth at cargo terminals and containers waiting to be transported out of the ports. The port operator for Lagos made significant improvements with off-loading ships in 2009. Containers come off ships at a much faster rate but have to wait for up to 45 days to be processed through customs. There are over 15 agencies represented at the ports. In an effort to achieve the 48 hour cargo clearance target at the ports, the government plans to withdraw all agencies except the NCS from the ports and improve the technical capacity of the NCS. There are also plans to automate all customs payments.

### **EXPORT SUBSIDIES AND OTHER EXPORT PROMOTION PROGRAMS**

The government of Nigeria administers various export incentive programs such as tax concessions, export development funds, capital asset depreciation allowances, and foreign currency retention programs in addition to operating Free Trade Zones and Export Processing Zones. According to the CET Book, most concessions, waivers, or exemptions on imports have been terminated. However, the Nigerian Export Promotion Council will continue to implement the Export Expansion Grant scheme to improve non-oil export performance.

### **GOVERNMENT PROCUREMENT**

Nigeria continues to take steps to improve public procurement. An amendment to the Public Procurement Act is being considered by the National Assembly that would decentralize government procurement and increase the procurement authorization limits for ministries, departments, and agencies, unlike the current legislation, which provides for a central clearinghouse for issuing and monitoring all government procurement above 50 million naira (\$333,333). The 36 state governments have agreed to enact the amended Public Procurement Act in their respective states.

Foreign companies incorporated in Nigeria are permitted to participate in government procurement on the same terms as local companies. Government tenders are published in local newspapers, and a "tenders" journal is sold at local newspaper outlets. U.S. companies have won government contracts in several sectors. Budget delays often result in both local and foreign companies experiencing delays in receiving

## **FOREIGN TRADE BARRIERS**

payment under public contracts. This has contributed to financial difficulties for suppliers of some goods and services.

Approval from the National Petroleum Investment Management Services agency (NAPIMS) is required for all procurement in the energy sector with a value above \$500,000. The NAPIMS approval process is slow and can significantly increase the time and resources required for a given project.

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

## **INTELLECTUAL PROPERTY RIGHTS (IPR) PROTECTION**

The lack of institutional capacity to address IPR issues is a major constraint to enforcement. Piracy and counterfeiting remain a problem despite growing interest among Nigerians in seeing their intellectual property protected. Counterfeit and pirated products ranging from automotive parts, pharmaceuticals, software, music and video recordings, and other consumer goods are rampant. Legislation intended to establish a legal framework for an IPR system to implement WTO obligations has been pending in the National Assembly for several years.

In 2004, the Nigerian Copyright Commission (NCC) launched an antipiracy initiative named “Strategic Action Against Piracy.” The Nigerian police force, working closely with the NCC, raided enterprises producing and selling various pirated works such as software, books, and videos. The NCC obtained two convictions on broadcast piracy and software piracy in 2009. About 60 cases are currently being prosecuted against IPR violators in various courts in the country. However, inconsistent application of legal and law enforcement measures remain barriers to IPR enforcement.

## **SERVICES BARRIERS**

Foreign energy services suppliers are confronted with a number of barriers in Nigeria, particularly with respect to movement of personnel. Nigeria imposes quotas on foreign personnel based on the issued capital of firms. Such quotas are especially strict in the oil and gas sector and may apply to both production and services companies. Oil and gas companies must hire Nigerian workers unless they can demonstrate that particular positions require expertise not found in the Nigerian workforce. Positions in finance and human resources are almost exclusively reserved for Nigerians. Certain geosciences and management positions may be filled by foreign workers with the approval of NAPIMS. Each oil company must negotiate its foreign worker allotment with NAPIMS. Delays in this process and in the approval of visas for foreign personnel present serious challenges to the energy industry in acquiring the necessary personnel for their operations.

## **INVESTMENT BARRIERS**

Investment in the petroleum sector is limited to existing joint ventures or production-sharing agreements. Foreign investors may invest in any Nigerian firm except those on an exemption list, which includes companies that manufacture firearms, ammunition, and military and paramilitary apparel. Foreign investors must register with the Nigerian Investment Promotion Commission after incorporation.

Potential investors must contend with complex tax administration procedures, confusing land ownership laws, overlapping land ownership claims, arbitrary application of regulations, power shortages, poor roads, corruption, and crime. The sanctity of contracts is often violated and Nigeria’s court system for settling commercial disputes is weak and can be biased. There were at least three prominent cases in

## **FOREIGN TRADE BARRIERS**

2009 in which the judicial system or law enforcement agencies may have been manipulated by local companies in order to exert pressure on U.S. companies and individuals for commercial advantage.

Violence in the oil-producing Nigerian Delta region is a longstanding issue and has affected production levels in the oil sector. Attacks in the first half of 2009 led major oil companies to invoke *force majeure* exemptions from delivery contracts. Although the government and militants have generally upheld a truce since late 2009, any resurgence in violence would be a clear deterrent to inward oil investment.

International oil companies are under significant pressure to increase procurement from domestic firms. The government, through the Nigerian Content Division of the Nigerian National Petroleum Corporation (NNPC), has set a target of 70 percent local content for oil-related projects by 2010. The government's local content target was not met in 2008, and will likely not have been met in 2009 due to infrastructure challenges such as power shortages, and insecurity in the Delta region. New legislation to codify mandatory levels of local content in specific petroleum activities is pending in the National Assembly. The proposed legislation could lead to higher costs and have a strong negative impact on the operations of international energy services companies operating in Nigeria.

The majority of natural gas flaring in Nigeria is done in older, on-shore, and near-off-shore oilfields. International oil companies typically operate those fields in joint-venture arrangements with the NNPC as the majority partner. Funding for joint venture operations, maintenance, and equipment upgrades comes from joint venture partners in proportion to their equity ownership. The government has failed to fully fund its share of the costs in these joint ventures during the past several years, reducing the ability of international operating partners to install new anti-flare technology in these older oilfields.

The government has proposed a Petroleum Industry Bill that would reorganize the NNPC and could worsen the investment climate in the oil and gas sector. Stakeholders in the sector, including international oil companies and oil and gas service providers, as well as Nigerian firms, have been advocating changes in the terms of the proposed bill to make it more attractive to private sector investment. Sanctity of contracts, mediation, and dispute settlement are other issues of particular concern for companies in this sector.

## **OTHER BARRIERS**

Nigeria's corruption levels remain high and its main anticorruption institution, the Economic and Financial Crimes Commission, has faltered recently in its commitment on the issue. Some U.S. suppliers believe they lose sales when they refuse to engage in illicit or corrupt behavior. Other U.S. exporters say Nigerian businessmen and officials understand that U.S. firms must adhere to the U.S. Foreign Corrupt Practices Act, and they believe that the law's restrictions help minimize their exposure to corruption.

# NORWAY

## TRADE SUMMARY

The U.S. goods trade deficit with Norway was \$2.9 billion in 2009, down \$1.1 billion from 2008. U.S. goods exports in 2009 were \$2.8 billion, down 16.4 percent from the previous year. Corresponding U.S. imports from Norway were \$5.7 billion, down 22.4 percent. Norway is currently the 46th largest export market for U.S. goods.

U.S. exports of private commercial services (*i.e.*, excluding military and government) to Norway were \$3.5 billion in 2008 (latest data available), and U.S. imports were \$2.0 billion. Sales of services in Norway by majority U.S.-owned affiliates were \$5.4 billion in 2007 (latest data available), while sales of services in the United States by majority Norway-owned firms were \$1.5 billion.

The stock of U.S. foreign direct investment (FDI) in Norway was \$10.9 billion in 2008 (latest data available), down from \$12.0 billion in 2007. U.S. FDI in Norway is primarily concentrated in the mining and manufacturing sectors.

## IMPORT POLICIES

Norway, along with Switzerland, Iceland, and Liechtenstein, is a member of the European Free Trade Association (EFTA). EFTA members, with the exception of Switzerland, participate in the European Union (EU) single market through the European Economic Area (EEA) accord. Norway grants preferential tariff rates to EEA members. As an EEA signatory, Norway assumes most of the rights and obligations of EU member states. The exceptions are in the agricultural and fishery sectors. These sectors are in addition to finance and foreign policy, which are not covered by the EEA accord. As a non-EU member, Norway's ability to influence EU decisions is limited.

As a general matter, Norway has implemented or is in the process of implementing most EU trade policies and regulations. Norway's market, except for agricultural products and processed foods, is generally open. Norway has continued on a unilateral basis to dismantle import tariffs on industrial products. The average Most Favored Nation (MFN) tariff on nonagricultural products has fallen from 2.3 percent in 2000 to less than 1 percent today. More than 90 percent of industrial tariff lines are currently duty-free.

Although Norway maintains a liberal trade and investment regime with respect to industrial products, its agricultural sector remains highly protected, and U.S. exporters of agricultural products face trade barriers that are at least as high as they face in the EU.

## Agricultural Products

Although agriculture accounts only for slightly more than 1 percent of Gross Domestic Product (GDP), support to agricultural producers as a percentage of total farm receipts is among the highest in the world. Norway emphasizes the importance of "non-trade concerns," which include food security, environmental protection, rural employment, and the maintenance of human settlement in sparsely populated areas as justification for high domestic support levels. One of Norway's leading concerns in the WTO Doha Development Round has been the preservation of its highly subsidized agricultural sector.

## FOREIGN TRADE BARRIERS

## **Tariffs**

Norway bound its tariffs for agricultural commodities in 1995 as part of its WTO commitments. Tariffication of agricultural nontariff barriers as a result of the Uruguay Round led to the replacement of quotas with high *ad valorem* or specific tariffs on these products. Although Norway is only 50 percent self-sufficient in agricultural production, it maintains a system that assures that domestic producers – farmers as well as the food processing industry – have little competition until all domestic production has been consumed. Tariff rates on agricultural products can range as high as several hundred percent.

Domestic agricultural shortages and price surges are offset by temporary tariff reductions. However, lack of predictability in tariff adjustments and insufficient advance notification of these adjustments – generally only two days to five days before implementation – favor nearby European suppliers and make imports from the United States, especially of fruits, vegetables and other perishable horticultural products, very difficult. For a number of processed food products, tariffs are applied based on their formulas, requiring the Norwegian importer to provide a detailed disclosure of product contents. Many exporters to the Norwegian market refuse to give all requested details and their products are, as a result, subject to maximum tariffs.

## **Tariff-Rate Quotas**

Norway has tariff-rate quotas (TRQs) for 350 agricultural and horticultural products including grains, meat, and eggs, and the Norwegian Agricultural Authority holds auctions for the allocation of quota for many of these products. Norwegian importers are primarily interested in TRQs for grains or niche products. However, participating in the auctions is inexpensive, and importers that secure a quota are not required to actually import those products. Although almost all of the TRQ quota amounts are sold at auctions each year, the quotas for grains have an average fill rate of only 53 percent, and the quotas for other products have an average fill rate of only 62 percent. The Agricultural Authority does not have a system to reallocate any unused quotas.

## **Raw Material Price Compensation**

Although the EEA does not generally apply to agricultural products, it includes provisions on raw material price compensation that are meant to increase trade in processed food. Norway has a special agreement with the EU within the EEA framework that applies a preferential duty on some EU processed food products. The agreement covers a wide range of products, including bread and baked goods, breakfast cereals, chocolate and sweets, ice cream, pasta, pizza, soups, and sauces. This regime disadvantages U.S. exporters to the Norwegian market for these processed foods.

Norway also maintains a price reduction regime that includes subsidies for using certain domestically-produced raw materials in processed foods. Products for which such subsidies are paid include chocolate, sweets and ice cream (for milk and glucose), and pizza (for cheese and meat). The purpose of the system is to help compensate the domestic food processing industry for high costs of domestic raw material.

## **Wines and Spirits**

The wine and spirits retail market in Norway is controlled by the government monopoly Vinmonopolet, with a stated social mission of curbing alcohol consumption. The monopoly regulates all domestic access to spirits. There were 242 Vinmonopolet stores throughout Norway in 2009, with over 10,000 products sold. Wine and spirits sales through ordinary retail stores are not allowed. Both an approved



importer/agent and distributor are required in order to enter the market. Gaining approvals to include wines and other alcoholic beverages on Vinmonopolet's retail list is cumbersome, contributing to the limited variety of U.S. wines available to Norwegian consumers. Vinmonopolet's tender system sets specifications and conditions for quality, price, and delivery for the purchase of most new products. Products chosen for sale through Vinmonopolet must meet annual minimum sales quotas or they are dropped from the basic list inventory. Advertising of alcoholic beverages is strictly prohibited.

In 2007, the market share of U.S. wine offered through the Vinmonopolet was less than 2 percent. In 2008, U.S. and Norwegian authorities held constructive discussions on ways to raise awareness of U.S. wines and increase the number of quality U.S. wines in Norway. These discussions strongly contributed to Vinmonopolet's decision to promote more American wines throughout its stores in 2009. Vinmonopolet decided to have a nationwide focus on U.S. wines in January 2009 and February 2009 with a special release of 17 U.S. wines in all its stores, as well as featuring U.S. wine and regions in its magazine Vinbladet. Through wide exposure created by this focus, as well as through a number of targeted tastings and events, more attention has been put on the quality and variety of U.S. wines. Vinmonopolet sales statistics for the first 6 months of 2009 show that sales of U.S. wines are up 61.7 percent for red wines and 19.5 percent for white wines compared to the same period in 2008.

## **INTELLECTUAL PROPERTY RIGHTS (IPR) PROTECTION**

Norway was listed on the Watch List in the 2009 Special 301 report. Key concerns cited in the Report included the lack of product patent protection for certain pharmaceutical products. U.S. industry has expressed concern that the regulatory framework in Norway regarding process patents filed prior to 1992 and pending in 1996 denies adequate patent protection for a number of pharmaceutical products currently on the Norwegian market. The United States will continue to encourage Norway to resolve this issue.

U.S. industry representatives report that Internet piracy in Norway is facilitated by the high level of broadband Internet penetration and the ease of peer-to-peer downloads of music and video. Industry representatives report concerns with Norway's implementation of the EU's 2001 Copyright Directive that addresses Internet piracy, as well as broad private use exceptions under Norway's copyright laws. The government is currently reviewing the legislation and the results are expected to be published in 2010.

U.S. and Norwegian authorities held constructive discussions in 2009 concerning several matters including: the need to educate and promote public awareness of illegal internet use; the role of Internet service providers in prohibiting piracy; and the need to dedicate necessary public resources to combat piracy and prosecute offenders.

## **SERVICES BARRIERS**

### **Financial Services**

Current regulations require that the Norwegian Financial Supervisory Authority grant permission for ownership levels in local financial institutions that exceed certain thresholds. The Authority evaluates the acquisitions to ensure that prospective buyers are financially stable and that the acquisition does not unduly limit competition. The Authority applies national treatment to nonbank foreign financial groups and institutions, but maintains nationality requirements mandating for certain types of financial institutions that at least half the members of the board and half the members of the corporate assembly be nationals and permanent residents of Norway or another EEA nation. On January 1, 2005, Norway

## **FOREIGN TRADE BARRIERS**

removed the ceiling on foreign equity participation in a Norwegian financial institution, provided the Authority has granted permission.

### **INVESTMENT BARRIERS**

Norway welcomes foreign investment as a matter of policy, and grants national treatment to foreign investors, except in mining, hydropower, and property acquisition. Foreign companies are required to obtain permission for the right to own or use various kinds of real property, including forests, mines, tilled land, and waterfalls. However, foreign companies do not need permission to rent real estate provided that the rental contract is made for a period of fewer than 10 years.

Norway's petroleum concession process still operates on a discretionary basis with the government awarding licenses based on subjective factors other than competitive bidding. The Norwegian government does not allow direct foreign ownership of hydropower resources.

# OMAN

## TRADE SUMMARY

The U.S. goods trade surplus with Oman was \$180 million in 2009, a decrease of \$351 million from 2008. U.S. goods exports in 2009 were \$1.1 billion, down 21.3 percent from the previous year. Corresponding U.S. imports from Oman were \$908 million, up 6.6 percent. Oman is currently the 72nd largest export market for U.S. goods.

## IMPORT POLICIES

### Tariffs

With the entry into force of the United States-Oman Free Trade Agreement (FTA) on January 1, 2009, Oman provided immediate duty free access on virtually all industrial and consumer products in its tariff schedule and will phase out tariffs on the remaining handful of products within 10 years. In addition, upon entry into force of the FTA, Oman provided immediate duty free access for U.S. agricultural products in 87 percent of agricultural tariff lines. Oman will phase out tariffs on the remaining agricultural products within 10 years.

As a member of the Gulf Cooperation Council (GCC), Oman applies the GCC common external tariff of 5 percent for most non-U.S. products, with a limited number of GCC-approved country-specific exceptions. Oman's exceptions include tariff rates of 100 percent on pork, alcohol, and cigarettes, and 25 percent on edible oils sold in retail packaging, as well as protective duties on a limited number of agricultural products such as dried lemons, bananas, dates, and ghee.

### Import Licensing

Companies that import goods into Oman must be registered with the Ministry of Commerce and Industry. Importation of certain classes of goods, such as alcohol, livestock, poultry, and their respective products, as well as firearms, narcotics, and explosives, requires a special license. Media imports are subject to censorship.

### Documentation Requirements

Only Omani nationals and companies of WTO Members that are registered as importers are permitted to submit documents to clear shipments through customs.

## GOVERNMENT PROCUREMENT

Under the FTA, procuring entities in Oman are required to conduct procurement covered by the Agreement in a fair, transparent, and nondiscriminatory manner.

Oman provides a 10 percent price preference to tenders that contain a high content of local goods or services, including direct employment of Omani nationals. However, Oman may not apply price preferences to procurement covered by the FTA. For most major tenders, Oman invites bids from firms either already registered in Oman or pre-selected by project consultants. Bidders are requested to be present at the opening of bids and interested persons may view the process on the Tender Board's

website. The U.S. business community has reported that bidders' costs can sometimes increase dramatically when award decisions are delayed, sometimes for years, or the bidding is reopened with modified specifications and, typically, short deadlines. Oman's Ministry of Defense may require that companies involved in defense-related transactions participate in its offset program, entitled "Partnership for Development."

In accordance with its commitment in its WTO accession, Oman began the process of acceding to the WTO Agreement on Government Procurement (GPA) in 2001, but it has not completed the process and remains an observer to the GPA.

## **INTELLECTUAL PROPERTY RIGHTS (IPR) PROTECTION**

In the FTA, Oman committed to provide strong IPR protection and enforcement for copyrights, trademarks, geographical indications and patents. Oman revised its IPR laws and regulations to implement these FTA commitments and acceded to several international IPR treaties.

As part of the GCC Customs Union, the six Member States are preparing a common trademark law, as well as a common unfair competition law to protect from unfair commercial use undisclosed information submitted for marketing approval of pharmaceutical products. The United States is engaged in a dialogue with GCC technical experts to ensure that the trademark law and unfair competition law will facilitate Member States' implementation of international and bilateral obligations.

## **SERVICES BARRIERS**

### **Banking**

Oman does not permit representative offices or offshore banking.

### **Legal Services**

By a decree from the Ministry of Justice in October 2009, non-Omani attorneys, including U.S. attorneys practicing in Oman, are prohibited from appearing in courts of first impression. Within the next several years, the Ministry of Justice plans to bar foreign lawyers from appearing in all of its courts.

## **INVESTMENT BARRIERS**

Under the FTA, Oman is required to accord MFN treatment and national treatment to U.S. investors, who also have the right to make financial transfers freely and without delay. In addition, Oman is required to apply international law standards for expropriation and compensation and to provide access to international arbitration. Many forms of investment are protected under the FTA, including enterprises, debt, concessions, contracts, and intellectual property rights. As a result, U.S. investors in almost all circumstances are entitled to establish, acquire, and operate investments in Oman on an equal footing with Omani investors and with investors of other countries. The FTA also prohibits the imposition of certain restrictions on U.S. investors, such as requirements to buy Omani rather than U.S. inputs for goods manufactured in Oman.

Concerns remain regarding the ability of U.S. businesses to acquire office space. Although U.S. investors are permitted to purchase freehold property in designated residential developments in accordance with regulations promulgated by the government in 2007, businesses must adhere to more restrictive

## **FOREIGN TRADE BARRIERS**

guidelines when acquiring real estate for commercial offices. With the exception of certain tourism-related property agreements, only companies or enterprises with at least a 51 percent Omani shareholding are permitted to own real estate for the purpose of establishing an administrative office, staff accommodation, warehouse or show room, or other building with a similar purpose. In addition, these companies must retain ownership of the land for at least two years. Other enterprises, including foreign majority-owned businesses, may instead seek "usufruct" rights that enable them to exploit, develop, and use land granted by a third party. A usufruct agreement is similar to a lease agreement and must be registered with the Ministry of Housing.



# PAKISTAN

## TRADE SUMMARY

The U.S. goods trade deficit with Pakistan was \$1.5 billion in 2009, down \$155 million from 2008. U.S. goods exports in 2009 were \$1.6 billion, down 14.4 percent from the previous year. Corresponding U.S. imports from Pakistan were \$3.2 billion, down 11.9 percent. Pakistan is currently the 60th largest export market for U.S. goods.

The stock of U.S. foreign direct investment (FDI) in Pakistan was \$482 million in 2008 (latest data available), down from \$514 million in 2007.

## IMPORT POLICIES

Pakistan's overall average applied tariff in 2008 was 14.7 percent. There are 14 different *ad valorem* tariff levels, ranging from 0 percent to 150 percent. In FY2008-2009 (July 2008 – June 2009), specific rates of duty were applied to 44 products. These rates were continued in the 2009-2010 budget.

The government of Pakistan in FY2008-2009 increased the specific tariff rates on 397 non-essential and luxury items from the 15 percent to 25 percent range to between 30 percent and 35 percent as part of an effort to control Pakistan's global trade deficit. These items include cosmetics, many domestic appliances, luxury food items, and cigarettes. The tariff on cars with an 1800cc engine capacity has been raised from 90 percent to 100 percent, and on cars with a 2500cc engine capacity the tariff has been raised from 100 percent to 150 percent. A 50 percent tariff has been imposed on imported vehicles with engines smaller than an 850cc engine capacity. A tariff ranging from \$6 to \$9 per handset is being assessed on imported cell phone handsets. Pakistan provides protection to domestic manufacturers of automotive parts by imposing higher tariff rates on those auto parts that are manufactured in Pakistan. Pakistan has a 55 percent tariff on imported automotive parts that are also manufactured domestically, and a 35 percent tariff on those automotive parts that it does not manufacture domestically. Prior to this arrangement, Pakistan used a local content requirement (known as the Deletion Program) in the auto industry, which required using certain levels of local inputs. Also in FY2008-2009, Pakistan reduced tariffs on instant print film and instant print cameras to 5 percent from the 30 percent to 200 percent range, with a goal of reducing incentives to evade payment of tariffs on these products.

The government of Pakistan reserves the right to grant sector-specific duty exemptions and concessions, and other protections under Statutory Regulatory Orders (SROs). For example, the government in 2006 exempted all domestically-produced and imported pharmaceutical-related inputs from its General Sales Tax, and an SRO issued in August 2002 exempted pharmaceutical products from the General Sales Tax, a measure which remains in place. However, certain pharmaceutical products remain subject to a 2006 SRO imposing a 15 percent duty. In recent years, the use of SROs has decreased. SROs and other trade policy and regulatory documents are published on the Central Board of Revenue's website: <http://www.cbr.gov.pk>.

U.S. soft drink manufacturers have reported that Pakistan imposes a 12 percent Central Excise Duty (CED) on carbonated soft drinks and a 50 percent CED on soft drink concentrates.

In January 2000, the Pakistani government began implementing a transactional valuation system, in accordance with the WTO's Customs Valuation Agreement. Currently, about 90 percent to 95 percent of

## FOREIGN TRADE BARRIERS

imports are assessed duties pursuant to the transactional valuation system, including major imports such as industrial and power equipment, petroleum and petroleum products, and chemicals. A number of traders in food and nonfood consumer products, however, report that the system is not uniformly applied. A few major U.S. companies in the machinery and materials sector have reported specific concerns with application of customs valuation methods by Pakistan Customs, particularly the use of minimum values instead of the declared transaction value.

On October 5, 2009, Pakistan began to enforce a 2005 regulation requiring that the commercial invoice and the packing list be included inside a container. The inclusion of invoice and packing lists is difficult in situations when shipments originate in a different location from where the invoice and packing list are created, when invoices are created after the shipment departs, or when several companies are involved.

## **GOVERNMENT PROCUREMENT**

Pakistan is not a signatory to the WTO Agreement on Government Procurement. The government uses an open procurement process, although bidders have to register with the government to be awarded contracts. Registration is required to ensure that legitimate businesses are bidding for contracts. The Public Procurement Regulatory Authority (the Authority), which was established in 2002, is an autonomous body responsible for prescribing regulations and procedures for procurement by public sector entities and for monitoring procurement by such entities. In 2004, the Authority enacted a regulatory framework for public procurement which is aimed at establishing transparent public procurement practices. Pursuant to the 2004 regulatory framework, international tender notices are publicly advertised and sole source contracting using company-specific qualifications has been eliminated. There are no official "buy national" policies.

Political influence on procurement decisions, charges of official corruption, non-transparency, and long delays in bureaucratic decision-making are common. Suppliers have reported instances where the government used the lowest bid as a basis for further negotiations, rather than accepting the lowest bid under its tender rules.

## **EXPORT SUBSIDIES**

Pakistan actively promotes the export of Pakistani goods with measures such as tariff concessions on imported inputs and income and sales tax concessions. Other subsidies in Pakistan's 2009 fiscal year were confined mostly to wheat and totaled roughly \$3.4 million, according to government sources. Although subsidies have been provided in the past, there was no freight subsidy in FY2009. The government provided \$48.19 million as a Research and Development subsidy to the textile sector and a \$9.7 million interest rate subsidy to the spinning sector in FY2009.

Pakistan established its first Export Processing Zone (EPZ) in Karachi in 1989, with special fiscal and institutional incentives available to encourage the establishment of exclusively export-oriented industries. The government subsequently established additional EPZs in eight other locations, including Risalpur, Gujranwala, and Sialkot in Punjab Province, and Saindak and Duddar in Balochistan Province. Principal government incentives for EPZ investors include an exemption from all federal, provincial, and municipal taxes for production dedicated to exports; exemption from all taxes and duties on equipment, machinery, and materials (including components, spare parts, and packing material); indefinite loss carry-forward; and access to Export Processing Zone Authority One Window services, including facilitated issuance of import permits and export authorizations. Despite the large incentives, most of these zones have failed to attract investment.

## **FOREIGN TRADE BARRIERS**



## **INTELLECTUAL PROPERTY RIGHTS (IPR) PROTECTION**

Pakistan was listed on the Priority Watch List in the 2009 Special 301 report. Key concerns cited in the report relate to weak protection and enforcement of IPRs, especially with respect to copyright and pharmaceutical data protection.

While the government took steps in 2006 and 2007 to improve copyright enforcement, especially with respect to optical disc piracy, it appears that only some of the arrests resulted in prosecutions and the few verdicts that were issued resulted in imposition of insignificant prison sentences. Pakistan's Federal Investigation Agency continues to conduct large scale raids, and from August 2008 to November 2009, 17 new cases were filed against IPR violators and \$6.4 million worth of pirated material were confiscated. The raids were carried out in several cities, including Rawalpindi, Lahore, Karachi, Multan, and Faisalabad. However, the lack of successful prosecutions means that arrests have little deterrent effect. Moreover, Pakistan is now reportedly being used as conduit for infringing products transiting from Russia, Malaysia, Singapore, China, Bangladesh, and Sri Lanka for onward distribution to third countries. Book piracy also continues to present barriers to legitimate trade and investment.

Pakistan has not made progress in providing effective protection against unfair commercial use of undisclosed test and other data generated to obtain marketing approval for pharmaceutical products. The government of Pakistan and international and local pharmaceutical companies have been negotiating draft regulations on data protection for the past three years. Although draft data protection regulations were finally formulated in 2009, the regulations remain under government of Pakistan review and have not been promulgated. In addition, Pakistan does not have an effective system to prevent the issuance of marketing approvals for unauthorized copies of patented pharmaceutical products. In 2009 Pakistan's President issued an ordinance that removed an 18-month patent application processing deadline, slowing the processing of pending patent applications.

There has been some progress on IPR issues over the past year. In October 2009, the Cabinet approved a draft Plant Breeder's Rights Law, and parliament is currently reviewing an amendment to the Seed Act of 1976. If passed, these will provide an environment conducive to research and development attractive to both domestic and foreign researchers and plant breeders. The government of Pakistan has indicated it expects the draft laws to be enacted in 2010.

## **SERVICES BARRIERS**

Pakistan generally permits foreign investment in services, subject to certain provisions, including a minimum initial capital investment requirement of \$150,000 for most sectors. Exceptions to this requirement exist with respect to the information technology services sector, which is not subject to the minimum initial investment requirements and banking for which there are special rules (described below). Foreign investors may hold up to a 100 percent equity stake and are allowed 100 percent repatriation of profits in most sectors. The requirement that foreign investors accumulate 40 percent local equity within five years of an initial investment has been eliminated and the cap on repatriation of profits at a maximum of 60 percent of total equity or profits has been abolished. Foreign investors in services and other non-manufacturing sectors are allowed to remit royalties and technical fees, subject to certain conditions. These include limiting initial royalty payments to \$100,000 and capping subsequent royalty payments at 5 percent of net sales for five years.

## **FOREIGN TRADE BARRIERS**

## **Telecommunications**

In 2003, the Pakistani government deregulated the telecommunications sector in an effort to comply with its WTO commitments and encourage growth in the sector. The Pakistan Telecommunication Company Limited (PTCL) lost its monopoly on basic telephone services, and the government issued 14 licenses to long distance telephone companies (13 of which are currently in use), 84 licenses to local loop regional telephone companies (of which 13 are operational), and 92 licenses to wireless local loop companies (of which 5 are operational). The ability of telecommunications companies to operate in Pakistan will continue to depend on access to PTCL infrastructure. In 2005-2006, the government combined 15 value added services including Internet service provision, vehicle tracking systems, and data network operations into one license, the Class Value Added (CVA) license. The government gave those who applied prior to announcement of this policy the option either to continue their old licenses or convert to CVA licenses. To date, the government has issued 124 new CVA licenses and converted 93 old licenses to CVAs. At present, the government does not issue licenses specifically for Voice-over-Internet Protocol (VoIP), but long distance telephone license holders may also provide VoIP services.

## **Banking and Insurance**

Foreign banks that do not have a global tier-1 paid up capital (*e.g.*, equity and retained earnings) of \$5 billion or more or are not from countries that are part of regional groups and associations of which Pakistan is a member (*e.g.*, the Economic Cooperation Organization and the South Asian Association for Regional Cooperation) are capped at a 49 percent equity stake.

The government permits only the parastatal National Insurance Company to underwrite and insure public sector firms. Private sector firms must meet 35 percent of their reinsurance needs within the country. Firms may seek foreign reinsurance facilities to meet 65 percent of their re-insurance needs, but two thirds of this should be met from A-rated foreign companies and the rest from B-rated reinsurance companies. Market domination in the life insurance sector may pose a significant barrier to entry, as the state-owned State Life Insurance Company holds over 65 percent of this market, although that percentage has been declining over the past several years. Three domestically-owned companies account for 65 percent of the general insurance (property, casualty, and health) market.

## **INVESTMENT BARRIERS**

Foreign investors are generally free to establish and own business enterprises in Pakistan, with the exception of five restricted areas: arms and munitions, high explosives, currency/mint operations, radioactive substances, and new non-industrial alcohol plants. There is a \$150,000 minimum foreign investment requirement in nonfinancial services (except information technology services), and a minimum investment requirement of \$300,000 in agriculture, infrastructure projects, and social services (such as education and health).

## **OTHER BARRIERS**

The government's privatization program stalled following a series of Supreme Court decisions against the privatization of Pakistan Steel Mill. The amount earned through privatizations in FY2009 was only \$16.4 million, compared to \$224 million in the previous year. The lack of a sound privatization plan and investor interest (attributable to investment climate and security concerns) has led to a halt in privatizations of state-owned enterprises.

## **FOREIGN TRADE BARRIERS**

Businesses operating in Pakistan have repeatedly called for strengthening national security against extremists. Corruption and a weak judicial system remain recurrent and substantial disincentives to investment. Pakistani laws targeting corruption include the 1947 Prevention of Corruption Act, the 1973 Efficiency and Discipline Rules, and the 1999 National Accountability Bureau (NAB) Ordinance. Previously, the NAB, the Federal Investigation Agency (FIA), and provincial anticorruption departments shared official responsibility for combating corruption. In October 2002, Pakistan's cabinet approved a National Anti-Corruption Strategy (NACS) that identified areas of pervasive corruption and recommended timeframes for measures and reforms to combat corruption. The NACS named the NAB as the sole anticorruption agency at the federal level. In mid-2009, the Supreme Court directed that the executive ordinance establishing the NAB be replaced with legislation not later than November 2009. However, the new law was not completed by that time and the new NAB bill is currently with the National Assembly Standing Committee on Law and Justice. The draft bill proposes to change the name of the NAB and reduces the maximum punishment for corruption offenses from 14 years to 13 years. It also proposes to abolish accountability courts and refers NAB cases to special benches of High Courts.

Contract enforcement can be difficult for U.S. and other foreign investors in Pakistan. For example, a longstanding investment dispute between a major U.S. multinational company and a local partner raised concerns about the enforceability of international arbitration awards regarding contracts between private parties. After nearly a decade of litigation, the case was resolved in 2009 when the local party withdrew its appeal from the Lahore High Court.

In 2004, Pakistan's Cabinet approved the 1958 New York Convention on Recognition and Enforcement of Foreign Arbitral Awards (New York Convention). Pakistan's Cabinet ratified the New York Convention on July 14, 2005, and conveyed the instrument of ratification to the United Nations Secretary General, who is the depository of such instruments. The ordinance by which the New York Convention was implemented expired in November 2009. A new bill was submitted to the National Assembly for approval.



# PANAMA

## TRADE SUMMARY

The U.S. goods trade surplus with Panama was \$4.1 billion in 2009, a decrease of \$454 million from 2008. U.S. goods exports in 2009 were \$4.4 billion, down 10.8 percent from the previous year. Corresponding U.S. imports from Panama were \$304 million, down 19.7 percent. Panama is currently the 40th largest export market for U.S. goods.

The stock of U.S. foreign direct investment (FDI) in Panama was \$7.2 billion in 2008 (latest data available), up from \$6.5 billion in 2007. Reported U.S. FDI in Panama is led by the finance/insurance and wholesale trade sectors.

## TRADE PROMOTION AGREEMENT

On June 28, 2007, the United States and Panama signed the United States – Panama Trade Promotion Agreement (TPA). Panama approved the TPA on July 11, 2007. The United States has not yet approved the TPA.

The TPA is a comprehensive free trade agreement. When the TPA enters into force, it will result in significant liberalization of trade in goods and services, including financial services. The TPA also includes important disciplines relating to customs administration and trade facilitation, technical barriers to trade, government procurement, investment, telecommunications, electronic commerce, intellectual property rights, and labor and environmental protection. Under the TPA, U.S. firms will have better access to Panama's services sector than it provides to other WTO Members under the General Agreement on Trade in Services. All services sectors are covered under the TPA, except where Panama has made specific exceptions. Moreover, Panama agreed to become a full participant in the WTO Information Technology Agreement.

## IMPORT POLICIES

### Tariffs

Panama's average tariff on U.S. industrial and consumer goods is 7 percent, but tariffs on some of these products are as high as 81 percent. Panama's average tariff on U.S. agricultural goods is 15 percent, but some U.S. agricultural exports face tariffs as high as 260 percent.

When the TPA enters into force, 88 percent of U.S. exports of consumer and industrial goods will enter Panama duty-free, with remaining tariffs phased out over 5 years or 10 years. The TPA includes "zero-for-zero" immediate duty-free access for key U.S. sectors and products, including agricultural and construction equipment, information technology products, and medical and scientific equipment. Other key U.S. export sectors, such as motor vehicles and parts, paper and wood products, and chemicals also will obtain significantly improved access to Panama's market as duties are phased out.

The TPA provides for immediate duty-free treatment for over 60 percent by value of U.S. agricultural exports to Panama, including high quality beef, certain pork and poultry products, cotton, wheat, soybeans and soybean meal, most fresh fruits and tree nuts, distilled spirits and wine, and a wide assortment of processed products. Duties on other agricultural goods will be phased out within 5 years to

## FOREIGN TRADE BARRIERS

12 years and on the most sensitive products within 15 years to 20 years. The TPA also provides for expanded market access opportunities through tariff-rate quotas (TRQs) for agricultural products such as pork, chicken leg quarters, dairy products, corn, rice, refined corn oil, dried beans, frozen French fries, and tomato products. These TRQs will permit immediate duty-free access for specified quantities that will increase as over-quota duties are phased out over the course of the implementation period.

Apparel products made in Panama will be duty-free under the TPA if they use U.S. or Panamanian fabric and yarn. Strong customs cooperation commitments between the United States and Panama under the TPA will allow for verification of claims of origin or preferential treatment, and denial of preferential treatment or entry if claims cannot be verified.

### **Nontariff Measures**

In addition to tariffs, all imports into Panama, except for foods and feeds, are subject to a 5 percent transfer tax levied both on the cost, insurance, and freight value, as well as on import duties and other handling charges. Pharmaceuticals, foods, school supplies, goods that will be re-exported, and all products related to transactions occurring in any free zone are exempt from the transfer tax. Importing entities are required to hold a commercial or industrial license to operate in Panama in order to import manufactured goods into the country without an import license. The commercial or industrial license may be obtained through Panama's online business registration service (<http://www.panamaemprende.gob.pa>). Importing entities holding a license are not required to have a separate import license, with the exception of imports of certain controlled products such as weapons, medicine, pharmaceutical products, and certain chemicals.

### **GOVERNMENT PROCUREMENT**

Panamanian Law 22 of 2006 regulates government procurement and other related issues. Law 22 was intended to streamline and modernize Panama's contracting system. It requires publication of all proposed government purchases. Law 22 also established PanamaCompra, an Internet-based procurement system (<http://www.panamacompra.gob.pa>) through which the government of Panama evaluates proposals and monitors the procurement process and holds consultations for public bids, including technical specifications and tender documents. PanamaCompra has been the forum for almost 275,000 contracts valued at over \$3 billion during the three years it has been open. While Panama committed to become a party to the WTO Government Procurement Agreement at the time it joined the WTO, it remains an observer and, to date, it has not followed through on this commitment.

The Panamanian government has generally handled procurement in a transparent manner, although occasionally U.S. companies have complained that certain required procedures have not been followed. The government of Panama announced approximately \$100 million in procurement through the use of sole-source contracts between July 1 and September 25, 2009, which the government justified on grounds of "urgency." However, the appropriateness of this justification is questionable since the procurements included expansion of the coastal highway (\$55 million) and purchase of a Presidential airplane (\$22 million). Panama has an administrative court to handle all public contracting disputes. The rulings of this administrative court are subject to review by Panama's Supreme Court.

When the TPA enters into force, it will require Panama's procuring entities to use fair and transparent procurement procedures, including advance notice of purchases and timely and effective bid review procedures, for procurement covered by the TPA. U.S. suppliers will be permitted to bid on procurement above certain thresholds of most Panamanian government entities, including key ministries and state-

### **FOREIGN TRADE BARRIERS**

owned enterprises, on the same basis as Panamanian suppliers. In particular, U.S. suppliers will be permitted to bid on procurement by the Panama Canal Authority. Disputes relating to Panama Canal Authority procurement will continue to be addressed through the authority's existing procedures. The TPA would also help to the strengthen rule of law and fight corruption by requiring Panama to ensure under its domestic law that bribery in matters affecting trade and investment, including in government procurement, is treated as a criminal offense or is subject to comparable penalties.

## **EXPORT SUBSIDIES**

Any company may import raw materials or semi-processed goods into Panama duty-free for export production, except for sensitive agricultural products, such as rice, dairy, pork, poultry, corn, and tomato products, or at a duty of 3 percent for domestic consumption or processing (pending certification that there is no national production). Companies are allowed a tax deduction of up to 100 percent of their profits from export operations through 2015, as provided in Law 11 of 2008.

Under Panama's Tax Credit Certificates (CAT) program, which provides tax credits to firms producing certain nontraditional agricultural exports, exporters received CATs equal to 5 percent of the good's national value added for exports made in 2009. The certificates were transferable and could be used to pay tax obligations to the government, or they could be sold in secondary markets at a discount.

In late December 2009, Panama's National Assembly passed Law 82 of 2009, which creates a Certificate of Promotion of Agricultural Exports (CEFA) program. The CEFA program will give incentives to agricultural exporters to reduce packing and transportation costs for specified nontraditional agricultural products. The CEFA replaces the CAT program, and is expected to provide similar benefits. The government of Panama is still developing implementing procedures for the CEFA program.

A number of export industries, such as tourism, and special economic areas, such as free trade zones, are exempt from paying certain types of taxes and import duties. The government of Panama established this policy to attract foreign investment, especially in economically depressed regions, such as the city of Colon. Companies that benefit from these exemptions are not eligible to benefit from the CEFA program for their exports.

Companies operating in any of Panama's 15 export processing zones (EPZs) may import inputs duty-free, if products assembled in the zones are to be exported. The government also provides other tax incentives to EPZ companies. Under the TPA, Panama may not adopt new duty waivers or expand existing duty waivers conditioned on the fulfillment of a performance requirement (*e.g.*, the export of a given level or percentage of goods or the use of domestic content in the production of goods). The TPA provides that Panama may maintain existing measures that are inconsistent with this obligation through 2009, provided that it maintains the measures in accordance with its obligations under the WTO Agreement on Subsidies and Countervailing Measures.

## **INTELLECTUAL PROPERTY RIGHTS (IPR) PROTECTION**

The government of Panama is making efforts to strengthen the enforcement of IPR in Panama. Since 1997, two district courts and one superior tribunal have been exclusively adjudicating anti-trust, patent, trademark, and copyright cases. The Panamanian government reports that, in 2009, there were 185 convictions for IPR-related violations, and it seized over \$17 million of illicit goods. However, given Panama's role as a transshipment point, U.S. industry remains concerned that Panama may become an important hub in the regional and global trade in pirated and counterfeit goods. Piracy is a significant

## **FOREIGN TRADE BARRIERS**

problem in Panama, and the incidence of Internet piracy has quickly emerged. For example, the unauthorized downloading from the Internet is often the source of pirated optical discs of films distributed by street vendors.

The TPA would provide for improved standards for the protection and enforcement of a broad range of IPR, including protections for patents, trademarks, undisclosed test and other data submitted to obtain marketing approval for pharmaceuticals and agricultural chemicals, and digital copyrighted products such as software, music, text, and videos; and further deterrence of piracy and counterfeiting.

## **SERVICES BARRIERS**

Under the TPA, Panama will accord U.S. services suppliers substantial access to its services market, including financial services. Panama agreed to provide improved access in sectors like express delivery, and to grant new access in certain professional services that previously had been reserved exclusively to Panamanian nationals. Panama also agreed that portfolio managers in the United States would be able to provide portfolio management services to both mutual funds and pension funds in Panama. Under the TPA, U.S. insurance suppliers will be permitted to operate as a branch or a subsidiary.

## **INVESTMENT BARRIERS**

Panama maintains an open investment regime and is generally receptive to foreign investment. However, recent actions taken by government of Panama to modify the terms of public concessions have contributed to an impression that the protection of an investment is less than in past years.

The U.S. Government has received numerous property dispute complaints from U.S. investors. Many of these complaints appear to stem from the general lack of titled land in Panama, along with inadequate government administration of the property system and a weak judiciary. Panama enacted Law 80 of 2009, which attempts to address the lack of titled land in certain parts of the country; however, it does not cure deficiencies in government administration or the judicial system.

The United States – Panama Bilateral Investment Treaty (BIT) entered into force in 1991 (with additional amendments in 2001). The BIT ensures that, with some exceptions, U.S. investors receive fair, equitable, and nondiscriminatory treatment, and that both Parties abide by international law standards, such as for expropriation and compensation and free transfers. Under the TPA, the dispute settlement mechanisms of the BIT would be suspended in most respects. Investors will continue to have important investment rights and protections under the investment provisions of the TPA.

Under the TPA, U.S. investors operating in Panama will continue to have a secure and predictable legal framework. Under the TPA, all forms of investment will be protected, including enterprises, debt, concessions, contracts, and intellectual property. U.S. investors will enjoy, in almost all circumstances, the right to establish, acquire, and operate investments in Panama on an equal footing with local investors. Among the rights that will be afforded to U.S. investors are due process protections and the right to receive fair market value for property in the event of an expropriation. Investor rights will be protected under the TPA by a procedure for dispute settlement that is impartial and transparent. In particular, Panama agreed to eliminate certain measures that restrict investment in retail trade to Panamanian nationals.

## **FOREIGN TRADE BARRIERS**



## **ELECTRONIC COMMERCE**

Law 43 of 2001 gives electronic signatures the legal equivalence of handwritten signatures. Panama issued Executive Decree 40 of 2009, which defines and regulates electronic documents, electronic signatures, technological documents, and storage services while adopting other measures that will allow the development of electronic commerce. These measures should improve the efficiency of the public sector by eliminating the use of paper documents, stamps, and handwritten signatures.

Under the TPA, Panama will be obligated to provide nondiscriminatory treatment of digital products transmitted electronically and not to impose customs duties, fees, or other charges on digital products transmitted electronically. Additionally, the TPA requires procedures for resolving disputes about trademarks used in Internet domain names.

## **OTHER BARRIERS**

### **Corruption**

The Panamanian judicial system continues to pose a problem for investors due to poorly trained personnel, huge case backlogs, and a lack of independence from political influence. The Martinelli administration campaigned in 2009 on a promise to “eradicate corruption.” Although the Panamanian government asserts its commitment to combating corruption as part of its overall agenda of institutional reform, it has not yet delivered concrete results. The general perception is that anticorruption laws are not applied rigorously, and that government enforcement bodies and the courts have lacked effectiveness in pursuing and prosecuting those accused of corruption, particularly in high profile cases. The anticorruption provisions in the TPA will require Panama to ensure that bribery in matters affecting trade or investment is treated as a criminal offense or is subject to comparable penalties under its law.



# PARAGUAY

## TRADE SUMMARY

The U.S. goods trade surplus with Paraguay was \$1.3 billion in 2009, a decrease of \$235 million from 2008. U.S. goods exports in 2009 were \$1.4 billion, down 16.0 percent from the previous year. Corresponding U.S. imports from Paraguay were \$56 million, down 28.1 percent. Paraguay is currently the 67th largest export market for U.S. goods.

The stock of U.S. foreign direct investment (FDI) in Paraguay was \$151 million in 2008 (latest data available), up from \$111 million in 2007.

## IMPORT POLICIES

### Tariffs

Paraguay's import tariffs range from 0 percent to 20 percent, with an average applied tariff rate of 8.7 percent in 2009.

Paraguay is a member of the MERCOSUR common market, formed in 1991 and comprised of Argentina, Brazil, Paraguay, and Uruguay. MERCOSUR's Common External Tariff (CET) averages 11.5 percent and ranges from 0 percent to 35 percent *ad valorem*, with a limited number of country-specific exceptions. Tariffs may be imposed by each MERCOSUR member on products imported from outside the region which transit at least one MERCOSUR member before reaching their final destination.

Paraguay is permitted by MERCOSUR to maintain over 2,600 exceptions to the CET until December 31, 2011. In addition, both Paraguay and Uruguay are permitted to maintain national lists of 100 country-specific exceptions until December 31, 2015.

In December 2009, Paraguay – along with the other MERCOSUR members – also approved tariff increases for hundreds of products in the CET, including dairy, textiles, and bags, backpacks, and suitcases. In many cases, the applied tariffs were increased up to WTO bound levels.

### Nontariff Barriers

A number of new procedures and requirements imposed by the government of Paraguay in 2009 could make importation of U.S. products more difficult. Since March 2009, the government of Paraguay has required non-automatic licenses on personal hygiene products, cosmetics, perfumes and toiletries, textiles and clothing, insecticides, agrochemicals, and poultry. Obtaining a license requires review by the Ministry of Industry and Commerce and sometimes the Ministry of Public Health, and the process is slow, taking up to 30 days for goods that require a health certification. Once issued, the certificates are valid for 30 days.

Since 2000, Paraguay has prohibited the importation of used clothing.

## **Customs Procedures**

Paraguay requires specific documentation, such as the commercial receipt, certificate of origin, and cargo manifest, for exports to be certified by the Paraguayan consulate in the country of origin. The United States is urging Paraguay to eliminate these requirements.

Paraguay frequently makes changes in its customs procedures. This makes it difficult for exporters to ensure they are following the most current procedures, which can delay shipments and lead to unexpected costs. The burden of compliance is most often borne by importers.

In 2009, a customs resolution restricted the ports-of-entry for numerous goods, including household cleaning products and other household goods.

## **GOVERNMENT PROCUREMENT**

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

In March 2009, in an effort to encourage local production, the government of Paraguay changed its procurement rules. The government of Paraguay will give preference to a locally produced good even if it is up to 70 percent more expensive than the imported good. Importers of foreign goods can participate in these procurements only where locally manufactured products and service providers are unavailable or the government fails to award a contract to a domestic supplier. The government can also call for tenders from foreign suppliers.

## **INTELLECTUAL PROPERTY RIGHTS (IPR) PROTECTION**

The United States will continue to monitor implementation of the Memorandum of Understanding between the United States and Paraguay pertaining to IPR protection and enforcement, which was revised in 2009 and will remain in effect through 2011. While Paraguay has increased the number of raids and seizures of pirated and counterfeit goods, concerns remain because of porous borders, ineffective prosecution of IPR infringers, and court sentences that are insufficient to deter infringement. Although a new penal code that became effective in 2009 increases penalties for IPR violations, prosecution of IPR offenders remains weak, and there are few convictions. Concerns also remain about inadequate protection against unfair commercial use of undisclosed test or other data generated to obtain marketing approval for pharmaceutical products and the shortcomings in Paraguay's patent regime.

## **INVESTMENT BARRIERS**

Under Paraguayan law, foreign companies must demonstrate just cause to terminate, modify, or decide not to renew contracts with Paraguayan distributors. Severe penalties and high fines may result if a court determines that the foreign company ended the relationship with its distributor without first having established that just cause exists. This requirement often leads to expensive out-of-court settlements. In a few cases, the courts have upheld the rights of foreign companies to terminate representation agreements after finding the requisite showing of just cause. However, this law may discourage U.S. investment due to concerns about potential lawsuits and interference with contractual relations. The United States will work with the Paraguayan government to seek modification of this law.

## **FOREIGN TRADE BARRIERS**

# PERU

## TRADE SUMMARY

The U.S. goods trade deficit with Peru was \$733 million in 2009, an increase of \$363 million from 2008. U.S. goods exports in 2009 were \$4.9 billion, down 20.3 percent from the previous year. Corresponding U.S. imports from Peru were \$4.2 billion, down 27.9 percent. Peru is currently the 36th largest export market for U.S. goods.

The stock of U.S. foreign direct investment (FDI) in Peru was \$8.5 billion in 2008 (latest data available), up from \$7.6 billion in 2007. U.S. FDI in Peru is primarily concentrated in the mining sector.

## TRADE PROMOTION AGREEMENT

The United States and Peru signed the United States-Peru Trade Promotion Agreement (PTPA) on April 12, 2006. Peru's Congress ratified the Agreement in June 2006 and a protocol of amendment in June 2007. On December 14, 2007, the PTPA Implementation Act became law, and the PTPA entered into force on February 1, 2009.

The PTPA is a comprehensive free trade agreement that has significantly liberalized and will continue to liberalize trade in goods and services between the United States and Peru. Under the PTPA, Peru immediately eliminated most of its tariffs on U.S. exports, with all remaining tariffs phased out over defined time periods. The PTPA also includes important disciplines relating to: customs administration and trade facilitation; technical barriers to trade; government procurement; services; investment; telecommunications; electronic commerce; intellectual property rights; transparency; and labor and environmental protection.

## IMPORT POLICIES

### Tariffs

Upon entry into force of the PTPA in February 2009, 80 percent of U.S. exports of consumer and industrial products entered Peru duty free immediately, with the remaining tariffs on these goods phased out within 10 years. More than two-thirds of current U.S. agricultural exports also gained immediate duty-free access to Peru. Tariffs on most of the remainder of U.S. agricultural products will be phased out within 15 years, with all tariffs eliminated in 17 years. Peru also agreed to eliminate its price band system on trade with the United States upon entry into force of the PTPA.

### Nontariff Measures

The government of Peru already has eliminated many nontariff barriers, and, under the PTPA, is subjecting remaining measures, including subsidies and import licensing requirements, to additional disciplines. Peru currently restricts imports of certain used goods, including used clothing and shoes (except as charitable donations, which are subject to the 19 percent value added tax), used tires, cars over five years old, and heavy trucks (weighing three tons or more) over 8 years old. Used cars and trucks that are granted import permits 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 after importation, in which case they are exempted entirely from the excise tax. Under the PTPA, Peru may not adopt or maintain

## FOREIGN TRADE BARRIERS

prohibitions or restrictions on trade in remanufactured goods, and may not apply to remanufactured goods certain existing prohibitions on trade in used goods. This commitment opens new and significant export opportunities for firms involved in remanufactured products such as engines, automotive parts, mining and construction equipment, transportation machinery, medical equipment, and computers.

## **GOVERNMENT PROCUREMENT**

Since 2002, Peru has applied a 20 percent price preference to bids by Peruvian firms in government procurement. The price preference may no longer be applied against U.S. companies bidding in procurement covered by the PTPA. The PTPA requires that procuring entities use fair, nondiscriminatory, and transparent procurement procedures, including advance notice of purchases and timely and effective bid review procedures, for procurement covered by the Agreement. Also, under the PTPA, U.S. suppliers are permitted to bid on procurements of most Peruvian central government entities, including state-owned enterprises, such as Peru's oil company and Peru's public health insurance agency, on the same basis as Peruvian suppliers. The anticorruption provisions in the PTPA require Peru to ensure under its domestic law that bribery in matters affecting trade and investment, including in government procurement, is treated as a criminal offense or is subject to comparable penalties.

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

## **INTELLECTUAL PROPERTY RIGHTS (IPR) PROTECTION**

Peru was listed on the Watch List in the 2009 Special 301 report. As a result of the PTPA, Peru enhanced its IPR legal framework significantly to strengthen IPR protection and enforcement. Among the many improvements, Peru amended its law on industrial property, as well as related laws and regulations to put in place state-of-the-art protections for trademarks and patents. For instance, Peru has developed an online system for registering and maintaining trademarks. Peru also ensures that the first person to acquire a right to a trademark or a geographical indication (GI) has priority and exclusivity with respect to that trademark or GI. Notwithstanding the improvements to Peru's IPR legal regime, piracy rates are high and the problem of counterfeit clothing and toys continues due to inadequate enforcement.

## **SERVICES BARRIERS**

### **Telecommunications**

In recent years, U.S. companies have complained that Peru's telecommunications regulator (OSIPTEL) has not done enough to lower the average mobile termination rates in the country, which has resulted in significant barriers to competition in the wireless sector. The current maximum rate scale, which U.S. companies claim is well above cost, expired at the end of 2009. In mid-2009, OSIPTEL began the process through which it will establish new rates, but due to several administrative and legal delays, the process has not yet been completed and new rates for 2010 have not yet been established. Continued oversight and review of these rates by OSIPTEL will be important to achieving progress in addressing concerns raised by suppliers. The United States will urge OSIPTEL to establish new rates as soon as possible.

## **INVESTMENT BARRIERS**

The PTPA establishes a secure and predictable legal framework for U.S. investors operating in Peru. Under the PTPA, U.S. investors and their investments are accorded national and most favored nation

## **FOREIGN TRADE BARRIERS**

treatment, and U.S. investors are permitted to make financial transfers freely and without delay. The PTPA applies international legal standards for expropriation and compensation, and provides for binding international arbitration for the resolution of investment disputes. In most circumstances, the PTPA guarantees U.S. investors the right to establish, acquire, and operate investments in Peru on an equal footing with domestic investors.

Peruvian law prohibits majority foreign ownership in the broadcast media sector. Foreigners are also restricted from owning land or investing in natural resources located within 50 kilometers of its border, though special authorization to operate within those areas may be granted. Under current law, foreign employees may not comprise more than 20 percent of the total number of employees of a local company (whether owned by foreign or Peruvian persons) or more than 30 percent of the total company payroll. Under the PTPA, Peru agreed not to apply most of its nationality-based hiring requirements to U.S. professionals and specialty personnel.

U.S. firms remain concerned that executive branch ministries, regulatory agencies, the tax agency, and the judiciary often lack the resources, expertise, or impartiality necessary to carry out their respective mandates. U.S. investors have also complained about the reinterpretation of rules and the imposition of disproportionate fines by the tax agency.

The Peruvian government has tried to address institutional weaknesses in the executive branch and has also made efforts at judicial reform. In July 2005, the Supreme Court issued an edict stating that final binding arbitration awards cannot be disputed in the domestic judicial system.





# THE PHILIPPINES

## TRADE SUMMARY

The U.S. goods trade deficit with the Philippines was \$1.0 billion in 2009, up \$606 million from 2008. U.S. goods exports in 2009 were \$5.8 billion, down 30.4 percent from the previous year. Corresponding U.S. imports from the Philippines were \$6.8 billion, down 22.0 percent. The Philippines is currently the 30th largest export market for U.S. goods.

U.S. exports of private commercial services (*i.e.*, excluding military and government) to the Philippines were \$2.1 billion in 2008 (latest data available), and U.S. imports were \$2.6 billion. Sales of services in the Philippines by majority U.S.-owned affiliates were \$2.4 billion in 2007 (latest data available), while sales of services in the United States by majority Philippines-owned firms were \$47 million.

The stock of U.S. foreign direct investment (FDI) in the Philippines was \$5.9 billion in 2008 (latest data available), down from \$7.1 billion in 2007. U.S. FDI in the Philippines is mostly in the manufacturing sector.

## IMPORT POLICIES

### Tariffs

In 2009, the Philippine simple average bound tariff, *i.e.*, the level that it cannot exceed under WTO rules, was 25.8 percent, while its simple average applied tariff was 7.1 percent, according to the Philippine Tariff Commission. All agricultural tariffs and approximately two-thirds of non-agricultural tariff lines are bound. Products with unbound tariffs include automobiles, chemicals, plastics, textiles, clothing, fish, and paper products. High tariffs – some at 30 percent – are charged on chemical waste, automobiles, motorcycles, and some automotive parts. Additionally, products with tariff-rate quotas (TRQ) have high in-quota tariffs ranging from 30 percent to 65 percent. Sugar has the highest tariff at 65 percent, followed by rice at 50 percent. Other products with TRQs are poultry, swine, potatoes, coffee and coffee extracts. Meat and edible meat offal, sausages, prepared and preserved meat, cabbages, carrots, manioc (cassava), sweet potatoes, and animal feeds (except dog and cat food) have applied tariffs between 30 percent and 45 percent. Products subject to tariffs of 30 percent and above account for 5 percent of total Philippine tariff lines.

### Automobile Sector Tariffs

The Motor Vehicle Development Program (MVDP) seeks to promote domestic automobile production with the objective of transforming the Philippines into a regional hub for automobile production as well as spurring regional exports. Tariffs on components are low and designed to encourage local assembly, whereas finished automobiles and motorcycles are subjected to the highest tariff rates applied to any nonagricultural product. The Philippines imposes a 30 percent tariff on passenger cars, 20 percent to 30 percent on vehicles for the transport of goods and 15 percent to 20 percent on vehicles for the transport of persons, depending on vehicle weight. A one percent tariff applies to completely knocked-down (CKD) kits by MVDP-registered participants, except for CKDs of alternative fuel vehicles, which are duty-free.

An Automotive Export Program grants export credits to qualified Completely Built Units, which may be applied to pay import duties otherwise due on qualifying imported finished automobiles. This system

## FOREIGN TRADE BARRIERS

effectively reduces the applied tariff rate to 10 percent. In addition, the Philippines charges value added taxes of 12 percent on vehicle imports and excise taxes based on the price of vehicles, with more expensive vehicles taxed at much higher rates.

Consistent with the objectives of the MVDP, Executive Order 156 (2002) imposed a general import prohibition on used motor vehicles. However, used vehicles account for a considerable portion of new vehicle registrations in the Philippines. In 2008, new vehicle registrations totaled 177,451 units, while local industry sales were recorded at 124,449 units, a discrepancy of nearly 30 percent of all new registrations. The local automobile industry attributes a significant portion of the difference to imports of used vehicles.

### **Safeguards**

The Philippine government continues to levy safeguard duties on ceramic floor and wall tiles, glass products, and steel angle bars. Under the Safeguard Measures Act, the current period for filing answers by interested parties is five days; the Philippine government has drafted amendments to the Safeguard Measures Act to extend this period to thirty days in response to concerns expressed by the United States and other governments, but this amendment has been pending since 2007.

### **Excise Tax on Distilled Spirits**

The Philippines maintains an excise tax regime for distilled spirits that imposes significantly higher excise taxes on spirits made from non-indigenous raw materials, which apparently disadvantages imports. In October 2009, the United States participated as a third party in WTO dispute settlement consultations between the European Union and Philippines on this issue in Manila. On January 14, 2010, the United States requested WTO consultations on the same issue.

### **Quantitative Restrictions**

The Philippine government imposes a tariff-rate quota (TRQ) on several agricultural products, including corn, pork, and poultry. Since 2002, the Philippine government has maintained a special safeguard (SSG) for out-of-quota chicken imports, which effectively doubles the out-of-quota tariff. In the wake of a recent series of typhoons, the Philippine Department of Agriculture recently suspended the SSG for imported chicken entering the country in December, and then extended the suspension through January 2010.

The U.S. Government continues to monitor the administration of the TRQ system known as the Minimum Access Volume (MAV) system, which regulates the distribution of import licenses for certain agricultural products, including pork and poultry. In October 2007, the Philippine Department of Agriculture announced a review of the MAV system, prompting concern among U.S. exporters. The U.S. Government urged the Philippines not to implement changes to the MAV system because of their potentially harmful effects on trade. In February 2009, the Philippines Department of Agriculture announced it would maintain the current system.

### **Customs Barriers**

The Philippine government has made progress in improving its customs regime since its implementation of the WTO Agreement on Customs Valuation in 2001. It is currently taking steps to accede to the World Customs Organization's Revised Kyoto Convention, efforts supported by U.S. technical assistance

programs. President Gloria Macapagal-Arroyo signed the Philippine Instrument of Accession and submitted it to the Philippine Senate for concurrence on March 16, 2009. The Philippine Senate Committee on Foreign Relations conducted a hearing on May 22, 2009 and filed its report signed by all 16 members on October 14, 2009. Sponsorship is expected in early 2010. Reports of corruption and other irregularities in customs processing persist, however, including undue and costly delays, continued private sector involvement in the valuation process, the use of reference prices rather than declared transaction values, and of customs officials seeking the payment of unrecorded facilitation fees. The U.S. Government will continue to seek to address these issues with the Philippines.

## **GOVERNMENT PROCUREMENT**

The Government Procurement Reform Act of 2003 aimed to consolidate procurement laws, simplify prequalification procedures, introduce objective and nondiscretionary criteria in the selection process, and establish an electronic single portal for government procurement activities. However, implementation remains inconsistent. Government procurement laws and regulations favor Philippine-controlled companies and locally produced materials and supplies in government procurement. The Philippines is not a signatory to the WTO Agreement on Government Procurement.

Since 1993, the Philippine government has maintained a countertrade requirement for procurement by government agencies and government-controlled corporations, setting the level of countertrade obligations at 50 percent of the price of imports, with penalties for nonperformance of countertrade obligations.

## **EXPORT SUBSIDIES**

The Philippines offers a wide array of incentives for export-oriented investment through export processing zones, free port zones, and other special industrial estates registered with the Philippine Economic Zone Authority. Along with reduced taxes, most zones offer simplified trade and tax transaction processing.

The Philippine government also offers export subsidies as an incentive for investment in less-developed economic areas. Qualified enterprises engaged in activities in preferred sectors and geographic areas registered with the Board of Investments for the Investment Priorities Plan (IPP) may take advantage of fiscal incentives. These include income tax holidays, additional income tax deductions for wages and for the development of necessary and major infrastructure works by the company, and tax and duty exemptions for the importation of breeding stock and genetic materials, as well as tax credits on local purchases of such stock and materials. To qualify for the incentives, enterprises must be 60 percent or more Philippine-owned and export at least 50 percent of their production, if the proposed activity is not listed in the IPP. An enterprise with less than 60 percent Philippine equity may qualify if its projects are classified as “pioneer” under the IPP or it exports at least 70 percent of total production.

## **INTELLECTUAL PROPERTY RIGHTS (IPR) PROTECTION**

While the Philippines has enhanced its focus on addressing IPR issues, it remained on the Special 301 Watch List in 2009. The top U.S. concerns include lack of progress in prosecuting IPR violators in Philippine courts, the spread of camcording and peer-to-peer piracy, the growth of illegal mobile downloads, and pharmaceuticals legislation that carves out new governmental authority to curb the exercise of IPR. U.S. distributors continue to report high levels of piracy of optical discs of films and

## **FOREIGN TRADE BARRIERS**

musical works, computer games, and business software, as well as widespread unauthorized transmissions of motion pictures and other programming on cable television systems.

In October 2009, a Philippines special working group delivered a proposal to expedite and clarify the judiciary's IPR litigation process. The working group members represent the IPO, National Committee on IPR, state prosecutors, law enforcement, customs, regional trial court judges, and private sector lawyers. The proposed rules aim for cases to be resolved within an average of one year. Specific provisions include procedures for the quick destruction of seized counterfeit goods, streamlined procedures for subject matter expert testimony, alternative dispute resolution, and the establishment of specialized IP courts with national jurisdiction. The Supreme Court is directing the formation of a judicial study committee to review the proposed rules and present the revised procedures to the Supreme Court for adoption.

## **SERVICES BARRIERS**

### **Basic Telecommunications**

Philippine law defines telecommunications services as a public utility, and as such, foreign ownership is limited to 40 percent. Foreigners may not serve as executives or managers of telecommunications companies, and foreign directors are limited by the proportion of foreign investment in the company. The United States has urged the Philippines to reclassify telecommunications outside of the utility definition, as it has done for electricity generation. The applicability of the public utility designation to value added services is particularly burdensome and out of step with international practice.

Foreign equity in private radio communications is limited to 20 percent and foreign ownership of cable television and all other forms of broadcasting and media is prohibited.

### **Financial Services**

The Philippines has not ratified the Fifth Protocol to the General Agreement on Trade in Services, which embodies its obligations under the WTO Financial Services Agreement (GATS).

### **Insurance**

Regulations permit up to 100 percent foreign ownership in the insurance sector, although minimum capitalization requirements increase in proportion to a company's foreign equity. Although full foreign ownership is allowed, the Philippines only committed in the GATS to a maximum of 51 percent equity participation while grandfathering existing insurers with more than 51 percent foreign equity.

Generally, only the state-owned Government Service Insurance System (GSIS) may provide coverage for government funded projects. A 1994 order requires sponsors of build-operate-transfer projects and privatized government corporations to secure their insurance and bonding from the GSIS at least to the extent of the government's interest. Private insurance firms, both domestic and foreign, regard this as a significant trade barrier. All reinsurance companies operating in the Philippines must cede to the industry-controlled National Reinsurance Corporation of the Philippines at least ten percent of outward reinsurance placements.

## **Banking**

Numerous limitations on foreign participation exist in the banking sector. Foreign banks that meet qualification requirements under the law currently may own no more than 60 percent of a locally-incorporated banking subsidiary. Foreign banks that do not meet qualification requirements (such as wide ownership and public listing in the country of origin, as well as global and/or national rankings) and non-bank investors are subject to a lower 40 percent ownership ceiling. Majority Philippine-owned domestic banks must control at least 70 percent of total banking system assets.

Because of a central bank moratorium on the issuance of new bank licenses since 1999, foreign investments are limited to existing banks. Furthermore, foreign banks cannot open more than six branches, although four banks operating in the Philippines prior to 1948 are partially exempt from this limitation and may operate up to six additional branches each.

Financial institutions must set aside loans for certain preferred sectors. The Agri-Agra Law requires banks to earmark at least 25 percent of their loan portfolios for agricultural credit, with at least 10 percent dedicated to agrarian reform program beneficiaries. The Magna Carta for Micro, Small and Medium Enterprises (MSMEs) requires banks to set aside at least 10 percent of their loan portfolios for MSME borrowers. These mandatory lending provisions are more burdensome on foreign banks for a number of reasons, including constrained branch networks and foreign land ownership restrictions that impede their ability to enforce rights over land accepted as collateral.

## **Securities and Other Financial Services**

Foreign equity in securities underwriting and finance companies is limited to 60 percent. In the area of mutual funds specifically, all members of the Board of Directors must be Philippine citizens, although no foreign ownership restrictions apply. The 2007 Lending Company Regulation Act sets forth majority-Philippine ownership for those few classes of credit enterprises not clearly under the scope of other laws.

## **Advertising**

The Philippine Constitution limits foreign ownership of advertising agencies to 30 percent. All executive and managing officers must be Philippine citizens.

## **Public Utilities**

The Philippine Constitution limits foreign investment in utilities, including water and sewage treatment, electricity transmission and distribution, telecommunications, and transport, to 40 percent. All executive and managing officers of utility companies must be Philippine citizens.

## **Practice of Professions**

Only Philippine citizens may be licensed under the Philippine Constitution to practice law, medicine, nursing, accountancy, engineering, architecture, and customs brokerage services.

## **Express Delivery Services**

Foreign equity participation in the domestic express delivery services sector is limited to 40 percent equity.

## **Retail Trade**

The Retail Trade Liberalization Act of 2000 limits retail ventures with paid-up capital less than \$2.5 million to Philippine nationals. Foreign investment in retail enterprises is permitted if it meets several requirements: paid-up capital is \$2.5 million or more; a \$830,000 minimum investment per store; the parent company must have a net worth of over \$200 million; and the retailer must own at least five retail stores elsewhere or at least one outlet with capitalization of \$25 million or more. In addition, at least 30 percent of inventory, by value, must be sourced from the Philippines. For retailers of high end or luxury products the investment in each retail store is \$250,000, the net worth of the parent company must exceed \$50 million and at least 10 percent of inventory must be sourced from the Philippines. These sourcing requirements are set to expire in 2010.

Foreign retailers are prohibited from engaging in trade outside their accredited stores, such as through the use of carts, sales representatives, or door-to-door selling. Retail enterprises with foreign ownership exceeding 80 percent of equity must offer at least 30 percent of their shares to local investors within eight years of the start of operations through public offering of shares of stock.

## **Civil Aviation**

### *Category 2 Status*

In 2007, the U.S. Federal Aviation Administration (FAA) downgraded the Philippine civil aviation air safety system to Category 2 status. The Civil Aviation Authority of the Philippines was created in 2008 to promote the aviation industry with an emphasis on aviation safety. Category 2 status prevents Philippine air carriers from increasing flights to the United States and limits them to the current level of service, with exceptions for wet leases – whereby one airline provides an aircraft, complete crew, maintenance, and insurance to another airline – with airlines accredited by Category 1 countries. At least one U.S. airline claims that the Philippine Civil Aviation Board (CAB), responsible for issuing airline operating permits has retaliated against it as a result of the FAA's Category 2 rating. This airline claims that the CAB continues to issue only temporary operating permits even though the airline complies with all requirements for a permanent operating permit.

In October 2009, the International Civil Aviation Organization (ICAO) reviewed Philippine air safety under its Universal Safety Oversight Audit Program. The audit focused on the Philippine government's capability for providing safety oversight by assessing the 16 ICAO safety annexes (which includes three annexes audited by the FAA). The final report will be published by ICAO within nine months of the date of inspection.

## **Airline Taxation**

The Philippine government imposes Common Carrier Tax and Gross Philippine Billing Tax on foreign airlines operating in the Philippines. The International Air Transportation Association (IATA) asserts that these taxes are discriminatory, and are inconsistent with ICAO resolutions, and have contributed to the departure of some foreign carriers from the Philippine civil aviation market, including British Airways, Lufthansa, Air France, and Alitalia. The Philippine Bureau of Internal Revenue maintains that taxes are imposed lawfully, but is reviewing its authority to adjust these taxes.

## **INVESTMENT BARRIERS**

Significant restrictions apply to foreign investment in the Philippines. The 1991 Foreign Investment Act contains two “negative lists” (List A and List B), collectively called the “Foreign Investment Negative List (FINL),” enumerating foreign investment restrictions. The Act requires the government to update the list every two years. At the time of writing, the 7th FINL remains in effect and updates – originally scheduled for release in early 2009 – remain pending.

List A reflects foreign investment restrictions mandated by the Constitution or specific laws. The list includes sectors in which foreign investment is prohibited (*e.g.*, mass media, small-scale mining) or limited (*e.g.*, natural resource extraction). List B contains limitations on foreign ownership imposed for reasons of national security, defense, public health, safety, and morals. Under this list, explosives, firearms, military hardware, and gaming activities are limited to 40 percent foreign equity. List B also limits foreign ownership in small- and medium-sized enterprises with less than \$200,000 in capital to 40 percent.

The 1987 Philippine Constitution bans foreigners from owning land in the Philippines, although the 1994 Investors’ Lease Act allows foreign investors to lease land for 50 years with one 25 year renewal. It is difficult to establish clear ownership and to lease land, however, due to an ambiguous deed and property system, a situation further exacerbated by a judiciary that does not decide cases in a timely manner. Some U.S. investors consider unresolved land disputes a particularly significant barrier to investment in the mineral exploration and processing sector.

### **Trade Related Investment Measures**

The Board of Investments imposes a higher export performance requirement for foreign-owned enterprises (70 percent of production) than for Philippine-owned companies (50 percent). Some investors claim that the Philippine government maintains unwritten “trade balancing” requirements for firms applying for approval of ventures under the ASEAN Industrial Cooperation scheme.

## **OTHER BARRIERS**

Corruption is a pervasive and longstanding problem in the Philippines. Reports of corruption remain common despite recent governmental efforts to enhance transparency and accountability. Foreign and domestic investors express concern over the propensity of Philippine courts and regulators to stray beyond matters of legal interpretation into policymaking and about the lack of transparency in these processes. There also are reports of courts being influenced by bribery and improperly issuing temporary restraining orders to impede legitimate commerce.





# QATAR

## TRADE SUMMARY

The U.S. goods trade surplus with Qatar was \$2.2 billion in 2009, a decrease of \$17 million from 2008. U.S. goods exports in 2009 were \$2.7 billion, up 0.2 percent from the previous year. Corresponding U.S. imports from Qatar were \$506 million, up 4.4 percent. Qatar is currently the 47th largest export market for U.S. goods.

The stock of U.S. foreign direct investment (FDI) in Qatar was \$9.2 billion in 2008 (latest data available), up from \$7.7 billion in 2007.

## IMPORT POLICIES

### Tariffs

As a member of the Gulf Cooperation Council (GCC), Qatar applies the GCC common external tariff of 5 percent for most products, with a limited number of GCC-approved country-specific exceptions. Qatar's exceptions include basic food products such as wheat, flour, rice, feed grains, and powdered milk. The tariff on alcoholic beverages and tobacco products is 100 percent.

Qatar is not a signatory to the WTO Information Technology Agreement.

### Import Licensing

Qatar requires importers to have a license for most products, and only issues import licenses to Qatari nationals. Only authorized local agents are allowed to import goods produced by the foreign firms they represent in the local market. However, this requirement may be waived if the local agent fails to provide the necessary spare parts and backup services for the product. Pork and pork derivatives may not be imported.

The government has on occasion established special import procedures via government-owned companies to help ease demand pressures. For example, in 2006, the government established the Qatar Raw Materials Company to import construction materials and sell them to companies in Qatar at a marginal markup (to cover its operating expenses).

### Documentation Requirements

To clear goods from customs zones at ports or land borders in Qatar, importers must submit a variety of documents, including a bill of lading, certificate of origin, invoice, and where applicable, an import license. The Qatari embassy, consulate, or chamber of commerce in the United States must authenticate all shipping documents, including the certificate of origin. Commercial consignments lacking a certificate of origin may be allowed provided the appropriate documentation is submitted within 90 days. In addition, foreign ratification fees are collected by customs officials. All imported beef and poultry products require a health certificate from the United States and a *Halal* slaughter certificate issued by an approved Islamic center in the United States.

In 2008, the Ministry of Business and Trade established a “one-stop shop” to handle all services and relevant documentation for foreign investors and importers present in Qatar. This office assigns a case manager to each businessperson seeking to reside in Qatar to review, sign, and process the required materials for health and labor regulations, residency permits, and other documents.

## **GOVERNMENT PROCUREMENT**

Qatar gives preferential treatment to suppliers that use local content in bids for government procurement. When competing for government contracts, tenders for goods with Qatari content are discounted by 10 percent and goods from other GCC countries receive a 5 percent discount. As a rule, participation in tenders with a value of 1 million Qatari Riyal (\$275,000) or less is confined to local contractors, suppliers, and merchants registered by the Qatar Chamber of Commerce. The Central Tender Committee posts details on tenders at: <http://www.ctc.gov.qa/tender-en.aspx>.

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

## **INTELLECTUAL PROPERTY RIGHTS (IPR) PROTECTION**

As part of the GCC Customs Union, the six Member States are preparing a common trademark law, as well as a common unfair competition law to protect from unfair commercial use undisclosed information submitted for marketing approval of pharmaceutical products. The United States is engaged in a dialogue with GCC technical experts to ensure that the trademark law and unfair competition law will facilitate Member States’ implementation of international and bilateral obligations.

## **SERVICES BARRIERS**

### **Agent and Distributor Rules**

Only Qatari nationals are allowed to serve as local agents, distributors, or sponsors. However, there are exceptions granted for 100 percent foreign-owned firms in the agriculture, industry, tourism, education and health sectors, and some Qatari ministries waive the local agent requirement for foreign companies that have contracts directly with the government of Qatar. The Qatar Distribution Company has the exclusive right to import and distribute alcohol.

### **Banking**

In 2003, the Qatar Central Bank allowed foreign banks to establish representational offices and allowed existing foreign banks in Qatar to open new branches through a case-by-case waiver granted through an Amiri Decree. In 2004, Law No. 31/2004 amended the Organization of Foreign Capital Investment Law to allow foreign investment in the banking sector with approval by decree from the Cabinet of Ministers. Qatari regulations for local and foreign bank practices are the same, with new licenses available through the Central Bank application process. In 2005, Qatar authorized foreign banks to open branches in the Qatar Financial Center (QFC). Foreign banks are authorized to conduct all types of business out of the QFC, including provision of Islamic banking services, but are informally “advised” not to offer services related to retail banking business. Laws and regulations applied to foreign banks registered in the QFC are different from, and more closely resemble international standards, than the ones adopted by the Central Bank. The QFC tribunal is completely independent of the existing Qatari legal system and has jurisdiction for any dispute involving a registered QFC business.

## **INVESTMENT BARRIERS**

The Organization of Foreign Capital Investment Law allows foreign investors to own up to 100 percent of projects in the agriculture, tourism, education, industry, health, and energy sectors with prior government approval. In all other sectors, foreign equity is limited to 49 percent. Qatar amended this law in 2004 to allow 100 percent foreign investment in the insurance and banking sectors if the investment is approved by a decree from the Cabinet of Ministers. In October 2009, the Council of Ministers agreed to further amendments to the law that would allow foreign investors to hold a 100 percent stake in consultative and technical work services, the information and technology sector, and distribution services. Although an Amiri Decree has been issued, detailed regulations have yet to be finalized.

The investment law permits foreign investors to lease land for up to 50 years, though renewal requires government approval. Foreign ownership of residential property is limited to select real estate projects. Foreigners can be issued residency permits without a local sponsor if they own residential or business property, but only if the property is in Cabinet-designated “investment areas.”

## **FOREIGN TRADE BARRIERS**



# RUSSIA

## TRADE SUMMARY

The U.S. goods trade deficit with Russia was \$12.8 billion in 2009, down \$4.6 billion from 2008. U.S. goods exports in 2009 were \$5.4 billion, down 42.3 percent from the previous year. Corresponding U.S. imports from Russia were \$18.2 billion, down 32.0 percent. Russia is currently the 32nd largest export market for U.S. goods.

The stock of U.S. foreign direct investment (FDI) in Russia was \$9.2 billion in 2008 (latest data available), down from \$14.4 billion in 2007. U.S. FDI in Russia is primarily concentrated in the mining and manufacturing sectors.

## WTO Accession

Through the first half of 2009, Russia's efforts to negotiate the terms for its accession to the World Trade Organization (WTO), begun in 1993, made significant progress. With the exception of Georgia, Russia had completed bilateral market access negotiations with interested WTO Members, including the United States. On the multilateral front, Russia continued discussions with WTO Members that focused on, *inter alia*, adoption and application of sanitary and phytosanitary measures, agriculture (including domestic support levels), intellectual property rights protection, rules for requiring import licenses for products with encryption technology, the levels of certain export duties, and whether Russia's state-owned enterprises would operate on a commercial basis. In addition, Russia had much work to do to implement WTO provisions into its domestic law and to comply with bilateral agreements already in force.

On June 9, 2009, however, Prime Minister Putin announced that Russia, Kazakhstan, and Belarus would suspend their individual applications for accession to the WTO in favor of a joint application for membership as a customs union. Subsequently, the government of Russia appeared to reverse its position, offering to continue its individual WTO accession negotiations, but with the intention that all three countries accede on similar terms on issues covered by the customs union. We await additional information from Russia on its trade plans in 2010, including its intentions with regard to resuming work on its WTO accession and resolving bilateral trade concerns. We will continue to work with Russia to ensure that work on trade and investment priorities keep pace with other important aspects of our bilateral relationship.

## IMPORT POLICIES

In 2006, Kazakhstan, Russia, and Belarus announced the formation of a trilateral customs union. On November 27, 2009, the Presidents of Russia, Belarus and Kazakhstan signed the agreements creating the Russia-Belarus-Kazakhstan Customs Union (the RBK Customs Union), including a harmonized table of tariffs and tariff-rate quotas, and a harmonized Customs Code. The common external trade tariff (CET) was implemented as of January 1, 2010, with the majority of the tariff rates established at Russia's current applied rates. On July 1, 2010, a common Customs Code will come into effect and internal customs barriers between Russia and Belarus will be eliminated; internal customs barriers between Russia and Kazakhstan will be eliminated as of July 1, 2011. Currently, the RBK Customs Union has competence over import duties, nontariff measures (*e.g.*, tariff-rate quotas, licensing) and unfair trade measures (antidumping, countervailing duties and safeguards). An expansion of its subject matter coverage is planned in the future, *e.g.*, to include sanitary and phytosanitary measures and technical barriers to trade.

## FOREIGN TRADE BARRIERS

The majority of Russia's tariffs will remain unchanged from the present applied tariff rates, but the tariff rates will increase on approximately 1,000 tariff lines, mostly in the areas of meat and other food products while only approximately 400 tariff lines will be reduced.

Russia continues to maintain a number of import restrictions, such as customs charges and fees that exceed the cost of the service provided, and valuation procedures that result in higher total tariff charges than are warranted. Compliance with licensing, registration, and certification regimes is burdensome. Discussions continue on eliminating these and other measures, or modifying them so that they are consistent with WTO requirements and other internationally accepted practices.

Although Russia did reduce or eliminate import tariffs on some products in 2007 and 2008, the prevailing trend in 2009 was to increase import tariffs in key areas in response to the global economic crisis. For example, the Russian government increased tariffs on automobiles, trucks, combine harvesters, soy meal, selected dairy products, and some construction equipment, and has indicated that it will continue to review its tariff policy in light of overall economic conditions. While initially announced as temporary measures for a period of nine months, many of these increases have been renewed and many of them were incorporated into the Customs Union CET.

### **Tariff-Rate Quotas**

In accordance with the 2005 United States-Russia Meat Agreement, the Russian government established country specific tariff-rate quota (TRQ) volumes (including for the United States) and reduced in-quota tariff rates for beef, pork, and poultry meat imports from 2006 through 2009. The agreement expired on December 31, 2009 and early in December 2009, Russia announced its new TRQs for 2010 through 2012. The TRQs that went into effect on January 1, 2010 have lower in-quota volumes for pork and poultry, and maintain high over-quota tariff rates that effectively preclude imports. By contrast, the in-quota volume for beef was increased although the high over-quota tariff remained. In addition, TRQs for some products for 2010 and beyond will be determined on the basis of the RBK Customs Union.

### **Import and Activity Licenses**

Import licenses and/or activity licenses to engage in wholesaling and manufacturing activities are necessary for the importation of certain products, including alcoholic beverages, pharmaceuticals, products with encryption technology, explosive substances, narcotics, nuclear substances, hazardous wastes, and some food products (*e.g.*, unprocessed products of animal origin).

All importers of alcohol products must have an activity license to produce or distribute and store such products, placing a burden on importers that should be applied to distributors. In addition, pursuant to the new customs union licensing regime, importers must obtain an import license for each type of alcoholic product (a requirement previously applied only to imports of vodka, tequila, grappa, and pure ethyl alcohol) under a burdensome and time-consuming process. (*Additional burdens imposed on importers of alcohol-containing products are described below in the section on Nontariff Barriers.*)

Currently, Russia requires that any product containing encryption technology be tested and approved by Russia's Federal Security Service before it can be imported into Russia. This process can often take six months or longer to complete. Leading U.S. technology companies contend that the current system impedes imports, delays the creation of an innovative and knowledge-based economy in Russia, and hampers the further development of research and development centers in Russia. In a November 2006 bilateral agreement with the United States, the Russian government agreed to establish a streamlined

system for the importation of goods containing encryption technology through the implementation of transparent, nondiscriminatory procedures. The Russian government agreed also to allow the importation of most commercially traded goods containing encryption technology after a one-time notification, or in some cases, with no licensing or notification requirements at all. Although Russia agreed to implement the new regime by February 2007, the old regime remains in place. The United States continues to work actively with the Russian government on addressing its import licensing barriers for goods containing encryption technology and ensuring the full implementation of the terms of the bilateral agreement. *(Additional information on electronic commerce barriers is continued below in the section on Investment Barriers.)*

### **Customs Issues, Taxes, and Tariffs**

In 2008, Russia's average "most favored nation" applied tariff rate was 10.8 percent. More specifically, U.S. agricultural exporters faced an average applied tariff of 14.2 percent, while industrial exports faced an average applied rate of 10.2 percent. Import tariffs on automobiles and agricultural and construction equipment continued to present particular obstacles to U.S. exports to Russia in 2009.

Excise taxes apply to a number of "luxury" goods, such as liquor and cigarettes, as well as passenger cars. Excise tax rates for all alcoholic beverages will increase dramatically from 2010 through 2012 according to the new excise tax rates adopted by the State Duma on November 20, 2009.

In 2009, the government of Russia also increased tariffs on a number of agricultural products, often citing the economic crisis as justification. For example, Russia nearly doubled the over-quota tariffs on poultry and pork to prohibitive rates. Russia also increased tariffs on soybean meal, rice, baby formula, corn and manioc starch, sugar, cheese, concentrated milk and cream, and tropical oils.

Customs authorities in Russia continue to assess duties on the royalty amounts for the domestic use of imported audiovisual materials, such as television master tapes. U.S. industry has complained that this practice represents a form of double taxation, since royalties are also subject to withholding, income, value added, and remittance taxes. U.S. consumer goods companies have also reported that Russian Customs is calculating customs duties based on a value that includes royalty payments made by the companies' Russian subsidiaries to their overseas parent companies for the use of parent company-owned product trademarks. U.S. companies are disputing these assessments.

Throughout 2009, Russian importers of some U.S. food products reported that Russian customs officials were challenging the declared import values, particularly of commodity products for which world prices had recently declined. Instead, Customs officials used reference prices, resulting in higher import values, and hence higher duty payments. Initially, Russian customs officials requested additional documentation in order to substantiate the declared value, but the requested documents were often unrelated to the specific commercial transaction at issue, as required under Russian law. Consequently, U.S. firms have been disadvantaged as Russian importers have often shifted to third-country suppliers who would provide the requested documents supporting the declared value. Some U.S. companies are challenging these assessments. In addition, U.S. Government officials have raised concerns about inconsistent valuation practices with Russian Customs.

U.S. industry also reports that Russia does not publish all regulations, judicial decisions, and administrative rulings of general application to customs matters. In addition, U.S. exporters report that customs enforcement varies by region and port of entry, and that frequent changes in regulations are

unpredictable, adding to costs and delays at the border. Russia recognizes that it will need to revise elements of its customs fee structure.

U.S. companies continue to face a wide array of nontariff trade barriers when exporting to Russia. Nontariff barriers are a topic of detailed discussions in Russia's WTO accession negotiations and in bilateral United States–Russia discussions.

### **Pharmaceuticals**

As Russia prepares to develop its own innovative pharmaceutical industry, major market access barriers remain. Russia still does not prevent unfair commercial use of data submitted for the purpose of obtaining marketing approval for pharmaceuticals despite commitments by the government to work with the Duma to enact legislation by June 2007 to provide six years of protection. Senior Russian government officials have repeatedly stated that they would like to see more local production of pharmaceuticals, including foreign active ingredients and formulations. The government's long-term pharmaceutical industry development plan calls for Russian manufacturers to account for at least 50 percent of total sales (based on value) by 2020.

### **Alcohol**

Importers of alcohol face a variety of regulatory measures. Pursuant to the Russian Customs Code and Law on Production and Turnover of Alcohol, as amended in December 2008, all customs duties, excise taxes, and VAT on alcohol must be paid in advance using a bank guarantee and deposit. Because the actual amount of the duties and fees may not be known when the guarantees are obtained, the government of Russia has established fixed guarantee amounts. On occasion, these amounts exceed the final actual amounts due, especially for lower value products. In addition, industry has reported that refunds of these guarantees are sometimes delayed for as long as seven months. The advance payment requirement for duties and taxes, and the length of time the bank guarantee refund is held open, may limit trade volumes due to the amount of money that must be dedicated to these guarantees.

### **EXPORT POLICIES**

Although Russia has eliminated export duties on a few products, it maintains export duties on nearly 450 types of products for both revenue and policy purposes. For example, a variety of agricultural products are subject to export tariffs, such as certain fish products, oilseeds, fertilizers, and wood products. Russia has indicated that it intends to eliminate gradually most of these duties, except for products deemed as strategic, such as hydrocarbons and scrap metals. In 2009, Russia eliminated its 10 percent export duty on copper cathode, thus implementing one of its commitments under the bilateral WTO market access agreement. Export duties on crude oil, which reach 65 percent in some circumstances, are deliberately designed to redirect crude to domestic refineries.

Over the last two years, Russia's government has been pursuing a policy of raising export tariffs on coniferous logs and round wood in order to stimulate the development of a domestic wood processing industry and to encourage the export of sawn lumber and value added wood products. The government has eliminated the export tax for processed wood products such as particle board, several types of cellulose from coniferous wood, certain types of paper, carton and cardboard, and railway and tramway sleepers.



On October 25, 2009, the government of Russia decided to delay further the introduction of a high export duty on raw timber, leaving the duty unchanged in 2010 at the current level of 25 percent [but no less than 15 euros per cubic meter (\$20.5/m<sup>3</sup>)]. Previously, the Russian authorities had planned to introduce a prohibitive 80 percent export tariff (but no less than 50 euros per cubic meter) starting on January 1, 2009, but then delayed to January 1, 2010. On October 25, 2009, the government of Russia decided to delay further the introduction of a high export duty on raw timber, leaving the duty unchanged in 2010 at the current level of 25 percent [but no less than 15 euros per cubic meter (\$20.5/m<sup>3</sup>)]. Further export tariff increases would affect domestic producers, since consumption of Russian forestry products decreased worldwide as a result of the economic downturn.

## **INTELLECTUAL PROPERTY RIGHTS (IPR) PROTECTION**

Russia was listed on the priority watch list in the 2009 Special 301 report. Key concerns cited in the Report included Russia's slow implementation of some of its commitments in the November 2006 Agreement between the Government of the United States of America and the Government of the Russian Federation on Protection and Enforcement of Intellectual Property Rights ("IPR Bilateral Agreement"), such as the commitment to fight Internet piracy, protect against unfair commercial use of undisclosed test or other data generated to obtain marketing approval for pharmaceutical products, deter piracy and counterfeiting through criminal penalties, strengthen border enforcement, and bring its laws into compliance with WTO and international IPR norms. The U.S. and Russian governments have an ongoing dialogue to ensure the full implementation of this agreement.

In 2009, Russia's optical disc production capacity continued to exceed domestic demand, raising concerns regarding optical disc piracy. U.S. copyright industries estimate that approximately 65 percent of sound recordings on the Russian market are pirated, resulting in reported losses of nearly \$2.7 billion in 2008. However, legitimate DVD sales are on the rise, in part due to increased law enforcement action against pirates, including a 2008 ban on camcording in movie theaters, and a growing preference for high quality products.

Internet piracy is a serious and growing concern. Authorities have begun criminal investigations against operators of some of the notorious Russia-based websites. Western and Russian recording companies have won several civil suits against Internet pirates, although resulting damage awards have been minimal by U.S. standards. Gaps remain in Russian legal and enforcement efforts to address Internet piracy, particularly with respect to sound recordings.

U.S. and multinational companies continue to report counterfeiting of trademarked goods, especially of consumer goods, distilled spirits, agricultural chemicals and biotechnology, and pharmaceuticals. While in the past U.S. firms complained about "trademark squatting" by Russian enterprises attempting to appropriate well-known trademarks not active or registered in Russia, rights holders have been increasingly successful in countering "trademark squatting" schemes through the Russian court system or the Russian Federal Service for Intellectual Property, Patents, and Trademarks (Rospatent). In an effort to advance administrative intellectual property protection, a specialized higher patent chamber at Rospatent has brought greater expertise and efficiency to the adjudication of patent and trademark disputes.

Part IV of the Civil Code, implemented in January 2008, improves many aspects of IPR protection, but still contains some provisions that raise concerns under the WTO and other international agreements. The Russian government pledged to ensure that Part IV and other IPR measures will be fully consistent with the WTO Agreement on Trade-Related Aspects of Intellectual Property Rights (TRIPS Agreement), and the United States continues to work with the Russian government toward this goal.

## **FOREIGN TRADE BARRIERS**

Amendments to the Russian Customs Code to provide customs officials with the *ex-officio* authority to seize suspected counterfeit goods and hold them for up to seven days to investigate their authenticity have passed a first reading in the Duma. Second and third readings of these amendments, and the third and final reading of the amendments to Part IV, have not been scheduled.

Under Article 39.3 of the TRIPS Agreement, Russia must, once it becomes a WTO Member, protect against disclosure and unfair commercial use of undisclosed test and other data submitted to government authorities to obtain marketing approval of pharmaceutical and agricultural chemical products. Russia currently does not provide such protection for pharmaceutical products. Although legislative changes to address these concerns are being considered by the Russian government, multiple versions of draft legislation on data exclusivity continue to circulate, making it impossible to assess the adequacy of the possible changes.

### **Domain Name Changes**

Starting November 25, 2009, priority will be given to trademark owners registered in the Russian Federation who also register their domain names in a new Cyrillic alphabet format. The Russian Coordinating Center of the National Internet Domain issued a regulation, "Provisions on Priority Registration of Domain Names in the •• Domain" that stipulates that domain names must either reproduce or match word designations contained in trademarks. Trademark owners with a ".RU" (Russia) domain name can keep the ".RU," but now have the option of obtaining a ".••"(RF). •• domain names may be registered for a fee of approximately \$40 for a one year period, with the possibility of subsequent renewal of the domain name's registration annually.

Priority registration of domain names in the •• domain will be available to rights holders of trademarks in Cyrillic only. Consequently, owners of trademark registrations in the Latin alphabet will be able to register Cyrillic domain names only during a subsequent "auction" period (intended to take place from April 12, 2010 to June 4, 2010) and a "free-for-all" domain name registration period (which would allegedly begin on June 7, 2010). This limitation extends to well-known trademarks in the Latin alphabet.

### **Enforcement**

Poor enforcement of IPR in the Russian Federation is a pervasive problem. In the November 2006 IPR Bilateral Agreement, Russia agreed to improve IPR enforcement while the United States agreed to step up IPR training programs and technical assistance for Russian customs and law enforcement officials. In 2009, the U.S. Patent and Trademark Office conducted six IPR training programs for Russian police, investigators, prosecutors, judges, and customs officials and in total trained 149 Russian law enforcement officials. Russian Customs has drafted an "IPR Enforcement Handbook", which will be used by all Russian Federal Customs Service officers. Additional training programs are planned for 2010.

In 2009, Russian law enforcement agencies carried out raids on optical disc production facilities suspected of engaging in pirate activities, including a major raid in Moscow and surrounding regions in November 2009 that involved close cooperation between the Russian Ministry of Interior (MVD) and rights holders. That raid stopped the activity of two international organized crime groups involved in mass producing counterfeit DVDs of films and software. Although the raid was a successful surprise raid, most surprise raids are less effective as the date and time of pending raids are often leaked to the optical disc plant in advance. While the level of cooperation with police in optical disc raids is increasing, the quality of raids, and the level of police expertise, is uneven nationwide. A number of factors limit the effectiveness of raids, including the high monetary damages threshold required to

establish criminal liability, and the general reluctance of prosecutors to initiate criminal cases in the field of IPR, even when evidence substantiates the claim.

## **SERVICES BARRIERS**

Russia's services market is relatively open to U.S. services suppliers, including in areas such as financial services, education, legal services, and distribution, although specific problems remain in particular areas. The ability to provide services to public utilities and certain energy-related services (*see discussion on energy in the section on Investment Barriers*) remains limited. The process for an individual or a company to obtain a license to provide a service remains difficult, and limitations on the form of commercial establishment affect some sectors.

### **Financial Services and Insurance**

The 1996 federal law "On Banks and Banking Activity" permits foreign banks to establish subsidiaries in Russia. However, Russia does not allow foreign banks to establish branches in Russia. While there is no cap on foreign charter capital in the banking sector, in the insurance sector, foreign insurance firms are subject to a 49 percent equity limitation.

### **Telecommunications**

The telecommunications services market reached \$37.2 billion in 2008 and is expected to grow to \$48.5 billion by 2013. Many in the industry continue to criticize the lack of transparency in the licensing process, as well as the 5 year to 10 year license validity period, which they argue does not allow them sufficient time to recoup their investment. The scarcity of civilian frequencies has led to competition among Russian mobile operators and impeded the development of new wireless networks in Russia, such as 3G and WiMAX. (Only about 5 percent of Russia's communication frequencies are used for civilian purposes, while 95 percent are reserved for military use.) Despite lobbying efforts from mobile operators, there is no indication that the Ministry of Communications and Mass Media will free up more frequencies for civilian use.

Industry reports that certification of new products in the telecommunications industry still suffers from a lack of transparency. Additionally, the satellite industry reports that the licensing process for obtaining access to a foreign satellite is overly burdensome and lacks transparency. Further, they claim that some of the legal requirements and administrative responsibilities associated with the provision of satellite services appear to be discriminatory, with the Russian government granting a preference for Russian satellite communications systems.

## **INVESTMENT BARRIERS**

Russia's foreign investment regulations and notification requirements can be confusing and contradictory, which has an adverse effect on foreign investment. In addition, U.S. investors and others cite corruption in commercial and bureaucratic transactions as a barrier to investment. President Medvedev's vow to tackle corruption in Russia included the creation of an Anti-corruption Council in the summer of 2008 and an anti-corruption legislation package, which was promulgated in December 2008. However, little progress has been seen on implementation.

Telecommunications and media services companies report specific investment restrictions. Russian entities with more than 50 percent foreign ownership are prohibited from sponsoring television and video

## **FOREIGN TRADE BARRIERS**

programs or from establishing television organizations capable of being received in more than 50 percent of Russia's territory or by more than 50 percent of the population. Even tighter investment restrictions have recently been imposed on security firms. As of January 1, 2010, the Law on Private Detective and Security Activities in the Russian Federation prohibits the participation of any foreign capital in a private security operation.

Further obstacles to investment in Russia include inadequate dispute resolution mechanisms, weak protection of minority stockholder rights, the absence of requirements for all companies and banks to adhere to international accounting standards, and the failure of some companies to adopt and adhere to business codes of conduct. Initiatives to address these shortcomings, either through regulation, administrative reform, or government sponsored voluntary codes of conduct, have made little progress. Inadequate transparency in the implementation of customs, taxation, licensing, and other administrative regulations also discourages investment.

### **National Treatment**

The 1999 Investment Law codifies principles of national treatment for foreign investors, including the right to purchase securities, transfer property rights, pursue rights in Russian courts, repatriate funds abroad after payment of duties and taxes, and receive compensation for nationalizations or illegal acts of Russian government bodies. However, the law goes on to state that federal law may provide for a number of exceptions, including, where necessary, "the protection of the constitution, public morals and health, and the rights and lawful interest of other persons and the defense of the state." Thus, a large number of broadly defined exceptions give the Russian government considerable discretion in prohibiting or inhibiting foreign investment. The law includes a "grandfather clause" that stipulates that existing (as of 1999) "priority" foreign investment projects with foreign participation of over 25 percent be protected from unforeseeable changes in the tax regime or new limitations on foreign investment. The law defines "priority" projects as those with a foreign charter capital of more than \$4.1 million and with a total investment of more than \$41 million. However, the lack of corresponding tax and customs regulations means that any protection afforded investors by this clause is only theoretical.

The government enacted the Strategic Sectors Law (SSL) in May 2008. The SSL introduces a list of 42 "strategic" sectors in which purchases of "controlling interests" by foreign investors must be pre-approved by the Russian government. Many observers, while welcoming more clarity on the rules of the game, have criticized the SSL for being overly broad in the number of sectors it covers, and raised concerns regarding the approval process.

To date, the Government Commission on Control of Foreign Investment in the Russian Federation has received over 80 applications, held four sessions, reviewed dozens and approved around twenty deals. However, the majority of the approved transactions actually involved Russian investors as many of them are structured using foreign offshore holding companies. Public information was available on just four foreign companies that received approval under the SSL: South African DeBeers (diamond mining, but the deal fell through because of the financial crisis); Italian Alenia Aeronautica (development of Sukhoi Superjet 100); Canadian Barrick Gold (gold mining); and Khartron, which is controlled by the Ukrainian government (space cooperation).

## **Taxes**

From 2002 through 2008, the corporate profit tax was 24 percent, 11 percentage points higher than Russia's flat 13 percent tax on personal income. However, in late 2008, as an economic stimulus measure, Russia reduced the corporate profits tax rate from 24 percent down to 20 percent, effective January 1, 2009.

Companies report that VAT refunds to a Russia-based exporter, which should be provided within three months after a claim is submitted, often do not occur on time, with customs and tax authorities applying a number of burdensome additional requirements. In addition, leasing companies find that VAT assessed on inputs to exported final products is often not refunded at all, for a number of reasons. In some cases, local tax inspectorates have initiated audits and attempted to seize bank accounts of the leasing companies, thus forcing exporters to seek very expensive and time consuming court enforcement. VAT refunds on exports are also the source of significant fraud, making it even more difficult for legitimate exporters to obtain refunds. Legislation to simplify VAT reimbursements took effect on January 1, 2007. Under the new law, VAT refund processing time was expected to fall from three months to two weeks, but anecdotal reports from Russian and U.S. companies indicate that the new law has not helped reduce refund processing time, and that in many cases, companies have to resort to court action to receive their VAT reimbursements. In addition, during the course of their audits, Federal Tax Service officials now have the authority to confiscate improperly disbursed VAT refunds, with penalties.

U.S. companies have also raised concerns about the Russian tax authorities' scrutiny of payments that cross Russia's border, but remain within the structure of the same legal entity. This tax issue has arisen chiefly in two contexts: (1) when a multinational company transfers an employee temporarily to the company's Russian office from another office outside Russia; and (2) in intra-company payments for the use of intellectual property. Under internationally accepted accounting standards, these normal business practices are handled as an intra-firm payment from one office to the other, or to the headquarters in the case of royalty payments. However, tax inspectors have often disputed such expenses as "economically unjustified" and, consequently, not permissible under the Russian Tax Code. While foreign firms with Russian operations have been careful to ensure that their accounting methods are consistent with the Russian Tax Code, several foreign firms have been subjected to audits and claims for back taxes in these situations.

## **Energy Sector**

In conjunction with the SSL, amendments to subsoil legislation were also passed requiring governmental approval for foreign investment in excess of 10 percent in companies operating a "strategic" deposit, which includes major oil, gas, and other mineral deposits. Foreign oil and gas companies are concerned about the potential application of these provisions, including how and when the government may declare a given field strategic and what compensation a field licensee may be given under such declarations.

In late 2008, the partners of the Caspian Pipeline Consortium (CPC) approved expansion of the CPC pipeline, which has been operational since 2001. The CPC pipeline originates in Kazakhstan and delivers oil to the Black Sea port of Novorossiysk. CPC expansion is critical for export of rapidly growing Central Asian oil production. As of late 2009, physical work on expansion had not yet begun.

## **ELECTRONIC COMMERCE**

Electronic commerce remains a developing market in Russia, valued at \$1.5 billion in 2008. Russia's law currently does not provide identical legal status to both electronic and paper documents. Because of this discrepancy, electronic settlement of outstanding charges is problematic, and currency control provisions may apply when paying in a currency other than rubles. The tax aspects of electronic commerce are virtually unexplored, and this area of the law is still developing.

Russia's Law on Electronic Digital Signatures went into effect on January 14, 2002. This law does not follow the Model Law on Electronic Signatures of the U.N. Commission on International Trade Law, but rather defines electronic signatures narrowly, making public-key technology the sole acceptable digital signature technology. It also requires that hardware and software used in digital signature authentication programs be certified in Russia. This requirement gives the Russian government the right to insist on the decompilation of electronic signature programs. The requirements contained in Russia's digital signature law, as well as the licensing requirements related to goods with encryption technology, impede trade in goods that could be used to further electronic commerce in Russia.

# SAUDI ARABIA

## TRADE SUMMARY

The U.S. goods trade deficit with Saudi Arabia was \$11.2 billion in 2009, down \$31.0 billion from 2008. U.S. goods exports in 2009 were \$10.8 billion, down 13.5 percent from the previous year. Corresponding U.S. imports from Saudi Arabia were \$22.0 billion, down 59.7 percent. Saudi Arabia is currently the 20th largest export market for U.S. goods.

U.S. exports of private commercial services (*i.e.*, excluding military and government) to Saudi Arabia were \$4.3 billion in 2008 (latest data available), and U.S. imports were \$527 million. Sales of services in Saudi Arabia by majority U.S.-owned affiliates were \$1.5 billion in 2007 (latest data available), while sales of services in the United States by majority Saudi Arabia-owned firms were \$3.7 billion.

The stock of U.S. foreign direct investment (FDI) in Saudi Arabia in 2008 was \$5.4 billion (latest data available), up from \$5.0 billion in 2007. U.S. FDI in Saudi Arabia is concentrated mostly in the nonbank holding companies sector.

## IMPORT POLICIES

### Tariffs

As a member of the Gulf Cooperation Council (GCC), Saudi Arabia applies the GCC common external tariff of 5 percent for most products, with a limited number of GCC-approved country specific exceptions. Saudi Arabia's exceptions include 666 products that may be imported duty-free, including aircraft and most livestock. Saudi Arabia applies a 12 percent tariff on 294 products, in some cases to protect local industries. Certain textile imports are among the products to which the 12 percent rate applies.

The vast majority of food products are subject to a 5 percent import duty. However, selected processed food products are assessed higher import duties. Saudi Arabia ties import duties to the level of local production of similar products. As a general rule, a maximum import tariff rate of 40 percent is applied when local production of a food or agricultural product exceeds a self-sufficiency level. Currently, a 40 percent import duty rate applies to fresh, dried, and processed dates. Imports of rice, baby milk, and animal feed are subsidized while coffee, tea, and fresh red meat enter the country duty-free. Saudi Arabia has no tariff-rate quotas.

Confectionary products with cocoa and other bulk cocoa products are subject to a 15 percent tariff. Nine types of fresh or chilled vegetables (tomatoes, onions, carrots, cucumbers, marrow, okra, watermelons, melons, and potatoes) are subject to a 25 percent tariff on a seasonal basis. Saudi Arabia also imposes a 100 percent tariff on cigarette and other tobacco imports.

### Import Prohibitions and Licensing

In Saudi Arabia, the importation of certain articles is either prohibited or requires special approval from the appropriate authorities. The importation of alcohol, firearms, pork products, and used clothing is prohibited. Imports of certain products, including agriculture seeds, live animals, books, periodicals, audio or visual media, religious materials that do not adhere to the state-sanctioned version of Islam or

## FOREIGN TRADE BARRIERS

that relate to a religion other than Islam, chemicals and harmful materials, pharmaceutical products, wireless equipment, horses, radio-controlled model airplanes, products containing alcohol, natural asphalt, and archaeological artifacts require special approval. Importation of some media products is subject to censorship.

### **Documentation Requirements**

Some products, most notably agricultural biotechnology products, require a certificate authenticated by the local chamber of commerce in the country of origin attesting to the product's fitness for human consumption and to its sale in the country of origin. Pursuant to commitments made in its protocol of accession to the World Trade Organization (WTO), Saudi Arabia eliminated the requirement to authenticate import documentation as of December 31, 2007.

### **GOVERNMENT PROCUREMENT**

Several royal decrees apply to Saudi Arabia's government procurement. Under a 1983 decree, contractors must subcontract 30 percent of the value of any government contract, including support services, to firms that are majority-owned by Saudi nationals. An exemption is granted where no Saudi-owned company can provide the goods and services necessary to fulfill the procurement requirement. Procurement regulations require preferential treatment for products of Saudi origin that satisfy the requirements of the procurement. In addition, Saudi Arabia gives priority in government purchasing to GCC products. These items receive up to a 10 percent price preference over non-GCC products in all government procurements in which foreign suppliers participate. Most Saudi defense contracts are not subject to the general procurement decrees and regulations; instead, they are negotiated on a case-by-case basis.

Foreign suppliers that participate in government procurement are required to establish a training program for Saudi nationals. In addition, the government may favor joint venture companies with a Saudi partner and gives preference to companies that use Saudi goods and services. For large military projects, there is frequently an offset requirement, which is determined on a project-by-project basis.

Foreign companies can provide services to the Saudi government directly without a local agent and can market their services to other public entities through an office that has been granted temporary registration. Foreign suppliers working only for the government, if not already registered to do business in Saudi Arabia, are required to obtain a temporary registration from the Ministry of Commerce and Industry within 30 days of signing a contract.

In 2003, the Saudi Council of Ministers required increased transparency in government procurement. The procurement information to be made public must include the names of the parties, financial value, brief description, duration, place of execution, and a point of contact.

In its accession to the WTO, Saudi Arabia committed to initiate negotiations for accession to the Agreement on Government Procurement (GPA). Although Saudi Arabia became an observer to the WTO Committee on Government Procurement in December 2007, it has not yet begun accession negotiations. Saudi Arabia, however, published revised government procurement procedures to bring them in line with GPA requirements in August 2006.



## **INTELLECTUAL PROPERTY RIGHTS (IPR) PROTECTION**

In February 2010, the United States announced that Saudi Arabia would be removed from the Special 301 Watch List in recognition of significant progress that Saudi Arabia had made in the protection and enforcement of intellectual property rights, including addressing concerns identified in the 2009 Special 301 Report. An Out-of-Cycle Review focused on three specific issues: (1) deterrent level penalties for violations of Saudi copyright law, (2) action to reduce the use of unauthorized copies of software within the Saudi government, and (3) adequate protection for patented pharmaceutical products. The United States will carefully monitor Saudi Arabia's progress in continuing to improve its IPR regime.

As part of the GCC Customs Union, the six Member States are preparing a common trademark law, as well as a common unfair competition law to protect from unfair commercial use undisclosed information submitted for marketing approval of pharmaceutical products. The United States is engaged in a dialogue with GCC technical experts to ensure that the trademark law and unfair competition law will facilitate Member States' implementation of international and bilateral obligations.

## **SERVICES BARRIERS**

### **Insurance**

In recent years, Saudi Arabia has implemented a series of laws regulating the insurance sector requiring certain types of insurance coverage within the country. In October 2003, the government enacted the Control Law for Co-Operative Insurance Companies, which requires all insurance companies operating in Saudi Arabia to be locally incorporated joint-stock companies (foreign equity is limited to 60 percent, and the remaining 40 percent must be floated on the Saudi stock market), and to operate on a cooperative or mutual basis (*i.e.*, requiring that the profits be distributed between policy holders and the insurance company).

The Saudi Arabian Monetary Agency (SAMA) began accepting applications for insurance operations in November 2003 and a royal decree was promulgated in April 2005 to implement Saudi Arabia's WTO commitment allowing foreign insurance companies to operate in Saudi Arabia through direct branches. For a transitional period of three years, foreign insurance companies operating through an agent were allowed to continue operations in Saudi Arabia pending the issuance of insurance branching regulations.

### **Banking**

Saudi Arabia limits foreign ownership in commercial banks to 40 percent of any individual bank operation. In the last few years, Saudi Arabia has taken steps to open up investment banking by granting operating licenses to foreign banks. SAMA granted 10 foreign bank licenses to operate in Saudi Arabia in December 2005. The 2004 Saudi Capital Markets Law provides for the creation of investment banks and brokerages in Saudi Arabia, with foreign participation in these ventures capped at 60 percent. Saudi Arabia passed a regulation in August 2008 allowing nonresidents to invest in swap agreements in the Saudi Stock Exchange, while local brokers and bankers retain legal title to traded shares.

## **INVESTMENT BARRIERS**

All foreign investment into Saudi Arabia requires a license from the Saudi Arabian General Investment Authority (SAGIA). While SAGIA is required to grant or refuse an investment license within 30 days of receiving a complete application, bureaucratic impediments arising in other ministries sometimes delay

## **FOREIGN TRADE BARRIERS**

the process. Although SAGIA is taking steps to address these impediments and streamline the process, companies can also experience bureaucratic delays after receiving licenses from SAGIA, for example, in obtaining a commercial registry or purchasing property. Foreign investment is currently prohibited in 15 manufacturing and service sectors and subsectors, including oil exploration, drilling and production, and manufacturing and services related to military activity.

The 2004 Capital Markets Law allows for the creation of financial intermediaries and created an independent stock market and an independent stock market regulatory body. The maximum equity share allowed for foreign partners in joint ventures is 60 percent. Direct foreign participation in the Saudi stock market is prohibited, though foreigners can purchase shares in bank-operated investment funds. Foreign participation in these funds is limited to 10 percent of the total value of the fund.

# SINGAPORE

## TRADE SUMMARY

The U.S. goods trade surplus with Singapore was \$6.6 billion in 2009, a decrease of \$5.3 billion from 2008. U.S. goods exports in 2009 were \$22.3 billion, down 20.0 percent from the previous year. Corresponding U.S. imports from Singapore were \$15.7 billion, down 1.4 percent. Singapore is currently the 11th largest export market for U.S. goods.

U.S. exports of private commercial services (*i.e.*, excluding military and government) to Singapore were \$9.0 billion in 2008 (latest data available), and U.S. imports were \$4.2 billion. Sales of services in Singapore by majority U.S.-owned affiliates were \$31.4 billion in 2007 (latest data available), while sales of services in the United States by majority Singapore-owned firms were \$2.9 billion.

The stock of U.S. foreign direct investment (FDI) in Singapore was \$106.5 billion in 2008 (latest data available), up from \$94.8 billion in 2007. U.S. FDI in Singapore is concentrated largely in the nonbank holding companies and the manufacturing sectors.

## FREE TRADE AGREEMENT

The United States and Singapore signed a Free Trade Agreement (FTA) on May 6, 2003, which entered into force on January 1, 2004. Since 2003, exports from the United States through 2009 increased 34.5 percent, with steady growth in exports of medical devices, machinery, and construction equipment. The United States and Singapore meet annually to review the implementation of the FTA and to seek to resolve outstanding trade issues.

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

## IMPORT POLICIES

### Import Licenses/Internal Taxes

Singapore maintains a tiered motorcycle operator licensing system based on engine displacement, which, along with a road tax based on engine size, places U.S. exports of large motorcycles at a competitive disadvantage. The import and sale of chewing gum is restricted in Singapore.

For social and/or environmental reasons, Singapore levies high excise taxes on distilled spirits and wine, tobacco products, and motor vehicles.

## FOREIGN TRADE BARRIERS

## **INTELLECTUAL PROPERTY RIGHTS (IPR) PROTECTION**

In connection with its FTA commitments and obligations under international treaties and conventions, Singapore has developed a generally strong IPR regime. Nevertheless, the United States continues to have concerns regarding the government's efforts to enforce IPR. These include: the continued transshipment of infringing goods through Singapore, insufficient deterrent penalties for end-user piracy, and the lack of meaningful enforcement against online infringers.

## **SERVICES BARRIERS**

### **Basic Telecommunications**

Facilities-based operators continue to be limited in their ability to take advantage of wholesale pricing for local provider SingTel's "last mile" local leased circuits. When completed in 2012, Singapore's next generation national broadband fiber network should allow fuller, more reasonable priced network access to provide telecommunication services to homes and businesses, bypassing the bottleneck of SingTel-owned circuits.

### **Audiovisual and Media Services**

Singapore restricts the use of satellite dishes and has not authorized direct-to-home satellite television services. Singapore's Media Development Authority (MDA) must license the installation and operation of broadcast receiving equipment, including satellite dishes. Satellite broadcasters that want to operate their own uplink facility must get a special license from MDA. Satellite broadcasters lacking their own facility are restricted to using one of four available uplink facilities.

Distribution, importation, or possession of any "offshore" or foreign newspaper must be approved by the government. Singapore has curtailed or banned the circulation of some foreign publications and limited their circulation when it perceives defamation of the Singapore government in the publication.

### **Legal Services**

U.S. and other foreign law firms with offices in Singapore cannot practice Singapore law, employ Singapore lawyers to practice Singapore law, or litigate in local courts, unless specifically approved to do so. In December 2008, Singapore granted "qualifying foreign law practice" (QFLP) licenses to six foreign law firms to practice Singapore law, but Singapore lawyers in a QFLP law firm cannot be full partners or share in worldwide profits with other partners in the firm.

### **Banking**

Singapore maintains legal distinctions between offshore and domestic banking units and the type of license held (full, wholesale, or offshore). Except in retail banking, Singapore laws do not distinguish operationally between foreign and domestic banks. Wholesale banks can operate in only one location, unless the Monetary Authority of Singapore approves an additional location.

Foreign banks and other financial institutions that issue credit cards in Singapore are unable to provide ATM services through local networks for holders of those cards. Foreign banks can only provide ATM services to locally-issued credit card holders through their own network or through a foreign bank's

## **FOREIGN TRADE BARRIERS**

shared ATM network. Foreign banks do not face the same restrictions for credit cards that they issue outside Singapore.

The Minister of Finance must provide specific types of approval for acquisitions of the voting shares of a local bank. Although it has lifted the formal ceilings on foreign ownership of local banks and finance companies, the Singapore government has indicated that it will not allow a foreign takeover of its three major local financial institutions. While foreign participation in the Singapore banking system is comparatively high, with foreign banks holding about 40 percent of nonbank deposits, the Singaporean government has stated publicly that it wants local banks' share of total resident deposits to remain above 50 percent.

## **Energy**

Singapore completed efforts to liberalize its gas market with the amendment of the Gas Act and implementation of a Gas Network Code in 2008, which was designed to give gas retailers and importers direct access to the onshore gas pipeline infrastructure. However, key parts of the local gas market, such as gas retailing and access to offshore gas pipelines, remain controlled by incumbent Singaporean firms. In the past, the dominance of Singaporean government-linked corporations in this sector proved very challenging for American companies that tried to enter the power generation and gas import business. To date, there is little indication that the gas market has substantially opened up to non-Singaporean firms.

## **Education Services**

Singapore passed the Private Education Bill on September 14, 2009, which included new registration criteria for education service providers. Education service providers have raised concerns regarding the lack of transparency about how the criteria are applied. The Ministry of Education (MOE) has rejected the applications of at least two foreign universities interested in providing university-level classes in Singapore, effectively barring their participation in the market. Although the MOE has provided a list of the criteria on which the applications are judged, it has not explained the specific reasons for denying these registrations, how it weights the criteria or reaches decisions on whether to approve or reject applications, or what steps the education service providers could take to satisfy the new requirements for future applications to be approved. The United States will continue to work with Singapore in an effort to resolve these concerns.

## **OTHER BARRIERS**

### **Competition**

Singapore has an extensive network of government-linked corporations that are active in many sectors of the economy. Some sectors, notably telecommunications, media, and financial services, are subject to sector-specific regulatory bodies and competition regulations typically less rigorous than those being implemented under the Competition Act. The United States will continue to monitor Singapore's implementation of its commitments on competition under the FTA.



# SOUTH AFRICA

## TRADE SUMMARY

The U.S. goods trade deficit with South Africa was \$1.4 billion in 2009, down \$2.0 billion from 2008. U.S. goods exports in 2009 were \$4.5 billion, down 31.3 percent from the previous year. Corresponding U.S. imports from South Africa were \$5.9 billion, down 40.9 percent. South Africa is currently the 39th largest export market for U.S. goods.

U.S. exports of private commercial services (*i.e.*, excluding military and government) to South Africa were \$2.0 billion in 2008 (latest data available), and U.S. imports were \$1.5 billion. Sales of services in South Africa by majority U.S.-owned affiliates were \$4.5 billion in 2007 (latest data available), while sales of services in the United States by majority South African-owned firms were \$1.2 billion.

The stock of U.S. foreign direct investment (FDI) in South Africa was \$4.9 billion in 2008 (latest data available), down from \$5.2 billion in 2007. U.S. FDI in South Africa was led by the manufacturing and wholesale trade sectors.

## IMPORT POLICIES

### Tariffs

South Africa is a member of the World Trade Organization (WTO), the Southern African Development Community, and the Southern African Customs Union (SACU). As a member of SACU, which links the trade regimes of Botswana, Lesotho, Namibia, South Africa, and Swaziland, South Africa applies the SACU common external tariff (CET). In practice, South Africa effectively sets the level of MFN tariffs applied by all SACU countries. South Africa's average applied duty in 2009 was 8.1 percent. Almost 97 percent of tariffs are charged on an *ad valorem* basis, with rates ranging from 0 percent to 96 percent, the highest of which are charged on dairy products, preparations of vegetables, beverages, and spirits.

The International Trade Administration Commission (ITAC) is tasked with administering South African trade laws. ITAC continues to receive requests from a number of industries for tariff protection, and U.S. companies have cited protective tariffs as a barrier to trade in South Africa. For example, U.S. apparel exporters expressed concern about increases in South African tariffs on over 120 clothing items in late 2009. Tariffs for these products were increased from 20 percent and 40 percent up to their WTO bound rate of 45 percent, *i.e.*, the rate that generally cannot be exceeded under WTO rules, and serve as a further impediment to enter South Africa's apparel market.

The South African government introduced a National Industrial Policy Framework and Industrial Policy Action Plan (the Framework) in 2007, with the goal of promoting value added industries in eight sectors, including: capital and transport equipment; automotive goods and components; chemicals, plastic fabrication, and pharmaceuticals; forestry, pulp, paper, and furniture; business process outsourcing; tourism; biofuels; and clothing and textiles. The Framework sets out specific mechanisms to assist these sectors, including a comprehensive review of import duties that has been underway for the last few years, and a potential reduction of selected import duties on inputs and components.

## FOREIGN TRADE BARRIERS

In August 2009, the South African Department of Trade and Industry (DTI) issued a policy statement suggesting that tariffs on agricultural goods could be raised and export taxes introduced in response to the impact on the agricultural sector of the global economic crisis. To date, no such action has been taken.

### **Nontariff Measures**

The Minister of Trade and Industry is authorized to prohibit imports into South Africa, by notice in the Government Gazette, of goods of a specified class or kind, except under the authority of, and in accordance with, the conditions stated in a permit issued by the ITAC. The ITAC requires import permits on used goods if such goods are manufactured domestically, thus creating a *de facto* ban on most used goods, including used clothing. Other categories of controlled imports include waste, scrap, ashes, residues, and goods subject to quality specifications.

Other often-cited nontariff barriers to trade include customs valuation above invoice prices, import permits, antidumping measures, and excessive regulation.

### **Antidumping Measures**

Transparency and due process remain issues with respect to the actions of ITAC and its administration of South Africa's antidumping laws and regulations.

As of the end of 2009, South Africa maintained antidumping duties on three products from the United States: chicken meat portions; L-lysine-HCl; and acetaminophenol.

In September 2007, South Africa's Supreme Court of Appeal ruled that ITAC had improperly calculated the five year expiration date of antidumping duties imposed on A4 paper imported from Indonesia and that, as a result, authority to impose duties had expired prior to the initiation of the sunset review for that product. ITAC subsequently announced its intention to terminate antidumping duties on several imported products because the sunset review of those duties had not been initiated before the expiration of the five year period as calculated under the court's interpretation of South African law. At the same time, ITAC indicated its intention to seek court permission to retain and "regularize" antidumping duties on 16 products, including chicken meat portions, acetaminophenol, and L-lysine-HCl from the United States, because, although the sunset reviews were initiated after the five year lapse date, ITAC found that dumping and injury were likely to continue or recur. In July 2009, ITAC announced that it would soon be filing the court application to address the consequences of the Supreme Court decision on these 16 products. As of the end of 2009, this application had not yet been filed with the Court.

## **GOVERNMENT PROCUREMENT**

Government purchases are made through competitive tenders for goods, services, and construction. South Africa uses government procurement to promote the empowerment of the historically disadvantaged majority population in South Africa through its Black Economic Empowerment (BEE) strategy. See the section on Investment Barriers for more details on BEE.

South Africa's Preferential Procurement Policy Framework Act of 2000 (the Framework Act) and its implementing regulations created the legal framework and a formula for evaluating tenders for government contracts. To augment this, the DTI has been working on regulations to clarify the Framework Act and to incorporate the objectives of the Broad-Based Black Economic Empowerment Act of 2003. These regulations would give preference to bidders who comply with BEE objectives and would

## **FOREIGN TRADE BARRIERS**



include BEE thresholds in tender evaluations. In procurement valued up to one million rand (about \$130,000), 80 percent of the tender evaluation would be based on the bid price and 20 percent on the supplier's commitment to BEE objectives. For tenders valued over one million rand, companies would earn 90 percent of their points from their bid price and 10 percent from their commitment to BEE objectives. The National Treasury is working with the DTI to align preferential procurement regulations with the BEE Code of Good Practice on Procurement in order to help standardize how firms are evaluated on their compliance with industry BEE scorecards.

South Africa's National Industrial Participation Program, introduced in 1996, subjects all government and parastatal purchases or lease contracts for goods, equipment, or services with an imported content equal to or exceeding \$10 million (or the rand equivalent thereof) to an industrial participation obligation. This obligation requires the seller/supplier to engage in local commercial or industrial activity valued at 30 percent or more of the value of the imported content of the total goods purchased or leased under a government tender.

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

### **INTELLECTUAL PROPERTY RIGHTS (IPR) PROTECTION**

Enforcement of intellectual property rights (IPR) in South Africa presents challenges. In recent years, the South African government has introduced measures to enhance enforcement of the 1997 Counterfeit Goods Act. The government has appointed more inspectors, designated more warehouses for securing counterfeit goods, destroyed counterfeit goods, and improved the training of customs, border police, and police officials. Although law enforcement authorities often cooperate with the private sector in investigating allegations of trade in pirated or counterfeit goods, some members of the business community have expressed concerns about lax enforcement of IPR laws against imports of infringing goods, as well as slow and cumbersome court proceedings. There have been some concerns that the South African Customs Administration interpreted a 2004 court ruling as limiting its ability to seize potentially infringing goods that are marked for transshipment through South Africa. This interpretation is still being debated within the South African government.

Under South African law, complainants can take both civil and criminal action against IPR offenders. The number of arrests for trading in pirated or counterfeit goods has increased in the last few years. In addition, South Africa has taken steps to improve enforcement, such as the creation of DTI's enforcement unit, and the establishment of Commercial Crime Courts in several cities. The South African government has also formed an interagency counterfeit division including the DTI, the South African Revenue Service (SARS), and the South African Police Service to improve coordination on IPR enforcement. SARS has launched a public awareness campaign about the seriousness and impact of IPR crimes, with special attention to counterfeiting issues related to merchandising for the 2010 World Cup soccer tournament in South Africa. DTI is also working with universities to incorporate IPR awareness into college curricula.

Despite efforts to improve IPR enforcement, monetary losses from counterfeiting and piracy remain high. U.S. industry is increasingly concerned about illegal commercial photocopying, especially at universities, libraries, and other on-campus venues. U.S. industry has also expressed concern about software, optical disc, and Internet piracy, the growing number of counterfeit production facilities, advertisements of "burn-to-order" services, and the unwillingness of South African Internet Service Providers (ISPs) to shut down infringing sites or access thereto. Counterfeit medicines are also a growing problem.

## **FOREIGN TRADE BARRIERS**

There is no direct legal protection for local distributors against parallel imports. However, in 2008, several members of the Motion Picture Association of America, acting individually, successfully obtained a civil injunction against a major DVD rental chain that was parallel importing their product. The Cape High Court awarded costs against the importer, who is appealing the decision.

## **SERVICES BARRIERS**

### **Telecommunications**

State-controlled Telkom, South Africa's main telecommunications provider, continues to dominate the market for value added and basic telecommunications services. Many businesses complain about high telecommunications prices, which are partly a result of Telkom's control of most of South Africa's wireline infrastructure. Telkom enjoyed a protected legal monopoly status prior to passage of the Electronic Communications Act (ECA) of 2005, which allowed the creation of a second national operator for telecommunications services. This second operator, however, with a small network, has yet to offer serious price competition in the market.

Liberalization policies implemented by the Department of Communications (DOC) in recent years have addressed some of the problems facing smaller operators. As a result, more mobile operators may now install their own fixed lines to link cell towers into their networks, Value Added Network Service (VANS) providers may use infrastructure not owned by Telkom, and VANS providers may offer voice services. In addition, private telecommunications network operators may sell spare capacity.

The telecommunications regulator, the Independent Communications Authority of South Africa (ICASA), has been tasked with issuing new licenses to mobile operators and ISPs, but missed its original deadline to issue these licenses, reportedly due to confusion of roles with the Department of Communications (DOC).

Despite legislative efforts to increase competition and ICASA independence, the DOC pursued a policy of "managed liberalization" under the Mbeki administration. In October 2008, the Pretoria High Court rejected the DOC's efforts to impose an invitation-only application process for VANS providers to convert their licenses to new Independent Electronic Communications Network Service (I-ECNS), providing operators the right to develop and operate their own telecommunications network. ICASA announced the recipients of the I-ECNS licenses on January 20, 2009. At the time, ICASA also promised licensees that it would complete the spectrum allocation process for these licenses and finalize BEE equity ownership requirements by the end of the first quarter of 2009, but had not done so by the end of 2009.

In January 2009, the South African government approved the sale of existing government-controlled shares in the new second national fixed-line operator Neotel to its parent corporation, India-based Tata Communications. This decision allowed Tata to gain a controlling share (56 percent) of Neotel, which was the sole South African sponsor of the United States-led SEACOM undersea fiber-optic cable. SEACOM became operational in late July 2009 and now provides the first true broadband connectivity for countries on Africa's eastern seaboard. Neotel is also promoting the development of other undersea cable projects, including EASSY (East Africa) and WACS (West Africa), which are expected to begin operations in mid-2010. Privately owned satellite firm Intelsat and a South African investment consortium also plan to build and launch a new \$250 million satellite that is expected to enter service in early 2011.

## **FOREIGN TRADE BARRIERS**

## **Broadcasting**

ICASA maintains local content regulations for satellite, terrestrial, and cable subscription services. Foreign ownership in a broadcaster is capped at a maximum of 20 percent. In July 2009, the South African government embarked on plans to amend the country's Broadcasting Act (1999). This follows a number of changes in the broadcasting and telecommunications sector since the Broadcasting Act came into effect, such as the migration from analog to digital television broadcasting. The DOC has announced a goal for the completion of digital migration by November 2011. Full migration should free up scarce spectrum (approximately 80-100 megahertz) that could be used to promote new technology and e-government services, since digital signals take up less bandwidth than analog signals.

## **INVESTMENT BARRIERS**

In February 2007, the DTI published Codes of Good Practice in the Government Gazette that included a new generic scorecard to measure a company's level of BEE in areas such as equity ownership, management, employment, procurement from black-owned companies, and development of black-owned enterprises. The Codes permit multinational corporations to earn BEE equity ownership "points" for empowerment actions in non-equity areas, provided the DTI approves and provided the multinational has a global corporate policy of owning 100 percent of the equity in its subsidiaries. Many U.S. companies had pressed for the right to use such "equity-equivalent" mechanisms. Although completion of the Codes of Good Practice has cleared up much of the uncertainty that surrounded BEE, they are complex documents and much about their interpretation and implementation remains unclear. By the end of 2009, only one multinational company had received DTI approval of an "equity-equivalent" program, which has led to complaints that the approval process is slow and nontransparent.

Several "transformation charters" have also been negotiated by stakeholders in sectors such as financial services, mining, and petroleum. These charters are intended to promote accelerated empowerment within particular sectors. It is expected that many of these charters will be converted into binding sector codes. There is uncertainty, however, as to whether equity-equivalent plans approved by DTI under the Codes of Good Practice would automatically satisfy equity requirements imposed by the transformation charters. In at least one case (the information and communications technology sector), a DTI-approved equity-equivalent plan was determined not to satisfy the requirements of a charter. In the financial services sector, a charter was reopened after labor unions complained that the charter's equity requirements were too generous to banks. Government, banks, and unions have so far been unable to agree on a revised charter, although talks continue. Because the time period for publishing the sector-specific charter in the Government Gazette has lapsed, some argue the sector is now governed by the Codes of Good Practice.

## **ELECTRONIC COMMERCE**

The Electronic Communications and Transactions Law governs all companies that conduct electronic commerce in South Africa. The law was designed to facilitate electronic commerce, but has been criticized as imposing significant regulatory burdens. The law requires government accreditation for certain electronic signatures, takes government control of South Africa's ".za" domain name, and requires a long list of disclosures for websites that sell via the Internet.

In early 2006, the South African Law Reform Commission submitted draft legislation and discussion documents on privacy and data protection for public comment and held a series of workshops on the draft legislation. Industry is still evaluating the extent to which this legislation, which is still awaiting action

## **FOREIGN TRADE BARRIERS**

by the National Assembly, will affect the ability of South African and foreign companies to receive and send transborder flows of personally identifiable data.

## **OTHER BARRIERS**

### **Ownership Patterns**

While South Africa's business environment has improved dramatically in the post-apartheid era, the energy, transportation, and telecommunications sectors are still dominated by state-owned or state-controlled monopolies.

### **Transparency and Corruption**

Laws such as the Promotion of Access to Information Act and the Public Finance Management Act, both enacted in 2000, have helped to increase transparency in government. The 2004 Prevention and Combating of Corrupt Activities Act defines graft, bars the payment of bribes by South African citizens and firms to foreign public officials, and obliges public officials to report corrupt activities. One shortcoming of the Act has been its failure to protect whistleblowers against recrimination or defamation claims.

South Africa has no fewer than 10 agencies engaged in anticorruption activities. Some, like the Public Service Commission, the Office of the Public Protector, and the Office of the Auditor-General, are constitutionally mandated to address corruption as part of their responsibilities. However, high rates of violent crime create a strain on enforcement capacity and make it difficult for South African criminal and judicial entities to dedicate adequate resources to anticorruption efforts. Following the April 2009 elections, the Zuma administration pledged to make anticorruption efforts a high priority and initiated a presidential hotline to receive reports of corrupt practices.

### **Business Mobility**

Many economic sectors in South Africa experience severe difficulty in recruiting because of skills shortages and emigration. For a number of years, U.S. and other foreign companies have complained of difficulties in the procedures for obtaining temporary work permits for their skilled foreign employees.

# SRI LANKA

## TRADE SUMMARY

The U.S. goods trade deficit with Sri Lanka was \$1.4 billion in 2009, down \$315 million from 2008. U.S. goods exports in 2009 were \$230 million, down 19.0 percent from the previous year. Corresponding U.S. imports from Sri Lanka were \$1.6 billion, down 18.8 percent. Sri Lanka is currently the 112th largest export market for U.S. goods.

The stock of U.S. foreign direct investment (FDI) in Sri Lanka was \$114 million in 2008 (latest data available), up from \$80 million in 2007.

## IMPORT POLICIES

Despite an economy that is attempting to open to foreign trade and investment, the pace of reform in Sri Lanka has been uneven. President Rajapaksa's broad economic strategy focuses on poverty alleviation and steering investment to disadvantaged areas, large scale infrastructure projects, developing the small- and medium-sized enterprise sector, promotion of agriculture, and expanding the already large civil service.

The Trade, Tariff, and Investment Policy Division of the Ministry of Finance and Planning is charged with the formulation and implementation of trade and investment policies. The Trade and Tariff cluster of the National Council of Economic Development (NCED) also examines trade and tariff issues and sends recommendations to the Ministry of Finance and Planning. In July 2009, the President appointed a Presidential Taxation Committee to examine the entire tax system including import tariffs.

### Import Charges

Sri Lanka's main trade policy instrument has been the import tariff. Under the WTO Agreement, Sri Lanka has bound (*i.e.*, agreed not to impose tariffs about a specified amount) only 37.8 percent of its tariff lines. According to the WTO, Sri Lanka's average applied agricultural tariff in 2008 was 25.5 percent, however its bound rates, *i.e.*, the rate that generally under WTO rules cannot be exceeded, for farm goods are significantly higher, averaging 50 percent. In 2008, Sri Lanka's average applied tariff for nonagricultural goods was 9 percent. Less than 30 percent of Sri Lanka's nonagricultural tariffs are bound under WTO rules, however, meaning applied tariffs on those products can be increased to any level.

Currently in Sri Lanka, there are five tariff bands: 0 percent; 2.5 percent; 6 percent; 15 percent; and 28 percent. Textiles, pharmaceuticals, and medical equipment have a zero tariff. Basic raw materials are generally assessed a 2.5 percent tariff. Semi-processed raw material tariffs are 6 percent, while intermediate product tariffs are 15 percent. Most finished product tariffs are 28 percent. There are also a number of deviations from the five band tariff policy. Some items are subject to an *ad valorem* or a specific tariff, whichever is higher, and there is intermittent use of exemptions and waivers. Footwear, ceramic products, and agricultural products carry specific tariffs.

In addition to tariffs, a variety of taxes introduced (see below) in the past several years have effectively increased Sri Lanka's tax rates on a range of imported items to between 60 percent and 100 percent of the cost, insurance, and freight (CIF) value of the product. The government has imposed these charges on

## FOREIGN TRADE BARRIERS

imports primarily to raise revenue, to defray the costs of specific government services, or to promote local producers. Most of these charges are revised upwards annually. In addition, the government imposed a new Nation Building Tax of one percent on imports on February 1, 2009; it was increased to three percent on May 1, 2009. The frequent changes (mostly upward) of these rates have added unpredictability to foreign exporters' and local importers' cost calculations. Affected products from the United States include fruits, processed/package food, and personal care products. The United States continues to examine if these combined tariffs, levies, and taxes conflict with Sri Lanka's WTO commitments.

Other charges on imports include:

- An Export Development Board (EDB) levy, ranging from 10 percent to 35 percent *ad valorem* on a range of imports identified as "nonessential." Most of the items are subject to specific duties as well; for example, shampoo (35 percent or Rs 175 (\$1.52) per kg), apparel (30 percent or Rs 75 (\$0.65) per unit), biscuits (35 percent or Rs 60 (\$0.52) per kg) and oranges (20 percent or Rs 15 (\$0.13) per kg). Whichever levy is higher – *ad valorem* or specific rate – is applied. Also, when calculating the EDB levy, an imputed profit margin of 10 percent is added onto the import price. In some cases, such as on biscuits, chocolates and soap, the tax is charged not on the import price but on 65 percent of the maximum retail price. The EDB levy on most imports was increased by raising the specific tariffs (unit rate) in November 2008 and in 2009. Locally manufactured products are not subject to the EDB;
- An import surcharge of 15 percent on all dutiable imports (increased from 10 percent as of November 8, 2007).
- A Ports and Airports Development Levy of 5 percent on imports. Locally manufactured products are not subject to the Ports and Airports Development Levy.
- A VAT of 0 percent, 12 percent, or 20 percent. When calculating the VAT, an imputed profit margin of 10 percent (increased from seven percent on January 1, 2007) is added on to the import price. Locally manufactured products are also subject to VAT but not the imputed profit margin. The new VAT rate of 12 percent was introduced on January 1, 2009 replacing the VAT rates of 5 percent and 15 percent;
- Excise fees are charged on some products such as aerated water, liquor, beer, motor vehicles, and cigarettes. The list of products subject to these fees was expanded in 2007 to include certain household electrical items. When calculating the excise fee, an imputed profit margin of 15 percent (increased from 10 percent on October 11, 2007 and from seven percent on January 1, 2007) is added on to the import price. Locally manufactured products are also subject to excise fees;
- A Social Responsibility Levy (SRL), a surcharge of 1.5 percent assessed on the import duty to fund the National Action Plan for Children. This tax was increased from one percent as of November 8, 2007. SRL is charged on the total income of local manufacturers;
- A regional infrastructure fee of five percent, 7.5 percent or 10 percent (based on engine capacity) is imposed on automobiles. This tax, first introduced in January 2007 at a flat rate of 2.5 percent, was increased in 2008. Locally manufactured automobiles are not subject to the regional infrastructure fee; and

## FOREIGN TRADE BARRIERS

- Textiles and Apparel: Textiles have a zero tariff. There is an Export Development Board Levy (often referred to as a “cess”) of 50 Rupees (approximately \$0.45) per kilogram on imported textiles not intended for use by the apparel export industry. All textile imports are subject to a Nation Building Levy of three percent, Ports and Airports Tax of five percent, Social Responsibility Levy of 1.5 percent and a VAT of 12 percent.

Currently, apparel imports are subject to a 15 percent import duty, a 30 percent or Rs 75 (\$0.65) per unit Export Development Board Levy, a 12 percent Value Added Tax, a five percent Ports and Airports Levy, a 1.5 percent Social Responsibility Levy and a three percent Nation Building Tax.

The United States engaged in bilateral Trade and Investment Framework Agreement (TIFA) talks with the government of Sri Lanka in October 2009. The United States raised concerns about the effect of combined tariffs, levies, and taxes on many imports. Sri Lanka explained that it had established a Presidential Tax Commission to simplify its tax and tariff structure and to ensure that it was in compliance with international agreements. The United States also stressed the importance of reducing Sri Lanka’s high tariffs on agricultural products and opening the Sri Lankan market for U.S. agricultural biotechnology products. The United States continues to follow up and press the Sri Lankan government to take action.

### **Import Licensing**

Sri Lanka requires import licenses for over 400 items at the 6-digit level of the Harmonized Tariff System, mostly for health, environment, and national security reasons. Importers must pay a fee equal to 0.1 percent of the import price to receive an import license.

### **GOVERNMENT PROCUREMENT**

Sri Lanka is not a signatory to the WTO Agreement on Government Procurement and has indicated it has no plans to join despite its status as an observer to the WTO Committee on Government Procurement.

Government procurement of goods and services is primarily undertaken through a public tender process. Some tenders are open only to registered suppliers. Procurement is also undertaken outside the normal competitive tender process. Examples of such procurement include agreements in 2006 with China to build a coal power plant and for two Chinese companies to build a new bulk cargo port in Hambantota, and an agreement with India to build a coal power plant.

The government publicly subscribes to principles of international competitive bidding, but charges of corruption and unfair awards are common. In 2006, Sri Lanka published new guidelines and a new procurement manual to improve the public procurement process. However, in early 2008 the government disbanded the National Procurement Agency, which it had established in 2004, and shifted its functions to a unit in the Ministry of Finance. This move has raised concerns about the government’s commitment to improve the transparency of procurements. The United States raised the need for more certainty and transparency in the government procurement process during the 2009 TIFA talks, but the government of Sri Lanka has yet to respond to these concerns.

### **INTELLECTUAL PROPERTY RIGHTS (IPR) PROTECTION**

Weak IPR enforcement remains a problem in Sri Lanka. Piracy levels remain very high for sound recordings and software. According to an industry-commissioned study, as much as 90 percent of

## **FOREIGN TRADE BARRIERS**

personal computers in Sri Lanka used pirated software in 2008 and retail revenue losses were estimated at around \$97 million in 2008 due to software piracy. Further, government use of unauthorized software continues to be a problem.

Redress through the courts for IPR infringement is often a frustrating and time-consuming process. While police can take action against counterfeiting and piracy without complaints by rights holders, they rarely do so. In the apparel sector, rightsholders have had some successes in combating trademark counterfeiting through the courts.

The Sri Lankan government's Director of Intellectual Property, along with international experts, continues to have IPR legal and enforcement training for customs, judicial and police officials. The U.S. Embassy, the United States Patent and Trademarks Office, and the American Chamber of Commerce of Sri Lanka are also working with the government of Sri Lanka and the private sector to improve enforcement, provide enforcement training, and enhance public awareness. Sri Lankan Customs has created a computer based Customs Trade Mark recordation system, although it is yet to be launched. During the TIFA meetings in 2009, the United States urged Sri Lanka to integrate U.S. technical assistance into the government's overall IPR enforcement plan.

## **SERVICES BARRIERS**

### **Insurance**

Sri Lanka does not allow cross-border supply of insurance, with the exception of health and travel insurance. In order to provide all other insurance services to resident Sri Lankans, insurance companies must be incorporated in Sri Lanka. Sri Lanka allows 100 percent foreign ownership for locally incorporated insurance firms, but branching is not allowed. Although Sri Lanka's insurance regulatory body has the authority to establish minimum and maximum premiums for motor, fire and employers liability policies, in practice these premiums are not regulated. In early 2008, the Sri Lankan government implemented a new regulation requiring all insurance companies to reinsure 20 percent of their insurance business with a state-run insurance fund.

### **Broadcasting**

The government imposes taxes on foreign movies, programs, and commercials to be shown on television, ranging from Rs 25,000 (approximately \$220) for an imported English-language movie to Rs 90,000 (approximately \$790) per half hour of a foreign language program dubbed in the local language Sinhala. Foreign television commercials are taxed at Rs 500,000 (roughly \$4,400) per year. Rates for non-English foreign programming are higher. Government approval is required for all foreign films and programs shown on television.

## **INVESTMENT BARRIERS**

While Sri Lanka welcomes foreign investment, there are restrictions in a wide range of sectors. For example, foreign investment is not permitted in certain types of money lending activities, in coastal fishing, and in retail trade for investments of less than \$1 million (or \$150,000 in the case of international brands and franchises). In other sectors, foreign investment is subject to case-by-case screening and approval when foreign equity exceeds 40 percent. These include shipping and travel agencies, freight forwarding, mass communications, deep sea fishing, local timber industries, mining and primary processing of natural resources, and the growing and primary processing of certain agriculture

## **FOREIGN TRADE BARRIERS**



commodities. Foreign equity restrictions on foreign investment also apply in the air transportation, coastal shipping, lotteries, and gem mining sectors, as well as in "sensitive" industries such as military hardware.



# SWITZERLAND

## TRADE SUMMARY

The U.S. goods trade surplus with Switzerland was \$1.5 billion in 2009, down \$2.8 billion from 2008. U.S. goods exports in 2009 were \$17.5 billion, down 20.5 percent from the previous year. Corresponding U.S. imports from Switzerland were \$16.0 billion, down 9.8 percent. Switzerland is currently the 16th largest export market for U.S. goods.

U.S. exports of private commercial services (*i.e.*, excluding military and government) to Switzerland were \$17.2 billion in 2008 (latest data available), and U.S. imports were \$14.8 billion. Sales of services in Switzerland by majority U.S.-owned affiliates were \$54.3 billion in 2007 (latest data available), while sales of services in the United States by majority Switzerland-owned firms were \$49.9 billion.

The stock of U.S. foreign direct investment (FDI) in Switzerland was \$123.4 billion in 2008 (latest data available), up from \$97.9 billion in 2007. U.S. FDI in Switzerland is led by the nonbank holding companies and wholesale trade sectors.

## IMPORT POLICIES

### Agricultural Products

The U.S. share of the Swiss agricultural import market was only 2.4 percent in 2008. Access for U.S. agricultural products is restricted by high tariffs on certain products, preferential tariff rates for other countries, and government regulation.

Switzerland's tariff schedule is comprised only of specific (non-*ad valorem*) duties. While the average *ad valorem* equivalent applied tariff in Switzerland for nonagricultural products is 2.1 percent, the *ad valorem* equivalent average applied tariff on imports of agricultural products is 44 percent.

Imports of nearly all agriculture products, particularly those that compete with Swiss products, are subject to seasonal import duties and quotas. Agricultural products which are not produced in Switzerland, such as tropical fruit and nuts, tend to have lower tariffs.

## GOVERNMENT PROCUREMENT

Switzerland is a signatory to the WTO Agreement on Government Procurement (GPA), which covers both cantonal and federal procurement. Cantonal and communal governments carry out many of the public projects; as a result, the value of their procurement is two to three times that of the federal government. At the cantonal and local levels, a 1995 law provides for nondiscriminatory access to government procurement. However, since cantons are allowed to implement the GPA independent from federal intervention, disparities in procedures may be found among the cantons, which may hamper participation by foreign firms.

In contrast to cantonal and communal practice, federal authorities are not required to inform unsuccessful bidders of the selected tender or reasons for the award. Under the federal law on public procurement, tender procedures apply where the value of the procurement exceeds SFr. 248,950 (\$248,950), whereas GPA obligations apply to procurement above \$203,000. According to a 2002 revised ordinance on public

## FOREIGN TRADE BARRIERS

procurement, all private or state-owned companies (*e.g.*, utilities, transportation, communications, defense, and construction) that submit tenders in government procurement must make their bids public where the contract exceeds SFr. 250,000 (\$250,000).

In 2010, an amendment to the Swiss procurement law will enter into force, in which Switzerland unilaterally at both the federal and cantonal levels will implement revisions to the WTO GPA which have been provisionally developed but not finalized.

## **INTELLECTUAL PROPERTY RIGHTS (IPR) PROTECTION**

Switzerland generally maintains high standards of intellectual property rights (IPR) protection. However, U.S. industry has expressed some concerns regarding Switzerland's revised copyright legislation implementing the World Intellectual Property Organization (WIPO) Copyright Treaty and Performances and Phonograms Treaty, including concerns over broad exceptions for use of multimedia content. The United States will continue to monitor the implementation and effect of this legislation.

## **SERVICES BARRIERS**

### **Telecommunications**

The Swiss government amended the Telecommunications Act following an investigation by the Competition Commission and the Federal Communications Commission against Swisscom (the former state monopoly, which is still 55.2 percent government-owned). The grounds for the amendments were Swisscom's failure to unbundle the local loop completely and to provide leased lines at cost-oriented prices to competitors. The legal amendment, which entered into force on April 1, 2007, gives the regulator explicit authority to force Swisscom to unbundle its local loop, sets a minimum transmission rate of 600 kbit/s downstream and provides a maximum price limit, thereby addressing a flaw cited in earlier court rulings. However, according to the OECD 2009 Communication Outlook, only 8 percent of the network accommodates unbundling. The amendment also requires that wholesale broadband access be offered to Swisscom competitors at cost-oriented prices for four years in order to provide competitors time to invest in their own competing facilities, after which all operators are expected to provide the broadband investment themselves. However, Swisscom competitors still complain the price charged by Swisscom to use its fiber network is too expensive.

### **Audiovisual Services**

Switzerland has no limitations on the amount of non-Swiss or non-European origin programming that can be broadcast, but film distributors and cinema companies must maintain, through self-regulatory solutions, an "appropriate diversity" (not currently defined) in the products offered within a region. The government may levy a nominal development tax on movie theater tickets if the Swiss government determines the appropriate geographical diversity is not being met.

Under the supervision of the Federal Institute of Intellectual Property and the Copyright Commission, five separate Swiss collecting societies receive royalties on the sale or reproduction of artworks as well as multimedia devices. Revenues received by the collecting societies increased from SFr. 119 million (\$119 million) in 1994 to a current SFr. 209 million (\$209 million). A portion of these revenues are used to finance measures that support Swiss culture.

## **FOREIGN TRADE BARRIERS**

## **Insurance**

Foreign insurers attempting to do business in Switzerland are required to establish a subsidiary or a branch and cannot sell their entire product line cross-border or through a representative office. Foreign insurers operating in Switzerland are limited to those types of insurance for which they are licensed in their home countries. The manager of the foreign-owned branch must be resident in Switzerland and the majority of the board of directors of the Swiss subsidiary must have citizenship in the EU or the European Free Trade Association. Public monopolies exist for fire and natural damage insurance in 19 cantons and for the insurance of workplace accidents in certain industries. Private insurance firms must establish a fund in the amount of 20 percent to 50 percent of the minimum capital requirement to be available to cover potential losses.



# TAIWAN

## TRADE SUMMARY

The U.S. goods trade deficit with Taiwan was \$9.9 billion in 2009, down \$1.5 billion from 2008. U.S. goods exports in 2009 were \$18.4 billion, down 26.1 percent from the previous year. Corresponding U.S. imports from Taiwan were \$28.4 billion, down 21.9 percent. Taiwan is currently the 15th largest export market for U.S. goods.

U.S. exports of private commercial services (*i.e.*, excluding military and government) to Taiwan were \$7.3 billion in 2008 (latest data available), and U.S. imports were \$7.7 billion. Sales of services in Taiwan by majority U.S.-owned affiliates were \$9.9 billion in 2007 (latest data available), while sales of services in the United States by majority Taiwan-owned firms were \$2.2 billion.

The stock of U.S. foreign direct investment (FDI) in Taiwan was \$16.6 billion in 2008 (latest data available), up from \$15.7 billion in 2007. U.S. FDI in Taiwan is mostly in the finance/insurance, manufacturing, and wholesale trade sectors.

## IMPORT POLICIES

### Tariffs

When Taiwan became a WTO Member in January 2002, the authorities implemented tariff-rate quotas (TRQs) on small passenger cars, three categories of fish and fish products, and a number of agricultural products. On January 1, 2007, in accordance with its WTO commitments, Taiwan made additional tariff cuts and increased TRQ amounts on these products. For example, the commodity tax on passenger cars with engine displacement of over 2000cc dropped from 35 percent to 30 percent, and this rate will remain in place until 2011. At that time, Taiwan has committed to eliminate fully TRQs on small passenger cars.

Taiwan maintains Special Safeguards (SSGs) for a number of agricultural products covered by TRQs. SSGs, which are generally permitted under Article 5 of the WTO Agreement on Agriculture, allow Taiwan to impose additional duties when import quantities exceed SSG trigger volumes or import prices fall below SSG trigger prices. Because Taiwan did not previously import many of these products, SSG trigger volumes are relatively low. Over the last few years, Taiwan has imposed SSG provisions on poultry imports several times, and SSGs have also been triggered on several other products, including types of offal.

U.S. industry continues to request that Taiwan lower tariffs on many goods, including large motorcycles, wine, canned soups, cookies (sweet biscuits), savory snack foods, vegetable juices, potato and potato products, table grapes, apples, fresh vegetables, and citrus products.

### Import Controls

Taiwan has eliminated more than 99 percent of its import controls, but 87 product categories still face import restrictions, up from 71 product categories in 2007. Of these 87 categories, 24 require import permits from the Board of Foreign Trade, and 63 are prohibited. Most of the requirements are reportedly based on public health and national defense concerns. Taiwan retains import bans on over 2,000 products from the People's Republic of China (PRC). U.S. industry reports that these bans are causing increasing

## FOREIGN TRADE BARRIERS

problems in managing their regional supply chains and in cases where final products are produced in PRC-based facilities.

### **Agriculture and Fish Products**

Before it became a WTO Member, Taiwan banned or restricted imports of 42 agricultural and fish items. In January 2002, Taiwan liberalized imports of 18 of these categories and implemented TRQs on the remaining 24 items. On January 1, 2005, Taiwan eliminated TRQs on a number of products of interest to the United States, including chicken meat, poultry offal, and pork bellies and offal.

#### *Rice*

Upon accession to the WTO in 2002, Taiwan committed to lifting the ban on rice importation and opened up an import quota of 144,720 metric tons on a brown rice basis under a “special treatment” regime. Starting in 2003, Taiwan shifted its rice importation from a special treatment regime to a complex TRQ system that includes a ceiling price mechanism. After the United States and other WTO members raised objections about Taiwan’s method of quota allocation, Taiwan subsequently agreed that its government import quota would be allocated based on a country-specific quota (CSQ) regime, with the U.S. quota accounting for the largest share at 64,634 metric tons -- valued at approximately \$50 million at current world prices.

Since late 2007, however, U.S. exporters have raised increasingly vocal concerns that Taiwan’s ceiling price mechanism has disrupted Taiwan’s tendering process for procurement of U.S. rice. The ceiling price is not public, but in recent years it is believed to have been set lower than the price levels bid by U.S. exporters, causing tenders to fail. As a result, Taiwan did not fill its 2007 or 2008 CSQs for purchasing U.S. rice. The United States is engaging Taiwan on filling past shortfalls, and in February 2010 Taiwan retendered a portion of the shortfall from 2008.

In 2009, the United States and Taiwan consulted regularly on the U.S. rice quota issue which has resulted in some improvements in Taiwan’s procurement of U.S. rice. By the end of 2009, Taiwan had contracted for over 98 percent of the 2009 U.S. rice CSQ.

#### *Wood Products*

After several years of discussion and review, Taiwan revised its building codes in line with international practices, and on October 31, 2008, the Construction and Planning Agency of the Ministry of the Interior announced long awaited companion fire codes for wood frame construction. U.S. industry believes the new codes will allow builders to obtain insurance for construction and further encourage wood use in construction. Taiwan imports of U.S. softwood and treated lumber increased 17 percent in the first 10 months of 2009 versus the same period in 2008 despite the impact of the global economic recession. However, industry has expressed concerns about the use of counterfeit U.S. industry-associated wood certification stamps.

Fire codes for heavy timber were not included in the 2008 announcement. However, those interested in using heavy timber in construction can apply to Taiwan authorities for fire resistance testing, although this option appears to be prohibitively costly. U.S. industry groups have approached Taiwan authorities to set schedules for expanding fire codes on the heavy timber products, but have not received positive responses. Industry estimates the adverse impact on U.S. exports at \$2.5 million.



## **Automobiles and Motorcycles**

On November 1, 2007, the Ministry of Transportation and Communications (MOTC) opened most expressways to large motorcycles with engine displacement of 550cc or more. In 2009, the MOTC asked the Directorate General of Highways (DGH) to study further the feasibility of opening highways to those motorcycles. DGH finished the study in November 2009, and the MOTC concluded that opening highways to large motorcycles would not be appropriate.

The tariff on small automobiles is 30 percent, that of motorcycles between 250cc to 500cc-displacement is 18 percent, and that of above-500cc-displacement motorcycles is 20 percent.

## **EXPORT SUBSIDIES**

Taiwan provides incentives to industrial firms in export processing zones and to firms in designated "emerging industries." Taiwan has notified the WTO of these programs.

## **INTELLECTUAL PROPERTY RIGHTS (IPR) PROTECTION**

IPR protection continues to be an important issue in the United States-Taiwan trade relationship. The United States recognizes Taiwan's continuing efforts to improve enforcement of IPR, and on January 16, 2009, Taiwan was removed from the Special 301 Watch List.

However, rights holders continue to express concerns regarding infringement of copyrighted material on the Internet, illegal textbook copying on and around university campuses, inadequate protection for the packaging, configuration, and outward appearance of products (trade dress), and the availability of counterfeit pharmaceuticals in Taiwan. The International Intellectual Property Alliance estimates that losses due to IPR copyright piracy in Taiwan cost U.S. industry \$115.4 million in 2008, down from \$327.8 million in 2007. The importation and transshipment of counterfeit products from China is also a problem.

Piracy on the Internet remains a serious concern for IP enforcement in Taiwan. In April 2009, the Legislative Yuan amended the Taiwan Copyright Law to require Internet service providers (ISP) to undertake specific and effective notice-and-takedown actions against online infringers to avoid ISP liability for the infringing activities of users on their networks.

## **Pharmaceutical and Medical Devices**

Taiwan has identified both the medical device and pharmaceutical sectors as priorities for development, and Taiwan agencies sometimes appear to favor the interests of local companies over foreign firms.

The U.S. pharmaceutical and medical device industries continue to express concern that Taiwan's procedures for medical product pricing and reimbursement fail to adequately recognize the value of innovative medical products for patients in Taiwan.

Through the Trade and Investment Framework Agreement process, as well as other bilateral engagement, the United States has been encouraging Taiwan to adopt a system of actual transaction pricing (ATP) in order to address the significant gap between the amount that the Bureau of National Health Insurance (BNHI) reimburses for a pharmaceutical product and the price actually paid to the provider of that product. This gap distorts pharmaceutical trade and prescription patterns in Taiwan and is worsened by

hospital doctors' ability to both prescribe and dispense pharmaceuticals, which may result in prescribing practices based on monetary factors instead of purely medical considerations. Separating these functions would help to resolve the long-term pricing problem. Industry stakeholders have been working with DOH to address these and other issues related to the importance and value of innovative pharmaceuticals, and would like to see the finalization of DOH's plans occur during 2010.

Taiwan's lengthy pharmaceutical registration process imposes unnecessary costs and slows market entry for new drugs that have already received regulatory approval in other advanced economies. These procedures include requirements to provide Certificates of Pharmaceutical Product (CPP) which certify that the drug is for sale in two separate markets outside Taiwan. In 2009, after consultation with stakeholders, the Department of Health (DOH), Bureau of Pharmaceutical Affairs (BOPA) indicated that it is considering new registration procedures that would reduce the current requirement to one CPP, which could help speed introduction of new U.S. pharmaceuticals into the Taiwan market. BOPA, however, has not yet finalized the new CPP plan.

For medical devices, BNHI pricing criteria currently specify a single purchase price for all medical devices that treat the same indication. This policy effectively subsidizes lower cost devices while forcing producers of high-priced, high-value devices (which are often accompanied by additional services) to be reimbursed at a lower level. In addition, registration and approval procedures for imports of most advanced medical devices are complex and time-consuming, and are the subject of longstanding complaints by U.S. firms. The United States encourages Taiwan to continue to engage in collaborative consultations with relevant stakeholders to consider improving such policies in order to better facilitate the private sector's development of innovative products and improve patients' access to such products.

DOH officials continue to work with industry to improve the medical device registration process, particularly concerning identical products made at manufacturing sites with different quality-system documentation, or with small modifications, such as outer packaging changes.

DOH is also revising its Guidelines for Registration for In Vitro Diagnostic Drug (IVD) Testing to adopt a more flexible product registration procedure. Such revisions on IVD medical devices management are expected to allow importing companies to follow either U.S. or EU procedures, rather than demand extensive documentation and redundant testing for products made in Europe by U.S. companies.

In addition, on January 1, 2010, Taiwan established the Taiwan Food and Drug Administration (TFDA) by combining agencies in charge of food and drug product policymaking, license issuing, and product testing into one office, which may consolidate and speed up approval procedures. According to the Taipei American Chamber of Commerce Pharmaceuticals Committee, reducing burdensome bureaucratic requirements to speed up approvals for new drugs and medical devices would result in a potential increase in U.S. exports.

## **SERVICES BARRIERS**

### **Banking Services**

Foreign banks may set up representative offices, branches, and subsidiaries. Foreign banking institutions may acquire up to 100 percent equity in Taiwan banks. Foreign-invested banks in Taiwan are accorded national treatment, and these banks were subject to a 25 percent ownership limit for each investor before the end of 2008. Beginning in January 2009, the 25 percent ownership limit has been lifted, although a

single investor, a group of related investors, or the total of different investors seeking to acquire an equity stake of 10 percent, 25 percent, or 50 percent must get prior approval from the government.

### **Healthcare Services**

All health care services in Taiwan must be provided by non-profit organizations. The number of foreign persons permitted to serve on the board of directors of a healthcare service provider is limited to no more than one-third of the total members. In addition, one-third of the board members must have professional medical qualifications.

Taiwan does not license or recognize chiropractors as legitimate medical practitioners, and allows chiropractors to practice in Taiwan only if they do not advertise their services and make no claims about the results or efficacy of treatments.

### **Pay Television Services**

The Cable Radio and Television Law restricts foreign investment in pay television services to a total equity share of 20 percent for direct investment, or 60 percent for direct plus indirect investment. In addition, continuing caps on monthly cable television fees are overly restrictive, hamper the Taiwan public's access to a broader range of programming, and may reduce the cable industry's incentives to invest in expensive digitalization of Taiwan's largely analog cable system.

### **Telecommunications Services**

The National Communications Commission (NCC) was established in 2006 to regulate the telecommunications and broadcasting sectors. In January 2008, the NCC reduced capital requirements for facilities-based operators from NT\$16 billion (\$485 million) to NT\$6.4 billion (\$194 million) for an integrated network operator; from NT\$1.2 billion (\$36.4 million) to NT\$500 million (\$15.2 million) for local call service providers in Taipei; and from NT\$2 billion (\$60.0 million) to NT\$800 million (\$24.2 million) for both long distance and international call operators. In September 2009, the NCC amended regulations to allow local call service providers flexibility in offering integrated services (*e.g.* long distance) using leased infrastructure, which will strengthen such operators' competitiveness by lowering installation costs. In 2008, the NCC also began accepting and reviewing license applications at any time, rather than on a quarterly basis.

Existing fixed-line operators report that they still face difficulties in negotiating reasonable interconnection arrangements at technically feasible points in the network of the dominant carrier, Chunghwa Telecom (CHT). The State maintains a 34 percent ownership share of CHT.

In addition to promoting NT\$35 billion (\$1.1 billion) of new broadband network construction ongoing since 2003, the NCC in July 2007 issued six regional licenses to Worldwide Interoperability for Microwave Access (WiMax) operators. Three WiMax operators began services in 2009, a situation that will help break CHT's dominance of the telecommunications network.

### **INVESTMENT BARRIERS**

Taiwan prohibits or restricts foreign investment in certain sectors, including agricultural production, chemical manufacturing, bus transportation, public utilities, and postal services. In May 2008, although Taiwan removed single-axle truck leasing from the list of sectors in which foreign investment is

### **FOREIGN TRADE BARRIERS**

restricted, it added pesticides to that list. Taiwan has allowed private production of cigarettes since 2004 without any foreign ownership limit, although prior official approval is required. Shipping companies registered in Taiwan are subject to a foreign ownership limit of 50 percent. Foreign ownership in Taiwan-registered merchant ships is limited to a 50 percent stake for ships engaged in international shipping, and to a 33 percent stake for those involved in domestic shipping.

The foreign ownership limit on wireless and wire line telecommunications firms is 60 percent, including a direct foreign investment limit of 49 percent. Separate rules exist for CHT, the legacy carrier still partially owned by the Ministry of Transport and Communications, which controls 97 percent of the fixed line telecommunications market. For CHT, the cap on direct and indirect investment was raised to 55 percent in December 2007, including a direct foreign investment limit of 49 percent. The total direct and indirect foreign ownership limit on cable television broadcasting services is 60 percent, which includes a 20 percent limit on foreign direct investment.

A 49 percent foreign ownership limit remains on satellite television broadcasting services, power transmission and distribution, piped distribution of natural gas, high speed railways, airport ground handling firms, air cargo terminals, air catering companies, and air cargo forwarders. In July 2007, the foreign ownership limit on airline companies was raised from 33 percent to 49.99 percent, with each individual foreign investor subject to an ownership limit of 25 percent.

### **Portfolio Investment**

Foreign portfolio investors are required to register, and since December 2003, registration via the Internet is permitted. Up to 30 percent of funds remitted for purposes of portfolio investment may be held in money market or other similar instruments. Funds for futures trading, however, must be remitted to Taiwan specifically for that purpose and are segregated from funds remitted for equity investment. In June 2007, Taiwan set a cap of NT\$300 million (approximately US\$9.2 billion) on the balance of a foreign investor's NT\$ omnibus account resulting from profits gained from futures trading in Taiwan. If the balance exceeds the limit, the foreign investor is required to convert the NT\$ into U.S. dollars, with the new balance below US\$10 million. Except for investors from the PRC, offshore foreign portfolio investors may trade in Taiwan's stock market regardless of their size.

Since April 2009, Taiwan has allowed PRC-based qualified domestic institutional investors to engage in portfolio investment and futures trading in Taiwan. China investors may invest in the following Taiwan securities: shares of listed companies, beneficial certificates, government bonds, financial bonds, and corporate bonds issued by public companies, asset-backed securities, and call warrants. An institutional investor that engages in futures trading can only do so using foreign currencies.

Since October 2003, foreign hedge funds have been permitted to trade in Taiwan's stock market, but are subject to Taiwan authorities' close surveillance. Foreign individual investors are subject to an investment limit. Onshore foreign individuals and institutional investors are also subject to annual inward/outward limits of \$5 million and \$50 million, respectively.

# THAILAND

## TRADE SUMMARY

The U.S. goods trade deficit with Thailand was \$12.2 billion in 2009, down \$2.3 billion from 2008. U.S. goods exports in 2009 were \$6.9 billion, down 23.7 percent from the previous year. Corresponding U.S. imports from Thailand were \$19.1 billion, down 18.9 percent. Thailand is currently the 29th largest export market for U.S. goods.

U.S. exports of private commercial services (*i.e.*, excluding military and government) to Thailand were \$1.7 billion in 2008 (latest data available), and U.S. imports were \$1.7 billion. Sales of services in Thailand by majority U.S.-owned affiliates were \$4.8 billion in 2007 (latest data available), while sales of services in the United States by majority Thailand-owned firms were not available for 2007 (\$239 million in 2005).

The stock of U.S. foreign direct investment (FDI) in Thailand was \$9.1 billion in 2008 (latest data available), up from \$8.9 billion in 2007. U.S. FDI in Thailand is led by the manufacturing, banking and finance/insurance sectors.

## FREE TRADE AGREEMENT (FTA) NEGOTIATIONS

The United States and Thailand launched FTA negotiations in June 2004, but these negotiations were suspended in September 2006 following a military-led coup against the government of then-Prime Minister Thaksin. The United States and Thailand continue to consult closely on ways to further build their economic relationship.

## IMPORT POLICIES

*Tariffs:* Thailand's high tariffs remain an impediment to market access in many sectors. According to the WTO, its average applied MFN tariff rate was 10.5 percent in 2007 with some tariffs as high as 80 percent. Under the WTO Agreement, Thailand has bound only 74.7 percent of its tariff lines. A binding establishes a tariff rate that generally, under WTO rules, cannot be exceeded. The highest tariff rates apply to imports competing with locally produced goods, including agricultural products, automobiles and automotive parts, motorcycles, alcoholic beverages, fabrics, paper and paperboard products, and restaurant equipment.

According to the WTO, Thailand has bound its tariffs on agricultural products at an average of 42.7 percent. Duties on imported processed food products typically range between 30 percent and 50 percent, the highest among Association of Southeast Asian Nations (ASEAN) members. Tariffs on meats, fresh fruits (including citrus fruit and table grapes) and vegetables, fresh cheese, and pulses (*e.g.*, dry peas, lentils, and chickpeas) are similarly high. High tariffs are sometimes applied to products even for which there is little domestic production. Frozen french fries, for example, are not produced in Thailand, yet imports face a 30 percent tariff. Tariffs on apples are 10 percent, while duties on pears and cherries range from 30 percent to 40 percent. U.S. fruit growers estimate they could export up to \$15 million more to Thailand each year if these tariffs were eliminated. U.S. exports of wine face a total duty and tax burden of nearly 400 percent when import duties, excise taxes, and other surcharges are calculated.

## FOREIGN TRADE BARRIERS

Thailand also applies a 10 percent tariff to all pharmaceuticals (excluding vaccines and therapies for HIV, malaria, and thalassemia). In addition to this tariff, all medicines are subject to a 7 percent value added tax.

Thailand's tariff rates for textiles imports are high, ranging from 20 percent to 30 percent for most fabrics and 30 percent for most clothing and other made-up textile products. Thailand also applies specific duties on more than one third of all textile tariff lines, which make effective rates even higher.

### **Nontariff barriers (NTBs)**

*Quantitative Restrictions and Import Licensing:* Import licenses are required for at least 32 categories of items, including many raw materials, petroleum, industrial materials, textiles, pharmaceuticals, certain consumer products, and agricultural items. Imports of used motorcycle parts and gaming machines are prohibited. Import licenses for used automobiles and used motorcycles are granted only for imports intended for re-export or for individual, non-commercial use. Imports of certain minerals, arms and ammunition, and art objects require special permits from the relevant ministries.

Although Thailand has been relatively open to imports of feed ingredients, including corn, soybeans, and soybean meal, in recent years, U.S. industry reports that the government has maintained excessively burdensome import requirements for feed products containing dairy ingredients. Non-transparent tariff-rate quotas on some products and price controls on others also impede market access. Thailand imposes domestic purchase requirements for several tariff-rate quota products, including non-fat dry milk, soybeans, soybean meal, and fresh potatoes. Delays in finalizing administrative tariff-rate quotas have led to market uncertainty and shipping disruptions. Thailand imposes import license fees for meat products of approximately \$150 per ton on beef and pork, \$300 per ton for poultry, and \$150 per ton on offal. U.S. industry has expressed concerns that these fees appear to be higher than necessary to cover the costs of import administration.

*Taxation:* The complexity of Thailand's tax system also has raised concerns. Excise taxes are high on some items, such as unleaded gasoline, beer, wine, and distilled spirits. For example, when import duties, excise taxes, and other surcharges are calculated, the cumulative duty and tax burden on most imported spirits is approximately 400 percent.

Excise taxes on automobiles in Thailand are based on various vehicle characteristics, such as engine size, weight, and wheelbase. In July 2004, Thailand revised its excise tax structure, but it remains complex and heavily favors domestically manufactured vehicles. Excise taxes on passenger vehicles range from 30 percent to 50 percent, while pickup trucks are taxed at a rate of 3 percent. As a result, domestic pickups account for more than 50 percent of total vehicle sales in Thailand.

U.S. industry has recently expressed concern about proposed amendments to the already burdensome excise tax laws and tax administration. One amendment would give the Excise Department Director General the discretionary authority to determine the import value of a product, rather than relying on the Customs-determined value. Another would alter the tax base calculation for imported goods from countries that have free trade agreements with Thailand. The United States continues to engage the Thai government on taxation issues.

*Customs Barriers:* The United States continues to have serious concerns about the lack of transparency of the Thai customs regime and the significant discretionary authority exercised by Customs Department officials. The Customs Department Director General retains the authority and discretion to arbitrarily

increase the customs value of imports. The United States has raised concerns with the Royal Thai government regarding this authority and has urged Thailand to eliminate this practice. The U.S. Government and industry also have expressed concern about the inconsistent application of Thailand's transaction valuation methodology and repeated use of arbitrary values by the Customs Department. In 2008, the Customs Department revised customs valuation procedures for imports of distilled spirits in response to concerns raised by exporters and the U.S. and other trading partners. Although the valuation procedures were revised, several U.S. companies are still awaiting refunds of the cash guarantees that were required prior to the final customs decision being issued. The United States will continue to monitor the implementation of the revisions to the customs valuation procedures and press Thailand to address its concerns.

The U.S. Government and exporters continue to urge the Customs Department to implement overdue reforms, including publishing proposals for changes in customs laws, regulations, and notifications, and allowing sufficient time for comments on these proposals. Of additional concern are the failure to publish Thai Customs' rulings and the lengthy appeals process for these rulings, both of which create considerable uncertainty for importers.

In August 2009, the Royal Thai government announced proposed reforms to its customs laws and procedures. Another round of changes was proposed in late 2009. These proposed amendments still must be scrutinized by the Council of State and approved by the Cabinet before the Thai government can submit the changes to Parliament. It remains unclear what specific changes will be made and the timeline for implementation. The U.S. Government intends to discuss the details of these specific proposals with the Thai government during 2010.

## **GOVERNMENT PROCUREMENT**

A specific set of rules, commonly referred to as the Prime Minister's Procurement Regulations, governs public sector procurement for ministries and state-owned enterprises. While these regulations require that nondiscriminatory treatment and open competition be accorded to all potential bidders, state enterprises and ministries typically apply additional procurement policies and practices. Preferential treatment is provided to domestic suppliers, which includes subsidiaries of U.S. firms registered as Thai companies, through an automatic 7 percent price advantage over foreign bidders in initial bid round evaluations.

Government agencies and state enterprises reserve the right to accept or reject any or all bids at any time and may also modify the technical requirements during the bidding process if corruption is suspected. This allows considerable leeway to government agencies and state-owned enterprises in managing procurements, while denying bidders recourse to challenge procedures. There are frequent allegations that the Thai government makes changes to technical requirements during the course of procurements. Despite an official commitment to transparency in government procurement, U.S. companies and the Thai media have reported allegations of irregularities. In addition, some U.S. companies have expressed concerns regarding a Thai government decision to no longer include arbitration clauses in concessions and government contracts. In order to provide support for this decision, the government is considering an amendment to the Arbitration Act that would exempt government contracts from arbitration procedures.

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

## **INTELLECTUAL PROPERTY RIGHTS (IPR) PROTECTION**

Thailand was listed on the Priority Watch List in the 2009 Special 301 Report. Key concerns cited in the report included the lack of progress since the previous year in addressing the widespread problems of piracy and counterfeiting. This was evidenced by the lack of sustained and coordinated enforcement efforts, and, in particular, the lack of successful prosecutions. The U.S. pharmaceutical industry continues to express concerns regarding the uncertain climate for their industry in Thailand. In addition, both the pharmaceutical industry and agricultural chemicals industries have expressed concerns that Thailand's trade secret regulations fail to protect against unfair commercial use of undisclosed tests and other data submitted to Thai governmental authorities.

The United States has been encouraged by the Thai government's recent high-level commitment to protect and promote IPR in Thailand and the creation of a national strategy to advance this commitment. Moreover, there have been some high profile seizures of IPR infringing products and the Thai government has introduced legislation addressing unlawful camcording and landlord liability for criminal action where pirated and counterfeit goods are produced or sold.

The United States will continue monitoring the Thai government's efforts to protect and enforce intellectual property rights.

## **SERVICES BARRIERS**

### **Telecommunications Services**

Thailand has made progress toward reforming its telecommunications regulatory regime, but significant obstacles to foreign investment remain. Foreign equity rights at the WTO remained capped at 20 percent and access remains limited to a narrow subset of sectors.

Thailand's constitution (enacted on August 24, 2007) mandates that there shall be a single independent regulator, provisionally named the National Broadcasting and Telecommunications Commission (NBTC), to allocate additional spectrum for radio and television frequencies, and telecommunications. The time frame set up by the NTBC, as well as the procedures for allocating additional frequencies, remain unclear. This puts at risk any plans for expanding mobile services that can only be provided if operators are able to obtain additional spectrum, including for services using third generation (3G) technology. The draft legislation to establish the NTBC is currently under review in Parliament.

Other unresolved issues in the telecommunications sector include: the phasing out of the concession contracts of the state-owned TOT and CAT Telecom; the privatization of TOT and CAT Telecom; enforcing interconnection obligations *vis-a-vis* these two operators; and Thailand's revision of its GATS schedule to reflect its 1998 commitments in the WTO, including with respect to improvements in foreign equity participation and regulatory oversight.

Although the National Telecommunications Commission has made progress in licensing new operators in some sub-sectors (*e.g.*, Internet access and private networks), it has yet to put in a framework for licensing competitors to the fixed services offered by CAT and TOT, covering domestic and international voice and data services.

## **FOREIGN TRADE BARRIERS**



## **Legal Services**

U.S. investors may own law firms in Thailand; but U.S. citizens and other foreign nationals (with the exception of "grandfathered" non-citizens) may not provide legal services. In certain circumstances, foreign attorneys may act in a consultative capacity.

## **Financial Services**

Significant restrictions remain on foreign participation in the financial services sector. Under the 1962 Commercial Banking Act, foreigners were allowed to hold a maximum of 25 percent of the equity in Thai banks, but in practice Thai regulators had waived the foreign shareholding ceiling with respect to most local banks due to their need for funds. The 2008 Financial Institutions Business Act, the consolidated financial act that replaced the 1962 Commercial Bank Act and a 1979 Act on financial services, increased the statutory percentage of foreign equity ownership to 49 percent in August 2008. However, foreign ownership between 25 percent and 49 percent requires prior approval from the Bank of Thailand. The law also allows the Ministry of Finance to authorize foreign ownership above 49 percent if deemed necessary to support the stability of the overall financial system during an economic crisis.

The Financial Sector Master Plan (FSMP I), which took effect in early 2004 and was completed at the end of 2008, called for the consolidation of financial institutions and encouraged mergers. The Second Financial Sector Master Plan (FSMP II), which will further liberalize and strengthen the financial industry, was approved by the Thai Cabinet in mid-November 2009.

Foreign banks are limited to one branch and are not permitted to operate off-site automated teller machines (ATMs), which are considered branches. Subsidiaries established under the period of FSMP I are entitled to open up to five bank branches, including a headquarters office. Under FSMP II, foreign banks will be allowed to open two additional branches regardless of location from 2010 onward. The FSMP II also will allow some foreign bank branches to have up to 20 branches and 20 ATMs subject to Bank of Thailand approval. Foreign management personnel are limited to six professionals in full branches and subsidiaries of foreign banks, although exceptions are often granted. In August 2009, pursuant to Thailand's commitments under the ASEAN Framework Agreement on Services, the Bank of Thailand waived the foreign management personnel restriction if the personnel are nationals from members of ASEAN.

Permission for foreigners to have more than a 49 percent equity stake in Thai securities firms is granted on a case-by-case basis.

## **Accounting Services**

Foreigners cannot be licensed as Certified Public Accountants unless they pass the required examination in the Thai language, are citizens of a country with a reciprocity agreement, and are legally resident in Thailand. Foreign accountants may serve as business consultants.

## **Transport Services and Communication Services, including Express Delivery Services**

The 2005 Multimodal Transport Act introduced uncertainty with respect to the treatment of foreign shipping companies. Approval of implementing regulations has been delayed, so the full impact of the law remains unclear. While the text of the law itself appears to require foreign shipping companies performing multimodal services in Thailand to either incorporate in Thailand or appoint a Thai agent (as

opposed to operating out of their branch offices in Thailand as they have done to date), the draft ministerial regulations implementing the law provide that the law shall not apply to foreign shipping companies transporting goods under bills of lading governed by international convention. Given the lack of clarity and the penalties for noncompliance, international shipping firms have sought to mitigate their risk by incorporating in Thailand, appointing an agent, or passing the attendant costs on to customers.

Thailand's Postal Act (1934) gives the government a monopoly on handling letters and postcards. Private express delivery companies must pay postal "fines" and penalties for delivery of documents in Thailand that amount to an average of 37 baht per item (slightly more than one U.S. dollar).

Thailand also imposes a 49 percent limit on foreign ownership in land transport (trucking), which discourages investment in the express delivery sector. Express delivery firms prefer to control items throughout the supply of the service, including both air and ground based operations, in order to speed the movement of goods.

### **Healthcare Services**

Thai government policy serves to restrict foreign investment in the healthcare services sector (*e.g.*, hospital, dental, and physician services). U.S. industry has identified the lack of transparency relating to foreign ownership and management of hospitals and treatment facilities as a significant barrier in this sector.

### **INVESTMENT BARRIERS**

The Foreign Business Act (FBA) lays out the overall framework governing foreign investment in Thailand. Under the FBA, a foreigner, defined as a person or company of non-Thai nationality or a company where foreign ownership accounts for 50 percent or more of total shares and/or registered, needs to obtain an alien business license from the relevant Ministry before commencement of its business if in a sector restricted by the FBA. Although the FBA prohibits majority foreign ownership of investment in most sectors, Thailand makes an exception for U.S. investors pursuant to the Treaty of Amity and Economic Relations (AER Treaty). Under the AER, Thailand may limit U.S. investment only in the following areas: "communications, transportation, fiduciary functions, banking involving depository functions, the exploitation of land or other natural resources, and domestic trade in indigenous agricultural products." Thailand's obligation to accord national treatment to U.S. investors in all other sectors does not extend to "the practice of professions, or callings reserved for Thai nationals".

### **ELECTRONIC COMMERCE**

Thailand does not have a complete legal framework to support electronic commerce, but the government is taking steps to create a more supportive environment for the business community. In July 2007, the Act on Computer-related Crime was enacted to criminalize offenses against computer systems and data. Several Royal Decrees have entered into effect since 2007 establishing policies for electronic transactions and e-payment service providers. Several additional measures are pending approval with the Council of State, including security measures for electronic transactions and regulations for certification authority.

### **OTHER BARRIERS**

In the pharmaceutical sector, the Government Pharmaceutical Organization (GPO) is not subject to registration requirements faced by the private sector. In addition, GPO is exempt from complying with

## **FOREIGN TRADE BARRIERS**

the requirements of the safety monitoring period (SMP) when producing and marketing generic formulations of drugs marketed in foreign countries. Other manufacturers are subject to a mandatory two year to four year SMP for all new chemical entities registered and approved for marketing in Thailand. During the SMP, only doctors in hospitals and clinics can prescribe the product and the product may not be included on the National List of Essential Drugs. This and other Thai government requirements limiting government hospitals' procurement and dispensing of drugs not on the national list of essential drugs significantly constrain the availability of many imported products.

The Thai government retains authority to control prices or set *de facto* price ceilings for 38 goods and 1 service, including staple agricultural products (sugar, cooking oil, condensed milk, wheat flour, and others), liquefied petroleum gas, medicines, sound recordings, and student uniforms. Under the 1999 "Act Relating to Price of Merchandise and Service," a government committee headed by the Minister of Commerce has the authority to "Prescribe the purchase price or distribution price of merchandise or service...", "prescribe maximum profit per unit...", and set the terms and conditions, including maximum permissible volumes, of any goods and service in Thailand. The law was amended in 1999 with the advent of a competition law and was meant to be phased out. However, with several critical aspects of competition law still undefined, the old law continues in place with no termination under consideration. Price control review mechanisms are nontransparent. Only sugar currently is subject to a retail price ceiling. In practice, the government also uses its control of major suppliers of products and services under state monopoly, such as the petroleum, aviation, and telecommunications sectors, to influence prices in the local market.

The Thai Constitution of 2007 contains provisions to combat corruption, including enhancement of the status and powers of the Office of the Counter Corruption Commission, which is independent from other branches of government. Persons holding high political office and members of their immediate families are required to disclose their assets and liabilities before assuming and upon leaving office. Moreover, a law regulating the bidding process for government contracts both clarifies actionable anticorruption offenses and increases penalties for violations. Despite these steps, corruption continues to be a serious concern. Counter-corruption mechanisms continue to be employed unevenly and the lack of transparency in many government administrative procedures facilitates corruption.



# TURKEY

## TRADE SUMMARY

The U.S. goods trade surplus with Turkey was \$3.4 billion in 2009, a decrease of \$1.9 billion from 2008. U.S. goods exports in 2009 were \$7.1 billion, down 28.8 percent from the previous year. Corresponding U.S. imports from Turkey were \$3.7 billion, down 21.1 percent. Turkey is currently the 28th largest export market for U.S. goods.

The stock of U.S. foreign direct investment (FDI) in Turkey was \$6.1 billion in 2008 (latest data available), up from \$6.0 billion in 2007. U.S. FDI in Turkey is concentrated largely in the banking, wholesale trade, and manufacturing sectors.

## IMPORT POLICIES

### Tariffs and Quantitative Restrictions

Turkey applies the EU's common external customs tariff to third-country nonagricultural imports (including from the United States) and does not impose duties on nonagricultural items from EU and European Free Trade Association (EFTA) countries.

Turkey continues to maintain high tariff rates on many food and agricultural product imports. Tariffs on fresh fruits range from 15.4 percent to 145.8 percent. Tariffs on processed fruit, fruit juice, and vegetables range between 19.5 percent and 130 percent. The Turkish government also levies high tariffs, excise taxes and other domestic charges on imported alcoholic beverages that increase wholesale prices by more than 200 percent.

U.S. exporters of rice, dried beans, pulses, sunflower seeds, and wheat, have reported concerns with valuation of their products by Turkish customs authorities and have estimated that the lack of certainty and transparency with regard to Turkish requirements in this area has resulted in losses between \$10 million and \$25 million per year.

### Import Licenses and Other Restrictions

Import licenses are required for products that need after-sales service (*e.g.*, photocopiers, advanced data processing equipment, and diesel generators), distilled spirits, and agricultural products. U.S. firms complain that lack of transparency in Turkey's import licensing system results in costly delays, demurrage charges, and other uncertainties that inhibit trade. U.S. producers have reported difficulties in obtaining licenses during the domestic harvest season for domestically produced food (such as pulses, nuts, dried fruits, cotton, grain, and oilseeds). For all grains, quotas limit or block imports. In addition, U.S. companies find Turkish documentation requirements affecting all food imports to be inconsistent, non-transparent, and not in accordance with standard international practices. This often results in shipments being held up at port due to onerous certification requirements that have recently changed or are unclear. U.S. companies estimate the cost of this barrier at between \$100 million and \$500 million per year.

In November 2005, the United States brought a dispute against Turkey to the WTO arguing that, *inter alia*, Turkey's tariff-rate quota (TRQ) regime for rice, which contained an onerous domestic purchase

## FOREIGN TRADE BARRIERS

requirement, and its refusal to issue import licenses for rice outside the TRQ, were inconsistent with Turkey's WTO obligations. In September, 2007, a WTO dispute settlement panel agreed with the United States that Turkey's TRQ regime for rice was in breach of Turkey's market access obligations under the WTO Agreement on Agriculture and the national treatment provisions of the General Agreement on Tariffs and Trade 1994 (GATT 1994). The reasonable period of time for Turkey to comply with the WTO's rulings and recommendations expired at the end of April 2008. The United States and Turkey continue to discuss Turkey's import regime for rice; Turkish authorities reportedly have taken no recent actions that have impeded rice imports.

Despite liberalization of the Turkish spirits and tobacco markets – including completion of privatization of the state-owned alcoholic beverage company and the state-owned tobacco company, as well as privatization of importing wine and alcoholic beverages – sales of imported products in these sectors have been inhibited by inordinately high tariffs (85 percent to 100 percent) and special consumption taxes (275 percent) beyond the regular value added tax (VAT).

## **GOVERNMENT PROCUREMENT**

Turkey is not a signatory to the WTO Agreement on Government Procurement; however, it is an observer to the WTO Committee on Government Procurement.

Turkey's public tender law established an independent board to oversee public tenders. Foreign companies can participate in state tenders valued above an established threshold. The law provides a price preference of up to 15 percent for domestic bidders, which is not available if they form a joint venture with foreign bidders. Turkey has expanded the definition of domestic bidder to include foreign-owned corporate entities established under Turkish law. Although Turkish law requires competitive bidding procedures, U.S. companies have complained that Turkey's procurement process can be lengthy and overly complicated. One of the problems identified is the requirement to use model contracts, which some Turkish government procuring agencies interpret as not being subject to modification. This makes it difficult for companies to formulate proposals if the model contracts contain non-germane financial requirements or technical specifications.

Turkish military procurement policy generally mandates including offset requirements in procurement specifications. Since the offset guidelines were modified in 2005 to encourage foreign direct investment and technology transfers, U.S. companies have won few new commercial defense sales. Some U.S. companies have declined to submit bids. The most objectionable requirements include those related to *force majeure*, liability and requirements for technical data packages and certain licenses at the time of submission (pre-licensing).

## **EXPORT SUBSIDIES**

Turkey employs a number of incentives to promote exports, although programs have been scaled back in recent years to comply with EU directives and WTO commitments. Published export subsidies ranging from 5 percent to 20 percent of export values are granted to 16 agricultural or processed agricultural product categories in the form of tax credits and debt forgiveness programs, and are paid for by taxes on exports of primary products such as hazelnuts and leather. The Turkish Grain Board generally sells domestic wheat at world prices (which are well below domestic prices) to Turkish flour and pasta manufacturers in quantities based upon their exports of flour and pasta.

## **FOREIGN TRADE BARRIERS**

## **INTELLECTUAL PROPERTY RIGHTS (IPR) PROTECTION**

Turkey was listed on the Watch List in the 2009 Special 301 Report. Key concerns cited in the Report included continued uncertainty as to Turkey's commitment to protect data generated to obtain marketing approval for pharmaceutical products, setbacks in Turkey's enforcement of protection for trademark rights, continued widespread counterfeiting of products, and piracy of books and software.

Enforcement of Turkey's intellectual property rights protection laws has improved in recent years. For example, the software industry welcomed a 2008 publication by the Ministry of Culture of a new circular reminding all government agencies of the requirement to use licensed software. Enforcement agencies engaged in several large operations to seize counterfeit goods over the course of 2009; however, industry reports that considerable gaps in enforcement efforts remain.

## **SERVICES BARRIERS**

### **Telecommunications Services**

The Telecommunications Authority (TK) has been actively taking steps necessary to promote a competitive Turkish telecommunications market. Two problems the sector saw as major impediments to a competitive telecommunications market were the lack of both number portability rules and 3G licenses. TK started requiring mobile number portability in November 2008 and issued three 3G licenses to the major domestic cell phone operators. (Prior to November 2008, TK was hampered by its lack of adequate authority to provide effective enforcement of its rules, but a regulatory change granted it additional powers to regulate the market.)

TK is also responsible for enforcing bans on Internet content determined by courts to be offensive. This has on many occasions led to TK blocking access for all consumers to various Internet-based service providers, such as the weblog hosting site wordpress.com, social networking sites like MySpace, and the video-sharing website YouTube.

### **Other Services Barriers**

There are restrictions on establishment in financial services, legal services, the petroleum sector and broadcasting (see the Investment Barriers section). Turkish citizenship is required to practice as an accountant or certified public accountant, or to represent clients in Turkish courts. Legislation awaiting final approval by Parliament would permit foreign doctors to work in Turkey.

## **INVESTMENT BARRIERS**

Almost all areas open to investment by the Turkish private sector are fully open to foreign participation without screening or prior approval, although there are restrictions on establishment in the financial services, legal services, broadcasting and petroleum sectors. Foreign equity ownership is limited to 25 percent in broadcasting, although Parliament is considering draft legislation to ease these restrictions. Foreign investors have sometimes found their investments undermined by legislative or court action.

### **Energy Sector**

Turkish law calls for a liberalized energy market in which private firms are able to develop projects with a license obtained from the Energy Market Regulatory Authority, an independent regulatory body. The

## **FOREIGN TRADE BARRIERS**

state electricity utility has been unbundled into power generation, transmission, distribution, and trading companies, and after years of delays, the first three electricity distribution regions, privatized in 2008, were transferred to the private sector in 2009. The Turkish government successfully finalized privatization of three additional distribution regions in 2009 and announced the results of a tender for four more in February 2010. The government plans to finalize privatization of all 20 distribution regions and start privatization of the generation facilities in 2010. This schedule may be delayed by limited access to credit caused by global financial market turmoil.

Liberalization in the natural gas sector has also faced delays. The state pipeline company, BOTAS, remains dominant in gas importation, despite legislation requiring a phased transfer of 80 percent of its gas purchase contracts to the private sector by the end of 2009. Except for a small scale contract transfer tender in 2005, BOTAS has failed to reach its targets and still has an 86 percent share in the gas market. The Turkish government has plans to introduce an amendment to the Natural Gas Market Law that will liberalize the importation of gas into Turkey. The amendment will reportedly include measures aimed at facilitating a better-functioning Turkish gas market, such as an unbundling of BOTAS' activities. Natural gas distribution in cities is dominated by the private sector. The only exceptions to this are the Ankara and Istanbul distribution networks, where the local administrations hold the distribution license. In 2008, a deal was reached to privatize Ankara's pipeline network, Baskent Gaz, but the financing for the deal fell through as a result of the global financial crisis. The Privatization Administration restarted the privatization process for Baskent Gaz in September 2009, and plans to finalize privatization of both Baskent Gaz and Istanbul Gas Distribution in 2010.

As the result of a 1997 court decision, the Turkish government blocked full repatriation of profits by foreign oil companies under Article 116 of the 1954 Petroleum Law, which had protected foreign investors from the impact of lira depreciation. Affected companies have challenged the 1997 decision, but the judgments in almost all such lawsuits have gone against the claimant companies. A new petroleum law that would provide greater investment incentives and protections has been submitted to the Parliament, but prospects for passage currently appear slim.

Turkey's decision to cancel 46 contracted power projects in 2001 led to a number of arbitration cases against the government, with the end result being that most companies were compensated. However, this action and the uncertainty it generated, combined with government-controlled prices despite rising fuel costs, delayed private investments in the power sector from 2001 to 2008, at a time when demand for electricity increased substantially.

Turkey passed its long-awaited Nuclear Power Law in 2008, and conducted a tender in September 2008 to build a nuclear plant. Several international companies, including U.S. firms, expressed interest in the tender. However the government turned down the companies' request for a delay in the bidding deadline, and as a result only one Russian consortium submitted a bid. After a year-long evaluation period, the Turkish government finally cancelled the tender in November 2009, based on a court decision related to legal complications with the bid. The government plans to move forward with nuclear power projects in two sites in 2010, Akkuyu on the Mediterranean coast and Sinop on the Black Sea coast. The government may use a public-private partnership model in these projects to avoid a new tender process.

### **Work Permits**

Many foreign (and reportedly many Turkish) employers perceive the difficulty in obtaining Turkish work permits for professional or highly skilled foreign workers as a pervasive problem. Companies complain that the application process is time-consuming and requires extensive documentation, the adjudication



process is lengthy (often exceeding the time for which the permit is requested), and the chances of approval are low.

### **Real Estate**

Foreign ownership of real estate in Turkey has long been a contentious issue. In early 2008, the Constitutional Court issued two decisions that suspended portions of the Foreign Direct Investment Law and the Title Deed Law which had allowed foreign individuals and companies to purchase land. In response, the Turkish government passed new legislation to permit these purchases again, but imposed an upper limit on the amount of land that can be owned by foreign individuals – no foreign individual may own more than 2.5 acres and all foreign individuals together can own no more than 10 percent of the land in any given development zone. As information on the amount of land currently held by foreigners in any development zone is not readily available, this may cause problems and legal challenges for individual investors seeking to purchase land in Turkey. There are no limits on the amount of land that can be owned by foreign companies with a legal presence in Turkey, so long as the land is being used in accordance with their business activities.

### **OTHER BARRIERS**

#### **Corruption**

Turkey has ratified the OECD anti-bribery convention and passed implementing legislation that makes bribery of foreign and domestic officials illegal and no longer tax-deductible. Despite this, many foreign firms doing business in Turkey perceive corruption of some government officials and politicians to be a problem.

The judicial system is also perceived by many observers to be susceptible to external influence and to be somewhat biased against foreigners.

#### **Taxes**

Turkey assesses a special consumption tax of 27 percent to 50 percent on all motor vehicles based on engine size, which has a disproportionate effect on automobiles imported from the United States.

#### **Corporate Governance**

A recent OECD report stated that Turkey's overall corporate governance outlook is positive because the authorities have already adopted, or are introducing, high quality corporate governance standards (including audit standards) and because transparency has improved significantly. The report cautions, however, that it is important for Turkey to improve further in the areas of control and disclosure of related party transactions and self-dealing, the protection of minority shareholders, and the role of the board in overseeing not only management but also controlling shareholders.

#### **Pharmaceuticals**

The pharmaceutical industry's sales have been affected by government price controls and an awkward and burdensome reimbursement system. In 2008, Turkey implemented changes in its discounting scheme that increased the cost borne by pharmaceutical manufacturers. In September 2009, faced with a growing health care budget deficit, the Turkish government decreed additional mandatory discounts totaling over

\$2.3 billion per year. According to industry analysis, approximately 70 percent of the burden of these discounts will fall on foreign pharmaceutical manufacturers. In December 2009, the government and pharmaceutical industry agreed on a compromise pricing deal that will require U.S. firms to provide extra discounts of approximately \$800 million per year. On December 31, 2009, the Ministry of Health publicized a new decree (effective March 1, 2010) requiring all imports of pharmaceutical products to receive a recognized goods manufacturing practices (GMP) inspection certificate; U.S. manufacturers are analyzing the new rules but have expressed concern that the Turkish government's implementation of them is already adversely affecting Turkish imports of pharmaceutical products.

U.S. research-based pharmaceutical firms are also concerned about achieving transparent and equitable treatment in upcoming reforms of the government's health care and pension system.

# UNITED ARAB EMIRATES

## TRADE SUMMARY

The United Arab Emirates (UAE) is a federation of seven emirates (Abu Dhabi, Dubai, Sharjah, Ajman, Umm Al-Qaiwain, Fujairah, and Ras Al-Khaimah). The U.S. goods trade surplus with the UAE was \$10.6 billion in 2009, a decrease of \$2.5 billion from 2008. U.S. goods exports in 2009 were \$12.1 billion, down 16.0 percent from the previous year. Corresponding U.S. imports from the UAE were \$1.5 billion, up 16.4 percent. The UAE is currently the 19th largest export market for U.S. goods.

The stock of U.S. foreign direct investment (FDI) in the UAE was \$3.4 billion in 2008 (latest data available), up from \$3.0 billion in 2007. Reported U.S. FDI in the UAE is led by the manufacturing and mining sectors.

## IMPORT POLICIES

### Tariffs

As a member of the Gulf Cooperation Council (GCC), the UAE applies the GCC common external tariff of 5 percent for most products, with a limited number of GCC-approved country-specific exceptions. Currently, the UAE's exceptions to the 5 percent tariff are a 50 percent tariff on alcohol, a 100 percent tariff on tobacco, and duty exemptions for 53 food and agricultural items. In February 2009, UAE resumed a 5 percent tariff on steel and cement, after a one year exemption that had been aimed at easing inflation in the construction sector.

### Import Licensing

Only firms with an appropriate trade license can engage in importation, and only UAE registered companies, which must have at least 51 percent ownership by a UAE national, can obtain such a license. This licensing provision does not apply to goods imported into free zones. Some goods for personal consumption do not require import licenses.

### Documentation Requirements

Since July 1998, the UAE has required that documentation for all imported products be authenticated by the UAE Embassy in the exporting country. There is an established fee schedule for this authentication. For U.S. exports, if validation is not obtained in the United States, customs authorities will apply the fee schedule when the goods arrive in the UAE.

## GOVERNMENT PROCUREMENT

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

The UAE grants a 10 percent price preference for local firms in government procurement. The UAE requires companies to register with the government before they can participate in government procurements, but to be eligible for registration, a company must have at least 51 percent UAE ownership. This requirement does not apply to major projects or defense contracts where there is no local company able to provide the goods or services required.

## FOREIGN TRADE BARRIERS

The UAE's offset program requires defense contractors which are awarded contracts valued at more than \$10 million to establish a commercially viable joint venture with local business partners that is projected to yield profits equivalent to 60 percent of the contract value within a specified period (usually 7 years). To date, more than 40 such joint venture projects have been launched, including, *inter alia*, a hospital, an imaging and geological information facility, a leasing company, a cooling system manufacturing company, an aquiculture enterprise, a foreign language training center in Abu Dhabi, and a firefighting equipment production facility. Two of the largest offset ventures are an international gas pipeline project (Dolphin) and the Oasis International Leasing Company, a British Aerospace offsets venture. There are also reports, as well as anecdotal evidence, indicating that defense contractors can sometimes satisfy their offset obligations through an up-front, lump-sum payment directly to the UAE Offsets Group.

## **INTELLECTUAL PROPERTY RIGHTS (IPR) PROTECTION**

The UAE has made the protection of intellectual property a priority in recent years. The UAE is considering additional legislation regarding data protection and other IPR-related matters and has consolidated its IPR offices under the authority of the Ministry of Economy.

According to 2009 industry estimates, the rate of software piracy in the UAE is the lowest in the Middle East. The UAE is recognized as the regional leader in fighting computer software piracy, although industry stakeholders believe the UAE could be doing more. Industry estimates in 2009 indicated that piracy resulted in almost \$170 million (AED 623 million) in losses to the UAE economy in 2008. In 2009, the UAE Ministry of Economy and local customs officials organized a number of IPR workshops and public awareness programs. The United States has encouraged the UAE to continue strengthening its efforts to combat IPR piracy and counterfeiting.

As part of the GCC Customs Union, the six Member States are preparing a common trademark law, as well as a common unfair competition law to protect from unfair commercial use undisclosed information submitted for marketing approval of pharmaceutical products. The United States is engaged in a dialogue with GCC technical experts to ensure that the trademark law and unfair competition law will facilitate Member States' implementation of international and bilateral obligations.

## **SERVICES BARRIERS**

### **Insurance**

Foreign insurance companies may operate only as branches in the UAE.

In 1989, the UAE government banned additional foreign insurance companies from opening due to the perception that the market was saturated. In 2004, the Ministry of Economy and Planning announced that it would open the UAE insurance sector to new foreign insurance companies.

In 2006, the President of the UAE issued Federal Law No. 16 of 2006, amending some provisions of Federal Law No. 9 of 1984 on insurance companies and agents. An insurance company established in the UAE must be a public joint stock company. At least 75 percent of the capital in such companies must be owned by UAE nationals, while the remaining 25 percent may be owned by a foreigner.

In the Emirate of Abu Dhabi, the offering of insurance coverage for construction projects and companies under the Abu Dhabi National Oil Company (ADNOC) is restricted to Abu Dhabi-based insurance companies.

## **FOREIGN TRADE BARRIERS**

## **Banking**

The UAE Central Bank does not grant new licenses to foreign banks. However, the Central Bank has granted licenses to some GCC banks. In 2008, the Central Bank allowed several foreign banks already operating in the UAE to set up new branches. According to Central Bank statistics, there were no new foreign bank branches in 2009, but local banks opened 43 new branches, six new electronic banking services units, and nine new pay offices.

## **Agent and Distributor Rules**

In 2006, the UAE made important changes to the Commercial Agencies Law (Agencies Law), which previously had required that all commercial agents be either UAE nationals or companies wholly owned by UAE nationals, and had restricted the number of agents a foreign principal could appoint as well as the terms of the agency relationship. The 2006 amendments: (1) limited an agency contract to a fixed time period; (2) required mutual consent to renew an agency agreement; (3) allowed either party to file for damages; (4) eliminated the Ministry of Economy's Trade Agencies Committee, which handled agency disputes; and (5) allowed the import of "liberalized goods" without the agent's approval. Nonetheless, foreign companies still find it difficult to dismiss a non-performing local agent without protracted litigation in the local courts, and experience has shown that the authorities' application of the new law has not always eased the way for the termination of agents as expected. It also remains difficult, if not impossible, to sell in UAE markets without a local agent.

## **Telecommunications**

UAE currently has two telecommunications companies which are largely government owned: Emirates Telecommunications Corporation (Etisalat), the former telecommunication monopoly, and Emirates Integrated Technology Company (which operates under the trade name Du). UAE has made commitments in the WTO to remove the duopoly by December 31, 2015, after which time it will consider issuing further licenses.

U.S. companies complain that the UAE's Telecommunications Regulatory Authority (TRA) continues to ban the use of Voice-over-Internet-Protocol (VoIP) services, on the basis that VoIP services violate Etisalat's monopoly on fixed telephony services. In January 2008, Etisalat announced that it was ready – from a technical standpoint - to provide VoIP services, but was waiting for TRA to issue terms and conditions for the provision of this service before doing so. While the TRA is reportedly developing a framework to legalize VoIP, it is unclear if and when this will occur. In April 2009, TRA reiterated its ban on Skype and other internet-calling services, but appears unable to prevent distribution of the software, which is now available through Apple's iTunes application. While Skype's website has been blocked by the TRA since 2006, the Skype for iPhone application has been available as a free download since the mobile phone program's launch on March 31, 2009.

## **INVESTMENT BARRIERS**

Except for companies located in one of the UAE's free trade zones, at least 51 percent of a company established in the UAE must be owned by a UAE national. A company engaged in importing and distributing a product must be either a 100 percent UAE-owned agency/distributorship or a 51 percent UAE-owned limited liability company.

The UAE government is considering liberalizing specific sectors where there is a need for foreign expertise or where local investments are insufficient to sustain 100 percent local ownership. Some of the sectors which may be liberalized include those in which foreign investment is likely to contribute high added value or facilitate technology transfer, such as education, health, professional services, and computer-related services. Separately, in September 2009, the Minister of Economy announced that the UAE is considering raising the foreign equity limit from the current 49 percent; this may lead, in some cases, to 100 percent foreign ownership.

Non-GCC nationals have the right to own buildings, but not the land, in certain geographical zones within the UAE. Non-GCC nationals may also be permitted to hold so-called freehold real estate within specified geographic areas. With regard to investment in securities, foreign investors may purchase 108 of the 135 issues on the UAE stock markets (Abu Dhabi Securities Market (ADSM), and Dubai Financial Market (DFM)).

Resolution of investment disputes continues to be a problem in the UAE. Foreign investors have expressed concern that pursuing international arbitration in such disputes may jeopardize their business activities in the UAE. Foreign investors also report a reluctance to take disputes to the domestic court system, due to a perceived lack of court impartiality.

# UKRAINE

## TRADE SUMMARY

The U.S. goods trade surplus with Ukraine was \$401 million in 2009, shifting from a deficit of \$472 million in 2008. U.S. goods exports in 2009 were \$890 million, down 52.4 percent from the previous year. Corresponding U.S. imports from Ukraine were \$489 million, down 79.1 percent. Ukraine is currently the 75th largest export market for U.S. goods.

The stock of U.S. foreign direct investment (FDI) in Ukraine was \$910 million in 2008 (latest data available), down from \$991 in 2007.

## United States-Ukraine Trade and Investment Cooperation Agreement

The United States and Ukraine signed a new Trade and Investment Cooperation Agreement (TICA) on April 1, 2008, establishing a forum for discussion of bilateral trade and investment relations. The TICA mandates a joint United States-Ukraine Council on Trade and Investment, which addresses a wide range of trade and investment issues including market access, intellectual property, labor, and environmental issues. The Council seeks to increase commercial and investment opportunities by identifying and working to remove impediments to trade and investment flows between the United States and Ukraine. The Council met for the second time on October 14, 2009.

## IMPORT POLICIES

Ukraine continues to maintain licensing requirements and fees on certain imports. Ukraine imposes several duties and taxes on imported goods: customs/import tariffs, value added tax (VAT), and excise duties. Additionally, imports into Ukraine are subject to customs processing fees, a unified fee on vehicles crossing Ukraine's borders, and port fees.

### Customs/Import Tariffs

Imports from the United States are subject to Ukraine's MFN applied rate which fell to an average of 4.95 percent after its accession to the World Trade Organization (WTO) in 2008. For agricultural goods, the average applied tariff rate is now 13 percent (down from 13.8 percent before WTO accession). For industrial goods the average applied rate is now 3.71 percent (down from 4.4 percent before WTO accession). Ukraine applies preferential tariff rates to imports from its 12 FTA partners and certain Commonwealth of Independent States (CIS) countries. Most MFN customs tariffs are levied at *ad valorem* rates, and only 1.5 percent of tariff lines (down from 5.97 percent prior to WTO accession) are subject to specific or combined rates of duty. These specific and combined rates apply primarily to agricultural goods that are also produced in Ukraine, such as grains, poultry products, sugar, and vegetables such as carrots and potatoes.

In 2009, the Ukrainian State Customs Service (SCS) began to assign higher customs values to U.S. food and agricultural imports than was declared in the import documentation. There are concerns on how the Ukraine State Customs Service is determining and/or calculating the new values. For some shipments, it is alleged that the result has been a customs valuation 100 percent higher than what was declared in the import documentation. Importers who have sought to appeal the assigned customs valuation have been instructed by SCS to have the government from the country of the product's origin provide verification.

## FOREIGN TRADE BARRIERS

These practices have made importing U.S. meat products, in particular, expensive and have impeded trade in these products. The United States government has raised its concerns about the valuation practices and is continuing to seek information on the reasons for the changes and the methodology used to determine the customs values.

On February 20, 2009, President Yushchenko signed into law a bill that imposed a temporary 13 percent increase in customs duties for a large number of imported goods. The increases went into effect on March 6, 2009 and expired on September 7, 2009. The tariffs affected by the law were increased to well above Ukraine's WTO bound rates, *i.e.*, the rate that generally cannot be exceeded under WTO rules, and the WTO's Balance of Payments Committee rejected Ukraine's argument that the tariff was justified by a trade imbalance crisis. The U.S. government signaled its concern over this measure, which adversely affected a significant number of U.S. exports, and continues to monitor the situation due to concerns that similar increases could be repeated through future legislation.

### **Excise Duties**

Ukraine applies excise duties to a limited set of goods imported into Ukraine, such as alcoholic beverages, non-filter cigarettes, motor vehicles, and petroleum products. Excise duty rates range from 10 percent to 300 percent of the declared customs value. High excise duties hinder U.S. exports of wine and grape spirits and automobiles to Ukraine. Although VAT and excise tax exemptions for locally-produced vehicles were eliminated in 2005, excise taxes on imported automobiles remain high, especially for those with larger engines, ranging from 0.02 euro/cc for automobiles with smaller engines to 3.50 euro/cc for those with larger engines. Although import tariffs on automobiles were significantly reduced as part of the commitments Ukraine made for WTO accession, the government has introduced a new registration fee that is considerably higher for used cars and therefore discourages imports of foreign used cars.

### **Import Licenses**

Import licenses are required for some goods. The list of goods covered by the licensing regime and the license terms are decided annually by the Cabinet of Ministers. In 2009, the list included pesticides, alcohol products, sugar and sugar syrup, prepared food products containing cocoa, optical media production inputs, some industrial chemical products and equipment containing them, official foreign postage stamps, excise marks, officially stamped/headed paper, checks and securities, some goods that contain sensitive encryption technologies, and ozone-depleting substances.

While the licenses themselves are granted automatically to applicants, some products require a separate licensing approval, which may or may not be automatic, from the relevant administrative agency before receiving the necessary import license from the Ministry of Economy. The Ukrainian State Committee for Veterinary Service established a procedure of import approvals that amounts to non-automatic licensing. The procedure is prescribed in the Law on Veterinary Medicine and covers all commodities subject to veterinary control. Approval is needed even for cases in which a bilateral veterinary certificate is issued by the country of origin. In 2008, the Ministry of Environment significantly tightened procedures for obtaining its approval to import goods that are potentially ozone-depleting. The stricter procedures delayed shipments and significantly increased business costs for importers of a wide range of goods, including aerosols, refrigerators, mascara, lipstick, toothpaste, and coffee makers.

For some goods, product certification is a prerequisite for an import license. Importers can request that a foreign facility be certified as in compliance with Ukraine's technical regulations that apply to imports. The U.S. distilled spirits industry reports that this option usually involves a burdensome and costly



inspection visit by Ukrainian government officials. If approved, the supplier receives a certificate of conformity valid for two to three years and avoids the burden of certifying each shipment and mandatory laboratory testing upon arrival in Ukraine.

## **GOVERNMENT PROCUREMENT**

Ukraine is not yet a signatory to the WTO Agreement on Government Procurement (GPA), but committed to initiate negotiations for GPA membership within two years of its WTO accession. Ukraine is reportedly preparing its initial offer to begin the process of GPA accession. It became an observer to the WTO Committee on Government Procurement in February 2009.

Ukraine's 2000 law "On Procurement of Goods, Works, and Services Using State Funds" was originally largely in line with international practice. However, amendments in 2004 to 2006 opened the system to widespread corruption and moved it away from international norms. Authority to carry out central oversight and policy development for the government procurement system was taken from the Ministry of Economy, and its policy and oversight functions were dispersed across several bodies, weakening oversight and policy making, and creating conflicts of interest and overlapping functions.

In March 2008, Parliament, responding to widespread complaints of the corruption and dysfunctional nature of the Ukrainian procurement system, repealed the 2000 law, as amended. In its place, the Cabinet of Ministers issued a decree establishing temporary provisions for government procurement. The decree eliminated the Tender Chamber of Ukraine, a nongovernmental organization, which had had the authority to monitor the procurement process and had become the center of the procurement system's corruption and lack of transparency. In addition, the decree made the Ministry of Economy the central oversight and policy body for the procurement system. The Constitutional Court subsequently ruled the temporary provisions unconstitutional on technical grounds, leaving Ukraine without a functioning government procurement system. On October 17, 2008, the Cabinet of Ministers issued a new decree, which closely tracked the previous temporary provisions. The constitutionality of the October 17 decree is not yet clear even though it was intended to address the constitutional issue raised by the Court.

A new draft procurement law passed a first reading on May 20, 2008. However, while the draft law awaited a second reading, amendments were introduced that, if enacted, would put in place a weak procurement regime that could once again open the system to conflicts of interest and corruption. The amendments include: establishment of an inter-ministerial commission that resembles the former Tender Chamber; weakening and dispersing policy and oversight functions; establishment of a defective and insufficiently independent bid protest mechanism; and expanding the number of exclusions from the application of the law. The Ministry of Economy, with support from the World Bank and the European Commission, has prepared an alternate draft procurement law based on the version that passed the first reading. This draft is generally in line with international standards and is advocated by the donor community.

The Cabinet of Ministers' decree currently in force requires that all government procurement of goods and services valued at more than UAH 100,000 (approximately \$16,500) and public works valued at more than UAH 300,000 (approximately \$50,000) must be procured through competitive tenders. Open international tenders are used where procurement is financed by an entity outside of Ukraine.

Ukraine's procurement rules generally do not restrict foreign enterprises from participating in government procurement, but in practice foreign companies claim that they are rarely able to compete on an equal footing with domestic companies. Foreign companies generally win only a tiny fraction of the total

## **FOREIGN TRADE BARRIERS**

tenders. Among the problems faced by foreign firms are: (1) lack of public notice of tender rules and requirements; (2) non-transparent preferences in tender awards; (3) imposition of conditions that were not part of the original tender requirements; and (4) ineffective grievance and dispute resolution mechanisms, which often allow a losing bidder to block the tender after the contract has been awarded.

## **EXPORT BARRIERS**

Exports of some categories of products are subject to registration by the Ministry of Economy. Products that must be registered prior to export from Ukraine include precious metals and stones, rolled metal products exported to the United States, scrap metal, printer's ink, optical polycarbonates for laser reading systems, optical disc manufacturing equipment, and paper with watermarks. The government has eliminated most export duties, with the notable exception of duties on natural gas, livestock, raw hides, some oil seeds, and scrap metal. As part of the commitments Ukraine made for WTO accession, Ukraine agreed to reductions of a number of these duties and elimination of others.

### **Export Restrictions on Grains and Sunflower Oil/Seeds**

Ukraine is the sixth largest wheat exporter in the world, and has in the past resorted to grain export restrictions in reaction to poor harvests. The supply of products deemed "socially important" (e.g., vegetable oil, bread, and sugar) is controlled by the government.

### **Live Cattle, Sheep, Hides, and Skins**

Export duties remain in place on live cattle, sheep, hides, and skins. However, trade of these products has been negligible. Ukraine continues a staged reduction of these duties. Export duties on live calves, cows, and sheep will fall to 10 percent in 2016. Export duties on raw hides will fall to 20 percent in 2018.

### **Scrap Metal**

Between January 2003 and WTO accession in May 2008, Ukraine imposed an export duty of 30 euro/metric ton on ferrous steel scrap and had, in effect, a ban on exports of nonferrous metals. The ferrous scrap export duty contributed to a decline in scrap exports from Ukraine, when global demand and prices for steel scrap were rising. Ukrainian metallurgical producers benefited from scrap inputs at prices lower than world levels. As part of its March 2006 bilateral WTO Market Access Agreement with the United States, Ukraine agreed to significantly lower these export duties. Upon WTO accession, duties fell to 25 euro/metric ton for ferrous metals and to 30 percent *ad valorem* (with minimum, specific rates for some products) for nonferrous metals. Laws passed in 2006 and 2007 as part of the accession process provide for staged duty reductions to 10 euros/metric ton over a period of 6 years (2008 – 2014) for ferrous metals and reductions to 15 percent *ad valorem* over a period of 5 years (2008 – 2013) for nonferrous metals.

### **Sunflower Seed, Flaxseed, and Linseed**

Sunflower seed, flaxseed, and linseed have been subject to an export duty since June 2001. The export duty on sunflower seed was lowered from 17 percent to 14 percent in 2008. The duties are subject to a one percent decrease annually until duties reach 10 percent. The duty was 13 percent as of January 1, 2010.

## **INTELLECTUAL PROPERTY RIGHTS (IPR) PROTECTION**

Ukraine was listed on the Watch List in the 2009 Special 301 report. Key concerns cited in the report included widespread retail piracy, the transshipment of pirated and counterfeit goods, Internet piracy, and government use of illegal software. The Ukrainian government meets regularly with U.S. Government officials and with U.S. and domestic industry representatives to monitor the progress of enforcement efforts through the United States-Ukraine IPR Enforcement Cooperation Group.

## **SERVICES BARRIERS**

### **Audiovisual Services**

A local content requirement exists for radio and television broadcasting, although it has not been stringently enforced in most cases. In November 2009, Ukrainian customs authorities stated that it had changed its rules for customs valuation for audiovisual products. Rather than assessing duties on the underlying carrier medium, they will assess valuation on projected royalties. To further complicate matters, Ukrainian customs officials stated that this new “ruling” is supposedly retroactive three years with serious penalties applied to those situations where valuation was based on the carrier medium.

### **Financial Services**

The United States continues to monitor Ukraine’s actions in particular with regard to electronic payments services. A ruling by the Ukrainian Anti-Monopoly Committee modified the National Bank of Ukraine’s June 19, 2008 rules that required any bank that wished to bid on cash management contracts for state employee salaries to join the National System of Mass Electronic Payment (NSMEP). NSMEP operates as a domestic electronic payments system in Ukraine, competing against foreign service suppliers. Under the modified ruling, banks are still required to become members of NSMEP, but there is no provision to force them to issue payment cards exclusively through that system. However, parliament is considering new legislation that would require all banks to join NSMEP and use that service exclusively for electronic payment transactions. This would force banks wishing to bid on government cash management contracts to base their bids on NSMEP-branded cards, thus shutting out foreign service suppliers.

## **INVESTMENT BARRIERS**

The government is working to streamline regulations and eliminate duplicative and confusing laws regarding investment and business. The State Center for Foreign Investment Promotion (known as InvestUkraine) is charged with helping attract foreign investment to the country. The Council of Investors, an advisory body to the Cabinet of Ministers, includes representatives from foreign and domestic companies and advises the government on efforts to improve the business and investment climate.

The United States has a bilateral investment treaty (BIT) with Ukraine, which took effect in 1996. The BIT guarantees U.S. investors non-discriminatory treatment, the right to make financial transfers freely and without delay, international legal standards for expropriation and compensation, and access to international arbitration. Despite the BIT, there are several longstanding investment disputes faced by several U.S. companies. These disputes mainly date from the early 1990s and the initial opening of the Ukrainian economy to foreign investors. In most cases, however, there has been little progress toward resolution under subsequent Ukrainian governments despite advocacy by the United States. In 2009, U.S. investors filed for international arbitration in a contract dispute involving poultry imports.

## **FOREIGN TRADE BARRIERS**

An agreement signed in December 2009 ended a longstanding, dispute that had prevented the U.S. Overseas Private Investment Corporation (OPIC) from operating in Ukraine. This agreement will enable OPIC to provide financing and political risk insurance to American companies operating in Ukraine.

### **Taxation**

Companies report that Ukraine's taxation system is a major obstacle for U.S. investors doing business in Ukraine, and a World Bank study released in September 2009 ranked Ukraine 180th out of the 181 countries surveyed in terms of the ease of paying taxes. Ukraine maintains a corporate profit tax (25 percent), a personal income tax (flat rate of 15 percent), a Value Added Tax (20 percent), and a payroll tax (variable, between 33.2 percent and 49.6 percent) that funds pension and social insurance programs. An average Ukrainian business has to pay 99 separate taxes and its profits are taxed at an overall rate of 58.4 percent. Many analysts single out the payroll tax as being exceptionally high and the main reason why shadow wage payments remain common in Ukraine.

In recent years, delays in the payment of VAT refunds to exporters have also been a problem. Industry reports that the government of Ukraine has been holding back the payment of VAT refunds for extended periods of time, for which it has been heavily criticized. The government stated its intention to introduce a comprehensive electronic system to ensure speedy refunds in the future, but no action has yet been taken in this direction. Ukraine's inability to refund VAT in a timely manner remains a problem, and delays in reimbursement have become an important cost factor for many foreign companies. Improvements to the system would have an important, positive impact on the investment climate.

### **Privatization**

The State Property Fund oversees the privatization process in Ukraine. Privatization rules generally apply to both foreign and domestic investors, and, in theory, a relatively level playing field exists. Observers claim, however, that a common abuse of privatization laws is the adjustment of the terms of a privatization contest to fit the characteristics of a certain, pre-selected bidder. Few major, new privatizations have been conducted since the privatization rush of 2004. In 2005, Ukraine revoked the privatization of the Krivorizhstal steel factory, which had been sold to a group of domestic investors for \$800 million, and subsequently sold it in a fair and transparent tender to Mittal Steel for \$4.8 billion, in what is generally viewed as Ukraine's most transparent major privatization to date. Since then, Ukraine has taken no further steps to reverse previous privatizations.

No major privatizations took place in 2009, largely due to constant political wrangling over the privatization process. The government has identified Ukrtelekom (the state telecommunications company), the Kryvorizhskyy Ore Mining and Processing Plant, and Turboatom (a producer of turbines for power plants), as priorities for privatization, but none have moved forward. Other attempts at privatization in recent years were often marked by controversy. In 2009, the Odessa Portside Plant, one of Ukraine's largest chemical producers, was to be sold at an auction between three bidders. However, the Ukrainian government subsequently nullified the results of the auction, claiming that the bidders had colluded to bring down the price, and withdrew the facility from the privatization process. The government has also announced its intention to privatize approximately 120 of the 140 coal mines still owned by the government. There are concerns that a few Ukrainian and Russian firms are trying to acquire these mines without going through a fair, transparent privatization process.

Ukraine maintains a moratorium on the sale of agricultural farmland. This provision blocks private investors from purchasing some of the 33 million hectares of arable land in Ukraine and constitutes a serious obstacle to the development of the agricultural sector. While there have been some efforts to adopt new legislation necessary to open the land market, the ban on the sale of agricultural land is set to continue until January 1, 2012, when it comes up for renewal.

### **Corporate Hijacking**

Ukraine continues to have problems with corporate hijacking activities. Some researchers claim that thousands of Ukrainian enterprises have suffered hijacking attempts in the last several years. These hijackers frequently purchase a small stake in a company, and then take advantage of what appears to be a combination of deficient legislation, corrupt courts, and a weak regulatory system to gain control of the company to the detriment of rightful shareholders. This development harms investors, including U.S. companies and shareholders, and has damaged the image of Ukraine among foreign investors. The Ukrainian government has recognized the seriousness of this problem and has taken some steps to address it. In September 2008, Parliament passed a new law “On Joint Stock Companies,” a major step to improve corporate governance and help stop corporate hijacking.



# VENEZUELA

## TRADE SUMMARY

The U.S. goods trade deficit with Venezuela was \$18.7 billion in 2009, down \$20.1 billion from 2008. U.S. goods exports in 2009 were \$9.4 billion, down 25.8 percent from the previous year. Corresponding U.S. imports from Venezuela were \$28.1 billion, down 45.4 percent. Venezuela is currently the 25th largest export market for U.S. goods.

U.S. exports of private commercial services (*i.e.*, excluding military and government) to Venezuela were \$5.0 billion in 2008 (latest data available), and U.S. imports were \$850 million. Sales of services in Venezuela by majority U.S.-owned affiliates were \$3.4 billion in 2007 (latest data available), while sales of services in the United States by majority Venezuela-owned firms were \$2.1 billion.

The stock of U.S. foreign direct investment (FDI) in Venezuela was \$17.3 billion in 2008 (latest data available) up from \$15.7 billion in 2007. U.S. FDI in Venezuela is concentrated largely in the nonbank holding companies, manufacturing, and finance/insurance sectors.

## IMPORT POLICIES

Venezuela officially withdrew from the Andean Community (AC) in April 2006. President Chavez stated publicly that the reason for the withdrawal was the entry of other AC member countries into free trade agreements or negotiations with the United States, which, according to the Venezuelan government, changed the essence of the pact.

Under AC rules, following a member's formal withdrawal only tariff-related decisions and resolutions remain in force and expire after a period of five years from the date of withdrawal. All Venezuela's obligations under the AC tariff liberalization regime should remain in place until the end of 2011. Over the years, AC norms, which cover a wide range of disciplines, have been incorporated into the Venezuelan legal framework. Although the Venezuelan government has yet to officially clarify the legal impact of leaving the AC, Venezuela has continued to follow AC norms. In November 2006, Venezuela's Supreme Court accepted a petition requesting an interpretation of the current validity of AC norms. As of February 2010, the court had not issued a ruling on the matter.

## Tariffs

In December 2005, Venezuela signed a framework agreement to join the Southern Cone Common Market (MERCOSUR). MERCOSUR membership is contingent upon approval by the legislatures of all MERCOSUR countries. In December 2009, the Brazilian senate voted to approve Venezuela's membership. The last hurdle to Venezuela's full membership in MERCOSUR is obtaining Paraguay's formal approval. In mid-2009, Paraguay's legislature deferred its review of Venezuela's request for full membership in MERCOSUR. Under the terms of its accession, Venezuela will have four years from its date of accession to adopt the MERCOSUR Common External Tariff (CET) and to provide duty-free treatment to its four MERCOSUR partners on all goods, with sensitive products allowed a two year extension.

While the AC applies higher tariffs on fisheries, textiles, and agricultural goods, MERCOSUR applies higher duty levels to vehicles, vehicle parts, leather, textiles, and shoes. Under the AC's Common

## FOREIGN TRADE BARRIERS

Automotive Policy (CAP), assembled passenger vehicles constituted an exception to the 20 percent maximum CET and are subject to 35 percent import duties. The CAP was set to expire at the end of 2009; however, it was automatically renewed for an additional 10 years.

### **Nontariff Measures**

Currency controls introduced in 2003 continue to pose a significant barrier to most trade with Venezuela with the possible exception of agricultural goods and pharmaceutical products. These controls are overseen by the Foreign Exchange Commission, or Comision de Administracion de Divisas (CADIVI). The official exchange rate was fixed at 2.15 bolivars (Bs)/\$1 from March 2005 through January 10, 2010. On January 11, 2010, the government devalued the currency and set two exchange rates, one at 2.6 Bs/\$1 (which applies to certain priority imports) and one at 4.3 Bs/\$1 (which applies to non-priority imports and most other categories of foreign exchange requests). Importers who receive CADIVI pre-approval may import goods and then apply for CADIVI approval to purchase dollars at the relevant official rate to pay for the imports. There is also a parallel foreign exchange market, whereby bolivars and dollars are exchanged via swaps of securities (usually Venezuelan government bonds). The parallel exchange rate fluctuated between 4.9 and 7 Bs/\$1 from January 2009 through February 2010.

Until the latter half of 2008, CADIVI continued to increase the amount of foreign exchange it approved for imports, even as the official exchange rate became increasingly overvalued. Imports rose from \$17 million in 2004 to \$49 million in 2008. However, the process for obtaining CADIVI pre-approval to import goods and then an approval to purchase dollars at the official rate began to impose an increasing barrier to trade for a number of reasons. For example, there was an increase in the number of bureaucratic steps necessary to be eligible for CADIVI pre-approval (including requirements for licenses from various ministries). There was also an increase in the waiting period to receive CADIVI pre-approval to make the import and then approval to purchase the dollars after the import was made. Importers report lengthening delays for such approvals, and unpredictability and inconsistency in their granting.

When oil prices fell sharply in the latter half of 2008, the Venezuelan government sharply reduced overall CADIVI approvals from an average of \$187 million per working day in October 2008 to a daily average of \$112 million over the first nine months of 2009. Approvals for imports are focused on priority items such as food and medicines, and the wait time for approval for other items has increased substantially. Many companies have moved to the parallel foreign exchange market to obtain foreign currency to pay for imports. As it is significantly more expensive to obtain dollars on the parallel market, the reduction in CADIVI approvals has had the effect of substantially raising the cost of non-price controlled imports and introduced important uncertainties into the import process.

Burdensome documentation requirements are another significant disincentive to importation. Beginning January 1, 2008, all automobile importers were required to solicit a license from the Ministry of People's Power for Light Industry and Commerce (MILCO) for authorization to receive foreign exchange for the importation of assembled vehicles. According to the resolution, approval of these licenses depends on "national need, the capacity of national production, plans to expand local production, model cost, historic sales, and the efficient use of fuel." When soliciting this license, all automotive companies will have to include their "national production plan" and their "vehicle importation plan." The law also prohibits the importation of passenger cars with engines larger than three liters, thus discriminating against companies selling predominantly larger cars. As of March 2010, the Venezuelan government is still considering the requests made by automobile companies for the importation of assembled vehicles in 2010. Venezuela prohibits the importation of used cars, buses, and trucks, and used tires, as well as used clothing.

## **FOREIGN TRADE BARRIERS**



The government also imposed import quotas on vehicles in January 2008 in a bid to increase the number of automobiles assembled in Venezuela, and carmakers are subject to limited allocations of dollars to import components they need to carry out production in Venezuela. The new automotive regime adds the requirement to produce dual fuel (gasoline and natural gas) vehicles. The original law mandated that all new vehicles sold in Venezuela after December 1, 2008, be dual fuel. The rule was twice postponed and then changed. As of April 1, 2009, 30 percent of vehicles sold are to be dual fuel, and each Venezuelan assembler must produce at least 2 dual fuel models. As of February 2010, however, the ability of the assemblers to meet this requirement is unclear. In addition, the gradually rising requirement for local content in domestically assembled vehicles was changed to a flat 50 percent requirement and will be applicable beginning in 2013. A new requirement for motors to be assembled in Venezuela by 2010 was also added. Assemblers have stated that the two requirements are extremely problematic. Local industry is unable to produce sufficient components to allow 50 percent local content, and the variety of motors and the necessary large production runs will make local motor assembly prohibitively expensive. Venezuela's withdrawal from the AC also means that parts produced in other Andean countries are no longer considered to be local content.

In addition, Venezuela also protects some industries within its agricultural sector through the use of licenses and sanitary permits to restrict imports. The Venezuelan government applies fixed farm gate prices for producers of corn, rice, sorghum, sugar, milk, and beef. These prices, though reviewed periodically, and only when the industry applies sufficient pressure, still generally lag behind increases in input costs. Since 2007, selected basic commodities are granted agricultural subsidies based on acreage or volume.

Venezuela maintains tariff-rate quotas (TRQs) for up to 62 Harmonized System code headings. However, the issuance of import licenses for such TRQs is neither transparent nor automatic and has negatively affected trade in basic agricultural commodities as well as processed products. The issuance of import licenses and sanitary permits is restrictive for products for which the government is trying to increase domestic output such as raw materials for processing. The Venezuelan government has denied import licenses for both in-quota and over-quota quantities, even though importers are often willing to pay the over-quota tariff for additional quantities of some products. Automatic issuance of licenses of over-quota quantities has not occurred. Furthermore, the Venezuelan government has not published regulations establishing the TRQ mechanism for certain eligible products and has refused to activate the TRQ for others, such as pork.

Trade in some basic agricultural and processed food products is facilitated by inclusion on the CADIVI priority import list. In 2008, CADIVI created two different mechanisms to expedite dollar approvals for imports worth less than \$50,000 and for selected agricultural and food products. In both cases, inclusion on a priority list of products is the basis on which to receive the benefit, avoiding delays in the issuance of CADIVI dollars. Nevertheless, importers of many basic commodities, horticultural products, and agricultural inputs must request a "certificate of nonproduction" or a "certificate of insufficient production" before trade can take place. These two documents state that there is no, or not enough, production to meet domestic demand, and on receipt, the importer can request foreign exchange and obtain import licenses, import permits, and possibly tax exoneration from other government offices. Some goods may require a certificate from more than one ministry, increasing processing time. The number of ministries and agencies involved and the constant shifting of responsibilities among them has hampered the issuance of import permits, licenses, and the registration of local and imported food products. On January 18, 2008, the government of Venezuela passed a resolution waiving the "certificate of nonproduction" requirement for 51 goods to mitigate food shortages.

## FOREIGN TRADE BARRIERS

The government has delayed the issuance of import licenses for yellow corn and for oilseeds and oilseed products until the entire domestic crop has been purchased at the set price when there is a surplus. When there is a deficit, imports are readily authorized. Since September 2007, the government of Venezuela has banned non-food use of corn and has controlled product movement through “mobilization guides,” which results in a *de facto* export ban. Products such as coffee and sugar, and other basic food items, cannot be exported while domestic demand is not satisfied, since a resolution was promulgated in February 2009.

Since January 2003, the Venezuelan government has implemented an import tax exoneration policy for staple products. Initially, the import tax exoneration was granted for a six month period. Since then, some products were added or removed from the initial list, and there were certain periods when this policy lapsed. On January 18, 2008, the government of Venezuela created a new list of tax-exempt goods that featured some products on the current list and some additions. The list was last updated in October 2008, with customs duties for live cattle imports exonerated to allow more cattle into the country for processing.

The Venezuelan government has created a large food distribution network for the low and middle economic classes. Both the Venezuelan Agricultural Corporation (CVA) and the Corporación de Abastecimiento y Servicios Agrícolas are the leading state trading entities. At the same time, Mercado de Alimentos, C.A. and Productora y Distribuidora Venezolana de Alimentos are the food marketing branches of the network, offering products at prices that are at or below those of controlled products. Venezuela’s state-owned oil company, Petroleos de Venezuela (PDVSA)), has also become an important food importer through its PDVAL subsidiary. Venezuela’s food program is focused on providing a government-subsidized basic basket of products, including dry milk, precooked corn flour, black beans, rice, vegetable oils, sardines, pasta, sugar, bologna, margarine, deviled ham, eggs, mayonnaise, and sauces. Government purchases of food products can be imported or domestically produced. The government’s food network competes with private industry, although the private sector also supplies products to this chain. The private sector has complained that all government entities have an unfair advantage because they have guaranteed access to official dollars, import licenses, and permits and, as government entities, they import products without tariffs and custom duties.

## **GOVERNMENT PROCUREMENT**

Venezuela’s government procurement law covers purchases by government entities, national universities, and autonomous state and municipal institutions. It is not clear to what degree the public procurement law applies to joint ventures in which a state entity has a controlling interest. The law requires a contracting agency to prepare a budget estimate for a procurement based on reference prices maintained by MILCO. The law forbids discrimination between domestic and foreign suppliers. However, the law also provides that the President can mandate temporary changes in the bidding process “under exceptional circumstances,” in accordance with “economic development plans” that promote national development or provides preferences to domestic goods and suppliers. These measures can include price preferences for domestic goods and suppliers, reservation of contracts for nationals, requirements for domestic content, technology transfer or the use of local labor and other incentives to purchase from companies domiciled in Venezuela. For example, government decree 1892 establishes a 5 percent preference for bids from companies whose products have over 20 percent local content. In addition, half of that 20 percent of content must be from small to medium-sized domestic enterprises. The Venezuelan government is increasingly awarding contracts directly, thus avoiding competition required by the government procurement law. There are allegations that companies from certain countries are favored while those from other countries, including the United States, receive discriminatory treatment.

## **FOREIGN TRADE BARRIERS**

A presidential decree published in March 2008 raised additional concerns. The decree established a National Service of Contractors, with which firms must register in order to sell to the government. Bids will not be accepted without prior registration. Some observers assert that the registration requirement allows additional screening for political acceptability of a company.

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

## **EXPORT SUBSIDIES**

Exporters of selected agricultural products – cocoa, some fruits, and certain seafood products – are eligible to receive a tax credit equal to 10 percent of the export's value. The level of direct payments for export subsidies has generally been fairly small and limited to agricultural products. Venezuela has notified its export subsidies to the WTO in the past, with the last notification occurring in June 2001, for the export year 1998. The total value of export subsidies at that time was \$5.5 million. The government has not published further information for export subsidies.

## **INTELLECTUAL PROPERTY RIGHTS (IPR) PROTECTION**

Venezuela was listed on the Priority Watch List in the 2009 Special 301 report. Key concerns cited in the Report relate to the deteriorating environment for the protection and enforcement of IPR in Venezuela. Copyright piracy is increasing and proposed copyright legislation, if implemented, would severely undercut the existing Venezuelan copyright law, as well as bilateral and international standards of IP protection. Concerns remain regarding the revocation of existing patents on pharmaceuticals. Other concerns include the lack of effective protection against unfair commercial use of undisclosed test and other data generated to obtain marketing approval for pharmaceutical products. Although weak enforcement of IPR remains a problem, Venezuela's tax and customs authority has made some progress on raising awareness of IPR issues through public anti-piracy and "zero tax evasion" campaigns.

## **SERVICES BARRIERS**

Venezuela maintains restrictions on a number of service sectors, including professional services, audiovisual, and telecommunications services. In any enterprise with more than 10 workers, foreign employees are restricted to 10 percent of the work force, and Venezuelan law limits foreign employee salaries to 20 percent of the payroll.

### **Professional Services**

Foreign equity participation in professional firms is restricted to a maximum of 19.9 percent. Only Venezuelan citizens may provide accounting and auditing services to government institutions and related institutions, such as banks and hospitals. In addition, only Venezuelan citizens may act as accountants for companies in which the government has at least a 25 percent ownership interest. A foreign lawyer cannot provide legal advice on foreign or international law without being fully licensed as a lawyer in Venezuela.

Foreigners are required to establish a commercial presence for the provision of engineering services. Foreign consulting engineers must work through local firms or employ Venezuelan engineers.

### **Audiovisual Services**

Venezuela limits foreign equity participation to less than 50 percent for enterprises engaged in Spanish

## **FOREIGN TRADE BARRIERS**

language media, including television and radio broadcasting. At least half of the television programming must be dedicated to national programming. Additionally, half of both FM and AM radio broadcasting must be dedicated to Venezuelan-produced material. In the case of music, 50 percent of the Venezuelan-produced material must be traditional Venezuelan songs. There is also an annual quota regarding the distribution and exhibition of Venezuelan films, as well as a requirement that a percentage of film copying be done in Venezuelan facilities.

## **INVESTMENT BARRIERS**

The government continues to control key sectors of the economy, including oil, petrochemicals, and much of the mining and aluminum industries. Venezuela began an ambitious program of privatization under the Caldera administration (1994-1999), but under President Chavez (since 2000) privatization has been halted and the government has re-nationalized certain key sectors of the economy. In 2007, the government nationalized certain electricity and telecommunications providers. In 2008, the government nationalized certain cement companies and an aluminum company, and first proposed the nationalization of a commercial bank. In 2009, this bank was nationalized, in addition to a food production plant and 76 oil field services companies.

Foreign investment continues to be restricted in the petroleum sector. The exploration, production, refinement, transportation, storage, and foreign and domestic sale of hydrocarbons are reserved to the state. However, private companies may engage in hydrocarbons-related activities through mixed companies and equity joint ventures with the state-owned oil company Petroleos de Venezuela, S.A. (PDVSA). Sales to foreign investors of interests in subsidiaries and affiliates of PDVSA are permitted following approval by the government.

Since 2004, the national government has made significant changes to royalty policies, tax policies and contracts involving hydrocarbons-related activities. This has substantially increased uncertainty in the hydrocarbons sector and raised concerns of companies operating in Venezuela.

In 2006, the government transferred operating service agreements to mixed companies in which PDVSA holds a majority stake. President Chavez issued a decree in late February 2007 requiring four strategic associations (joint venture projects relating to the development of Venezuela's extra heavy crude oil reserves) to convert to PDVSA-controlled joint ventures in which the government would hold at least a 60 percent equity stake. The decree established a deadline of April 30, 2007, for completing the transfer. ConocoPhillips and ExxonMobil refused to transfer their investment stakes in three of the strategic associations. As a result, the Venezuelan government took control of these investments. Both companies viewed the government's actions as expropriations and attempted to negotiate with Venezuelan authorities regarding compensation. Both companies have filed international arbitration claims against the Venezuelan government. The United States is monitoring the process closely, has consulted with the affected U.S. companies, and has stated its expectation that U.S. companies will receive fair treatment, including timely, adequate, and effective compensation where a tribunal finds that an expropriation has occurred.

In October 2008, PDVSA announced a new bid round for two projects containing a total of four blocks of the country's heavy crude reserves in Eastern Venezuela. In early December 2008, a project containing three blocks was added to the announced tender. On February 10, 2010, two winning consortia were announced for two of the three projects. The winning consortia must now negotiate mixed company agreements with PDVSA (with 60 percent majority of PDVSA ownership) before development of these blocks can begin. Both the 2001 Hydrocarbons Law and the 1999 Gaseous Hydrocarbons Law require

## **FOREIGN TRADE BARRIERS**

that there be a competitive process for the identification of private partners for projects to be developed by PDVSA. However, the government may directly award contracts when the project is to be developed under special circumstances or is of national interest. National oil companies from politically strategic partner countries seem to be the preferred partners for the development of many new projects.

The previous government had passed legislation in 1998 aimed at introducing domestic and foreign competition into the domestic gasoline market. The law allowed foreign and private Venezuelan investors to own and operate service stations, although the government retained the right to set product prices. The current government has not raised gasoline prices in several years, and currency devaluations and a high inflation rate eliminated service station profit margins. An Organic Law on the Restructuring of the Internal Liquid Fuels Market came into effect on September 18, 2008. The law mandates government control of domestic transportation and wholesale of liquid fuels and set a 60 day period for negotiations with the affected companies. Affected companies have not yet been paid, but negotiations are still ongoing. All establishments that carry out retail activities of liquid fuels were to be re-branded as PDVSA. As of November 2009, few gas stations have been re-branded. The law does not define the term "liquid fuels," which creates uncertainty as to whether it will apply to products other than gasoline or diesel fuel, such as motor oils or lubricants.

In May 2009, the Venezuelan government promulgated a law reserving to the state those assets and services related to the performance of primary activities identified in the 2001 Hydrocarbons Law. Specifically, the assets and services included: (1) those involved in the injection of water, steam, or gas into petroleum reservoirs; (2) those related to gas compression; and (3) assets and services associated with the hydrocarbons industry on Lake Maracaibo in western Venezuela. This included boats for the transportation of personnel, divers, and maintenance; cranes and crane barges; tugs; flat barges; light vessels; cutting barges; barges for laying pipeline and sub-aquatic cable; vessel maintenance facilities; docks; and any type of dikes. Seventy-six companies, including several U.S.-owned firms, were nationalized pursuant to this law and none have received compensation to date.

In June 2009, the government promulgated the Organic Law for the Development of Petrochemical Activities to regulate the execution of petrochemical activities and to reserve to the state activities defined as primary and intermediate activities as well as all facilities and works required to carry out these activities. As a result, only the state and companies in which the state has at least a 50 percent ownership stake may carry out primary and intermediate petrochemical activities.

Electric power generation, transmission, and distribution are open to private participation under Venezuelan law. However, President Chavez announced in January 2007 that the Venezuelan government would nationalize strategic areas, including telecommunications and electricity. As a result, the U.S. power generating company, AES Corporation, sold its 82.14 percent stake in Electricidad de Caracas, the company that provides power to the Caracas metropolitan area, to the Venezuelan government in March 2007. The government also purchased the assets of several smaller power producers.

Private participation is allowed in the mining sector. In early 2005, President Chavez reorganized the ministries that govern the energy and mining sectors. One result of this restructuring was to increase control over basic industries at the ministerial level and to strengthen the state-owned Corporacion Venezolana de Guayana (CVG), which controls steel and aluminum production, electricity generation, and mining. Under its new board of directors, named in February 2005, CVG announced a review of all existing contracts between CVG companies and third parties. A draft mining law is still pending in the

National Assembly that seeks to repeal “inactive” concessions to foreign countries and to structure the mining sector under a joint-venture model.

Supply contracts by CVG companies are still pending review by the Ministry of Basic Industries and Mining (MIBAM). The Venezuelan government is looking to increase the development of downstream industrial sectors and to add value to Venezuelan exports. To this end, MIBAM is taking several steps to help local companies, including making available to them a higher percentage of materials, improving payment terms, and providing discounts of up to 10 percent.

# VIETNAM

## TRADE SUMMARY

The U.S. goods trade deficit with Vietnam was \$9.2 billion in 2009, down \$929 million from 2008. U.S. goods exports in 2009 were \$3.1 billion, up 11.4 percent from the previous year. Corresponding U.S. imports from Vietnam were \$12.3 billion, down 4.7 percent. Vietnam is currently the 45th largest export market for U.S. goods.

The stock of U.S. foreign direct investment (FDI) in Vietnam was \$473 million in 2008 (latest data available), up from \$426 million in 2007.

The United States and Vietnam held numerous discussions throughout 2009 under the Trade and Investment Framework Agreement (TIFA). The TIFA provided a forum to help monitor and implement Vietnam's WTO commitments, address bilateral trade issues, and promote increased trade and investment. In June 2008, the two countries launched negotiations for a Bilateral Investment Treaty (BIT). Two rounds of BIT negotiations were held in 2009.

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

## IMPORT POLICIES

### Tariffs

Vietnam significantly reduced its tariff rates for many key U.S. exports in the context of its entry into the WTO in January 2007 and as part of the accession process agreed to bind all tariff lines. As a result, the vast majority of U.S. exports now face tariffs of 15 percent or less. High tariffs on selected products remain, however. U.S. industry has identified a range of products where it sees significant potential for export growth if Vietnam's tariffs could be reduced further. Those products include fresh apples, cherries, pears and citrus, almonds, cooked and raw frozen poultry, fresh/chilled and frozen pork, cheese, frozen potato products, flatbread, tomato concentrate and tomato sauce, ice cream powder, cereals and preparations, sugars, and confectionaries. Several beverage products also face high tariffs, including distilled spirits, powdered teas, nutritional supplements (including protein drink mixes) and coffee. In addition, Vietnam imposes high tariffs on selected equipment for restaurant use and large engine motorcycles. After making substantial tariff reductions on a wide range of products in 2007, Vietnam raised applied rates on some products during 2008 and 2009, including meat and poultry, automobiles, paper, steel and fertilizer.

## FOREIGN TRADE BARRIERS

## **Nontariff barriers (NTBs)**

Vietnam has made significant progress in eliminating nontariff barriers (NTBs) under the 2001 United States-Vietnam Bilateral Trade Agreement (BTA) and through Vietnam's accession to the WTO. As a result, Vietnam has eliminated quantitative restrictions on imports and other nontariff measures, such as quotas, bans, permits, prior authorization requirements, licensing requirements, or other restrictions having the same effect, that would not be consistent with its WTO commitments.

*Import prohibitions:* Vietnam currently prohibits the commercial importation of a limited number of products, including cultural products deemed "depraved and reactionary", firecrackers, certain children's toys, second hand consumer goods, right hand drive motor vehicles, and used spare parts for vehicles.

*Quantitative restrictions and import licensing:* Salt, tobacco, eggs, and sugar are under a tariff-rate quota regime. In 2008, Vietnam introduced an import licensing regime on a number of products, mostly consumer goods. The United States has expressed concerns regarding the discretionary nature of elements of these regulations through the TIFA dialogue and in the WTO Committee on Import Licensing. Vietnam has not yet notified this regime to the WTO, as required by the Agreement on Import Licensing Procedures. The United States continues to closely monitor implementation of this measure and urge Vietnam to notify it to the WTO.

*Price Registration and Stabilization:* In late 2009, the Ministry of Finance published for public comment a draft regulation that would establish a price registration and stabilization regime for a broad range of goods and services potentially affecting U.S. exports. The United States, along with other governments and private sector interests, raised concerns with the Vietnamese government and has requested additional clarification from responsible agencies regarding this draft proposal. The United States will continue to seek to address this issue with Vietnam on this issue under the TIFA.

*Customs:* Vietnam implemented the WTO Customs Valuation Agreement through the 2006 Customs Law and related implementing regulations, significantly improving customs valuation in Vietnam. However, U.S. exporters report that inefficient customs clearance remains a key concern. The United States will continue to work with Vietnam to monitor implementation of the WTO Customs Valuation Agreement and other customs issues as part of the ongoing TIFA dialogue.

*Trading rights:* Import rights are granted for all goods except for a limited number of products reserved for importation through state trading enterprises and those products subject to a phase in period under Vietnam's WTO accession agreement. Vietnam has reserved the right of importation for state trading entities in the following product categories: cigars and cigarettes, crude oil, newspapers, journals and periodicals, and recorded media for sound or pictures (with certain exclusions).

*Taxes:* Vietnam applies a value added tax on goods and services in a number of categories listed in the Law on Value added Tax and related implementing regulations. Certain goods in Vietnam are also subject to an excise tax, levied in accordance with the Law on Excise Tax. This law was revised in late 2008. Effective January 1, 2010, excise taxes will be harmonized to a single *ad valorem* rate for all beer, regardless of packaging, and for all distilled spirits over 20 percent alcohol by volume.

Pharmaceutical companies have raised concerns about possible discriminatory treatment against foreign firms across a range of product registration requirements for imported pharmaceuticals. The United States will continue to work closely with the Ministry of Health and other relevant agencies to seek improvements in the transparency of the pharmaceutical regulatory process.

## **FOREIGN TRADE BARRIERS**



The U.S. distilled spirits industry has identified Vietnam's restrictions on advertising of distilled spirits in print, electronic, and broadcast media as a barrier to increased exports.

## **GOVERNMENT PROCUREMENT**

Vietnam's 2006 Law on Procurement provides for greater transparency in procurement procedures; decentralization of procurement decision making to the ministries, agencies, and local authorities; appeal processes; and enforcement provisions. The U.S. software industry has expressed concern about the Vietnamese government's promotion of the use of open source software by government agencies, including specific preferences for open source software in government procurement. It continues to urge the Vietnamese government to use a merit-based approach to software procurement decisions consistent with the APEC Technology Choice Pathfinder Agreement that Vietnam signed in 2006.

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

## **INTELLECTUAL PROPERTY RIGHTS (IPR) PROTECTION**

Vietnam was listed on the Watch List in the 2009 Special 301 report. While recognizing the strides Vietnam has made in IPR protection and enforcement over the past several years, the United States noted that enforcement efforts have not kept pace with rising levels of IP infringement and piracy in the country. Furthermore, administrative enforcement actions and penalties --- the most commonly used means of enforcing IPR in Vietnam --- have not served as a sufficient deterrent. The special 301 report also noted that IP violations committed over the Internet continue to increase. Over the past year, Vietnamese agencies took some initial steps to enforce IP protections on the Internet, including sending warning letters and meeting with service providers to provide warnings against providing infringing content. The United States will continue to work with Vietnamese authorities and to encourage more vigorous enforcement actions.

In 2009, Vietnam revised its IPR Law, as well as IPR related provisions in the Criminal Code, to provide criminal penalties for IPR infringement conducted on a commercial scale. Vietnam has stated it will clarify the IPR related provisions in the Criminal Code through an implementing decree. The United States continues to monitor implementation of these important provisions.

## **SERVICES BARRIERS**

In the BTA and in Vietnam's WTO services schedule, Vietnam committed to a high level of liberalization in a broad array of service sectors, including financial services, telecommunications, express delivery, professional services, and distribution services. As part of these negotiations, Vietnam also retained some market access limitations and exceptions to national treatment.

### **Audiovisual Services**

Foreigners may invest in cinema construction and operation only through joint ventures with local Vietnamese partners, subject to government approval. Films are subject to censorship before public viewing, a process which is nontransparent and for which the right of appeal of a censor's decisions is not well established.

## **FOREIGN TRADE BARRIERS**

## **Broadcasting**

In late 2009, Vietnam's Ministry of Information and Communication circulated draft regulations covering pay televisions that included, among other things, a proposal to establish a government controlled agency as the only authorized entity for the purchase and distribution of pay television programming. This proposal would have had the effect of requiring all foreign programming and all foreign channels to be sold into the Vietnam market through this "single buyer" government entity. The United States and industry representatives have registered serious concerns over this proposal. The United States will continue to monitor the development of these regulations.

## **Express Delivery Services**

Foreign participation in joint ventures with express delivery service providers currently is limited to 51 percent of a firm's equity. By January 2012, 100 percent foreign ownership will be permitted in this sector.

## **Telecommunications**

Vietnam permits foreign participation in the telecommunications sector, with varying equity limitations depending on the sub-sector (there are five basic and eight value added sub-sectors). For instance, foreign ownership in private networks is permitted up to 70 percent, while foreign ownership in facility-based basic services (*e.g.*, public voice service where the supplier owns its transmission facilities) is generally capped at 49 percent. As of January 2010, Vietnam allows foreign equity of up to 65 percent for non-facilities-based public telecommunications services (*i.e.*, services provided by a supplier that does not own its own transmission capacity but contracts for such capacity, including submarine cable capacity, from a facilities-based supplier).

Opportunities for foreign firms to form joint ventures in the facilities-based sector are further restricted by a requirement that all facilities-based operators be majority state owned, limiting the pool of such partners and reinforcing governmental control over market entry. The United States will continue to engage Vietnam as it drafts implementing regulations for its new telecommunications law in an effort to address these restrictions.

In 2009, there were widely reported incidents of blocking of certain websites, including foreign-based social networking sites, with the apparent involvement of telecommunications operators. Although formal governmental measures implementing such blocking are not public, the Vietnamese government has acknowledged efforts to ensure that Internet usage does not promote 'antisocial' behavior. The United States has raised serious concerns about these internet restrictions with the Vietnamese government and will continue monitor this issue closely.

## **Distribution Services**

Foreign participation in this sector, which includes commission agents' services, wholesale services, retail services, franchising and direct sales activities, is allowed without equity limitations. However, foreign-invested distributors are restricted from trading in a limited number of goods that are excluded from Vietnam's distribution sector commitments either during a phase out period or for an indefinite time period, as set out in Vietnam's WTO Schedule of Specific Commitments. The United States continues to urge Vietnam to further reduce or eliminate these product-specific restrictions on foreign-invested distributors, including in the distribution of videos (tapes, VCDs, DVDs) and pharmaceuticals. In

addition, the United States will continue to seek greater clarity and transparency in distribution licensing to address issues with licensing procedures.

### **Banking and Securities Services**

Foreign equity in joint venture banks is limited to 49 percent. In 2012, 100 percent foreign ownership of securities firms will be permitted. Foreign banks have raised concerns about certain provisions in the draft Law on Credit Institutions which could potentially negatively affect their ability to do business in Vietnam.

### **INVESTMENT BARRIERS**

Vietnam's Investment Law sets criteria designating certain sectors in which foreign investment is prohibited and others in which foreign investment is subject to conditions ("conditional sectors"). Vietnam also has specific laws that apply to investment in conditional sectors such as banking, securities, insurance, mining, telecommunications, real estate, ports and aviation. Investments in conditional sectors, and other projects deemed sensitive, are subject to extensive and additional review, sometimes requiring the Prime Minister's approval, which can often delay the approval of investment licenses.

All land in Vietnam is owned and managed by the state and, as such, neither foreigners nor Vietnamese nationals can own land. The 2006 Investment Law permits foreign invested enterprises to rent land for a period of 50 years and up to 70 years in special cases. Investors can obtain land use rights and mortgage both the structures erected on that land and the value of land use rights.

### **ELECTRONIC COMMERCE**

Electronic commerce remains underdeveloped in Vietnam. Development has been hampered by the low number of Internet subscribers, government firewalls, limited bandwidth and other problems with the Internet infrastructure, limitations in the financial services sector (including few credit cards users), and regulatory barriers. The 2006 Law on Electronic Transactions gave legal standing to electronic contracts and electronic signatures and allocated the responsibilities of parties with respect to the transmission and receipt of electronic data.

### **OTHER BARRIERS**

Both foreign and domestic firms have identified corruption in Vietnam in all phases of business operations as an obstacle to their business activities. The lack of transparency, accountability, and media freedom, as well as widespread official corruption and inefficient bureaucracy, remain serious problems.

Competition among government agencies for control over business and investments has created confusing and overlapping jurisdictions and overly bureaucratic procedures which in turn create opportunities for corruption. Low pay for government officials and inadequate accountability systems contribute to these problems. With the assistance of the United States and other donors, Vietnam is in the process of implementing a public administration reform program and continuing to enhance transparency. The United States will continue to work with Vietnam to support administrative reform efforts and promote greater transparency.



# APPENDIX I



# APPENDIX I

## Report on Progress in Reducing Trade-Related Barriers to the Export of Greenhouse Gas Intensity Reducing Technologies

This Appendix provides an update on progress the Administration has made in reducing trade-related barriers to the export of greenhouse gas intensity reducing technologies (GHGIRTs), as called for by the Energy Policy Act of 2005. In October 2006, pursuant to section 1611 of the Act,<sup>1</sup> USTR prepared a report that identified trade barriers that face U.S. exporters of GHGIRTs in the top 25 greenhouse gas (GHG) emitting developing countries and described the steps the United States is taking to reduce these and other barriers to trade.<sup>2</sup> The Act also calls for USTR to report annually on progress made with respect to removing the barriers identified in the initial report. USTR submitted the first annual progress report in October 2007; this report, as well as the initial report, are available at [www.ustr.gov](http://www.ustr.gov). As noted in the October 2007 report, USTR will submit further annual progress reports as part of the NTE Report.

As described in the initial 2006 GHGIRT report, barriers to the exports of GHGIRTs are generally those identified in the NTE with respect to other exports to the 25 developing countries: *e.g.*, lack of adequate and effective intellectual property rights protections; lack of regulatory transparency and sound legal infrastructure; state-controlled oil and energy sectors, which are often slower to invest in new technologies; cumbersome and unpredictable customs procedures; corruption; import licensing schemes; investment restrictions, including requirements to partner with domestic firms; and high applied tariff rates for some countries. Progress in removing such barriers is noted below in the appropriate country chapter of the report. The reader is also referred to USTR's "Special 301" report pursuant to section 182 of the Trade Act of 1974. The "Special 301" report describes the adequacy and effectiveness of intellectual property rights protection and enforcement of U.S. trading partners; the 2010 report will be released in April 2010.

Concerning relevant multilateral activities, the United States continues to exercise leadership within the World Trade Organization in pushing for increased liberalization of global trade in environmental goods and services, including GHGIRTs. In particular, as highlighted by Ambassador Kirk and several other trade ministers at the WTO Ministerial Meeting in December, the United States will work with other like-minded and ambitious Members to explore approaches to fast-track the elimination of tariffs on goods directly relevant to addressing climate change, such as solar panels and stoves, and wind and hydraulic turbines. We believe that such action could make an important contribution to both the DDA and the global climate negotiations, which will continue in 2010.

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<sup>1</sup> Section 1611 of the Act amends the Global Environmental Protection Assistance Act of 1989 (Public Law 101-240) to add new Sections 731-39. Section 732(a)(2)(A) directs the Department of State to identify the top 25 GHG emitting developing countries for the purpose of promoting climate change technology. The Secretary of State has submitted its report to Congress identifying these 25 countries. Section 734 calls on the United States Trade Representative "(as appropriate and consistent with applicable bilateral, regional, and mutual trade agreements) [to] (1) identify trade-relations barriers maintained by foreign countries to the export of greenhouse gas intensity reducing technologies and practices from the United States to the developing countries identified in the report submitted under section 732(a)(2)(A); and (2) negotiate with foreign countries for the removal of those barriers."

<sup>2</sup> These 25 countries were identified in the Department of State's 2006 "Report to Congress on Developing Country Emissions of Greenhouse Gases and Climate Change Technology Deployment." They are: China; India; South Africa; Mexico; Brazil; Indonesia; Thailand; Kazakhstan; Malaysia; Egypt; Argentina; Venezuela; Uzbekistan; Pakistan; Nigeria; Algeria; Philippines; Iraq; Vietnam; Colombia; Chile; Libya; Turkmenistan; Bangladesh; and Azerbaijan. In 2008, Morocco replaced Azerbaijan on the list. The United States-Morocco Free Trade Agreement contains commitments, *inter alia*, to promote intellectual property rights, effectively enforce environmental laws, improve transparency, eliminate tariffs on GHGIRTs and open Morocco's market to U.S. environmental services firms.

The United States is also continuing its efforts in APEC to build awareness and promote trade liberalization of environmental goods and services (EGS) in APEC. This year, the United States worked closely with Singapore and other APEC members to develop an ambitious work program to promote trade and investment in EGS in the region, with an emphasis on addressing nontariff barriers and enhancing market drivers of environmental goods, and improving understanding and market access for environmental services. The United States, together with Canada and New Zealand, also spear-headed the launch of a new APEC website, the Environmental Goods and Services Information Exchange (EGSIE), at [www.apec.egs.org](http://www.apec.egs.org). This tool will assist APEC economies in better understanding and promoting their EGS industries, and expanding EGS trade and investment in the region.



# APPENDIX II



**APPENDIX**  
**US Data for Given Trade Partners in Rank Order of US Goods Exports**  
(Values in Millions of Dollars)

Country	Trade Balance		Change	Exports*	Exports*	Change 08/09		Imports**	Imports**	Change 08/09		FDI***	FDI***	% Change	FDI Area
	2007	2008	2008-09	2008	2009	Value	Percent	2008	2009	Value	Percent	2007	2008	2007-08	
World	-816,199	-501,190	315,009	1,287,442.0	1,056,895.0	-230,547	-17.91	2,103,640.7	1,558,085.0	-545,556	-25.93	2,916,930	3,162,021	8.40	Nonbank Holding Co, Finance/Ins, Manuf
Canada	-78,342	-20,183	58,159	261,149.8	204,728.1	-56,422	-21.61	339,491.4	224,910.8	-114,581	-33.75	233,971	227,298	-2.85	Manuf., Finance/Insurance, Nonbank Holding Co
Mexico	-64,722	-47,539	17,182	151,220.1	128,997.7	-22,222	-14.70	215,941.6	176,537.0	-39,405	-18.25	91,259	95,618	4.78	Manuf, Nonbank Holding Co, Finance/Ins
China	-268,040	-226,826	41,214	69,732.8	69,576.0	-157	-0.22	337,772.6	296,402.1	-41,370	-12.25	28,597	45,695	59.79	Manufacturing
Japan	-74,120	-44,769	29,351	65,141.8	51,179.6	-13,962	-21.43	139,262.2	95,949.0	-43,313	-31.10	81,923	79,235	-3.28	Finance/Ins, Manuf, Wholesale
United Kingdom	-4,988	-1,772	3,216	53,599.1	45,713.7	-7,885	-14.71	58,587.4	47,485.9	-11,101	-18.95	424,612	420,873	-0.88	Finance/Ins, Nonbank Holding Co, Manuf
Germany	-42,991	-27,954	15,037	54,505.3	43,298.6	-11,207	-20.56	97,496.6	71,253.1	-26,244	-26.92	100,806	110,784	9.90	Manuf, Nonbank Holding Co, Finance/Insurance
Netherlands	18,597	16,244	-2,352	39,719.5	32,347.0	-7,372	-18.56	21,122.9	16,102.8	-5,020	-23.77	389,430	442,926	13.74	Nonbank Holding Co, Finance/Insurance, Manuf
Korea, Republic of	-13,400	-10,595	2,805	34,668.7	28,640.0	-6,029	-17.39	48,069.1	39,235.1	-8,834	-18.38	26,854	27,673	3.05	Manuf., Finance/Insurance, Wholesale trade
France	-15,209	-7,512	7,697	28,840.1	26,522.3	-2,318	-8.04	44,049.3	34,034.2	-10,015	-22.74	70,113	75,040	7.03	Manuf, Nonbank Holding Co
Brazil	1,846	6,101	4,256	32,298.7	26,175.3	-6,123	-18.96	30,452.9	20,073.9	-10,379	-34.08	47,750	45,500	-4.71	Manufacturing, Finance/Insurance
Singapore	11,969	6,620	-5,349	27,853.6	22,278.5	-5,575	-20.02	15,884.9	15,658.6	-226	-1.42	94,810	106,529	12.36	Nonbank Holding Co, Manuf
Belgium	11,595	7,849	-3,746	28,903.5	21,629.7	-7,274	-25.17	17,308.1	13,780.6	-3,527	-20.38	62,959	65,054	3.33	Finance/Insurance, Manufacturing
Hong Kong	15,015	17,552	2,536	21,498.6	21,118.5	-380	-1.77	6,483.4	3,566.8	-2,917	-44.99	50,199	51,505	2.60	Nonbank Holding Co, Fin/Ins, Wholesale trade
Australia	11,630	11,583	-47	22,218.6	19,597.5	-2,621	-11.80	10,588.8	8,014.9	-2,574	-24.31	83,346	88,549	6.24	Mining, Nonbank Holding Co, Information, Manuf
Taiwan	-11,400	-9,942	1,458	24,926.3	18,432.4	-6,494	-26.05	36,326.1	28,374.6	-7,951	-21.89	15,711	16,604	5.68	Finance/Ins, Manuf., Wholesale trade
Switzerland	4,242	1,466	-2,775	22,023.6	17,499.1	-4,525	-20.54	17,781.9	16,032.9	-1,749	-9.84	97,917	123,358	25.98	Nonbank Holding Co, Wholesale trade
India	-8,022	-4,714	3,309	17,682.1	16,462.4	-1,220	-6.90	25,704.4	21,176.2	-4,528	-17.62	14,540	16,104	10.76	Information, Manufacturing
Italy	-20,674	-14,184	6,491	15,460.8	12,232.6	-3,228	-20.88	36,135.0	26,416.2	-9,719	-26.90	26,731	28,653	7.19	Manuf, Finance/Insurance
United Arab Emirates	13,131	10,610	-2,521	14,417.4	12,107.3	-2,310	-16.02	1,286.2	1,496.8	211	16.37	2,969	3,423	15.29	Manuf, Mining
Saudi Arabia	-42,263	-11,242	31,021	12,484.2	10,803.7	-1,681	-13.46	54,747.4	22,046.0	-32,701	-59.73	5,013	5,382	7.36	Nonbank Holding Co
Malaysia	-17,787	-12,877	4,909	12,949.5	10,401.5	-2,548	-19.68	30,736.1	23,278.8	-7,457	-24.26	13,037	13,291	1.95	Manuf, Mining
Israel	-7,849	-9,177	-1,328	14,486.9	9,567.8	-4,919	-33.96	22,335.8	18,744.8	-3,591	-16.08	9,464	10,153	7.28	Manuf
Colombia	-1,656	-1,862	-206	11,437.3	9,457.8	-1,979	-17.31	13,093.2	11,319.9	-1,773	-13.54	4,496	6,263	39.30	Mining, Manufacturing
Chile	3,661	3,415	-247	11,857.4	9,365.3	-2,492	-21.02	8,196.0	5,950.4	-2,246	-27.40	11,568	12,613	9.03	Finance/Insurance, Manuf., Banking, Mining
Venezuela	-38,814	-18,735	20,079	12,610.0	9,359.8	-3,250	-25.78	51,423.6	28,094.4	-23,329	-45.37	15,748	17,332	10.06	Nonbank Holding Co, Manuf, Finance/Insurance
Spain	1,096	886	-210	12,189.8	8,750.8	-3,439	-28.21	11,093.9	7,865.0	-3,229	-29.10	66,621	66,649	0.04	Nonbank Holding Co, Manuf, Finance/Ins
Ireland	-23,736	-20,550	3,186	7,610.8	7,516.4	-94	-1.24	31,346.5	28,066.0	-3,281	-10.47	114,876	146,194	27.26	Nonbank Holding Co, Finance/Insurance, Manuf
Turkey	5,317	3,427	-1,890	9,958.7	7,089.0	-2,870	-28.82	4,641.9	3,662.1	-980	-21.11	5,974	6,089	1.93	Banking, Wholesale trade, Manuf
Thailand	-14,472	-12,164	2,307	9,066.6	6,920.8	-2,146	-23.67	23,538.3	19,085.2	-4,453	-18.92	8,850	9,128	3.14	Manuf, Banking, Finance/Insurance
Philippines	-418	-1,024	-606	8,294.9	5,772.8	-2,522	-30.40	8,713.3	6,797.1	-1,916	-21.99	7,066	5,914	-16.30	Manufacturing
Argentina	1,714	1,670	-44	7,536.3	5,559.7	-1,977	-26.23	5,822.1	3,889.8	-1,932	-33.19	14,061	15,195	8.06	Nonbank Holding Co, Manuf, Mining
Russia	-17,448	-12,838	4,610	9,334.6	5,382.8	-3,952	-42.33	26,783.0	18,221.0	-8,562	-31.97	14,404	9,157	-36.43	Mining, Manuf
Dominican Republic	2,617	1,941	-675	6,594.4	5,269.9	-1,324	-20.09	3,977.8	3,328.8	-649	-16.32	766	960	25.33	Manufacturing
Egypt	3,632	3,200	-432	6,002.2	5,257.6	-745	-12.41	2,370.4	2,057.8	-313	-13.19	7,147	8,771	22.72	Mining
Indonesia	-10,155	-7,832	2,323	5,644.5	5,106.4	-538	-9.53	15,799.1	12,938.5	-2,861	-18.11	17,679	17,909	1.30	Nonbank Holding Co, Mining
Peru	371	733	363	6,183.0	4,925.2	-1,258	-20.34	5,812.5	4,192.1	-1,620	-27.88	7,551	8,458	12.01	Mining
Costa Rica	1,742	-897	-2,639	5,679.8	4,704.4	-975	-17.17	3,938.1	5,601.4	1,663	42.24	2,265	2,525	11.48	Manuf, Professional Scientific and Technical
Sweden	-7,480	-3,643	3,837	5,018.3	4,563.6	-455	-9.06	12,498.3	8,206.6	-4,292	-34.34	35,120	43,391	23.55	Nonbank Holding Companies, Finance/Insurance
South Africa	-3,458	-1,418	2,040	6,490.5	4,460.7	-2,030	-31.27	9,948.0	5,878.7	-4,069	-40.91	5,198	4,915	-5.44	Manuf, Wholesale trade
Panama	4,508	4,054	-454	4,887.3	4,358.0	-529	-10.83	379.1	304.2	-75	-19.75	6,509	7,243	11.28	Finance/Insurance, Wholesale trade

\* US Total Goods Exports (f.a.s.); \*\* US General Goods Imports (customs value); \*\*\* Stock of US Foreign Direct Investment Abroad

**APPENDIX**  
**US Data for Given Trade Partners in Rank Order of US Goods Exports**  
(Values in Millions of Dollars)

Country	Trade Balance		Change 2008-09	Exports* 2008	Exports* 2009	Change 08/09		Imports** 2008	Imports** 2009	Change 08/09		FDI*** 2007	FDI*** 2008	% Change 2007-08	FDI Area
	2007	2008				Value	Percent			Value	Percent				
Ecuador	-5,598	-1,345	4,253	3,450.0	3,927.0	477	13.82	9,048.4	5,272.3	-3,776	-41.73	977	1,276	30.60	Mining, Manuf., Wholesale trade
Guatemala	1,256	763	-492	4,718.3	3,900.7	-818	-17.33	3,462.7	3,137.6	-325	-9.39	614	915	49.02	
Nigeria	-33,966	-15,470	18,495	4,102.4	3,658.0	-444	-10.83	38,068.0	19,128.3	-18,940	-49.75	1,433	3,393	136.78	Mining, Nonbank Holding Companies
Honduras	805	60	-745	4,846.2	3,384.0	-1,462	-30.17	4,041.2	3,324.0	-717	-17.75	640	700	9.38	
Vietnam	-10,112	-9,182	929	2,789.4	3,107.6	318	11.41	12,901.1	12,289.9	-611	-4.74	426	473	11.03	
Norway	-4,023	-2,927	1,096	3,292.2	2,752.2	-540	-16.40	7,315.1	5,679.2	-1,636	-22.36	12,044	10,889	-9.59	Mining, Manufacturing
Qatar	2,232	2,214	-17	2,715.9	2,720.2	4	0.16	484.3	505.8	22	4.44	7,673	9,158	19.35	
Austria	-5,808	-3,839	1,969	2,649.1	2,538.5	-111	-4.18	8,457.0	6,377.2	-2,080	-24.59	16,527	17,518	6.00	Nonbank Holding Co, Manuf
Greece	933	1,635	703	1,931.6	2,475.7	544	28.17	998.9	840.6	-158	-15.85	2,116	2,125	0.43	Wholesale trade, Finance/Insurance
Poland	1,544	265	-1,278	4,130.6	2,304.9	-1,826	-44.20	2,586.9	2,039.5	-547	-21.16	15,239	15,597	2.35	Manufacturing
New Zealand	-637	-397	240	2,533.9	2,160.5	-373	-14.74	3,170.8	2,557.5	-613	-19.34	5,395	5,266	-2.39	Manuf, Finance/Insurance
Denmark	-3,735	-3,503	232	2,711.1	2,058.5	-653	-24.07	6,446.4	5,561.8	-885	-13.72	8,273	10,393	25.63	Manuf, Nonbank Holding Co, Wholesale trade
El Salvador	234	197	-37	2,462.0	2,019.3	-443	-17.98	2,228.0	1,822.0	-406	-18.22	1,559	3,215	106.22	
Kuwait	-4,374	-1,831	2,543	2,719.3	1,951.8	-768	-28.23	7,093.0	3,782.6	-3,310	-46.67		1,459		
Finland	-2,142	-2,319	-176	3,760.8	1,665.6	-2,095	-55.71	5,903.3	3,984.3	-1,919	-32.51	2,196	2,298	4.64	Manuf, Wholesale trade
Pakistan	-1,693	-1,539	155	1,897.8	1,624.9	-273	-14.38	3,591.1	3,163.5	-428	-11.91	514	482	-6.23	
Morocco	557	1,138	581	1,435.9	1,606.1	170	11.86	878.7	468.0	-411	-46.74	249	252	1.20	
Angola	-16,892	-7,916	8,976	2,019.2	1,422.9	-596	-29.53	18,911.3	9,338.9	-9,572	-50.62	1,627	2,130	30.92	
Paraguay	1,532	1,296	-235	1,609.9	1,352.6	-257	-15.99	78.4	56.4	-22	-28.08	111	151	36.04	
Luxembourg	452	850	398	988.0	1,292.1	304	30.78	536.1	442.6	-94	-17.45	153,639	163,167	6.20	Nonbank Holding Co, Finance/Insurance
Hungary	-1,672	-993	679	1,431.0	1,231.7	-199	-13.93	3,102.8	2,224.4	-878	-28.31	4,302	5,103	18.62	Manufacturing
Jordan	-197	269	466	940.3	1,193.4	253	26.91	1,137.5	924.1	-213	-18.76	119	121	1.68	
Oman	530	180	-350	1,382.0	1,087.5	-295	-21.31	851.9	907.8	56	6.57				
Portugal	195	-484	-678	2,646.0	1,085.3	-1,561	-58.98	2,451.4	1,569.0	-882	-36.00	3,123	3,397	8.77	Wholesale trade, Manuf
Czech Republic	-1,190	-951	239	1,378.4	969.7	-409	-29.65	2,568.7	1,921.0	-648	-25.21	4,180	4,654	11.34	Manuf, Finance/Insurance
Ukraine	-472	401	873	1,868.0	890.1	-978	-52.35	2,339.9	489.2	-1,851	-79.09	991	910	-8.17	
Nicaragua	-609	-896	-287	1,094.2	715.0	-379	-34.65	1,703.6	1,611.3	-92	-5.42	237	162	-31.65	
Romania	-58	-72	-13	1,048.2	671.6	-377	-35.93	1,106.7	743.5	-363	-32.82	994	1,184	19.11	
Bahrain	291	205	-86	829.5	668.6	-161	-19.40	538.9	463.5	-75	-13.99	80	18	-77.50	
Kenya	99	374	275	442.4	654.4	212	47.92	343.5	280.6	-63	-18.32	193	183	-5.18	
Ghana	386	499	113	608.4	634.3	26	4.25	222.2	134.8	-87	-39.34				
Kazakhstan	-618	-946	-328	985.5	599.5	-386	-39.17	1,603.4	1,545.8	-58	-3.59	6,387	6,689	4.73	
Bolivia	-122	-73	49	389.3	431.7	42	10.88	511.0	504.5	-6	-1.26				
Ethiopia	149	163	14	301.6	276.0	-26	-8.49	152.2	112.9	-39	-25.86	2	2	0.00	
Sri Lanka	-1,679	-1,364	315	283.3	229.5	-54	-18.97	1,961.9	1,593.6	-368	-18.77	80	114	42.50	
Cambodia	-2,257	-1,798	460	154.2	127.2	-27	-17.48	2,411.5	1,924.8	-487	-20.18				
Brunei	-3	59	61	111.5	100.2	-11	-10.14	114.3	41.6	-73	-63.61	28	26	-7.14	
Congo, Dem Rep of	-136	-251	-115	130.3	79.9	-50	-38.72	266.2	330.5	64	24.17				
Laos	-24	-23	1	18.3	20.4	2	11.45	42.4	43.4	1	2.25				
European Union - 27	-95,807	-60,544	35,263	271,810.0	220,776.0	-51,034	-18.78	367,617.0	281,320.0	-86,297	-23.47	1,504,444	1,630,785	8.40	Nonbank Holding Co, Finance/Ins, Manuf

\* US Total Goods Exports (f.a.s.); \*\* US General Goods Imports (customs value); \*\*\* Stock of US Foreign Direct Investment Abroad