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# LIST OF FREQUENTLY USED ACRONYMS

| | |
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| APEC | Asia Pacific Economic Cooperation |
| ASEAN | Association of Southeast Asian Nations |
| BIT | Bilateral Investment Treaty |
| CACM | Central American Common Market |
| CARICOM | Caribbean Common Market |
| CFTA | Canada Free Trade Agreement |
| EU | European Union |
| EFTA | European Free Trade Association |
| GATS | General Agreement on Trade in Services |
| GATT | General Agreement on Tariffs and Trade |
| GCC | Gulf Cooperation Council |
| GDP | Gross Domestic Product |
| GSP | Generalized System of Preferences |
| IPR | Intellectual Property Rights |
| ITA | Information Technology Agreement |
| MAI | Multilateral Agreement on Investment |
| MERCOSUR | Southern Common Market |
| MFA | Multifiber Arrangement |
| MOSS | Market-Oriented-Sector-Selective |
| MOU | Memorandum of Understanding |
| MRA | Mutual Recognition Agreement |
| NAFTA | North American Free Trade Agreement |
| NIS | Newly Independent States |
| OECD | Organization for Economic Cooperation and Development |
| SADC | Southern African Development Community |
| TRIPs | Trade-Related Aspects of Intellectual Property Rights |
| USDA | U.S. Department of Agriculture |
| USITC | U.S. International Trade Commission |
| USTR | United States Trade Representative |
| WTO | World Trade Organization |

# CONTENTS

**COMPILATION OF COUNTRIES:**

# FOREWORD

The 1997 National Trade Estimate Report on Foreign Trade Barriers (NTE) is the twelfth in an annual series that surveys significant foreign barriers to U.S. exports.

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

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

The report provides, where feasible, quantitative estimates of the impact of these foreign practices on the value of U.S. exports. Information is also included on actions being taken to eliminate any act, policy, or practice identified in the report.

**SCOPE AND COVERAGE**

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

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

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

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

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

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

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

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

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

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

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

This report discusses the largest export markets for the United States, including 46 nations,[3] Taiwan, Hong Kong, and two regional bodies. Some countries were excluded from this report due primarily to the relatively small size of their markets or the absence of major trade complaints from representatives of U.S. goods and services sectors. However, the omission of particular countries and barriers does not imply that they are not of concern to the United States.

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

The merchandise trade data contained in the NTE report are based on total U.S. exports, free alongside (f.a.s.)[4] value, and general U.S. imports, customs value (defined in Section 402, Tariff Act of 1930, 19 U.S.C. 1401a), as reported by the Bureau of the Census, Department of Commerce. (NOTE: These data are ranked according to size of export market in the Appendix.) The direct investment data are from the September 1996 issue of the Survey of Current Business and unpublished data from the Bureau of Economic Analysis, Department of Commerce.

**TRADE IMPACT ESTIMATES AND FOREIGN BARRIERS**

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

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

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

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

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

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

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

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

In some cases, industry valuations estimating the financial effects of barriers are contained in the report. The methods 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 31, 1997

### Endnotes

1. The current NTE report covers only those financial services-related market access issues brought to the attention of USTR by outside sources. For the reader interested in a more comprehensive discussion of financial services barriers, the Treasury Department publishes quadrennially (most recently in 1994) the National Treatment Study. Prepared in collaboration with the Secretary of State, the Office of the Comptroller of the Currency, the Federal Reserve Board, the Federal Deposit Insurance Corporation, the Securities and Exchange Commission, and the Department of Commerce, the Study analyzes in detail treatment of U.S. commercial banks and securities firms in foreign markets. It is intended as an authoritative reference for assessing financial services regimes abroad.

2. It is difficult to obtain information on specific problems associated with bribery and corruption, particularly since its perpetrators go to great lengths to conceal their activities. Nevertheless, a consistent complaint from U.S. firms is that they have experienced situations that suggest corruption has played a role in the award of foreign contracts.

This is particularly true in large infrastructure projects. Companies located in other countries generally do not face the constraints applied to U.S. firms under the Foreign Corrupt Practices Act (FCPA) in their dealings with government officials in third countries. The result can be a competitive advantage in favor of foreign firms in international transactions, particularly in the developing world.

Corruption takes many forms. For example, in many countries, it is seen in government procurement and Customs practices. If left unchecked, bribery and corruption can negate market access gained through trade negotiations and could begin to undermine the foundations of the international trading system.

The United States has taken an active role in addressing bribery and corruption in international business transactions. With the strong urging of the United States, at the 1996 OECD Ministerial meeting, Ministers committed to take steps to eliminate the tax deductibility in their countries of bribes to foreign public officials, to criminalize bribery, and to examine methods to accomplish those objectives. We continue to exhort our trading partners to criminalize bribery directly, through national laws, rather than through the time-consuming international treaty process. Finally, the United States is pressing for a strong follow-up OECD recommendation on criminalization at the May 1997 Ministerial meeting, preferably to be based upon a recommendation by the Working Group on Bribery on a common set of essential elements for effective criminalization of foreign bribery.

In March 1996, countries in the Western Hemisphere concluded negotiation of the Inter-American Convention Against Corruption. This Convention, a direct result of the Summit of the Americas Plan of Action, includes language modeled on the FCPA, thereby multilateralizing the criminalization of bribery within the region. The Convention entered into force in March 1997 and awaits ratification by the U.S. Senate. Meanwhile, the Organization of American States is working on a set of model laws that ratifying countries can use to implement the Convention.

To complement efforts in these fora, the United States has proposed that the World Trade Organization (WTO) take up work in related areas. Several existing WTO Agreements, such as the Customs Valuation Agreement and the Pre-shipment Inspection Agreement, already address some problems associated with bribery and corruption. At the December 1996 Ministerial meeting in Singapore, the United States succeeded in gaining approval of the formation of a working group to study transparency in government procurement practices, with a view towards developing elements for inclusion in a multilateral agreement. A separate WTO Ministerial decision to undertake exploratory and analytical work on the simplification of trade and customs procedures should provide an opportunity for the WTO to identify and pursue means to reduce the impact of bribery and corruption on international trade, particularly with respect to balance of payments, customs valuation, and pre-shipment inspection provisions.

3. This total includes as one unit the Newly Independent States (NIS), comprising Armenia, Azerbaijan, Belarus, Georgia, Kazakstan, Kyrgyzstan, Moldova, Tajikistan, Turkmenistan, Ukraine, and Uzbekistan.

4. 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.

# Foreword

# THE ARAB LEAGUE

**(Boycott of Israel)**

The Arab League boycott of the state of Israel is an impediment to U.S. trade and investment in the Middle East and North Africa. While the primary aspect of the boycott prohibits the importation of Israeli-origin goods and services into boycotting countries, the secondary and tertiary aspects of the boycott discriminate against U.S. and other foreign firms that do business with both Israel and boycotting countries. (Arab League members include the Palestinian Authority and the following states: Algeria, Bahrain, Comoros, Djibouti, Egypt, Iraq, Jordan, Kuwait, Lebanon, Libya, Mauritania, Morocco, Oman, Qatar, Saudi Arabia, Somalia, Sudan, Syria, Tunisia, the United Arab Emirates (U.A.E.), and Yemen.) The secondary and tertiary aspects of the boycott directly affect U.S. exports to the region. The secondary aspect prohibits any entity in Arab League states from engaging in business with U.S. or other foreign firms that contribute to Israel's military or economic development. 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.

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

The legal structure of the boycott in the Arab League remains unchanged. The de facto status has changed significantly.

Some member governments of the Arab League have consistently maintained that only the Arab League as a whole can revoke the boycott. Other member governments support national discretion on adherence to the boycott, and a number of states have taken steps to dismantle their adherence to some aspects of it. Enforcement of the boycott remains the responsibility of individual member states, and enforcement efforts vary widely from country to country.

Egypt has not enforced any aspect of the boycott since 1980, pursuant to its 1979 Treaty of Peace with Israel. Jordan formally terminated its adherence to all aspects of the boycott effective August 16, 1995, when legislation implementing the Treaty of Peace with Israel was enacted. The Palestinian Authority agreed not to enforce the boycott in a 1995 letter to then-U.S. Trade Representative Kantor. In addition, the Gulf Cooperation Council countries (Bahrain, Kuwait, Oman, Qatar, Saudi Arabia, and the U.A.E.) announced in September 1994 their non-adherence to the secondary and tertiary aspects (a decision which Kuwait had announced previously). Accordingly, requests that foreign firms comply with secondary and tertiary boycott certifications are typically withdrawn when challenged. In 1996, both Oman and Qatar ended boycott enforcement and established reciprocal trade arrangements with Israel. The boycott, however, remains a substantive impediment to doing business in countries which rigidly impose its terms, such as Syria.

Under U.S. antiboycott legislation enacted in 1978, U.S. firms are prohibited from providing any information about business relationships in response to a boycott request and are required to report receipt of any such request to the U.S. Department of Commerce's Office of Antiboycott Compliance. U.S. antiboycott laws also prohibit U.S. persons from taking certain other actions, including refusal to do business with a blacklisted company. Encouragingly, the number of boycott related requests to U.S. firms to take prohibited actions is significantly diminished across the region. In some states, such as Oman, apparent requests now reflect obsolete references in procurement or import documents rather than official policy. The fact that the de jure status of the boycott and U.S. law remain unchanged, however, make the boycott a continuing problem for firms that may have to report boycott-related requests.

Where enforced, the boycott serves as a ban or zero quota on the products of a blacklisted firm. While it is unevenly applied, the boycott results in significant economic harm to U.S. firms in terms of lost sales, foregone opportunities and distortion of investment decisions which are difficult to quantify accurately.

# ARGENTINA

In 1996, the U.S. trade surplus with Argentina was more than $2.2 billion, a decrease of $193 million from the U.S. trade surplus of approximately $2.4 billion in 1995. U.S. merchandise exports to Argentina were $4.5 billion, an increase of $326 million (7.8 percent) from the level of U.S. exports to Argentina in 1995. Argentina was the United States' twenty-sixth largest export market in 1996. U.S. imports from Argentina were nearly $2.3 billion in 1996, an increase of $518 million (29.4 percent) from the level of imports in 1995.

The stock of U.S. foreign direct investment (FDI) in Argentina in 1995 was nearly $8.0 billion, an increase of 33.9 percent from the level of U.S. FDI in 1994. U.S. FDI in Argentina is concentrated largely in the manufacturing, wholesale, and petroleum sectors.

A U.S.-Argentine Bilateral Investment Treaty (BIT) entered into force in October 1994. Under the BIT, U.S. investors enjoy national treatment in all sectors except shipbuilding, fishing, and nuclear power generation. An amendment to the treaty removed mining, except uranium production, from the list of exceptions. The treaty provides for arbitration of disputes by the International Center for the Settlement of Investment Disputes or other mutually acceptable international bodies.

**IMPORT POLICIES**

Since 1989, the Menem administration has made significant progress in reducing traditional border measure barriers (such as tariffs and import licensing) and non-border measure barriers (in areas such as investment and government procurement). A number of serious barriers remain, however.

Argentina, Brazil, Paraguay, and Uruguay officially established MERCOSUR (the Spanish abbreviation for Southern Common Market) in January 1991. On January 1, 1995, MERCOSUR formed a partial customs union and a common external tariff (CET) covering 85 percent of traded goods. MERCOSUR will gradually phase in coverage of the CET through 2006, when all products should be covered by the customs union. Chile signed a free trade agreement, effective October 1, 1996, with MERCOSUR, but will not participate in the CET. Bolivia will enter into a similar arrangement on April 1, 1997.

MERCOSUR's CET ranges from 0 to 20 percent. Capital goods and informatics are excepted until 2001, and telecommunications equipment until 2006. In 1995, Argentina raised the tariffs on these goods to help counter an expected fiscal shortfall. Argentina's current average tariff (CET plus exceptions) is around 12 percent. At the request of the United States and other World Trade Organization (WTO) members, the MERCOSUR countries agreed to the formation of a working party in the WTO to examine the consistency of MERCOSUR with the WTO rules. The United States will also continue to engage this group of countries on a bilateral basis in an effort to expand trade and investment and reduce barriers to commerce.

In September 1995, the Government of Argentina imposed "specific duties" on textiles, apparel, and footwear. The specific duties are inconsistent with Argentina's WTO binding, which calls for ad valorem duties not to exceed 35 percent. The Government of Argentina also imposes a 3 percent "statistical tax" on these and other imports that is inconsistent with its WTO obligations. The United States has asked

Argentina to eliminate these measures or otherwise bring them into conformity with the WTO. After more than a year of consultations on this issue, the U.S. Government initiated a Section 301 investigation in October 1996. Several rounds of consultations were held, but no resolution has been found. On February 25, 1997, the WTO Dispute Settlement Body established a panel to review the specific duties and "statistical tax." However, that same day, Argentina informed the WTO that it revoked the specific duties on footwear and replaced them with nearly identical provisional safeguard duties, which may remain in place for 200 days. At that time, Argentina will have to determine whether it will take a longer lasting safeguard action.

Argentina no longer maintains an import licensing regime, but it does impose burdensome country of origin requirements. Import quotas exist in the auto sector, but the quotas are supposed to be eliminated by January 1, 2000, as required by the WTO. MERCOSUR members have agreed to implement a MERCOSUR automotive policy in the year 2000 to harmonize policies. The Argentine Government currently establishes annual quotas for official distributors of foreign cars and auto dealers, as well as for other firms and individuals.

In October 1995, Argentina suspended imports of fresh fruit from California in response to oriental fruit fly detections in that state. The U.S. Department of Agriculture (USDA) provided Argentina's quarantine agency data and background information on the situation, and Argentina has partially lifted the suspension. USDA continues to press Argentina to completely revoke the suspension.

In addition, certain U.S. fruits, such as Florida citrus, are currently denied access to Argentina, while others face uncertain and non-transparent phytosanitary entry requirements.

## LACK OF INTELLECTUAL PROPERTY PROTECTION

### Patents

Reform of Argentina's patent protection for pharmaceutical products has been a contentious bilateral issue over the last ten years. In March 1996, the Executive issued a decree authorizing the National Intellectual Property Institute to approve pharmaceutical patents starting in November 2000. The decree does not provide "pipeline" protection for products patented in other countries but not marketed in Argentina and contains ambiguous provisions on compulsory licenses and parallel imports. Compulsory licenses can be awarded in cases of anticompetitive practices or for failure to supply the domestic market.

The March 1996 decree provides less protection than that sought by the Menem administration to fulfill previous commitments to the United States to resolve a Section 301 investigation. U.S. industry estimates that Argentina's lack of pharmaceutical patent protection results in losses of over $540 million a year. In December 1996, the Argentine Congress passed a data exclusivity law for firms seeking approval to market a pharmaceutical product. However, the law fails to protect adequately from unauthorized use by third parties the data submitted to health authorities. In January 1997, during a Special 301 out-of-cycle review (OCR), the U.S. Government announced the suspension of 50 percent of Argentina's GSP benefits effective in April 1997 because of Argentina's lack of patent protection for pharmaceuticals. U.S. officials continue to urge Argentina to improve its patent and data exclusivity regimes.

**Copyrights**

Argentina's copyright laws and regulations have generally been adequate. Although the copyright law, dating from 1933, did not cover computer software, the government issued a decree in 1994 extending copyright protection to software. However, a local court ruled in late 1995 that the 1994 decree cannot authorize criminal sanctions for software piracy. The case has been appealed to the Supreme Court, which has not yet decided whether it will hear the case. Argentine police continue to conduct raids against software pirates, but the case has impeded the industry's anti-piracy efforts.

In 1993, the Menem administration issued a decree raising the term of protection for cinematographic works from 30 to 50 years after the death of the author to conform with the Berne Convention standard. Cable television piracy has diminished in recent years. Video piracy, however, is a severe problem, causing the home video rental market for legitimate tapes to decline significantly. In addition, according to some estimates, pirated products, virtually all of them imported, account for 30 percent of the sound recording market.

U.S. industry estimates that losses due to copyright piracy in Argentina total about $255 million annually.

**Trademarks**

U.S. companies report that they continue to experience problems with enforcement of their trademarks, which is adversely affected by the inability to seek criminal prosecution, monetary damages, and criminal sanctions against counterfeiters.

**SERVICES BARRIERS**

Although Argentina has undertaken liberalization in the services area as part of its broader economic reform program, some barriers continue to exist. Fifty percent of the participants in the production of any broadcast advertisement must be Argentine, effectively barring use of foreign-based advertisements. In May 1996, the Argentine Government issued a regulation requiring local generation of a majority of cable channels carried by cable/pay television operators in Argentina. The regulation also obliges all operators to register their programming with a government body.

Entry into the insurance sector, previously limited, was liberalized in early 1992, allowing foreign firms established as local companies to compete on an equal footing with those owned by Argentines. However, foreign firms must have a subsidiary in Argentina to sell insurance locally. Since September 1993, foreign companies have been permitted to purchase existing life insurance licenses from Argentine companies, essentially establishing a new company with these acquired licenses. The state reinsurance firm, was abolished by a decree promulgated on January 27, 1992, and the requirement to reinsure 60 percent of each policy with the state eliminated retroactively to January 1, 1992. The privatization of pension funds has attracted a number of U.S. firms.

In October 1994, Law 24.377 modified the existing Argentine film law (Law 17.741). Included in the new legislation is (1) a 10 percent tax on the rental and sale of all home video products; (2) a provision calling for the obligatory exhibition and remuneration of national short subject films; and (3) a provision authorizing the Argentine Film Institute to oversee obligatory local processing, dubbing, and subtitling of foreign films. The second provision has yet to be implemented.

In the recently concluded WTO negotiations on basic telecommunications services, Argentina made commitments on most basic telecom services. It adopted the reference paper on regulatory commitments. Argentina limited market access and national treatment for cellular services to a duopoly system, and excluded market access for geostationary satellite systems. Resolutions 14/87 and 242/97, passed in January and February 1997, respectively, preclude foreign access to Argentina's satellite services market.

# AUSTRALIA

In 1996, the U.S. trade surplus with Australia was $8.1 billion, an increase of $667 million from the U.S. trade surplus of $7.5 billion in 1995. U.S. merchandise exports to Australia were nearly $12.0 billion, an increase of over $1.2 billion (11.2 percent) from the level of U.S. exports to Australia in 1995. Australia was the United States' fourteenth largest export market in 1996. U.S. imports from Australia were nearly $3.9 billion in 1996, an increase of $535 million (16.1 percent) from the level of imports in 1995.

The stock of U.S. foreign direct investment (FDI) in Australia in 1995 was $24.7 billion, an increase of 24.2 percent from the level of U.S. FDI in 1994. U.S. FDI in Australia is concentrated largely in the manufacturing and petroleum sectors.

The Government of Australia is continuing a policy of economic reform begun in the 1980s to make Australia more competitive in the global economy. This chapter describes areas of specific concern to the United States.

## IMPORT POLICIES

### Tariffs

As calculated for Australia's WTO trade policy review, the trade-weighted average tariff was 4.1 percent in 1993/94; a projected 2.8 percent in 1996/97; and a projected 2.2 percent in 2000/01. This represents a tariff reduction of 72 percent compared to 1987 duty rates. With the conclusion of the Uruguay Round, Australia bound over 94 percent of its industrial tariff lines. As part of its Asia Pacific Economic Cooperation (APEC) Individual Action Plan (IAP), Australia has committed to further tariff liberalization.

In May 1994, the Government of Australia released a white paper reiterating its commitment to unilateral tariff reform. Following through on its commitment, the government reduced all tariffs (except those on textile, clothing and footwear (TCF), automotive parts, and motor vehicles) in stages to 5 percent by July 1, 1996. This included the reduction of traditionally high-tariff goods of particular interest to U.S. exporters, such as wine, torque wrenches (down from 17 percent), and aluminum screening (16 percent). However, in the Uruguay Round, Australia did not join most other members of the Organization for Economic Cooperation and Development (OECD) in agreeing to phase out tariffs on paper and plasterboard products. Australia also declined to participate in the "zero for zero" agreement for distilled spirits (Australia is the third largest market for U.S. exports of distilled spirits).

The tariff rate on passenger motor vehicles and their original equipment components, currently 22.5 percent (down from 25 percent as of January 1, 1996), will be reduced in stages to 15 percent by January 1, 2000. A recent Australian Industry Commission draft study has recommended that the tariff rate on motor vehicles be reduced to 5 percent by 2004. The Government of Australia has indicated that further unilateral tariff cuts beyond 2000 may be conditioned on reciprocal cuts in automotive-exporting countries. Tariffs on light commercial and four-wheel drive vehicles and components were reduced to 5 percent on July 1, 1996. Replacement components for passenger vehicles will remain at 15 percent from July 1, 1996, until the year 2000. Under Australian“automotive arrangements,” automobile manufacturers may import duty-free dutiable components up to a value equal to 15 percent of their automobile production in a given year.

By July 1, 2000, Australia will reduce tariffs on carpets (currently 23 percent) to 15 percent and on TCF items to a maximum of 25 percent. Tariffs on cotton sheeting and woven fabrics will fall to 15 percent from the current maximum rate of 25 percent. Tariffs on apparel and certain finished textiles (now up to 37 percent) will be reduced to 25 percent. Footwear tariffs (now up to 27 percent) will fall to 15 percent and tariffs on footwear parts (now up to 15 percent) to 10 percent.

**STANDARDS, TESTING, LABELING, AND CERTIFICATION**

The Government of Australia limits livestock and poultry imports through quarantine and health restrictions, some of which the Australian Government has not scientifically justified as required by their WTO commitments. The federal government has indicated an “in-principle” decision to lift the ban on cooked chicken imports from the United States, Denmark, and Thailand. The decision has been met with strong domestic opposition. The United States believes that the recommended temperature/time requirements applicable to the treatment of processed cooked poultry meat are so extreme as to restrict imports. The Government of Australia has commissioned one final round of testing on the existing proposed time/temperature levels. The Australian Government will not issue import permits for cooked chicken meat until it receives the test results. In general, Australia prohibits poultry imports (not just cooked chicken meat) without having completed the WTO-required risk assessments. Similarly, a WTO-inconsistent ban presently exists on cooked pork (except canned products). The United States has raised these issues at the highest levels of the Australian Government and will continue to do so at all levels and in all appropriate fora.

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

Phytosanitary regulations prohibit or severely limit the entry of many fruits from the United States, including Florida citrus, grapes, blueberries, stone fruit, apples, and pears. After admitting U.S. cherries from California in 1996, the Australian Government decided to revisit the pest risk analysis because of the level of cherries which had to be treated upon arrival (no pests of quarantine significance were found). This review is nearing completion. Whether Australia will allow imports of other U.S. stone fruit will depend upon the results of the cherry review. The United States is waiting for Australia’s assessment with respect to the entry of the other named fruits.

Australia prohibits the importation of all fresh, chilled, and frozen salmon for alleged health-related concerns. The United States joined Canada in consultations with Australia on this matter under Article

XXII of the GATT 1947. In November 1995, the United States requested separate consultations under the WTO. The Government of Australia announced in December 1996 that no changes would be made to its salmon importation prohibition. The United States is currently examining whether Australia's final risk assessment is scientifically justified.

Australia recently completed an independent review of its animal, plant, and human quarantine policies. Among its findings, the review recommended basing Australia's international position on quarantine-related issues on the consistent application of risk analysis based on objective scientific principles and related international standards. It referred specifically to the restrictions placed on seeds (including bulk grains) and horticulture (including fruit, vegetables, and cut flowers). The Government of Australia is expected to respond to the report by mid-1997.

**GOVERNMENT PROCUREMENT**

Australia has yet to join and adhere to the WTO Agreement on Government Procurement. The United States continues to urge Australia to do so.

Since 1991, foreign information technology (IT) companies with annual sales to the Government of Australia of less than $40 million have been "invited" to enter into fixed-term arrangements (FTAs), and those with sales greater than $40 million into partnerships for development (PFDs). Although companies are not required to join, there is strong pressure to join in order to do business. Companies are asked to undertake an agreed-upon level of strategic activities in Australia, including research and development, training, technology transfer, capital investment, and the facilitation of export market opportunities for Australian companies. When the PFD program was first implemented, the main incentive for companies to join was to avoid "offset" obligations. After it abolished offsets in 1992, the Government of Australia prohibited its agencies from purchasing IT-related goods and services from companies that dropped out of the program.

In 1992, the scheme was extended into the telecommunications customer premises equipment sector, replacing, in large measure, the requirement that suppliers of Customer Premises Equipment (standard telephones, PABX, small business systems and cellular mobile telephones) have industrial development arrangements (IDAs) in place before obtaining licenses to connect their equipment to the public switched network. From July 1993, companies participating in PFD or FTA programs were able to seek exemption on a case-by-case basis from the IDA requirement. Australia terminated the IDA scheme in June 1996.

In February 1995, the Bureau of Industry Economics published an evaluation of the PFD and FTA programs. It recommended that both the PFD and FTA programs be continued, but that their "unwarranted emphasis on the information technology and telecommunications sector's trade balance outcome" should cease.

In 1995, the Government of Australia established the "Information Technology Services Common Use Contract Panel" (ITCUCP), to determine which companies will be used as a source for Commonwealth information technology requirements involving systems integration activity (excluding purchases of less than $1 million). Any information technology company may join upon demonstrating "acceptable levels" of Australian product development, investment in capital equipment, skills development and/or services support, and local sourcing. Potential members of the ITCUCP also will be evaluated on their Australian R&D activities, export orientation, and development of relationships with Australian and New Zealand suppliers and consumers. The ITCUCP has a much broader membership than its predecessor, which was limited to 15 private companies.

The Government of Australia's May 1994 employment and industry policy statement strengthens its efforts to use government procurement policy to encourage local industrial development. It requires industry impact statements to be drafted for procurement of $7.4 million or more, and establishes a two-envelope system for such tenders. Under this system, bidders are required to submit detailed information regarding Australian industrial involvement (AII) separately (in "envelope 2"); bids are judged both on price and product specifications, as well as industrial development grounds. U.S. firms have expressed concern that the two envelope system reduces the transparency of the bidding process by affording the Government of Australia opportunity to increase AII targets during the bidding process. In October 1995, the Industry Commission published a study critical of the two-envelope system.

## EXPORT SUBSIDIES

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

### Export Market Development Grants Scheme

The Export Market Development Grants Scheme (EMDG) aims to encourage Australian exporters to seek out and develop overseas markets for goods, services, tourism, industrial property rights, and technology that are substantially of Australian origin. EMDG grants are provided to partially reimburse Australian residents who have incurred eligible expenditures while developing overseas markets for Australian products and services. Grant recipients are reimbursed for 50 percent of their eligible expenditures above A$15,000, with a general annual grant limit of A$200,000.

### Automotive Export Facilitation Scheme

Under the terms of an export facilitation scheme, manufacturers of automotive vehicles and components receive subsidies based on the level of exports of specified automotive products. The subsidies are in the form of duty rebate “credits” which recipients can, in turn, use to offset their duty liability on imports of specified automotive products. In general, the level of subsidy is determined based on the sales value of the eligible exports, but the calculation is also performed in a way which rewards domestic value-added activities. The greater the value of any qualifying exported product, the greater the import credit granted. Significantly, however, there is no requirement that the imported products be consumed in the production of exported products. Indeed, imports of finished vehicles for consumption on the Australian market are fully eligible for duty rebates under this scheme.

Subsidy benefits are freely transferable and may be sold among participants in the program. The export facilitation scheme is scheduled to remain in force until at least December 31, 2000. Although benefits are progressively reduced each year between 1991 and 2000 in line with the reduction of 2.5 percentage points in the tariff applicable to passenger motor vehicles, the level of duty rebate will still be significant in the year 2000, when Australia's duty on imported vehicles and components will be at least 15 percent.

### Textiles, Clothing and Footwear (TCF) Import Credit Scheme

Similar to the Automotive Export Facilitation scheme, the TCF import credit scheme grants duty rebate credits to Australian exporters of TCF products. These import credits entitle the holder to a reduction in import duties on an equal value of eligible TCF imports. The value of import credits granted is calculated as a share (currently 25 percent) of the domestic value-added in TCF exports. Import credits are freely transferable and may be sold among participants in the program.

## LACK OF INTELLECTUAL PROPERTY PROTECTION

With a few exceptions, Australia provides world class intellectual property protection for copyrights, patents, trademarks, designs, integrated circuits, and plant breeders rights. Some specific issues remain of concern.

### Software Decompilation

In mid-1995, the Copyright Law Review Committee (CLRC) released its report on computer software protection. The report recommended against changing copyright law to allow the parallel importation of computer software. However, the CLRC's report also contained recommendations which would allow software decompilation for interoperability purposes. As of this writing, the Australian Government has not decided whether to allow decompilation. The U.S. Government has advised the Australians of its serious concerns with decompilation.

### Protection of Test Data

The Government of Australia recently announced a new regime governing the protection of test data for pharmaceuticals and agricultural chemicals (effective January 1, 1998). The Australian Government took the narrow approach to this issue by allowing protection for "new chemical entities" for five years from the date of registration of the originator product. It rejected the wider interpretation adopted by other countries. For industry, especially the agricultural chemical industry, this narrow approach offers limited practical protection, since "new uses and formulations" not "new chemical entities" are the areas that require attention. Furthermore, the new regime's five-year period of protection for test data is insufficient in the case of test data submitted for marketing approval of agricultural chemicals.

### Parallel Importation

Australia allows parallel importation of books under limited circumstances. When foreign publishers do not make available in Australia editions of new works within 30 days of original publication abroad, or when an Australian edition becomes unavailable and remains so for 90 days, the Australian Government permits parallel importation. The Australian Government is currently reconsidering whether to allow parallel importation of sound recordings. Later in 1997, the government will reevaluate its position on parallel importation of books and software.

### National Treatment

In September 1995, Australia's Minister for Communications and the Arts announced that the Copyright Act would be amended to, among other things, give artists and copyright owners a technology-neutral electronic transmission right that would not be granted to U.S. right holders on a national treatment basis. This particular item (which would apply to all transmission, including cable, satellite, microwave and existing forms of broadcasting) has since been removed from the amendment bill, but may be included in a separate bill for later consideration by the Parliament.

On all of these issues, the United States has vigorously voiced its concerns. Last year, USTR included Australia on the Special 301 Watch List. Australia's protection of test data represents slight progress, but the United States continues to have serious concerns on the remaining IPR issues.

## SERVICES BARRIERS

### Local Content Requirements for Broadcasting and Advertising

The Australian Broadcasting Authority (ABA), the broadcasting regulator for radio and television, liberalized rules governing local content in television advertising effective January 1, 1992. Under current rules, up to 20 percent of the time used annually for paid advertisement between the hours of 6:00 a.m. and midnight can be filled with messages produced by non-Australians. At present, those rules do not appear to have a serious effect on trade.

For broadcasts, 50 percent of a commercial television station's average annual broadcasts between the hours of 6:00 a.m. and midnight must be dedicated to Australian programs. Programs are evaluated on a complex point system based on relevancy to Australia (setting, accent, etc., ranging from no Australian content to a 100 percent Australian production). Trade sources indicate that the content regulation does not have a substantial impact on the amount of U.S.-sourced programming sold to Australian broadcasters, since the mix of programming is driven by the market's preference for Australian themes. In 1994, an average of 44 percent of commercial stations' broadcasting time was devoted to imported programming. The U.S. Government has reiterated its opposition to quotas in the context of the ABA's review of the Australian content standard. Nevertheless, the ABA decided at the conclusion of that review in September 1995 to increase the local content quota to 55 percent effective January 1, 1998.

The regulatory framework for pay television also contains a local content provision which mandates that channels carrying mostly drama programs (not sports or music channels) must allocate 10 percent of their program acquisition expenditures on new Australian dramas. A 1995 amendment to the Broadcasting Services Act 1992 provides for a ministerial review of Australian content on pay television by July 1, 1997, including consideration of the feasibility of increasing the Australian drama expenditure requirement to 20 percent. The United States has provided formal comments to Australia taking issue with such an increase.

**Telecommunications**

In recent years, the Government of Australia has significantly liberalized its telecommunications sector -- a program which will culminate on June 30, 1997, with the removal of the current restriction on the number of licensed carriers. However, the Australian Government has restricted total foreign investment in the upcoming one-third privatization of the state-owned telecommunications carrier Telstra to 35 percent of the one-third (5 percent of the one-third for individuals). Until June 30, 1997, Telstra's sole competitor in fixed services (except for resale and value-added services, which are already open to competition) is Optus Communications, which is also a mobile carrier. License conditions applying to foreign investment in Optus require that while the two current foreign investors hold more than 15 percent of Optus (they are also restricted to no more than their current holdings of 24.5 percent each), other foreign investments must be passive, portfolio investments, and must be less than 5 percent each. The directors of Optus must be Australian citizens, other than those appointed by the two major foreign investors, who must comprise the minority. A third cellular carrier, Vodafone, was licensed in 1993 with majority British ownership; it must become majority Australian-owned by July 2003. There are no industry-specific foreign investment limitations on resellers and value-added services providers.

Draft legislation to liberalize the Australian telecommunications market from July 1, 1997, was introduced into the Parliament in December 1996. All telecommunications services will be liberalized. The legislation will not impose any specific foreign investment restrictions on new carriers and services providers entering the market after July 1, 1997, although general investment screening processes will apply.

In the recently concluded WTO negotiations on basic telecommunications, Australia made commitments on all basic telecom services, based on the outcome of the legislative process, and adopted the reference paper on regulatory commitments. Australia retained foreign ownership restrictions on Telstra, Vodafone, and Optus.

**INVESTMENT BARRIERS**

In Australia, all potential foreign investors are required to submit to a screening process for investment approval. Application of Australia's foreign investment law provides discretion for the government to deny specific foreign investment based on "national interest." Australia's commitments under the WTO General Agreement on Trade in Services (GATS) are limited as a result of Australia's screening requirements.

Foreign ownership of commercial television stations is limited. A foreign person may not be in a position to exercise control over a commercial television license or have company interest in such a license exceeding 15 percent. The aggregate foreign ownership that may be held in television stations is limited to 20 percent. Legislation stipulates that no more than 20 percent of the directors of a broadcasting licensee company may be foreign nationals. Foreigners are also restricted to 20 percent ownership interest in any single subscription television license. Aggregate foreign ownership in a subscription television license is limited to 35 percent.

Foreign airlines flying to Australia may acquire up to 25 percent of the equity in an Australian domestic carrier individually, or up to 40 percent in aggregate. All other foreign investors (including those that do not operate an airline service to Australia) may acquire up to 100 percent of a domestic carrier, or establish a new aviation business. Australia completed the privatization of Qantas in August 1995. Foreign ownership is capped at 49 percent, and no single entity is allowed to own more than 25 percent.

The purchase of urban real estate by foreign interests is regulated closely. All proposals by foreign investors to acquire developed real estate are examined. Such applications are normally not approved except in the cases of foreign companies buying temporary residences for company executives and other foreign nationals temporarily resident in Australia.

## OTHER BARRIERS

### Bounties

Bounties in some product sectors were originally provided in lieu of tariff protection to assist domestic manufacturers to compete with foreign suppliers. Bounties are now in place on the following products (scheduled expiration dates are indicated in parentheses): computers and circuit boards (June 30, 1997); books (June 30, 1997); and shipbuilding (December 31, 1997). Bounties may be reviewed before expiration and some possibly extended or converted to tariffs. Bounties for machine tools, robots, and fuel ethanol were abolished in 1996.

### Commodity Boards

Several national and state commodity boards control the marketing and export of certain Australian agricultural products. Activities for these marketing authorities are financed by the producers, but some boards enjoy export monopoly powers conferred by the federal or state government.

While some of the boards' domestic activities have been deregulated, the export of wheat and rice remains under the exclusive control of commodity boards. The Government of Australia has indicated that the Australian Wheat Board (which strictly regulates wheat marketing abroad) will retain its export monopoly until at least 1999. The export of barley from certain states likewise remains strictly regulated.

Approximately 95 percent of dairy exports are made by the private sector and about 5 percent by an arm of the Australian Dairy Corporation. Australia terminated its dairy market support payments, which were classified as an export subsidy, on June 30, 1995, in accordance with Australia's Uruguay Round implementing legislation, but instituted a new internal support program on July 1, 1995.

# BRAZIL

In 1996, the U.S. trade surplus with Brazil was $3.9 billion, an increase of $1.3 billion from the U.S. trade surplus of $2.6 billion in 1995. U.S. merchandise exports to Brazil were $12.7 billion, an increase of $1.3 billion (11.0 percent) from the level of U.S. exports to Brazil in 1995. Brazil was the United States' twelfth largest export market in 1996. U.S. imports from Brazil were $8.8 billion in 1996, a decrease of $53 million (0.6 percent) from the level of imports in 1995.

The stock of U.S. foreign direct investment (FDI) in Brazil in 1995 was $23.6 billion, an increase of 25.5 percent from the level of U.S. FDI in 1994. U.S. FDI in Brazil is concentrated largely in the manufacturing, financial, and banking sectors.

**Overview**

The process of economic liberalization initiated in 1990 has produced significant changes in Brazil's trade regime, resulting in a more open and competitive economy. Imports have increased as a result of generally lower tariffs and reduced non-tariff barriers, as well as the strength of the Brazilian currency relative to the dollar. Imports are composed of a wide range of industrial, agricultural, and consumer goods. Despite some restrictive measures adopted during 1996 to slow mounting trade deficits -- measures which the Government of Brazil maintains are temporary -- access to Brazilian markets in a significant number of sectors is generally good, and most markets are characterized by competition and participation by foreign firms through imports, local production, and joint ventures.

The government still dominates certain sectors of the economy, such as the telecommunications, petroleum, and electrical energy sectors, limiting trade, investment, and procurement opportunities. However, the federal government is in the process of opening cellular telephone service to private investors and foreign firms and has submitted a bill to Congress to regulate privatization of remaining phone services. In addition, one state (Rio Grande do Sul) has already sold 35 percent of the stock in its state phone company to a foreign operator, effectively privatizing it. The government also privatized three federally-owned electric companies in 1995-96 and plans to privatize others in 1997. Several Brazilian states are also working with the National Development Bank to develop privatization plans for state-controlled electric companies. The government is in the process of introducing legislation and regulations to implement the constitutional amendments eliminating the government monopoly in the petroleum and telecommunications sectors, approved by the Brazilian Congress in 1995.

## IMPORT POLICIES

**Tariffs**

Tariffs, in general, are the primary instrument in Brazil for regulating imports. As of October 1996, the average tariff was 13.6 percent and the median tariff rate was 20.0 percent.

In response to an import surge and the resulting large monthly trade deficits in late 1994 and early 1995, in March 1995 the government raised import tariffs significantly on a range of consumer durable goods, including automobiles, motorcycles, and toys. The new tariff levels, as high as 70 percent on some products, were to remain in effect until April 1996. However, in 1996 the government decided to maintain high tariff levels for both autos and toys until the year 2000. As Brazil is currently phasing down its tariff binding levels as required by the World Trade Organization (WTO), these rates will have to be lowered periodically to remain within WTO bindings. The tariff increases have not affected capital goods, which constitute approximately 40 percent of U.S. exports to Brazil. Industry reports that tariffs remain high on certain food and chemical products.

In December 1995, the government issued regulations establishing investment incentives for the automobile sector that do not appear to conform to Brazil's WTO obligations. These measures require firms to invest in Brazil and maintain specified levels of local content in order to qualify for lower duty rates on imports of vehicles, parts, and materials. The United States and Japan requested WTO consultations on this issue in August 1996, contending that the regime did not comply with WTO obligations. The EU, Korea, and Canada joined those consultations. In August 1996, Brazil issued a decree that provided tariff-rate quotas to Japanese, Korean, and European auto manufacturers. In-quota rates equaled the rates being offered to U.S. firms that were invested in Brazil. The United States was not included in the tariff-rate quota. In October 1996, the United States initiated a Section 301 investigation into Brazil’s practices, and is currently consulting with Brazil on this issue.

Brazil and its Southern Common Market (MERCOSUR) partners, Argentina, Paraguay, and Uruguay, implemented the MERCOSUR common external tariff (CET) on January 1, 1995. The CET currently covers approximately 85 percent of 9,000 tariff items; most of the remaining 15 percent will be covered by 2001, and all will be covered by 2006. The CET levels range between 0 and 20 percent, with the exception of tariffs on telecommunications equipment, computers, some capital goods, and products included on Brazil's national list of exceptions to the CET, such as shoes, automobiles, and consumer electronics. For products covered by the CET, the maximum Brazilian tariff is still 20 percent, the most commonly applied tariff is 14 percent, and the average CET tariff is 11.7 percent. The United States signed a framework agreement on trade and investment with MERCOSUR in 1991. Meetings of the Trade and Investment Council are held on an annual basis.

At the request of the United States and other WTO member countries, the members of MERCOSUR agreed to the formation of a WTO working party to examine the WTO consistency of MERCOSUR. The first meeting of the working party took place in the fall of 1995 and the second in the fall of 1996. The United States will continue to encourage the reduction of trade and investment barriers, including tariffs, and the creation of a customs union that is open and consistent with the WTO, specifically GATT Article XXIV.

**Import Licensing**

Although import licenses are required for virtually all products, import licensing generally does not pose a barrier to U.S. exports. On January 2, 1997, the Secretariat of Foreign Trade implemented a computerized trade documentation system (SISCOMEX) to handle import licensing. Although the system is still having technical problems, the government expects to resolve the problems soon. The system should streamline the filing and processing of import documentation, as well as allow the government to maintain trade statistics and track import tariff collections more effectively.

## STANDARDS, TESTING, LABELING, AND CERTIFICATION

The primary barriers to U.S. agricultural products are sanitary and phytosanitary measures. Brazil prohibits the entry of poultry and poultry products from the United States, alleging lack of reciprocity. In October 1995, Brazil prohibited the importation of live sheep from the United States due to scrapie disease. New regulations on imports of wine may also restrict access to the Brazilian market for U.S. wines.

Brazil adopted the harmonized phytosanitary standards of the Southern Cone Phytosanitary Committee (COSAVE), composed of Argentina, Chile, Brazil, Paraguay, and Uruguay, on January 1, 1996. Exporters encountered difficulties during 1995 and 1996 as Brazil implemented a number of the new regulations with insufficient advance notification on such commodities as wheat, apples, and seeds. The United States is negotiating with Brazil to enable U.S. firms to meet the import requirements established by the new regulations for agricultural products. In the summer of 1996, the United States and Brazil negotiated new protocols for wheat, some fruits, seeds, and legumes, but Brazil has failed to implement some of these agreements. The United States is working with Brazil to fulfill its commitments.

## GOVERNMENT PROCUREMENT

The federal, state, and municipal governments, as well as related agencies and companies, follow a "buy national" policy. Brazil permits foreign companies to compete in any procurement-related multilateral development bank loans and opens selected procurement to international tenders. Given the significant influence of the state-controlled sector due to its large size, discriminatory government procurement policies are, in relative terms, a substantial barrier to U.S. exports. For example, discriminatory government procurement practices exist in the telecommunications, computer, and computer software sectors. Foreign companies with production facilities in Brazil still receive preferential treatment in government procurement decisions.

To the extent that the privatization program in Brazil continues and non-discriminatory policies are adopted, U.S. firms will have greater opportunities in Brazil. Complete implementation of the constitutional amendments passed in 1995, opening the state telecommunications, petroleum, and natural gas distribution monopolies to private (including foreign) participation, may also ease some of the barriers currently faced by foreign suppliers. However, even after complete implementation, foreign companies with production facilities in Brazil will still receive preferential treatment in government procurement decisions.

Law 8666 of 1993, covering most government procurement other than informatics and telecommunications, requires non-discriminatory treatment for all bidders, regardless of the nationality or origin of product or service. However, regulations introduced in late 1993 allow consideration of non-price factors, give preferences to telecommunications, computers, and digital electronics goods produced in Brazil, and stipulate local content requirements for eligibility for fiscal benefits. Decree 1070 of March 1994, which regulates the procurement of informatics and telecommunications goods and services, requires federal agencies and parastatal entities to give preference to locally-produced computer products based on a complicated and non-transparent price/technology matrix. Bidders that meet one or more of the criteria for preferential treatment -- Brazilian-owned company, Brazilian technology or products, or minimum local value-added content -- are allowed a price differential of up to 12 percent over other bidders.

It is not possible to estimate the economic impact of these restrictions on U.S. exports. However, free competition could provide significant market opportunities for U.S. firms. The United States seeks adoption of competitive procurement procedures, elimination of any measures favoring domestic producers, and provision of predictable, nondiscriminatory treatment for U.S. suppliers in Brazil's government procurement.

## EXPORT SUBSIDIES

The Government of Brazil offers a variety of tax and tariff incentives to encourage production for export and the use of Brazilian inputs in exported products. Several of these programs have been found to be countervailable under U.S. law in the context of specific countervailing duty cases. Incentives include tax and tariff exemptions for equipment and materials imported for the production of goods for export, excise and sales tax exemptions on exported products, and rebates on materials used in the manufacture of exported products. Exporters enjoy exemption from withholding tax for remittances overseas for loan payments and marketing as well as from the financial operations tax for deposit receipts on export products. Exporters are also eligible for a rebate on social contribution taxes paid on locally-acquired production inputs.

An export credit program known as PROEX was established in 1991. PROEX is intended to equalize domestic and international interest rates for export financing. Revisions to PROEX were announced in late 1995. The revisions expanded the size of the program and authorized coverage of additional export sectors. While $344 million was initially budgeted for PROEX in 1996, the revisions actually increased export financing to $380 million.

## LACK OF INTELLECTUAL PROPERTY PROTECTION

### Industrial Property

On May 14, 1996, a new industrial property law was enacted. Although it will enter into force in May 1997, implementing regulations have not yet been published. This law improves many aspects of Brazil’s industrial property regime, but some problems remain.

Patent protection will now be available for pharmaceutical products and processes, chemical products, and other inventions that were not patentable under the prior law. Protection is still not available, however, for man-made plants and animals (except for man-made microorganisms), nor has plant variety protection been provided as ultimately required by the Agreement on Trade-Related Aspects of Intellectual Property Rights (TRIPs) when patent protection is not available for man-made plants. In addition, certain isolated or purified forms of substances found in nature are not patentable subject matter. The term of patent protection was extended from 15 years from the date of filing to 20 years from the date of filing, but patents in force are not expressly extended to the new term as stipulated by paragraph 2 of Article 70 of the TRIPs Agreement. "Pipeline" protection is provided for inventions that were not patentable in Brazil because of limitations on patentable subject matter (e.g., pharmaceutical and chemical products) if the inventions were patented in another country and not marketed in Brazil.

Domestic working of a patented invention is required unless it is not economically feasible. Failure to produce locally could eventually result in forfeiture of the patent. Importation does not always satisfy the working requirement as ultimately required by the TRIPs Agreement. The remedies for non-working are compulsory licenses and permission to parallel import.

There is a vast network of compulsory licenses. Compulsory licenses may be granted for abuse of rights, abuses of economic power, non-working in Brazil, failure to meet the needs of the market, working dependent patents, and in national emergencies or to meet the public interest.

The new law added provisions for the protection of "well-known" trademarks, but also contains a long list of categories of marks that are not registrable. A law for the protection of the layout designs of integrated circuits, introduced in April 1996, has not been enacted.

**Copyrights and Related Rights**

Estimated trade losses from the piracy of computer programs and entertainment software, motion pictures, sound recordings and musical compositions continued to increase in 1996 (estimated at $666.2 million by U.S. industry), despite significant efforts by right holders to enforce their rights under the existing laws. Improved laws and more effective judicial procedures are needed to reduce these losses.

In the area of computer programs, in 1994 the Government of Brazil committed itself to enact amendments to a 1987 software law by January 1, 1995. At present, amendments are pending that would significantly improve protection for firms marketing computer programs in Brazil; among these amendments are: the abolition of the "law of similars," elimination of the software registration system, introduction of a rental right, and an increase in the term of protection to fifty years. These amendments were approved in January 1, 1996, by the Chamber of Deputies, but are still pending in the Senate. In addition to the software amendments, amendments to Brazil's copyright law are needed to bring it into compliance with the Berne Convention and TRIPs Agreement. In particular, amendments should address "retroactive" protection for sound recordings and parallel imports.

**Enforcement**

In the last two years, enforcement of laws against video and software piracy has gradually improved. Foreign firms have had some success in using the Brazilian legal system to protect their copyrights, and the government has initiated action to reduce the importation of pirated sound recordings and videocassettes. However, fines are not indexed to an appropriate economic indicator. As a result, the value of fines established several years ago has eroded to the point where they are no longer a deterrent to piracy. Thus, the penal code needs to be amended to provide indexed fines that create a deterrent to infringement, increase the effectiveness of the criminal enforcement system, and decrease delays in the judicial process.

Entry into force of provisions under the 1996 industrial property law establishing specialized intellectual property courts may provide some relief for copyright owners.

**SERVICES BARRIERS**

Restrictive investment laws, lack of transparency in administrative procedures, legal and administrative restrictions on remittances, and arbitrary application of regulations and laws limit U.S. service exports to Brazil. Service trade opportunities, particularly in the telecommunications, oilfield, mining, and financial industries, have been affected by limitations on foreign capital participation in many sectors. The passage of constitutional amendments eliminating the distinction between national and foreign capital; opening the state telecommunications, petroleum, and natural gas distribution monopolies to private participation; and permitting foreign participation in coastal and inland shipping should ease many of the current restrictions on foreign services providers. However, the degree to which some of these sectors are actually opened will depend on implementing legislation, which, in most cases, has not yet been introduced. In those areas where implementing legislation has been introduced, described below, the opening to foreign participation remains limited.

The 1996 law opening cellular telephone service to foreign operators requires Brazilian majority ownership (51 percent) of any company or consortium providing telecommunications services in Brazil. However, in the recently concluded WTO negotiations on basic telecommunications services, Brazil made commitments on most basic telecommunications services and will remove its foreign investment restrictions on cellular and satellite services, contained in its 1996 law, on July 20, 1999. Furthermore, Brazil committed to bind the outcome of future reform legislation by revising its WTO commitments to incorporate such reforms. The legislation is expected to open all public and nonpublic services to unlimited market access and national treatment within one year of enactment.

The 1996 cabotage law limits foreign participation in cabotage to countries which have reciprocal cabotage arrangements with Brazil; otherwise, cabotage services are limited almost exclusively to Brazilian companies, although they may rent or charter foreign-made ships on a limited basis. Foreign companies or foreign crews may operate only with the prior approval of the Brazilian authorities.

Foreign companies, particularly construction engineering firms, are prevented from providing technical services in government procurement contracts unless Brazilian firms are unable to perform them. INPI, which must approve all technical service contracts, has subjected foreign companies to substantial delays. However, Brazil has promulgated a concessions law (February 1995) and the Law of Electrical Energy Producers (July 1995) to promote a more transparent regulatory regime and provide a legal framework for concessionaires of public services.

Brazil restricts the private sector use of foreign-produced advertising materials through limits on foreign film footage (two-thirds of which must be produced in Brazil) and sound tracks (all of which must be produced in Brazil), limits on foreign capital participation, and requirements that the majority of the directors of a company must be Brazilian. Discriminatory government procurement practices further curtail the use of foreign-produced advertising material.

Foreign legal, accounting, tax preparation, management consulting, architectural, engineering, and construction firms are hindered by various barriers. These include forced local partnerships, limits on foreign directorships and non-transparent registration procedures. The Government of Brazil reserves the right to refuse entry of managers or executives associated with the provision of a service if they do not provide new technology, increase productivity in Brazil, or attract new investment.

Brazil is South America's largest potential insurance market. The Government of Brazil discriminates against foreign firms in the insurance sector through: (1) limitations on foreign capital to 50 percent equity participation; (2) limitations on voting stock that foreign firms can control in an existing insurance company, insurance brokerage, or private premium fund to no more than 30 percent; (3) limitations on the entry of new firms in the sector ostensibly due to market "saturation;" and (4) mandatory incorporation in Brazil. The amendment eliminating the distinction between national and foreign capital should correct this discriminatory treatment. However, implementing legislation may be required before non-discriminatory rules can take effect. In addition, the Government of Brazil restricts import insurance to Brazilian firms through Resolution Number 3/71, which denies U.S. marine cargo insurers an opportunity to compete for business and requires state companies doing business with insurance brokerage firms to use 100 percent Brazilian-owned brokerages. In June 1996, the Brazilian Government voted an end to the state's monopoly on reinsurance.

## INVESTMENT BARRIERS

In addition to restrictions on services-related investments, various prohibitions limit foreign investment in petroleum production and refining, internal transportation, public utilities, media, and other "strategic industries." In other sectors, Brazil limits foreign-equity participations, imposes local-content requirements, and links incentives to export performance. For example, there are equity limitations, local content requirements, and incentive-based performance requirements in the computer and digital electronics sector. In the auto sector, local content and incentive-based export performance requirements were introduced in 1995. Foreign majority participation in direct mining operations and foreign investment in health care have been barred by Brazil's constitution.

Some of these restrictions may be reduced once the 1995 constitutional amendments are implemented. In August 1995, the government introduced a measure which permits foreign financial institutions to open new branches or to increase their ownership participation in Brazilian financial institutions. However, foreign ownership of land in rural areas and adjacent to national borders remains prohibited under Law Number 6634.

Investment restrictions are an important limitation for U.S. firms seeking to conduct business in Brazil. Despite these restrictions, U.S. and other foreign firms have major investments in Brazil. The United States will seek to ensure that implementing legislation for the constitutional amendments passed in 1995 will, in fact, lower barriers to U.S. business.

# BULGARIA

In 1996, the U.S. trade surplus with Bulgaria was $11 million, an shift of $62 million from the U.S. trade deficit of $51 million in 1995. U.S. merchandise exports to Bulgaria were $137 million, an increase of $5 million (3.8 percent) from the level of U.S. exports to Bulgaria in 1995. Bulgaria was the United States' one hundred and second largest export market in 1996. U.S. imports from Bulgaria were $126 million in 1996, a decrease of $57 million (31.2 percent) from the level of imports in 1995.

In 1996, Bulgaria's economy went into severe crisis, after experiencing modest growth in 1995 under conditions of superficial macroeconomic stability. Gross domestic product (GDP) fell by 10 percent, inflation was 311 percent, interest rates soared, public confidence in the banking system collapsed amidst widespread bank failures, and the Bulgarian lev experienced a seven-fold depreciation. The cause of this implosion was failure to undertake the structural reforms required to control losses in state-owned industries and place the banking sector in a solvent condition.

Privatization of state-owned businesses also stagnated, although a voucher privatization program was implemented (with considerable delays in the timetable) during 1996. Only when forced by the prospect of national insolvency has the government taken some modest steps, under pressure from the international financial institutions, to implement reforms.

Bulgaria signed a Standby Agreement with the IMF in July, but received only the first tranche of the funding because of failure to fulfill the reform conditions; a planned structural adjustment loan with the World Bank was delayed for the same reason.

**IMPORT POLICIES**

The U.S.-Bulgaria Bilateral Trade Agreement, in place since 1991, provides mutual most-favored-nation (MFN) status. However, the extension of MFN to Bulgaria by the United States remained subject to Title IV of the Trade Act of 1974 (also known as Jackson-Vanik) until September 1996, when Bulgaria was removed from the purview of Jackson-Vanik and received unconditional MFN status.

Average Bulgarian import tariffs are relatively high, including in areas of key concern to U.S. exporters, such as agricultural goods and inputs. In June 1996, Bulgaria imposed a temporary import surcharge of five percent for balance of payment purposes, which it is scheduled to phase out by June 2000. Unlike some other countries in the region, Bulgaria applied tariffs to capital goods intended for the operation of investment projects through 1996; legislation passed in December 1996 introduced customs and VAT exemptions for capital contributions in kind but tightened other conditions on foreign investors. Some U.S. investors report that high import tariffs on products needed for the operation of their establishments in Bulgaria serve as a significant barrier to investment.

Bulgaria's Association Agreement with the European Union (EU) phases out tariffs between Bulgaria and the EU while U.S. exporters still face duties. In some instances, this has created a competitive disadvantage for U.S. exporters. The agreement provides improved reciprocal market access for certain farm products.

## Bulgaria

Bulgaria became a member of the World Trade Organization in December 1996.

### GOVERNMENT PROCUREMENT

There are as yet no standardized government-wide regulations addressing public procurement. Bidders complain that tendering processes are frequently subject to irregularities, fueling speculation that corruption is pervasive. Bulgaria has committed to accede to the Agreement on Government Procurement by December 31, 1997, and is in the process of drafting legislation on government contracts.

### LACK OF INTELLECTUAL PROPERTY PROTECTION

The U.S.-Bulgaria Trade and Intellectual Property Agreement requires Bulgaria to implement regulations to protect intellectual property and to accede to major international conventions on intellectual property rights (IPR). Adoption of new patent and copyright laws brought the Bulgarian IPR system generally up to international standards, but enforcement remains seriously deficient.

In April 1995, following a government-to-government exchange of letters with the United States, Bulgaria agreed to strengthen copyright protection and enforcement. As a result, in 1995, Bulgaria acceded to the Rome and Geneva Phonograms Conventions, enacted changes to the penal code to make IPR infringements subject to criminal prosecution and imprisonment, and took action against some producers and distributors of pirated products. Bulgaria also implemented a title verification decree for audio and video recordings in April 1996. Nevertheless, video, compact disc, and computer program piracy remains a serious concern. The problem is compounded by the export of many of these illegal recordings to other countries. Bulgaria was placed on the Special 301 watch list after an out-of-cycle review in September 1996.

Other U.S. industries report that lack of effective IPR enforcement prevents their greater investment in Bulgaria. They also cite the illegal use of trademarks and trade dress (characteristic product appearance) as a barrier to the Bulgarian market. Bulgaria is currently developing a new trademark law.

### INVESTMENT BARRIERS

On September 23, 1992, the United States and Bulgaria signed a Bilateral Investment Treaty, which was implemented on May 3, 1994. Overall U.S. investment in Bulgaria remains low compared to other countries in the region. Besides the tariff and IPR problems cited previously, U.S. industries also report that a lack of transparency of regulations, high (and unequally enforced) tax burdens, and government bureaucracy create significant barriers to investment. Other companies cite a lack of coherent government strategy to encourage investment. Some companies have also reported crime as a barrier to investment. A very broad and somewhat cumbersome 1996 concessions law, which has yet to be fully implemented, has complicated investments in sectors such as mining, oil and gas exploration, pipelines, and telecommunications.[5]

# CANADA

In 1996, the U.S. trade deficit with Canada was $23.9 billion, an increase of $5.8 billion from the U.S. trade deficit of $18.2 billion in 1995. U.S. merchandise exports to Canada were $132.6 billion, an increase of $5.6 billion (4.4 percent) from the level of U.S. exports to Canada in 1995. Canada continued to be the United States' single largest export market in 1996. U.S. imports from Canada were $156.5 billion in 1996, an increase of $11.4 billion (7.9 percent) from the level of imports in 1995.

The United States continues to be by far the largest foreign direct investor in Canada, which results in high dividend payments by Canadian subsidiaries to their U.S. parents. The stock of U.S. foreign direct investment (FDI) in Canada in 1995 was $81.4 billion, an increase of 8.5 percent from the level of U.S. FDI in 1994. U.S. FDI in Canada is concentrated largely in the manufacturing, financial, and petroleum sectors. In addition, Canada's large external debt, much of which is held by U.S. residents, gives rise to an outward flow of debt service payments to the United States.

### The U.S.-Canada Free Trade Agreement and the North American Free Trade Agreement

On January 1, 1989, the United States and Canada began to implement the U.S.-Canada Free Trade Agreement (CFTA), designed to eliminate over a period of ten years virtually all tariff and non-tariff barriers to trade between the two countries. The CFTA was suspended on January 1, 1994, with the inauguration of the North American Free Trade Agreement (NAFTA), which expands the free trade area to Mexico. The NAFTA extends the CFTA to important sectors such as trade in services, investment, and government procurement. The CFTA's bilateral phase-out of tariffs is continuing and will be complete on January 1, 1998.

## IMPORT POLICIES

### Beer

The U.S. Government successfully challenged Canadian beer practices before the GATT in 1991. A series of negotiations led to the U.S.-Canada Memorandum of Understanding (MOU) on Provincial Beer Marketing Practices in 1993 and an annex to the MOU in April 1994 which significantly improved access to the Canadian market for U.S. beer. However, U.S. exporters remain concerned about provincial minimum price policies and taxes, ostensibly for environmental purposes, on beer cans.

### Wine and Spirits

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

On May 28, 1996, Industry Canada issued amendments to the regulations on consumer packaging and labeling that retained the existing standard container sizes for wine. Industry Canada is currently revisiting the issue and hopes to conclude its review by mid-1997. Elimination of standard container sizes in Canada would allow U.S. exporters to ship wine in containers that are common in the United States but are not currently permitted in Canada. The United States will continue to pursue removal of these barriers in appropriate fora.

**Supply Managed Products and Barley**

As part of its implementation of the World Trade Organization (WTO) Agreements, Canada replaced its import quotas on certain supply managed commodities (dairy, poultry, and eggs) with tariff rate quotas (TRQs). Under the TRQ system, small amounts of imports can enter at low rates of duty, but imports above those limits are subject to prohibitively high duties ranging up to 350 percent. Canada also imposed tariffs on U.S. barley and barley products as well as additional dairy products beginning August 1, 1995. Barley imports from the United States were previously subject to import licensing requirements. Although a panel established under NAFTA Chapter 20 dispute settlement procedures upheld Canada's use of these various tariffs in December 1996, the United States will continue to pursue improved access to the Canadian market for U.S. dairy, eggs, poultry, and barley products. In addition, the United States will continue to review Canada's dairy industry support programs to determine whether they are consistent with Canada's NAFTA obligations and Canada's obligations in the WTO to limit subsidies. The United States and other countries have expressed concern with these programs at the WTO.

**Horticultural Import Restrictions**

Canadian regulations on fresh fruit and vegetable imports prohibit consignment sales of fresh fruits and vegetables without a prearranged buyer. Other restrictions prohibit bulk produce imports without a special ministerial waiver of Canadian packaging regulations.

**Restrictions on U.S. Publications**

In 1996, USTR initiated a Section 301 investigation and requested consultations with the Government of Canada to address certain discriminatory practices used by the Government of Canada to unfairly protect Canada's domestic magazine industry. Subsequently, USTR used WTO dispute settlement procedures to challenge these discriminatory practices. Specifically, USTR requested that a WTO panel be formed to consider Canadian measures prohibiting or restricting the importation into Canada of certain periodicals; tax treatment of so-called “split-run” periodicals; and the application of favorable postage rates to certain Canadian periodicals.

Canada prohibits imports of “split-run” editions of magazines (regional editions that include advertising and some content aimed at the regional audience). Magazines are also prohibited from entering Canada if more than five percent of total advertising space contains ads that give Canadian sources of availability or specific conditions relating to the sale or provision of any goods or service in Canada. Moreover, since 1979, Canada Post Corporation (CPC) has applied higher postal rates to foreign publications mailed in Canada than to Canadian publications.

During 1994, in response to the launch of a Canadian edition of "Sports Illustrated," which was electronically transmitted to and printed in Canada, the Canadian Government "clarified" its investment policies on split-run magazines, defining new magazine titles as "investments" subject to review under the Investment Canada Act. Moreover, in 1995, the Canadian Government enacted an excise tax on split-run magazine editions such as “Sports Illustrated” on a per-issue basis at a rate of 80 percent of the amount charged for all advertising appearing in that issue.

The WTO panel’s report, entitled *Canada --Certain Measures Concerning Periodicals,* was circulated to WTO Members on March 14, 1997. The Panel’s findings support the United States on nearly all claims. The panel recommended that Canada bring its practices into conformity with GATT 1994. Either Party may appeal the panel’s decision to the WTO Appellate Body.

## GOVERNMENT PROCUREMENT

NAFTA and the CFTA significantly increased the value of the Canadian procurement market open to U.S. suppliers. Goods contracts valued at more than $25,000 (the WTO procurement threshold) are open to U.S. suppliers on a non-discriminatory basis. NAFTA also opens up services contracts and goods and services contracts by the Canadian federal government valued at more than $50,000 ($250,000 for covered government-owned enterprises, or “Crown corporations”) and federal government construction services contracts valued at more than $6.5 million ($8 million for covered Crown corporations). In addition, NAFTA extends coverage to a number of federal entities and some government-owned enterprises (Crown corporations) not covered by the CFTA. NAFTA also builds on the CFTA's effective bid-challenge system and greater transparency.

However, federal and provincial "buy national" or "buy local" policies are still applied to some of Canada's government procurement. For instance, the Canadian Government sources its printing solely from Canadian establishments. Where GATT Government Procurement Code or NAFTA requirements do not apply, some Canadian government entities favor Canadian-based firms. Bids are solicited from vendors on source lists which favor Canadian over foreign-based firms. Generally, if there is sufficient competition from Canadian-based sources, foreign-based firms are not invited to bid.

Sole-source procurements are also used to favor Canadian firms. Canada's industrial benefits policy is also administered through a "procurement review mechanism," which may require a supplier to invest, purchase, and/or hire in Canada as a condition of receiving a large contract.

## LACK OF INTELLECTUAL PROPERTY PROTECTION

In 1996, the Canadian Government introduced new copyright legislation which would establish a public performance right for record producers and performers and a levy on the sale of blank audio tapes. The revenues collected from these programs are intended to compensate performers and producers for the performance and unauthorized home-taping of their works in Canada. The United States is extremely concerned that U.S. performers and producers may be denied national treatment under the proposed legislation. USTR is consulting with U.S. industry on next steps should the legislation become law.

# Canada

## SERVICES BARRIERS

### Broadcasting Act

The Broadcasting Act sets out the broadcasting policy for Canada, which lists among its objectives, "to safeguard, enrich and strengthen the cultural, political, social and economic fabric of Canada." The federal broadcasting regulator, the Canadian Radio-Television and Telecommunications Commission (CRTC), is charged with implementing this policy. Under current CRTC policy, in cases where a Canadian service is licensed in a format competitive with that of an authorized non-Canadian service, the Commission can drop the non-Canadian service, if the new Canadian applicant requests it to do so. This policy has already led to one “de-listing” and deterred potential new entrants from attempting to enter the Canadian market.

### Direct-to-Home Satellite Broadcasting

In August 1994, the CRTC issued an order that discriminated against U.S.-associated providers of direct-to-home (DTH) satellite broadcasting services seeking to offer such service to Canadian consumers. The CRTC order exempted Canadian DTH providers from licensing requirements, but subjected U.S.-associated DTH providers to lengthy licensing procedures which effectively would have precluded entry into the Canadian market even where U.S. associated providers complied with existing CRTC ownership and content requirements.

In July 1995, the Canadian federal cabinet overturned the CRTC’s DTH policy and ordered that all services be licensed under the same rules. On December 20, 1995, the CRTC issued two national DTH satellite TV licenses, one of which went to U.S.-associated Power DirecTV. However, Power DirecTV has since abandoned its plans to launch a Canadian service because of technological issues, some of which were associated with CRTC regulations.

Simultaneously with the licensing of the two DTH systems, a number of DTH pay-per-view (PPV) services were also licensed. The DTH licenses specify that the only PPV services the two DTH licensees may offer are those services licensed by the CRTC. The PPV licenses are further conditioned in two significant respects.

First, it is a condition of license that feature film rights must be acquired from Canadian distributors except where the film is offered by a foreign distributor who owns worldwide rights or who has provided not less than half of the cost of producing the film. The U.S. Government and the U.S. industry are concerned that this condition of license, in effect, gives Canadian companies monopoly distribution rights with respect to certain films. U.S. industry sources report that it is common practice for film distribution rights to be purchased by different companies for different parts of the world. Under this condition, only Canadian distributors will be allowed to license these films to the Canadian PPV services.

Second, it is a condition of license that 100 percent of revenues earned from the exhibition of Canadian feature films be paid to the producer/distributor. However, revenues earned from the exhibition of all non-Canadian feature films offered on English language services must be split, on a title by title basis, one-third to the DTH service, one-third to the programming undertaking, and one-third to the producer/distributor. U.S. industry sources report that the likely effect of this restriction will be to restrain competition.

The Canadian Motion Picture Distributors Association and a number of U.S.-based studios appealed the licensing conditions to the Federal Court of Appeal on January 26, 1996, and to the Canadian federal Cabinet on February 2, 1996. On March 19, 1996, the Cabinet rejected the appeal, apparently deciding it a matter best dealt with by the court, and on June 26, 1996, the Federal Court of Appeal also ruled against the appeal. A key finding of the court was that the CRTC's action was "directly related to broadcasting, a federal concern, and is not a veiled attempt to regulate film production or film distribution which are under provincial jurisdiction."

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

**Direct-to-Home Pay-Audio Services**

A U.S. Direct-to-Home (DTH) pay-audio service, Digital Music Express (DMX), was granted a license on two occasions by the CRTC over the past several years only to have the license overturned by the government for further examination of whether more Canadian content should be required. USTR persuaded Canada not to overturn the license as requested by Canadian interests for a third time, and as a result, DMX received a license to operate in Canada on October 11, 1996.

**Basic Telecommunications Services**

In the recently concluded WTO negotiations on basic telecommunications services, Canada made commitments on all basic telecom services, with phase-in of some commitments. For instance, market access to the Canada-non-U.S. international services market and to land submarine cables is not granted until October 1, 1998. Canada adopted the reference paper on regulatory commitments. Canada retained a 46.7 percent limit on foreign ownership, a requirement for "Canadian control" of basic telecom facilities, and a routing restriction to promote the use of Canadian facilities for domestic traffic. The routing restrictions are with regard to both domestic Canadian and international traffic, but the international traffic restrictions will be phased out across time.

**Border Broadcasting**

In 1976, Canada adopted a tax provision denying Canadian enterprises tax deductions for the cost of advertising in foreign print and broadcast media when the advertising is directed primarily at Canadians. The main targets of this legislation were advertisements placed on U.S. border television stations beaming programs into Canada, but the provision also applies to U.S. periodicals.

Government-to-government and industry-to-industry consultations have failed to provide a compromise solution to this problem. As a result of a 1980 Section 301 determination that the Canadian law both injured and discriminated against U.S. commerce, the United States enacted mirror legislation in the 1984 Trade Act against Canada's broadcast media. However, U.S. legislation was never enacted against Canada's print media.

## Canada

### Temporary Entry of Goods

Under the temporary importation regulations, Revenue Canada allows the temporary entry, at free or reduced rates, of certain specialized equipment needed to perform short-term service contracts, if such equipment is not available from Canadian sources. Under the NAFTA, Canada has broadened the range of professional equipment allowed temporary duty-free entry, but it has not provided unrestricted access. Presently, in the context of a three-year comprehensive review by the Canadian Government launched in 1994 on ways to simplify the Canadian tariff system, it has been proposed that a single tariff item be introduced to replace a number of current provisions covering temporarily-imported goods. Essentially, the new item would provide conditional free entry, on a most-favored-nation basis, for temporarily-entered goods without regard for whether the goods are available from Canadian sources. Movement by the Canadian Government toward this tariff system revision is expected on January 1, 1998.

### Insurance and Banking

U.S. insurance companies may enter Canada as branches, but some provinces bar foreign companies from buying provincially-chartered insurance companies. The "National Treatment Study" published by the U.S. Department of the Treasury on December 1, 1994, provides recent, detailed information on the treatment of U.S. banks and securities dealers in Canada. U.S. banks and securities firms have a clear right of establishment and a guarantee of national treatment. The principal barrier of which U.S. banks have complained is Canada's prohibition on the establishment of foreign bank branches; Canada is the only G-10 country that restricts foreign bank entry to separately organized and capitalized subsidiaries. Canada agreed under Article 1403 of the NAFTA to review this restriction when Canadian banks are allowed to expand through subsidiaries or direct branches "into substantially all of the United States." The United States and other OECD countries have been pressuring Canada to allow foreign bank branching as soon as possible, in conjunction with the 1997 renewal of Canada’s banking legislation. In February 1997, Canada announced that it would introduce legislation by the end of 1997 which would allow foreign banks to branch directly into Canada.

### INVESTMENT BARRIERS

### General Entry Restrictions

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

### Investment Canada Act

The Investment Canada Act requires the federal government to review proposed acquisitions by U.S. and other foreign investors to ensure "net benefit to Canada." Foreign investments in new businesses, direct acquisitions worth less than C$5 million, and indirect acquisitions worth less than C$50 million do not require prior government approval. Under the CFTA, Canada raised the threshold level for review of direct acquisitions by U.S. investors to C$150 million. Under NAFTA, this threshold (currently at C$160 million) will continue to be increased in line with the growth of nominal GDP. Screening of indirect acquisitions by U.S. investors has been eliminated. However, these exemptions do not apply to foreign investments in "culturally sensitive sectors" such as publishing, film, video, music, broadcasting, and telecommunications. Any foreign investment in these sectors is potentially subject to review.

**Publishing Policy**

Prior to 1992, when ownership of a firm engaged in the publication, sale, or distribution of books, magazines, periodicals, or newspapers in Canada passed to foreign investors as a result of mergers and acquisitions of parent firms outside of Canada ("indirect acquisition"), Canada required divestiture of control to Canadian investors.

Since January 1992, Canadian book publishing and distribution firms that fall into foreign hands through indirect acquisition need not be divested to Canadian control, but the foreign investor must negotiate specific commitments to promote Canadian publishing. Foreign investors may directly acquire Canadian book firms under limited circumstances. Also, since 1993, Canada treats the publication of any new magazine title by foreign-owned firms as a new investment subject to review. Under current policy guidelines, approval for a new magazine title would not be granted. The United States is monitoring the effect of these new policies on U.S. interests.

**Film Industry Investment**

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

**Performance Requirements**

Reviews of prospective foreign investments involve an examination of the investor's business plan by Investment Canada. Approval of the investment creates a legal obligation on the part of the investor to fulfill the business plan, which may include commitments in areas such as research and development or the promotion of Canadian authors. The United States successfully concluded a GATT case requiring Canada to stop extracting commitments from foreign investors to favor Canadian suppliers. The CFTA made major progress toward ending the imposition of performance requirements on U.S. investors, and on third country investors when U.S. trade interests would be affected. The United States will continue to pursue the elimination of investment restrictions, including performance requirements, both bilaterally and multilaterally.

# Canada

## OTHER BARRIERS

### Canadian Wheat Board

The Canadian Wheat Board (CWB) has exclusive authority to market western Canadian wheat, durum wheat, and barley for export. It also controls milling wheat and malting barley sales domestically. The United States has been working to have the export activities of state trading enterprises, such as the CWB, addressed in the WTO Committee on Agriculture. In the October 1995 report of the private, binational Joint Commission on Grains (JCG), the JCG also recommended that both countries "eliminate the excessive discretionary pricing practices of their institutions" which for Canada would mean "placing the CWB at risk of profit or loss in the marketplace, or conducting itself in an equivalent manner."

# CHILE

In 1996, the U.S. trade surplus with Chile was $1.9 billion, an increase of $194 million from the U.S. trade surplus of $1.7 billion in 1995. U.S. merchandise exports to Chile were more than $4.1 billion, an increase of $519 million (14.4 percent) from the level of U.S. exports to Chile in 1995. Chile was the United States' twenty-seventh largest export market in 1996. U.S. imports from Chile were about $2.3 billion in 1996, an increase of $325 million (16.8 percent) from the level of imports in 1995.

The stock of U.S. foreign direct investment (FDI) in Chile in 1995 was $5.5 billion, an increase of 25.7 percent from the level of U.S. FDI in 1994. U.S. FDI in Chile is concentrated largely in the financial and manufacturing sectors.

## IMPORT POLICIES

Chile has a generally open trade regime. Chile applies a uniform ad valorem tariff of 11 percent on imports from all countries with which it has not already negotiated free trade agreements. Chile's tariffs are bound at 25 percent ad valorem. However, some significant barriers do exist.

Chile's major border measure barriers are in the agricultural sector. Chile maintains a price band system for wheat, wheat flour, vegetable oils, and sugar. This variable tariff system is designed to maintain domestic prices for these commodities within a predetermined band, delaying the impact of changes in international market prices on Chilean producers and consumers. Chile also imposes minimum customs value requirements for imports of agricultural products on occasion, in response to low world prices. Further, imports of used automobiles are prohibited.

## STANDARDS, TESTING, LABELING, AND CERTIFICATION

Chile uses animal health and phytosanitary requirements to restrict or prevent some imports. Even though Chile is a member of the World Trade Organization (WTO), announcement of proposed rule changes, notification of proposals to other members via the WTO Secretariat, and opportunity for public comment often fail to precede the actual promulgation of new requirements. U.S. exports of poultry are effectively blocked from the Chilean market through a sanitary requirement that the United States considers unjustified and discriminatory. The U.S. Government has protested this requirement to the Chilean Government and has raised the issue in the WTO Sanitary and Phytosanitary Committee. U.S. fruit exporters have found it extremely difficult to penetrate the Chilean market due to phytosanitary barriers. U.S. beef exports have been restricted by Chilean labeling and grading regulations. Chile does not permit U.S. beef in consumer cuts to enter the market without being graded to Chilean grading standards. Because Chilean meat grades originate from carcass grades at the time of slaughter, this requirement effectively blocks U.S.-produced beef from the market, although meat that will undergo further processing is not affected. The United States will continue to press Chile to implement and enforce WTO-consistent sanitary and phytosanitary requirements.

## EXPORT SUBSIDIES

## Chile

While Chile does not generally subsidize exports, it does employ a number of export promotion measures to help non-traditional exports. Chile provides a simplified duty drawback program for non-traditional exports which does not reflect actual duties paid on imported components. This program has been determined to be countervailable under U.S. law.

Chile’s export promotion measures are primarily intended to expedite and simplify the paperwork involved in the export process. The Government of Chile also provides exporters with quicker returns of value-added taxes than it provides to other producers. One such export promotion measure lets all exporters defer import duties for up to seven years on imported capital equipment or receive an equivalent subsidy for domestically produced capital goods. The Government of Chile has announced that, in accordance with WTO commitments, the drawback program will be phased out over time. Chile also has an active export promotion agency which has planned expenditures of up to $10 million a year, half from government funds and half from industry contributions, for agricultural export promotion alone.

### LACK OF INTELLECTUAL PROPERTY PROTECTION

#### Patents

Chile implemented a new patent, trademark, and industrial design law in 1991. This law provides product patent protection for pharmaceuticals. However, deficiencies exist in the law, including: a term of protection that is not consistent with international standards of 20 years from filing; lack of protection for plant and animal varieties; lack of provisions for extending patent terms for delays due to regulatory approval processes; inadequate industrial design provisions; and a lack of “pipeline” protection for pharmaceutical products patented in other countries prior to the time product patent protection became available in Chile.

The shortcomings in Chile's patent regime are amplified by its discriminatory registration process. The registration procedures required by the Chilean Health Ministry to market new drugs discriminate markedly against the first-to-file (generally foreign firms) by enforcing a longer waiting period and higher standards of documentary evidence than are required for subsequent registries of a theoretically-similar product. This gives copies a strong commercial advantage and exacerbates the lack of patent protection for pharmaceutical products because of the lack of pipeline protection.

The trade gains from remedying these deficiencies for the pharmaceutical industry alone are estimated to be in the range of $50-100 million annually.

#### Copyrights

Chile revised its copyright law in 1992, extending the term of protection to the author's life plus 50 years (the Berne Convention standard). Chile's law does not protect computer software as a "literary work" as required by the Agreement on Trade-Related Aspects of Intellectual Property Rights (TRIPs). Chile's copyright law also has some deficiencies including: unclear rental and importation rights; inadequate penalties; lack of provision for ex parte civil searches; unclear provision for injunctions and temporary restraining orders; no provisions for "works for hire;" and unnecessary constraints on contractual rights.

Despite active and effective enforcement efforts, piracy of computer software remains significant. Industry sources have estimated that pirated goods constituted 68 percent of the software market in 1995, with potential gains of as much as $74 million if piracy were reduced to zero. Though relatively low, piracy of video tapes also exists and is estimated by industry sources to affect some 25-30 percent of the market, with potential trade gains of around $5 million a year. Sound recording piracy is estimated at about 25 percent of the market; potential trade gains from its elimination would approach $10 million.

### Trademarks and Other Issues

Chile's trademark law provides a degree of IPR protection, but also contains deficiencies, including: no requirement of use to maintain trademark protection; a "novelty" requirement for trademark registrations; no provision for trademarking figurative marks, color or packaging or for certification or collective marks; and no provisions for protection of "well-known" marks. In addition, Chile does not provide protection for semiconductor mask works or for encrypted program-carrying satellite signals.

## SERVICES BARRIERS

In the recently concluded WTO negotiations on basic telecommunications services, Chile made commitments on most basic telecom services and adopted the reference paper on regulatory commitments. However, Chile has made no commitment for local telecommunications services.

## INVESTMENT BARRIERS

While Chile welcomes foreign investment, controls and restrictions do exist. Under the law that regulates nearly all foreign direct investment, profits may be repatriated immediately, but none of the original capital may be repatriated for one year. Foreign direct investment is also subject to pro forma screening by the Government of Chile. The government has recently begun to reject “speculative” investments from qualifying as foreign direct investment, although the funds can enter as ordinary foreign capital. In addition, foreign capital introduced into Chile for most lending purposes, for investment in government securities, and for other so-called non-productive purposes is subject to a non-interest bearing reserve deposit requirement, thereby significantly raising the financial cost of such capital transactions. There is no tax treaty between Chile and the United States, so the profits of U.S. companies are taxed by the governments of both nations.

Royalty contracts must be approved by the Central Bank. Contracts may set fees and royalties only as a percentage of sales. Payments are usually limited to one percent of sales for the use of trademarks, three percent for the use of trade secrets and proprietary processes, and five percent for the use of patents. Remittances above these levels may be denied access to the inter-bank foreign exchange market and may be disallowed as expenses by the tax authorities. Trade-related investment measures are also applied in the automobile industry, with the government granting tax benefits in return for meeting local content requirements, and for exporting.

In the petroleum sector, oil and gas deposits are reserved for the state. However, private investors, whether foreign or Chilean, are allowed concessions in this area.

# Chile

## OTHER BARRIERS

### Distilled Spirits Tax

Chile maintains an excise tax on spirits, based on the alcohol content, that favors locally produced "pisco" by taxing it at 25 percent ad valorem while whiskey is taxed at 70 percent. The United States has urged Chile to adopt a more equitable distilled spirits tax system. New legislation to amend the current system, anticipated in 1997, would not meet U.S. concerns in its current form.

### Luxury Tax

In addition to the 11 percent import tariff and the 18 percent value-added tax, automobile imports are subject to a "luxury" tax of 85 percent of c.i.f. value above roughly $10,300. This tax discourages sales of larger, more expensive vehicles, including most U.S.-made automobiles, which incorporate expensive safety features. Despite these taxes, sales of U.S.-produced vehicles are rising.

# PEOPLE'S REPUBLIC OF CHINA

In 1996, the U.S. trade deficit with China was over $39.5 billion, an increase of more than $5.7 billion from the U.S. trade deficit of $33.8 billion in 1995. U.S. merchandise exports to China were nearly $12.0 billion, an increase of $230 million (2.0 percent) from the level of U.S. exports to China in 1995. China was the United States' fifteenth largest export market in 1996. U.S. imports from China were nearly $51.5 billion in 1996, an increase of over $5.9 billion (13.0 percent) from the level of imports in 1995.

The U.S. Department of Commerce has estimated that for services trade in 1995, the U.S. exported $2.5 billion to China and imported $1.6 billion in services, resulting in a positive service trade balance with China of $937 million. A 1996 services trade balance is not yet available.

The stock of U.S. foreign direct investment (FDI) in China in 1995 was $2.0 billion, an increase of 20.6 percent from the level of new U.S. FDI in 1994. U.S. FDI in China is concentrated largely in the manufacturing and petroleum sectors.

**Overview**

Since 1992, the United States has made progress toward opening China's market to U.S. goods and services. Over the past five years, the United States has successfully negotiated landmark trade agreements with China that have resulted in increased market access for a range of goods and services through reduced tariff and non-tariff barriers. For example:

- *Market Access:* On October 10, 1992, the United States and China signed a Memorandum of Understanding (MOU) on market access that commits China to significant liberalization of key aspects of its import administration, including reduction of trade barriers and gradual opening of its market to U.S. exports. This MOU resolved a 301 investigation initiated by the U.S. Government that started on October 10, 1991. The investigation examined four broad areas: the absence of transparency; import licensing requirements; import quotas, restrictions, and controls; and standards and certification requirements.

- *Intellectual Property Rights (IPR) Protection:* In 1992, the United States and China signed an MOU that committed China to strengthen its IPR legal regime. On February 26, 1995, the United States and China signed an IPR Agreement designed to ensure both a crackdown on piracy and real market access for the intellectual property industry. In May 1996, when it became clear that China was not fully implementing this MOU, the Clinton Administration threatened to impose approximately $2 billion worth of sanctions on Chinese goods if China did not take action to stop piracy and improve market access. Subsequently, China closed 15 illegal CD factories and, in June 1996, the United States and China exchanged information in an IPR Accord that detailed the steps that China had taken and would take in the future to ensure effective implementation of the 1995 Agreement. Over the past nine months, China has taken significant steps to crack down on piracy including closing 9 more factories between May and June 1996, and 28 production facilities between September 1996 and March 1997 (see the section of this chapter entitled "Lack of Intellectual Property Protection").

## China

- *Textiles:* In February 1997, the United States and China renewed their bilateral textile agreement. The new agreement enhances market access opportunities for U.S. exports of textiles and apparel, includes additional protection against circumvention, and effectively controls China's exports to the United States.

Clearly, these bilateral agreements demonstrate the significant progress that has been made in China. That said, however, there remains a great deal of work to be done before China's market is sufficiently open to U.S. exports. China's growing economic strength, coupled with its focus on boosting competitiveness in certain export-oriented industries, requires continued vigilance by the Administration to ensure China's policies and practices are consistent with existing bilateral agreements and are in line with international rules.

In this light, the Administration is committed to supporting China's accession to the World Trade Organization (WTO) -- but only on the basis of a commercially meaningful protocol package. Recognizing that China is undergoing complex economic reform, USTR has approached WTO accession negotiations flexibly and pragmatically, with the understanding that the outcome must secure solid commitments from China to provide market access and follow WTO rules.

**IMPORT POLICIES**

China restricts imports through a variety of means, including high tariffs and other taxes, non-tariff measures, limitations on which enterprises can import, and other barriers, such as import substitution. For example:

- *Tariffs:* China has used prohibitively high tariffs, in combination with other import restrictions and foreign exchange controls, to protect its domestic industry and restrict imports -- contributing to inefficiencies in China's economy and posing a major barrier to U.S. commercial opportunities.

- *Non-Tariff Measures:* While China has generally met the requirements of the 1992 Market Access MOU to remove various non-tariff barriers, such as quotas and licensing requirements, China still maintains a large number of non-tariff administrative controls to implement its trade and industrial policies.

**Tariffs and Taxes**

China's tariffs have traditionally been so high as to be prohibitive to foreign exporters. In fact, in 1996, most-favored-nation (MFN) tariffs facing goods entering China ranged as high as 120 percent. In 1996, China lowered its average import tariff from 35.9 percent to 23 percent. Despite recent tariff reductions, however, U.S. industry continues to express concern that tariff rates for sectors in which China is seeking to build its international competitiveness, such as chemicals, remain extremely high.

In addition to high tariff rates, unpredictable application creates difficulties for companies trying to export to, or import into, the Chinese market. Tariffs may vary for the same product, depending on whether the product is eligible for an exemption from the published MFN tariff. High-technology items whose purchase is incorporated into state or sector plans, for instance, have been imported at tariff rates significantly lower than the published MFN rate. In addition, import tariffs have sometimes been reduced or even not applied, either through temporary tariff rates published by China's General Administration of Customs (Customs) or through informal means.

China has taken steps to reduce tariffs pursuant to its bilateral commitments and in an effort to support its WTO accession bid. While many of the tariff reductions are still under negotiation in the context of WTO discussions, in November 1996, China's President Jiang Zemin announced that China would reduce the simple average tariff rate from the current 23 percent to 15 percent by the year 2000, as well as make further reductions in the medium- and long-term.

In addition to import tariffs, imports may also be subject to value-added and other taxes. U.S. industry complains that the current value-added taxing system (VAT) amounts to an added surcharge of 17 percent on both imported goods and domestic products, which discourages consumers by raising prices. A product subject to the average 23 percent import tariff, for example, is in fact subject to a 40 percent tax when the VAT is added. Since some domestic and foreign firms are able to avoid the VAT through negotiation, U.S. firms who “play by the rules” are at a competitive disadvantage.

U.S. and other foreign businesses selling goods into China also complain about China's lack of uniformity in customs valuation practices. Different ports of entry may charge significantly different duty rates on the same products. Because there is flexibility at the local level in deciding whether to charge the official rate, actual customs duties, like many taxes, are often the result of negotiation between businesspeople and Chinese customs officers. Allegations of corruption often result.

In a move that could raise major project costs in China by 20 percent or more despite nominal tariff reductions underway, China is phasing out over a two-year period tariff exemptions for capital equipment imported by foreign investors in China. In early 1997, Chinese officials were still clarifying and finalizing the details and criteria under which firms, products, and projects will be eligible for tariff exemptions of up to another two years.

On December 31, 1996, Customs announced that foreign enterprises approved for establishment between October 1, 1995, and March 31, 1996, that reported to China’s Ministry of Foreign Trade and Economic Cooperation (MOFTEC) for reapproval and registered with the Customs Tariff Department, as well as reported to local customs offices, may continue to enjoy the preferential tax policy of duty-free imports of capital equipment until June 30, 1997, provided the total investment is over $30 million. Other enterprises valued under $30 million must apply to MOFTEC for an extension. Projects approved prior to October 1, 1995, must receive State Council approval for an extension of preferential tax treatment.

There appears, however, to be a difference in practice in the way MOFTEC and Customs apply extension criteria to foreign-invested enterprises (FIEs): MOFTEC interprets the notice more strictly than Customs. MOFTEC maintains it has submitted to Customs a finite list of FIEs out of the total number of FIEs approved between the October - March window which are eligible for the extension. Customs, however, has interpreted the notice more broadly to include all FIEs approved between October and March. To date, how many and which companies are approved for extensions is unknown.

## China

### Non-Tariff Measures (NTMs)

Non-tariff barriers are administered at national and subnational levels by the State Economic and Trade Commission (SETC), the State Planning Commission (SPC), and the Ministry of Foreign Trade and Economic Cooperation (MOFTEC). These non-tariff barriers include import licenses, import quotas, and other import controls. The levels of specific non-tariff barriers are the result of complex negotiations between the Central Government and Chinese ministries, state corporations, and trading companies.

Central Government agencies determine the levels of import quotas through data collection and negotiating sessions, usually late each year. These agencies -- including the SPC, SETC, and MOFTEC -- determine the projected demand for each product subject to import restrictions. Such restrictions generally include quantitative restrictions. Officials at central and local levels evaluate the need for particular products for individual projects or quantitative restrictions for the products. Once "demand" is determined, Central Government agencies allocate quotas that are eventually distributed nationwide to end-users and administered by local branches of the Central Government agencies concerned. China provides little transparency regarding the quantity or value of products to be imported under a quota, notwithstanding bilateral obligations and WTO requirements to provide such information.

MOFTEC uses import licenses to exercise an additional, nationwide system of control over some imports. Many products are subject both to quotas or restrictions and also to import licensing requirements. For these products, after permission has been granted by other designated agencies for its importation, MOFTEC must decide whether to issue a license. MOFTEC officials claim that import licenses are issued automatically once other agencies have approved an import.

While far too many NTMs still remain in place, progress is being made. For example, China abolished non-tariff barriers on schedule at the end of 1995 on 176 items specified under the 1992 Market Access MOU. Several items for which abolition of import restrictions were required under the Market Access MOU are no longer listed in China Customs publications as subject to non-tariff measures, but in contrast to the elimination of import restrictions at the end of 1995, the embassy and interested industries have been unable to obtain from Chinese agencies published notices announcing the removal of those import restrictions. Some of the few goods in this category include certain refrigerators and freezers, air conditions, and skips and hoists. The Market Access MOU specifies further eliminations of non-tariff import barriers that China has agreed to undertake prior to the end of 1997.

According to U.S. exporters and investors, new alternative measures and some aspects of China's new industrial policies may be undercutting the market access gains that had been anticipated as a result of changes obligated under the Market Access MOU. These measures include the new "automatic" registration requirement, electro-mechanical product import control measures, new regulations on the administration of medical equipment, proposed guidelines for the electronics sector, and camera import control measures, among Close to 400 products covered by the annex to the MOU are now subject to these "automatic registration" requirements. The implementation of this registration requirement appears to pose a new de facto licensing requirement.

### Transparency

The 1992 bilateral Market Access MOU laid the foundation for China to improve significantly the transparency of its trade regime, including the publication of a central repository for all central government trade regulations and publications in the provinces of all trade and investment-related trade regulations. While the MOFTEC *Gazette* was established to carry official texts of all trade-related laws and regulations at the national level -- and has been a significant step toward transparency -- its coverage of trade-related regulations is still incomplete and not always timely. In addition, important steps toward making the import approval process transparent, especially for industrial goods such as machinery and electronics products, are offset by the opaque nature of customs and other government procedures.

Central Government agencies have published many -- though not all -- of their import administration laws and regulations, making China's trade regime more transparent. Analysis of published Chinese “catalogs” of goods subject to general import quota administration or special registration requirements has identified several dozen tariff-line items that appear to be subject to Chinese import quota or import license requirements in addition to those previously notified by China to the WTO Working Party in Geneva. The U.S. and Chinese negotiating teams are working to reconcile these data.

**Trading Rights and Other Restrictions**

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

In some cases, specific bureaus or ministries impose informal market access barriers for imports that fall under their jurisdictions. For example, the State Pharmaceutical Administration is responsible for issuing quality certificates for pharmaceutical products. Some Chinese organizations require end-users to acquire purchase certificates before they can receive permission to import.

As a result, China's real demand for these types of imported products greatly exceeds the supply made available through the official system. For example, the U.S. spirits industry estimates that only five percent or less of imported distilled spirits enter the Chinese market through official channels. Thus, a large illegal “grey” market for spirits has grown up around the official system. Sales of such products have resulted in revenue losses for China, because of rampant smuggling and the associated corruption. Another side effect of the smuggling that suppressing demand engenders is counterfeiting and passing off of poor quality or even dangerous products as the much sought after but difficult to obtain legitimate imports.

**Import Substitution**

Import substitution has been a longstanding Chinese trade policy. Nonetheless, in the 1992 MOU, China confirmed that it had eliminated all import substitution regulations, guidance, and policies, and that it would not subject any products to import substitution measures in the future. This constitutes a commitment, for example, that a Chinese government agency would no longer deny permission to import a foreign product because a domestic alternative exists.

Despite this commitment, in 1994 China announced an automotive industrial policy that included import substitution requirements. This policy, designed to foster development of a modern automobile industry in China, explicitly calls for production of domestic automobiles and automobile parts as substitutes for imports, and establishes local content requirements, which would force the use of domestic products, whether comparable or not in quality or price. The United States is consulting with China in the context of its WTO accession negotiations on the elimination of these policies and ensuring that any future policies do not contain such provisions.

## STANDARDS, TESTING, LABELING, AND CERTIFICATION

China maintains statutory inspection requirements (conformity assessment procedures) on more than 2,400 tariff line items, of which more than 860 are requirements on imported goods. Major problems include the lack of transparency, difficulty in determining the appropriate standard, use of different standards on imports from different countries and different standards from domestic goods, and adoption of unique standards that differ from international standards for no identifiable reason.

China passed the "Import and Export Commodity Inspection Law" establishing a separate regime for safety inspections of imported goods on February 2, 1989. The first catalog of 9 commodities covered by the law was announced on August 1, 1989, with compliance required as of May 1, 1990. A second catalog of commodities covered by the law was announced on August 1, 1995, and contained a list of 38 categories of equipment, the first 20 of which became subject to safety inspection and certification on October 1, 1996. The last 18 of these equipment categories will be subject to safety inspection and certification as of October 1, 1997. More commodities will be covered in future catalogs.

As noted, U.S. and other foreign traders often encounter difficulty in learning which Chinese standards apply to their goods. Officials of the State Administration for Commodity Inspection have said that, for some goods for which China has not yet developed its own standards, the standards of the country of origin will apply to that good. Therefore, a particular good from the United States may have to meet a different standard at the China's port of entry than does the same good from the European Union. This is a serious issue that goes to the heart of MFN treatment and is being taken up in the context of China's WTO accession negotiations.

For manufactured goods, China requires that a quality license be issued before the goods can be imported into China. With a few exceptions, China does not accept U.S. certification of product quality or manufacturing procedures. Obtaining quality licenses to export to China can be time-consuming and expensive. While the inspection and licensing requirements vary according to commodity, U.S. industry considers most to be burdensome and contrary the principles of the TBT Agreement.

The 1992 Market Access MOU requires that China apply the same standards and testing requirements to non-agricultural products, whether foreign or domestic. U.S. and other foreign suppliers have complained, however, that the safety and inspection procedures applied to foreign products are more rigorous than those applied to similar domestically produced products. Foreign suppliers have also had difficulty in learning exactly how and by whom inspections are conducted. For some types of product inspections, China does not use the same inspection agency for domestic and imported goods.

China's phytosanitary and veterinary import quarantine standards are often overly strict, unevenly applied, and not backed up by modern laboratory techniques. An example is China's use of past Mediterranean fruit fly occurrences in urban Los Angeles as a reason to ban the entry of citrus fruit from all parts of the United States. In another example, the Chinese Government continues to require foreign pesticide producers to submit to costly testing and registration procedures, but it does not apply these requirements to domestic producers. U.S. companies report that complying with these regulation costs more than $5 million per agricultural chemical.

China committed in the 1992 Market Access MOU to base its agricultural import standards on "sound science." Since 1992, China has made some progress on agricultural sanitary and phytosanitary issues, signing bilateral protocols for several agricultural items, including live horses (September 1994); apples from Washington, Oregon, and Idaho (April 1995); ostriches, bovine embryos, swine, and cattle (June 1995); and cherries (March 1996). However, China's sanitary and phytosanitary measures still prohibit imports of U.S. citrus, plums, grapes, tobacco, and Pacific Northwest wheat. In 1996, China's sanitary requirements for poultry and poultry meat became a major issue. Imports from the U.S. were abruptly stopped on several occasions for reasons inconsistent with international standards.

China's restrictions on imports of citrus and Pacific Northwest wheat are of particular concern to U.S. industries because they are not based on sound science. We have raised repeatedly raised these issues at the most senior levels throughout the year. Discussions aimed at resolving the other outstanding agricultural issues have also been ongoing. Technical experts from the United States and China met in Shanghai in January 1996 for phytosanitary discussions that covered California plums, grapes, cherries, apples, and tobacco. China, however, has been slow to address phytosanitary issues relating to citrus, particularly from California. In late 1995, China sent a technical team to inspect U.S. citrus growing regions, including California, Florida, Texas, and Arizona. In early 1997, the United States is still discussing with China the results of China's pest risk analysis from this technical inspection.

**GOVERNMENT PROCUREMENT**

China's government purchasing actions and decisions are subject to China's general laws, regulations and directives. Despite its commitment under the 1992 Market Access MOU to publish all laws and regulations affecting imports and exports, some regulations and a large number of directives have traditionally been unpublished, and there is no published, publicly available national procurement code in China. Only one tendering organization, the National Tendering Center for Machinery and Electrical Equipment, has published a tendering guide, which is brief and vague. If the Chinese Government maintains any laws, regulations, and policies on the conduct, evaluation, and award of government procurement procedures, they remain restricted for "internal use" and inaccessible to foreigners, including government officials and business representatives.

Based upon experiences of U.S. firms, government approval, at some level, is required for most government projects in China for which imports are required. Projects in certain fields require approvals from several different organizations and at different levels, depending on the value of the project or purchase. Projects of government-owned enterprises or projects requiring government funds valued at less than $10 million for inland provinces (or $30 million for coastal provinces and major jurisdictions including but not limited to Beijing, Shanghai, Tianjin, and Guangdong) must receive approval by their own departments or planning commissions at the provincial level. Projects over $30 million require approval by the ministries in charge of the industry concerned as well as State Planning Commission examination and approval. They also need final approval by the State Council.

Tendering procedures are typically non-transparent and inconsistent over time. Contracts below $100,000 are not usually tendered. For domestic procurement, Chinese enterprises increasingly compete to supply major projects. For international procurement not under World Bank guidelines, China may offer a project to a single bidder, a few, or as many bidders as it chooses. Bidders can be excluded for largely political reasons.

For projects using foreign loans provided by international organizations such as the World Bank, procurement complies with the standards set by the donor organization. Such procurement is overseen by either one of a handful of tendering companies that are subsidiaries of state-owned trading companies or the State Council's National Tendering Center. For procurement that is not required to meet World Bank standards, these procedures are optional and, to the best of our knowledge, seldom used. Influenced by the World Bank and other organizations, the SPC is understood to be examining the possibility of establishing regulations that would require competitive bidding for government procurement. Given widespread noncompetitive practices that provide latitude for corrupt exchanges, progress on such reforms is likely to be slow.

Procurement made with international financing requiring competitive bidding, regardless of the level of government, must be tendered. Other procurement need not be tendered but are encouraged to do so. Even if the bidding guidelines set up by the National Tendering Center must be followed for tenders that it conducts, the guidelines are vague enough to allow significant flexibility.

China's government procurement procedures allow for preferential treatment of domestic suppliers, products and services. Domestic procurement is often closed to foreign bidders. Even when open to foreign bidders, such suppliers may be discouraged from bidding by the uncertainty of obtaining foreign exchange.[2] Moreover, the Chinese Government routinely seeks to obtain offsets from foreign bidders in the form of local content requirements, technology transfers, investment requirements, counter-trade or other concessions, not required of Chinese firms. In fact, bidding documents, including those for internationally-funded procurements, often express a "preference" for offsets.

Negotiation among a field of competitors narrowed by selection is frequently used to try to extract additional concessions from bidders. Such negotiations appear to focus as much on offsets as price, quality, and other technical and directly related economic factors. Chinese negotiators do not necessarily conduct negotiations on an equal basis with all bidders, but rather may focus their efforts on a principal bidder and try to use concessions from other bidders to extract further concessions from this bidder.

[2] China has moved toward an interbank market for foreign exchange and current account convertibility, but the extent to which the current changes will eliminate the need for approval to use foreign exchange remains unclear.

Since laws, regulations, or policies on government procurement remain largely unpublished, it is difficult to determine if practice conforms with World Bank standards. U.S. and other foreign businesses are of the opinion that most government procurement complies with China's unpublished laws, policies, and regulations. There may be some differences in uniformity on a regional basis with greater competition in the more developed, free-wheeling coastal areas. Tenders under World Bank guidelines appear to conform to those guidelines, but tendering is voluntary for projects or purchases not subject to such guidelines and is infrequently used in such cases.

Invitations may be extended to selected "qualified" bidders for tendered procurement, but it is not clear how these qualifications are determined or whether invitations are extended to all interested suppliers on the qualified suppliers list. Non-tendered procurements are not subject to any constraints. Procedures for adding suppliers to lists of qualified bidders are not clearly established, either in terms of periods for qualification or of criteria for domestic or foreign suppliers.

The non-transparency of the current procurement environment contributes to the perception that suppliers of U.S. products are, on occasion, not treated fairly. Tenders can be opened to a select list of bidders if the tendering organization determines that a limited number of "qualified" producers or suppliers exists (although it is not clear how such qualifications are determined). Non-tendered procurements often involve negotiations with a single supplier or a restricted number of suppliers. Procurement for some major purchases has apparently been awarded for political reasons, and single-source procurement -- including buying sprees timed to influence political decisions in other countries -- is not uncommon.

Finally, despite the promulgation of China's first law on unfair competition in December 1993, the problem of official corruption remains widespread as the government continues to call for improved self-discipline and anti-corruption efforts at all levels. For procurements made using competitive procedures, there is little direct evidence that bribery or corrupt practices have influenced awards or resulted in failure to enforce competitive measures. However, competitive procedures are not followed for the bulk of procurements in China. Given the Chinese Government's own fervent campaign to attack widespread corrupt practices of officials, the likelihood of corruption or bribery affecting domestic procurements appears significant. To wit, U.S. suppliers have frequently raised this problem with U.S. officials, complaining that such practices in China put them at a competitive disadvantage. While this dilemma is less severe in sectors where the United States holds clear technological preeminence or cost advantages, it does undermine the long-term competitiveness of U.S. suppliers in the Chinese market.

The size and rate of growth of the Chinese economy, the proportion of the economy still falling under State control, and demand for the type of high technology goods and services that the United States provides all indicate that government procurement contracts would offer extremely significant commercial opportunities if current restrictions were removed. Sectors of highest demand include infrastructure development (especially energy, petrochemicals, transportation and environmental protection), telecommunications and value-added services, machinery, electrical equipment and precision instruments, and certain agricultural and forest products. Changes in China's government procurement practices might result in increased U.S. exports to China of over $500 million.

## China

### EXPORT SUBSIDIES

The Chinese Government claims that direct financial subsidies on all exports, including agricultural goods, ended on January 1, 1991. While this may be true for direct budgetary outlays, China continues to use a variety of measures to support and promote exports. For example, Chinese exporters benefit from preferential loan policies (e.g., access to funds on non-commercial terms), preferential tax policies (e.g., reduced income taxes), and preferential energy and raw material supply policies (e.g., access to freight services and input supplies on non-commercial terms). Certain export sectors also benefit from government-funded technological.

The government also generates exports by imposing foreign exchange earnings requirements on Chinese foreign trade corporations (FTCs) and export requirements on foreign invested enterprises. These foreign exchange earnings requirements tend to make FTCs over export, resulting in systematic financial losses. These losses are often covered by state commercial bank loans, and the chronic nature of these losses suggests that much of the lending is not on strictly commercial terms. State trading companies are also subject to constraints that make them export in volumes not consistent with their input costs or other commercial considerations.

China is attempting to bring a greater degree of uniformity in the type and amount of taxes and duties imposed on enterprises in China, domestic and foreign-funded alike. As a result, preferential tax and duty policies that benefit exporters in special economic zones and coastal cities are being revised. It remains to be seen, however, whether uniformity will, in fact, be achieved, particularly with respect to income and other direct taxes imposed on exporters.

### LACK OF INTELLECTUAL PROPERTY PROTECTION

U.S. efforts to protect intellectual property rights (IPR) in China took a major step forward in 1996. In an effort to ensure effective enforcement by the Chinese of the 1995 U.S.-China IPR Agreement, in May 1996 the Clinton Administration threatened to impose increased tariffs on $2 billion of China's exports to the United States. In June 1996, China and the United States signed an IPR Accord which set out the steps that China had taken in recent months and further steps that it would take in the future. At that time China reported on its recent efforts to crack down on piracy which included shutting 15 illegal CD factories and over 500 laser disc cinemas nationwide. Imports of CD presses were also stopped unless central government authorities granted express approval for the import.

Since June, the Chinese have made significant progress in combating IPR violations. Specifically, Chinese officials have closed 9 factories and 28 illegal production facilities and confiscated millions of illegal and unauthorized LDs, CDs, VCDs and other publications. In addition, Chinese authorities launched 37,300 checks across the country on IPR related cases and collected US $491 million in revenue from IPR related fines, up 33 percent over 1995. To date, more than 3,000 judges have been specifically trained to hear IPR cases, and significant rewards have been paid for information leading to the arrest of pirates.

Significantly, China's customs authorities have notably increased IPR enforcement efforts at the border. Imports of CD presses through the ports of Shantou and Foshan have been stopped. In Guangdong province, over 6,000 smuggling cases involving goods worth approximately US $1.2 million were uncovered (up 18 percent over 1995). Cooperative efforts between Guangdong province and Hong Kong customs officials have paid off, resulting in 15 joint crackdown operations in 1996.

In addition, as a result of the 1995 IPR Agreement and the 1996 IPR Accord, intellectual property companies have gained ground in terms of market access. U.S. companies improved access to China's domestic audiovisual markets and China committed to permit, for the first time, the establishment of joint ventures to produce and reproduce product in China and to enter into contracts for distribution, sale, and performance of foreign works throughout China. In addition, U.S. motion picture companies have entered into revenue sharing arrangements with partners in China.

China and the United States have committed to frequent consultations and exchanges of data on IPR enforcement activities. U.S. government agencies and industry groups have provided specialized IPR training and assistance to Chinese government agency personnel pursuant to the agreements. Enforcement of IPR protection has become part of China’s nationwide anti-crime campaign, thus ensuring Chinese police involvement in arresting IPR piracy.

The Administration commends China for taking these promising steps on effectively enforcing IPRs. USTR will continue to pursue improved enforcement, in particular in respect of end-user infringements such as institutional piracy. Industries estimate that continued improvements in China’s enforcement of its IPR laws and regulations may result in an increase in U.S. exports of goods and services in excess of $500 million, and improved audiovisual market access may result in increased U.S. exports of between $50 million and $100 million.

**SERVICES BARRIERS**

While China has promised to liberalize its services markets upon accession to the WTO, today China's market for services remains severely restricted. For example, foreign service providers are only allowed to operate under selective “experimental” licenses and are restricted to specific geographic areas. As in other sectors, the absence of transparency and a sound legal and regulatory structure, and public ignorance of those laws and regulations that do exist, block market access for services companies.

In short, China denies U.S. and other foreign services companies national treatment. U.S. services companies continue to face significant administrative restrictions from which domestic firms are exempt. For example, U.S. financial institutions, law firms, and accounting firms, among others, must largely limit their activities to serving foreign firms or joint ventures. U.S. companies still are not permitted to offer after-sales services, except in collaboration with a Chinese partner. Although some U.S. companies, such as those involved in joint-ventures, are allowed to hire and fire based on demand and performance and pay wages according to market rates, the representative offices of U.S. service suppliers are still required to hire, recruit, or register all local staff through state labor services companies which collect large monthly fees for each employee hired. Access to distribution outlets remains severely restricted, and foreign firms are even barred from transferring products among various subsidiary production facilities.

## China

In line with its effort to join the WTO, China has begun to allow foreign participation in several services industries on a trial basis. For example, the State Council has followed up on plans announced in January of 1996 to allow foreign banks in Shanghai's Pudong area to conduct *renminbi* transactions on a restricted trial basis. As of early 1997, 8 foreign banks had obtained permission to conduct local currency business in Pudong. U.S. and other foreign financial institutions, however, still need approval for new representative offices and branches, which is granted on a case-by-case basis. By the end of 1996, China approved a total of 150 bank branches and 530 representational offices. China has also licensed 73 U.S. law firms in 15 cities, but limited their practice to a single city and forbidden them to take Chinese clients, appear in Chinese courts or establish joint-venture law firms. In late 1996, the Ministry of Justice announced plans to further regulate the activities of foreign law firms. However, such restrictions were postponed indefinitely due to pressure from foreign firms and diplomats. Travel and other tourist-related services are limited to 11 areas in China, and retailing firms are subject to vague, restrictive guidelines, the implementation of which often varies considerably from locality to locality.

With regard to insurance services, China has passed an insurance law and is taking steps to reform and develop its domestic industry, but still blocks nearly all foreign companies from the market. While China has approved to date 144 representative offices opened by 84 different foreign insurance companies, including many large U.S. insurers, only one U.S., one Japanese, and one Canadian company have been granted licenses to operate in China. A fourth foreign insurance company has been granted a license to participate in a joint-venture with a Chinese partner. In addition, the licenses granted to the U.S. company restrict the company to a narrow range of operations in Shanghai and Guangzhou. Permission to compete directly with the state-run insurance company, the People's Insurance Company, or with other quasi-private Chinese companies such as Ping An or China Pacific, has not been granted. While U.S. companies suffer under such restrictions, new Chinese insurance conglomerates have been given free rein to set up operations and take market share.

In other areas, such as information and telecommunications services, U.S. companies continue to be closed out of the market. Current regulations governing providers of telecommunications services and value-added telecommunications services limit the management or ownership of these types of services to domestic companies.

Many foreign operators, including U.S. firms, are looking for ways to avoid these restrictions on operation, including forming joint venture with local companies. For example, some foreign companies have teamed with Chinese partners to provide information services via the internet. One non-U.S. foreign company, for example, is working with the People’s Daily to provide on-line translations of major computer and information industry publications. In another example, some foreign companies have entered into joint ventures with local companies to construct telecom networks. These ventures are Chinese legal entities, which can then contract with Unicom, China’s second carrier. There is now some evidence that the MPT, China’s first carrier, may be willing to participate in similar kinds of arrangements.

Information services also remains a difficult and sensitive area for U.S. companies to do business in China, in part because of Chinese concerns about pornographic and politically sensitive material entering China. In April 1996, for example, the State Council announced plans to enact severely restrictive regulations governing the activities for foreign news service providers. While it appears that such action has been set aside for the time being, foreign information services providers remain wary.

Since China's services sector remains underdeveloped and current foreign participation in the market is minimal, it is difficult to estimate how much such barriers to market access represent in lost U.S. exports of services. In some services sectors, such as insurance, even the most conservative estimates predict total premiums to reach $10-20 billion in the next several years. If China lifted barriers to market access in the sector, U.S. insurance providers could be expected to capture a portion of the Chinese market that would almost certainly exceed $500 million. In other services sectors, such as legal services, accountancy and consulting, while potential revenues are likely more modest, the lifting of barriers to market access would certainly result in significant a increase in U.S. exports of services.

**INVESTMENT BARRIERS**

Although official Chinese policy welcomes foreign investment as critical to the country's economic development plans, the Chinese Government continues to maintain barriers and controls on foreign investment, channeling it toward areas that support Chinese Government development policies. China encourages foreign investment in priority infrastructure sectors such as energy production, communications, and transportation, and restricts or prohibits it in sectors where China's planners have not determined that China has a specific need or where China wants to protect the local industry. In June 1995, Chinese authorities issued investment guidelines detailing sectors in which investment is encouraged, restricted or prohibited. The new guidelines were a positive step toward clarifying China's policies on foreign investment. However, a continued general lack of transparency in the foreign investment approval process and inconsistency in the implementation of regulations continue to hinder investors that meet the substantive requirements of the "guidelines."

According to the investment guidelines, the Chinese Government still prohibits foreign investment for projects with objectives not in line with national economic development under the state plan. In addition, there are many areas in which, although foreign investment is technically allowed, it is severely restricted. Restricted categories generally reflect: (1) the protection of domestic industries, such as the services sector, in which China fears that its domestic market and companies would be quickly dominated by foreign firms; (2) the aim of limiting luxuries or requiring large imports of components or raw materials; and (3) the avoidance of redundancy (i.e., excess capacity).

Examples of investment restrictions are abundant. For example, China bans investment in the management and operation of basic telecommunications, all aspects of value-added telecommunications as well as in the news media, broadcast and television sectors -- citing a "national security interest." In addition, China severely restricts investment in the rest of the services sector, including distribution, trade, construction, tourism and travel services, shipping, advertising, insurance, and education. Finally, China hinders foreign investment and distorts trade by insisting on fulfillment of contract-specific local content, foreign exchange balancing, and technology transfer requirements if companies are to import under anything other than prohibitive tariff rates. Furthermore, foreign enterprises are often limited in their scope. Generally, they are prohibited from directly importing and reselling goods without further processing.

## China

The day-to-day problems faced by foreign ventures lie primarily in the uncertain investment climate created by policy vacillations and the uneven implementation of laws and regulations. The Chinese Government has taken steps to address investors' complaints regarding the inadequacies of protection for foreign investment, such as amending its joint venture law to prohibit the expropriation or nationalization of joint ventures without cause and compensation. While this action is a step in the right direction, the law continues to fall short of international standards sought by the United States. Other legislative actions taken by Beijing have promised greater autonomy and incentives for foreign-invested ventures, but these laws have been haphazardly enforced, if at all.

In addition, the designation of key state enterprises in many industries as the exclusive bases for the development of critical technologies limit the choice of joint venture partners. Designated partners are frequently unattractive for various business reasons such as lack of experience, inappropriate staffing levels, and outdated equipment.

Overall, foreign-invested enterprises have a significantly greater degree of managerial autonomy than do typical Chinese enterprises. On the other hand, Chinese enterprises enjoy certain advantages because they are fully integrated into the national economic system. Central government ministries and local governments frequently provide special advantages to state-owned firms. For example, many Chinese companies are able to obtain preferential treatment in local financing marketing, setting prices, and purchasing raw materials. Unlike many U.S. companies in China, Chinese companies have free access to the Chinese domestic market.

For many companies, the highly personalized nature of business in China and the limited number of suppliers and customers often make arbitration or other legal remedies impractical. Even when they have strong cases, foreign investors often decide against using arbitration or other legal means to resolve problems out of fear of permanently alienating critical business associates or government authorities. The lack of recourse to an impartial legal system that is not susceptible to Chinese Government pressure further undermines investor confidence.

In December 1992, the United States re-established the Joint Commission on Commerce and Trade (JCCT) as a ministerial-level forum for discussion of investor and business concerns, among other things. The JCCT met most recently in October 1996 with working group sessions on trade and investment in a number of sectors. These working groups have established and continue to coordinate a range of cooperative exchanges on trade and investment issues, providing a forum to discuss specific investor and business problems.

### ANTICOMPETITIVE PRACTICES

Anticompetitive practices in China come in the form of industrial conglomerates created to improve the profitability of state-owned enterprises. In some cases, the government has provided subsidies and other public benefits to such conglomerates, as well as authorizing some to fix prices, allocate contracts and, in other ways, restrict competition among domestic suppliers. Such monopolistic or monopsonistic practices may restrict market access for imported products, raise production costs, and restrict market opportunities for foreign-invested enterprises in China.

## OTHER BARRIERS

The explosive growth of the market for many products in China, while a very positive sign for China's economy as a whole, has led to the creation of a large “illegal” gray market in some sectors of great commercial interest to U.S. producers and exporters. While some U.S. products are traded in the gray market, most U.S. companies either cannot or choose not to accept the risks of entering this “unofficial” market. The existence of this parallel gray market resulting in part from controlled demand, thus deprives U.S. firms of sales that would otherwise occur on the legitimate market. Medical equipment is an example of this phenomenon. Similarly, restrictive import licensing requirements for low-end computers, only tardily lifted in mid-1995, appeared to allow third country competitors to make inroads in a market that is dominated elsewhere by U.S. manufacturers.

Smuggling of both legitimate and “fake” products constitutes a formidable disincentive to engage in legitimate importation of U.S. and other foreign products -- and harms U.S. exporters in several ways. Smuggling diverts income from U.S. joint ventures in China or their home operations. Reportedly many of the products smuggled into China are counterfeit or otherwise defective. In such cases, both the producer and importer of legitimate goods are harmed as well as consumers in China. Moreover, smuggling creates havoc for companies that try to provide after sales service and repairs. Smuggled goods do not carry warranties, are often damaged or handled poorly, and are not serviced by trained personnel.

### Satellite Launch Services

On March 13, 1995, the United States and China signed an agreement renewing the Bilateral Agreement on International Trade in Commercial Space Launch Services. The agreement covers the period from 1995 to 2001 and continues quantitative and pricing disciplines established under the first U.S.-China space launch services agreement signed in 1989. The 1995 space launch agreement is covered under applicable U.S. trade laws and regulations.

The renewed agreement limits China to no more than 11 launches to geosynchronous earth orbit (GEO) over the seven-year period of the agreement. In addition, it allows four launches in 1995-96 to be counted against the quota of the first agreement since they had already been reviewed under that agreement. China conducted only four of its permitted nine launches in 1989-1994.

In light of the emergence of the remote-sensing and weather tracking market for launches to low-earth-orbit (LEO) since 1989 and commercial plans for the deployment of telecommunications satellite constellations into LEO beginning in 1997, the renewed Chinese agreement contains specific disciplines and guidelines regarding future Chinese launches to LEO. The agreement requires that Chinese participation in the LEO market segment be proportionate and non-disruptive. The U.S. may request consultations with China to establish the facts and agree on any necessary corrective action.

The 1995 agreement contains new language which more clearly describes the circumstances under which adjustments to the GEO quota may be made. For example, the GEO restrictions may be increased as a result of stronger than predicted growth for GEO launch services or the lack of availability of western launch services during a specified launch period. By providing this greater detail, the agreement should achieve its intended objective with respect to the U.S. space launch industry while balancing the needs of U.S. satellite manufacturers and users.

The renewed agreement contains two improvements to the GEO pricing discipline: (1) a detailed annex on the adjustments which might be appropriate to make when comparing Chinese and Western launch prices and average values associated with those adjustments, and (2) a safe harbor which provides that Chinese prices falling within 15 percent of Western prices will generally be assumed to be in compliance with the "par pricing" standard of the agreement, unless facts indicate otherwise. The former improvement will help prevent disputes with China on the nature and value of price adjustments, while the latter should aid in focusing attention on those transactions which could threaten the integrity of the "par pricing" discipline.

The LEO pricing disciplines consists of the same par pricing requirement as in GEO. The two sides have been working over the last year to reach a consensus on specific LEO pricing adjustments as have already been negotiated on GEO.

In July 1996, the United States and China held the first set of annual consultations that are called for under the agreement. Among the subjects covered at those consultations were developments in the overall supply and demand for international commercial space launch services and a review of competitions either won by, or involving, Chinese launch service providers since the new agreement was in place.

Taking into account the information supplied by China during the annual consultations with regard to the prices, terms, and conditions offered by China for international commercial space launch services, the United States subsequently concluded that Chinese pricing in two competitions did not appear to be justified under the pricing provisions of the 1995 agreement. As a result, the U.S. requested “special consultations” with China as provided for in Article IV (2) of the agreement to review its concerns. Those consultations were held on November 14-15, 1996, during which the United States reviewed its concerns in each of those consultations. In turn, China was given an opportunity to provide additional information regarding the prices, terms, and conditions of the competitions or other factors that would further clarify the apparent price differences. The United States is reviewing the results of those consultations.

**Textiles**

USTR engaged in several textile negotiations with China throughout 1996, culminating in a four year textile pact concluded February 3, 1997. The pact builds on the 1994 textile agreement -- which produced USTR sanctions against China on three different occasions, most recently in September 1996 -- improving it in two important areas, namely market access and enforcement against illegal transshipment. Under the market access aspects of the agreement, China has agreed to reduce tariffs and bind tariffs at applied rates, thereby increasing market access for U.S. exporters, and to ensure that non-tariff barriers do not impede the achievement of improved access. U.S. producers are confident that they can effectively export a number of products to China under these conditions.

While the pact provides some adjustment to China’s quota levels and growth rates, the new package addresses on-going U.S. concerns about illegal transshipment practices. The new agreement reduces quota levels in fourteen apparel and fabric product categories where there were repeated violations of the 1994 agreement through transshipment or over shipment. It maintains strong enforcement measures, including the ability to "triple charge" quotas for repeated violations of the agreement, as well as a number of procedural measures to improve the bilateral consultation process, including arrangements to implement an "electronic visa" information system to more effectively track textile and apparel shipments. The parties have agreed to maintain the separate treatment of textiles quotas for Hong Kong, Macau, and China after July 1, 1997.

# COLOMBIA

In 1996, the U.S. trade surplus with Colombia was $435 million, a decrease of $438 million from the U.S. trade surplus of $873 million in 1995. U.S. merchandise exports to Colombia were approximately $4.7 billion, an increase of $81 million (1.8 percent) from the level of U.S. exports to Colombia in 1995. Colombia was the United States' twenty-fifth largest export market in 1996. U.S. imports from Colombia were nearly $4.3 billion in 1996, an increase of $518 million (13.8 percent) from the level of imports in 1995.

The stock of U.S. foreign direct investment (FDI) in Colombia in 1995 was more than $3.4 billion, an increase of 4.0 percent from the level of U.S. FDI in 1994. U.S. FDI in Colombia is concentrated largely in the petroleum, manufacturing, and financial sectors.

## IMPORT POLICIES

Under an economic liberalization plan known as "apertura" (opening), in the early 1990's, Colombia substantially reduced tariffs, eliminated almost all import licensing requirements, simplified import and export procedures, established a free market exchange rate regime (with very few conditions), created transparent and more liberal foreign investment rules, and opened up nearly all sectors of the economy for foreign investment. The agricultural sector has been a general exception to this opening.

### Tariffs

As a result of the Uruguay Round negotiations, Colombia bound most of its tariff rates at 35 to 40 percent. Currently, Colombia's average applied tariff rate is about 12 percent ad valorem.

Colombia, along with Venezuela and Ecuador, implemented an Andean Pact common external tariff (CET), which took effect on February 1, 1995. The CET has a four-tier structure, with duty levels of 5, 10, 15, and 20 percent for most products. In accordance with the Andean Pact CET, Colombia harmonized its national four-tier tariff schedule with that of Venezuela and Ecuador, with some exceptions taken by each country. (Bolivia retains its two-tier tariff structure of 5 and 10 percent, and Peru its structure of 15 and 25 percent).

Colombia has imposed minimum specific duties to keep out low value goods. Colombia established a minimum ad valorem tariff amount below which a duty may not fall, or a minimum value for a product below which an additional tariff is charged. For low-priced items, this will either cause the tariff to be an inordinate share of the value of the product, or stifle trade in low-priced versions of that product.

Colombia also adopted a harmonized automotive policy with Venezuela and Ecuador -- which went into effect on January 1, 1995 -- establishing CET rates of 35 percent for passenger vehicles, 15 percent for mass transit and cargo vehicles, and 3 percent for kits. The policy includes regional content requirements.

In recent years Colombia has negotiated trade arrangements with other Latin American and Caribbean countries. Colombia has a comprehensive free trade agreement with Mexico and Venezuela, known as the

G-3 Agreement, which took effect on January 1, 1995, under which most tariffs are to be reduced to zero by the year 2007. Colombia also has a partial free trade agreement with Chile. All of Colombia's bilateral and regional trade agreements are based on Latin American Integration Association (ALADI) regulations and procedures. Other agreements, such as those negotiated with Cuba, Panama, Central America, and CARICOM, have either been ineffective or have not been fully implemented. Colombia, like the other members of the Andean Pact, is in the initial stages of negotiating a free trade arrangement with the countries of MERCOSUR.

**Non-Tariff Measures**

Most products are subject to a 16 percent value-added tax (automobiles are subject to higher rates ranging from 20 to 60 percent). This tax applies to domestically produced goods as well as imports.

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

The agriculture sector in Colombia remains protected. Since the promulgation of Decree 2439 in November 1994, the Ministry of Agriculture has been required to approve import licenses for many agricultural items, such as wheat, poultry meat, malting barley, corn, cotton, rice, sorghum, wheat flour, oilseeds and their products, soybeans, soybean meal, and soybean oil. Private importers are more likely to have their import licenses approved if they also buy domestically-produced wheat, sorghum, palm oil, or malting barley. This import licensing regime appears to be discretionary and thus not consistent with Colombia's obligations under the WTO Agreement on Agriculture. If the import licensing requirement for the products indicated above were eliminated, it is estimated that U.S. annual exports would increase by $10 million.

Thirteen basic agricultural commodities (powdered milk, wheat, malting barley, yellow and white corn, crude palm and soybean oils, white rice, soybeans, white and raw sugars, chicken pieces, and pork meat) and an additional 120 commodities that are considered substitutes or related products are subject to a variable import tariff "price band" system. Imported wheat is also subject to minimum import prices. There are at this time no reliable figures showing how much U.S. exports would increase if the price band system were eliminated.

Since July 1993, the Colombian Foreign Trade Institute (INCOMEX) has required an approval prior to the importation of chicken parts. Under this system, the Government of Colombia has approved import licenses only when it has determined such imports will not adversely affect Colombian chicken producers. Since 1994, import licenses to import U.S. chicken parts have been regularly denied. If the import licensing requirement for chicken parts were eliminated, it is estimated that U.S. annual exports would increase by approximately $10 million.

Valuation of imported merchandise, previously the responsibility of the Customs Service, can now ostensibly be done by importers who self-value, assess, and pay duties and other taxes at commercial banks. Customs clearance processes in many instances can be performed fairly rapidly. However, Colombia's pre-shipment inspection of imported equipment must be performed by an independent testing agency which, according to U.S. industry, results in unnecessary delays. Through a series of resolutions dating back to November 1994, the Colombian Government has created a pre-shipment inspection (PSI) mechanism using private PSI companies. Upon acceding to the WTO Agreement on Pre-Shipment Inspection, Colombia took measures to allow PSI companies to perform certain direct functions under the control of the National Tax and Customs Directorate (DIAN). As of February 1, 1996, PSI companies began mandatory preclearance of all goods defined as "sensitive" by the Colombian Government.

**STANDARDS, TESTING, LABELING, AND CERTIFICATION**

INCOMEX mandates compliance with specific technical standards for a variety of products. The particular specifications are established by the Colombian Institute of Standards (ICONTEC). Under Decree 300 of 1995, a certificate of conformity with Colombian standards is required prior to the importation of any good regulated by a standard. Inconsistencies in the application and enforcement of standards sometimes lead to problems for U.S. exporters. Several products require testing to verify conformity with ICONTEC standards. The shortage of officially recognized laboratories and a lack of transparency has affected enforcement of existing regulations regarding quality conformity.

ICONTEC is strengthening a national system on quality and standards by the creation of a national network of certified metrology laboratories. Colombian officials have visited similar sites in the United States for study. The Center for Quality Control and Metrology, due to open in 1997, will be key in assuring quality compliance to national and international standards of any product (whether imported or produced locally) entering the Colombian market,.

Colombia’s tax law, Law 223, which took effect on January 1, 1996, establishes that all distilled spirits are subject to a value-added tax of 35 percent. However, the law makes an exception for whiskeys that are aged for 12 or more years, which are subject to a 20 percent value-added tax. Bourbon and Tennessee Whiskey -- both distinctive products of the United States -- are typically aged from four to eight years and, as a consequence, face a higher tax rate than most competing imported whiskeys which are aged longer. This distinction between whiskeys creates a competitive disadvantage for Bourbon and Tennessee Whiskey. The United States has pointed out this inconsistency in the Colombian tax law but, to date, the Government of Colombia has not revised its law.

According to U.S. industry, Colombian requirements for phytosanitary registrations to bring new products into the market take an excessively long time, six to eight months, to fulfill. In 1996, Colombian authorities began requiring that all fresh fruit and vegetables originating from California and Florida be fumigated at the port of entry with methyl bromide. By October 1996, after Colombian officials visited the states in question, the requirement was repealed.

**GOVERNMENT PROCUREMENT**

An October 1993 government procurement and contracting law, Law 80, provides equal treatment to foreign companies on a reciprocal basis and eliminates the 20 percent surcharge previously added to foreign bids. In implementing Law 80, the Government of Colombia instituted a burdensome requirement that companies without local headquarters must certify reciprocity in government procurement in the home country. Law 80 does not apply to contracts for the exploration and exploitation of renewable or non-renewable natural resources, their commercialization, and those activities performed by state companies involved in these sectors; nor does it apply to contracts for telecommunications, radio, television, and long distance telephone services. These contracts are governed by other laws. Colombia is not a signatory to the WTO Agreement on Government Procurement.

U.S. providers of telecommunications services have encountered difficulties in bidding on contracts. The bidding process suffers from a lack of transparency and other irregularities. One U.S. company lost bids on contracts worth over $100 million amid allegations of illicit payments made by competitors. Other U.S. companies have found themselves unable to enter the bidding process owing to their unwillingness to offer financial incentives. Another U.S. company was judged the best contestant technically, legally, and financially by two different evaluating boards, but the final decision was delayed repeatedly without explanation. And in another case, a $93 million government contract was initially awarded to a foreign competitor, but then the entire bidding process was canceled amid allegations of improper activities and bribes. A U.S. company lost years of effort and millions of dollars invested in the preparation of its bid, which was judged by an independent commission to be the best submitted from a third country.

## EXPORT SUBSIDIES

As a result of "apertura" and commitments made by the Government of Colombia to the U.S. Government in the context of acceding to the GATT subsidies code, Colombia agreed to phase out any export subsidies inconsistent with that code. This process will continue under the WTO Agreement on Subsidies and Countervailing Measures. Colombia's tax rebate certificate program (CERT) contains a subsidy component; the Government of Colombia has committed to eliminating the subsidy and creating an equitable drawback system, but has not yet done so. Colombia also has notified the WTO of its "special machinery import-export system" and "free zones" as constituting export subsidies.

## LACK OF INTELLECTUAL PROPERTY PROTECTION

Despite significant improvement in 1993 and 1994 in the area of intellectual property rights (IPR), Colombia does not yet provide adequate and effective protection. As a result of its laws and practices -- especially its inadequate IPR enforcement - - Colombia has been on the "Watch List" under the Special 301 provision of the 1988 Trade Act every year since 1991. The United States continues to discuss IPR issues with Colombia and remains interested in negotiating a bilateral agreement on intellectual property protection. Colombia has ratified, but not yet fully implemented, the provisions of the WTO Agreement on Trade-Related Aspects of Intellectual Property Rights (TRIPS).

**Patents and Trademarks**

Two Andean Pact decisions on the protection of patents and trademarks and of plant varieties have been in effect in Colombia since January 1, 1994. The decisions are comprehensive and offer a significant improvement over previous standards of protection of intellectual property in the Andean Pact countries. For example, they provide a 20-year term of protection for patents and reversal of the burden of proof in cases of alleged process patent infringement. The provisions of the decisions covering protection of trade secrets and new plant varieties are generally consistent with world-class standards for protecting intellectual property rights. However, the decisions still contain deficiencies, including overly broad compulsory licensing provisions, working requirements, restrictions on biotechnology inventions, denial of pharmaceutical patent protection for patented products listed on the World Health Organization's Model List of Essential Drugs, the lack of transitional ("pipeline") protection, and the lack of protection against parallel imports. In June 1996, Colombia ratified the Paris Convention for the Protection of Industrial Property, which went into effect in September 1996.

Colombia's trademark protection requires registration and use of a trademark in Colombia. Trademark registrations have a ten-year duration and may be renewed for successive ten-year periods. Priority rights are granted to the first application for trademark in another Andean Pact country or in any country which grants reciprocal rights. Colombia is a member of the Inter-American Convention for Trademark and Commercial Protection. Enforcement in the trademark area remains a weak.

The Colombian Government has made progress administering patent and trademark regulations. The agency in charge of patents and trademarks -- the Superintendency of Industry and Commerce -- has cleared up some of its trademark backlog. However, some 27,000 cases remain pending.

The Andean Pact decision on patent and trademark protection also provides for protection of industrial secrets. Protected property includes that which is secret (not generally known or easily accessible to those who usually handle such information) and has an effective commercial value or a potential commercial value as a secret. The decision requires that the person wishing to maintain the secrecy of a product take reasonable steps to ensure that secrecy.

According to U.S. industry, Colombia maintains a policy of promoting unbranded pharmaceuticals at the expense of the brands typically produced by multinational companies. Law 100 establishes that the Colombian people will be covered by either social security or health promoting entities and that pharmaceutical products will be supplied based on a list of only 307 generic substances, thereby threatening to bring about the disappearance of the brand name pharmaceutical market in Colombia.

**Copyrights**

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

Colombia's 1993 copyright law significantly increased penalties for copyright infringement, specifically empowering the attorney general's office to combat piracy. However, U.S. industry estimates that video cassette piracy represents over 75 percent of the video market, sound recording piracy has soared to 66 percent of the market, and business software piracy has dropped slightly to 67 percent of the market. Industry estimates total revenue lost to copyright piracy at $131 million in 1996.

## SERVICES BARRIERS

Colombia maintains barriers in a number of service areas, including audiovisual, franchising, data processing, and professional services. In some industries, percentage limits are placed on foreign equity participation. In addition, a minimum of 50 percent of any television commercial for public broadcast network programming must be produced locally.

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

Foreign law firms are not permitted a commercial presence in Colombia unless the firm is headed by a Colombian attorney. Colombia also restricts the movement of personnel in several professional areas, such as architecture, engineering, law, and construction. Firms with more than ten employees can have no more than 20 percent of specialists and 10 percent of unskilled laborers who are foreign nationals.

In 1991 Colombia promulgated Resolution 51, which permits 100 percent foreign ownership in financial services, although the use of foreign personnel in the financial services sector remains limited to administrators, legal representatives, and technicians. For a full discussion of treatment of U.S. banking and securities firms, see the Department of Treasury's 1994 *National Treatment Study*.

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

### Basic Telecommunications Services

In the recently concluded WTO negotiations on basic telecommunications services, Colombia made commitments on some basic telecom services. It adopted the reference paper on regulatory commitments. Colombia limited foreign ownership for telecom services to 70 percent, and made market access and national treatment for cellular, PCS, long-distance, and international services subject to an economic needs test.

## INVESTMENT BARRIERS

Investment screening has been largely eliminated, and the mechanisms that still exist are generally routine and non-discriminatory. Legislation grants national treatment to foreign direct investors and permits complete foreign ownership in virtually all sectors of the Colombian economy. However, since 1994, in an effort to curb money laundering, the Colombian Government has prohibited foreign direct investors from obtaining ownership in real estate not connected with other investment activities.

Local content requirements exist in the automotive assembly sector as outlined in Decree 440 of March 1995, covering Colombia, Venezuela, and Ecuador. Beginning January 1, 1997, a minimum of 32-33 percent of local content is required for passenger vehicles carrying up to 16 persons, and cargo vehicles carrying up to 10,000 lbs., to meet national or regional origin standards. For all other vehicles, the requirement is 17-18 percent. Penalties will be established to enforce compliance with these percentages.

All foreign investment in petroleum exploration and development in Colombia must be carried out by an association contract between the foreign investor and ECOPETROL, the state oil company. The terms of the association contract underwent changes in 1994 and 1995 that represent an improvement over the terms in effect since 1989, but are still not as attractive as the original terms introduced in 1976. The 1995 changes opened previously reserved areas to foreign development and allowed for extensions of the length of association contracts during the last five years of the contract. These changes are not expected to make petroleum investment significantly more economically viable.

Although the Colombian Government opened small operating fields of less than 40 million barrels to foreign investment in 1995, it has not taken steps to make them more profitable to investors. The Government of Colombia has been imposing a "war" tax of approximately one dollar per barrel on foreign oil companies, which acts as an economic disincentive. According to a tax reform law adopted in December 1995, the war tax is being phased out on a two-tier schedule. For certain fields the tax requirement expires December 31, 1997, and for others it is gradually reduced until its elimination on December 31, 2000. The "war" tax is not imposed on new fields discovered after January 1, 1995.

## OTHER BARRIERS

For three years, Colombia has maintained a policy of price controls for medicines which allows price increases up to a rate several points below the expected level of overall inflation. Law 100, already in force, has dramatically affected the private brand name market for pharmaceuticals. While technically Colombians are given the option to purchase products bearing trademarks or brand names, the law has interfered with the market by creating a structure that unfairly or unnecessarily favors consumption of “generic” drugs at the expense of those bearing trademarks.

### Export Licenses

On January 9, 1995, USTR initiated a Section 301 investigation of Colombia's implementation of the Banana Framework Agreement (BFA) with the EU. On January 10, 1996, USTR determined that Colombia's policies, acts and practices were unreasonable and discriminatory and a burden or restriction on U.S. commerce. Taking into account the positive steps Colombia had taken in revising its internal banana regime and its willingness to cooperate with the United States in reforming the EU regime, USTR decided that the appropriate action was to implement a process aimed at addressing the outstanding issues, while stressing that additional action may still be taken. The United States and Colombia signed a Memorandum of Understanding (MOU) on that process. During 1996, the dispute over the EU banana import regime, including the EU's implementation of the BFA, was submitted to a dispute settlement panel of the WTO by the United States and four other countries. USTR will continue to monitor Colombia's adherence to the MOU, particularly in light of ongoing WTO proceedings against the EU regime.

**Taxes**

According to U.S. industry, Colombia applies a tax of 24 percent on income from sales of computer software which, when combined with a remittance tax of nearly 10 percent on royalties, yields an aggregate tax of greater than 30 percent on foreign licensors.

**Television Local Content Quotas**

As part of the de-monopolization of Colombia's government-owned television network, Colombia passed the Television Broadcast Law, Law 182/95, effective January 1995, which increases protection for all copyrighted programming by regulating satellite dishes and permits private television broadcasters to compete with the government-owned broadcaster. It permits foreign direct investment in the Colombian motion picture industry, but limits foreign investment to 15 percent of the total capital of local television programming production companies. The law increases restrictions on foreign content in broadcasting, including a complicated, burdensome system of subquotas for different hours of the day. The Colombian law requires broadcasters to transmit 70 percent locally-produced programming during prime time and a range of zero to 40 percent during other times on national television, and 50 percent locally-produced programming on regional channels and local stations. Foreign talent may be used in locally-produced programming, but limits are set by the Colombian quasi-independent national television commission.

Law 182/95 also includes burdensome restrictions on foreign investment, mandating reciprocity requirements and requirements that foreign investors be engaged actively in television operations in their country of origin. Foreign investment also must involve an implicit transfer of technology. The Television Commission has the authority to reduce these restrictions, but has not taken action in this area.

# COSTA RICA

In 1996, the U.S. trade deficit with Costa Rica was $160 million, an increase of $54 million from the U.S. trade deficit of $106 million in 1995. U.S. merchandise exports to Costa Rica were $1.8 billion, an increase of $75 million (4.3 percent) from the level of U.S. exports to Costa Rica in 1995. Costa Rica was the United States' forty-first largest export market in 1996. U.S. imports from Costa Rica were nearly $2.0 billion in 1996, an increase of $129 million (7.0 percent) from the level of imports in 1995.

The stock of U.S. foreign direct investment (FDI) in Costa Rica in 1995 was $790 million, an increase of 39.6 percent from the level of U.S. FDI in 1994. U.S. FDI in Costa Rica is concentrated largely in the manufacturing sector.

## IMPORT POLICIES

### Tariffs and Other Import Charges

Costa Rica is a member of the Central American Common Market (CACM), which also includes Guatemala, El Salvador, Honduras, and Nicaragua. With the exception of certain items, notably agricultural products, there are no duties for products traded among CACM members. The CACM had a common external tariff (CET) ranging from 5 to 20 percent for most products. In 1995, the members of the CACM agreed to reduce the CET to 0 to 15 percent, but allowed each member country to determine the timing of the reductions. Costa Rica's timetable for reducing the tariffs is contingent on progress in reducing the fiscal deficit and meeting targets under the International Monetary Fund (IMF) standby program.

In the context of the Uruguay Round negotiations, the Government of Costa Rica agreed to eliminate all import quotas and currently has a tariff binding of 53 percent on most goods, excluding selected agricultural commodities which are protected with significantly higher tariffs. Examples of such protection are dairy products and poultry products, with tariff bindings of 108 and 266 percent, respectively. Under the WTO Agreement on Agriculture, Costa Rica agreed to permit imports of up to 3 percent of national consumption of these goods, growing to 5 percent in 2004. This provides opportunities for new-to-market U.S. agricultural products. Unfortunately, full implementation of all tariff rate quotas (TRQs) is being delayed due to a court challenge.

Most applied tariffs range from 1 to 28 percent ad valorem. The Government of Costa Rica reduced duties on imported raw materials, bulk grains, unmilled rice, and oilseeds 5 to 1 percent in July 1996. Imported automobiles, both new and used, are taxed heavily. Depending on the model and accessories, a new car importer can pay up to 150 percent of the c.i.f. price in import duties and taxes (excise tax, sales tax, and 1-percent general tax).

### Quantitative Restrictions and Import Licensing

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

### Customs Procedures

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

## STANDARDS, TESTING, LABELING, AND CERTIFICATION

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

There are no general requirements in Costa Rica for marking the origin of goods or for labeling of general merchandise. However, special labeling requirements apply to shipments of food products, pharmaceuticals, fertilizers, pesticides, hormones, veterinary preparations, vaccines, poisonous substances, and mouthwashes. Costa Rican food-labeling law requires that all imported food products contain labeling in Spanish with the following specifications: product name, list of ingredients in quantitative order, nutritional information, name and address of importer, expiration or best-if-used-by dates, and weight.

## GOVERNMENT PROCUREMENT

Costa Rica's government procurement system is based on the 1995 reforms to the Costa Rican Financial Administration Law (Law No. 7494), which came into effect in May 1996. Government entities or ministries with a regular annual budget of more than $200 million are permitted to issue public tenders subject to publication in the official newspaper *(La Gaceta)* for purchases over $2.3 million. Entities may make purchases between $130,000 and $2.3 million through tenders circulated among a registered suppliers list. Purchases under $130,000 may be made from a list of pre-selected bidders.

## EXPORT SUBSIDIES

The Export Promotion Law (Law No. 5162 of December 22, 1972), which provides for incentives such as tax credit certificates for up to 15 percent of the value of exports, is being phased out. The benefits are only granted to existing companies and are due to end within two years. Export contracts granting 12-year tax holidays (Law No. 6955 of March 2, 1984) and consolidating the drawback system (tax-free) will be phased out by 1999.

## LACK OF INTELLECTUAL PROPERTY PROTECTION

Costa Rica is a signatory of all major international agreements and conventions on trademarks, copyrights, and patent protection. Costa Rica became a member of the Word Intellectual Property Organization (WIPO) in 1980.

**Copyrights**

Costa Rican copyright law is generally adequate, but not uniformly enforced. The copyright regime was revised in 1994 to provide specific protection for computer software. While piracy of satellite transmissions by the domestic cable television industry has been curtailed, the Costa Rican hotel industry continues to engage in satellite signal piracy. Piracy of video recording and computer software is also widespread, although some progress has been made in reducing such practices. According to one private sector assessment, video piracy has recently been reduced from virtually 100 percent to 90 percent. In a January 1996 court decision, a video club operator was sentenced to one year in prison for duplicating and renting videos without the authorization of the copyright owners. In December 1996, the police initiated an investigation of alleged computer hardware and software piracy. A report prepared in 1995 by the International Intellectual Property Alliance estimated that losses in Costa Rica due to copyright infringements cost U.S. firms $1.1 million annually.

**Patents**

In 1995, the Legislative Assembly ratified the Paris Convention for the Protection of Industrial Property. However, Costa Rican patent law is deficient in several key areas. Patents are granted for a non-extendable 12-year term from the date of the grant. In the case of products deemed to be in the "public interest," such as pharmaceuticals, chemicals and agricultural chemicals, fertilizers, and beverage/food products, the term of protection is only one year from the date of grant. The current patent regime also has unacceptably broad compulsory licensing provisions and requires local manufacture. A new patent law is being drafted to bring Costa Rica in line with its obligations under the Agreement on Trade-Related Aspects of Intellectual Property Rights (TRIPs), including restricting compulsory licensing provisions and extending full patent protection term for inventions designated as being "in the public interest."

**Trademarks**

Counterfeiting of well-known marks is widespread. Legal recourse against these practices in Costa Rica is available, but may require protracted and costly litigation. In 1994, Costa Rica signed the Central American Convention for the Protection of Trademarks.

**SERVICES BARRIERS**

Article 46 of the Costa Rican constitution prohibits private sector monopolies, unless established by law, and acts deemed to restrict or endanger the freedom of trade, agriculture, or industry. However, the constitution established state-owned monopolies on insurance, telecommunications, large electrical generation plants, energy distribution, petroleum exploration, refining, distribution and marketing to the retail level, production of alcoholic beverages, and railroad transportation. In addition, restrictions on the participation of foreign companies exist in private sector activities, such as customs handling, medical services, and other professions requiring Costa Rican registration and long-term residency. Financial reform legislation enacted in 1995 eliminated the state-owned banks' monopoly on checking accounts and savings deposits under 30 days' duration and allowed private commercial banks to access the Central Bank's discount window beginning in September 1996. To qualify for the benefits of the law, however, private commercial banks are required to lend between 10 and 17 percent of their short-term assets to state-owned commercial banks and/or to open branches in rural areas of the country.

Foreign individuals wishing to participate in some sectors may be discouraged by rigorous controls. For example, medical practitioners, lawyers, certified public accountants, engineers, architects, teachers, and other professionals must be members of an officially recognized guild ("colegios") which sets residency, examination, and apprenticeship requirements that can only be met by long-time residents in Costa Rica, whether citizens or foreigners.

The Costa Rican Insurance Institute (INS), which also includes fire department services and medical/rehabilitation clinics, holds the monopoly over the insurance sector. In an open market, insurance underwriting in Costa Rica executed through foreign companies has the potential to grow gradually to approximately 60 percent of the market, given the financial strength, range of product offerings, and global competitiveness of the industry. U.S. participation would account for 50 to 60 percent of the international component of the Costa Rican insurance market, or roughly 35 to 40 percent of the total insurance underwriting in Costa Rica.

## INVESTMENT BARRIERS

An expropriation law (Law No. 7495) was enacted in 1995, replacing prior legislation which allowed private property to be taken by any state institution without prior compensation. The law stipulates that expropriations are to occur only after full advance payment is made, regardless of the nationality of the property owner. Expropriations made prior to 1995, as well as land invasions by squatters, however, remain unaddressed. The U.S. Government continues to press the Costa Rican Government to provide prompt, adequate, and effective compensation to affected U.S. property owners and investors. In addition, private investment (both domestic and foreign) is restricted in the areas of energy, telecommunications, insurance, and petroleum (except for retailing). The U.S. Government continues to negotiate a U.S.-Costa Rica Bilateral Investment Treaty (BIT) to address these and other inadequacies.

While impossible to quantify with precision, existing investment barriers impact substantially on U.S. exports. Government monopolies in important sectors, including telecommunications, electric power production and distribution, and insurance, represent a significant non-tariff barrier to U.S. private investment. The telecommunications and electric energy, opening these sectors more completely to private investment could result in a minimum increase of 10 percent annually in the rate of investment in each sector. Between 1990 and 1994, the U.S. market share in telecommunications imports ranged from 28.3 to 45.4 percent; in electric energy production, the U.S. market share in local imports ranged from 28.2 to 36.3 percent. In a free and open Costa Rican market, the U.S. market share could stabilize towards the upper limit of those ranges, at about 40 percent, and a larger share of the earnings could accrue to U.S. investors as well.

## OTHER BARRIERS

On January 9, 1995, USTR initiated a Section 301 investigation of Costa Rica's implementation of the Banana Framework Agreement (BFA) concluded by Costa Rica and the European Union (EU) on January 1, 1995. On January 10, 1996, USTR determined that Costa Rica's policies, acts and practices were unreasonable or discriminatory and a burden or restriction on U.S. commerce. Taking into account the positive steps Costa Rica had taken in revising its internal banana regime and its willingness to cooperate with the United States in seeking to reform of the EU banana regime, USTR decided that the appropriate action was to implement a process aimed at addressing the outstanding issues, while stressing that additional action may still be taken.

# Costa Rica

# DOMINICAN REPUBLIC

In 1996, the U.S. trade deficit with the Dominican Republic was $392 million, an increase of $11 million from the U.S. trade deficit of $381 million in 1995. U.S. merchandise exports to the Dominican Republic were $3.2 billion, an increase of $166 million (5.5 percent) from the level of U.S. exports to the Dominican Republic in 1995. The Dominican Republic was the United States' thirty-third largest export market in 1996. U.S. imports from the Dominican Republic were $3.6 billion in 1996, an increase of $178 million (5.2 percent) from the level of imports in 1995.

The stock of U.S. foreign direct investment (FDI) in the Dominican Republic in 1995 was $1.3 billion, an increase of 7.0 percent from the of U.S. FDI in 1994. U.S. FDI in the Dominican Republic is concentrated largely in the manufacturing and financial sectors.

## IMPORT POLICIES

Tariffs on most products fall within a range of 5 to 35 percent. However, the Government of the Dominican Republic imposes a 5 to 80 percent selective consumption tax on "nonessential" imports such as home appliances, alcohol, perfumes, jewelry, automobiles, and auto parts. Late in 1996, the Fernandez administration proposed an extensive tariff reduction on so-called luxury imports (particularly automobiles) to the Dominican Congress. The Congress has not yet acted on this proposal.

U.S. producers of many products face an additional de facto trade barrier in the form of a highly-discretionary customs valuation system. In addition, import permits are required for most agricultural items and are often delayed or withheld to protect local producers. Arbitrary customs clearance procedures sometimes delay the importation of merchandise for lengthy periods. Furthermore, the Dominican Government continues to require importers to obtain from a Dominican Consulate in the United States a consular invoice and "legalization" of documents with attendant fees and delays, although this system is now under review by a Dominican Government interagency group.

## STANDARDS, TESTING, LABELING, AND CERTIFICATION

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

## GOVERNMENT PROCUREMENT

There is no explicit "buy national" policy, however, government procurement is often conducted without the benefit of open bidding. The processes by which contractors and/or suppliers are chosen are generally opaque. The new administration in the Dominican Republic is committed to more transparent decision-making.

## Dominican Republic

### EXPORT SUBSIDIES

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

### LACK OF INTELLECTUAL PROPERTY PROTECTION

Dominican law does not provide protection of intellectual property rights that is consistent with international standards such as the Agreement on Trade-Related Aspects of Intellectual Property Rights (TRIPs). For example, the copyright law is deficient in a number of areas. The Dominican Republic has inadequate patent protection, especially for pharmaceuticals.

#### Copyrights

The piracy of computer software, video and audio tapes, and compact disc technologies continues with little enforcement action by the Dominican Government. A U.S. Government review of the Dominican Republic's trade preferences under the Generalized System of Preferences (GSP), in response to a petition from the Motion Picture Export Association of America claiming widespread cable television piracy, was terminated in 1994 when the Dominican Government took steps to address U.S. concerns. Larger cable television companies now generally pay fees and royalties, although smaller systems may still be pirating signals and programs.

#### Patents

Existing law provides for broad exclusions of subject matter from patentability, and includes onerous local working requirements. Dominican patent protection law continues to be inadequate with respect to term of protection. Infringement is widespread. The Ministry of Health currently is granting marketing approvals for existing pharmaceutical products, thus allowing violation of patent holders' rights.

#### Trademarks

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

### SERVICES BARRIERS

Until recently, foreign participation in the financial services sector was restricted by law. The 1995 foreign investment law, and a financial-monetary code now before the Dominican Congress, permit foreign involvement in the financial services sector. However, the practical impact of these provisions is not clear. There is no secondary securities market in the Dominican Republic so questions of brokerage services and securities underwriting, trading, etc., do not arise.

## INVESTMENT BARRIERS

### Foreign Investment Law

The December 1995 investment law is designed to remove barriers to investment and to provide equal access for foreign investors to all sectors of the economy except toxic waste disposal, public health and environment, and defense, for which express presidential authorization is required. Foreigners may register investments of cash, trademarks, or technology in new or existing companies or real estate (with some limitations). Implementing regulations were issued in September 1996.

Investors no longer need the authorization of the Foreign Investment Directorate to invest but must register any investment with the Central Bank within 90 days. Investors may remit the full amount of capital originally invested and capital gains as well as fees for technology transfer and royalties from previously-registered contracts. The law grants a five-year term for the gradual repatriation of non-remitted accumulated profits. Foreigners may represent their products directly without need for a local agent.

### Telecommunications

In the recently concluded WTO negotiations on basic telecommunications services, the Dominican Republic made limited commitments on most basic telecommunications services. It adopted the reference paper on regulatory commitments but did not guarantee national treatment for any telecommunication service.

## OTHER BARRIERS

The Dominican Republic levies a value-added eight percent Tax on the Transfer of Industrialized Goods and Services (ITBIS). The ITBIS expressly taxes the importation of industrial goods. A very broad categories of domestic goods, but very few imported goods, are exempted from the ITBIS. For imports, the tax is levied on the c.i.f. value plus all customs duties and internal taxes on imports. For domestic goods, the tax base is the sales price plus related costs such as transportation. Services appear to be taxed in the same manner. The discrimination against imported products under the ITBIS effectively increases the protection afforded to many domestic industries.

# Dominican Republic

# ECUADOR

In 1996, the U.S. trade deficit with Ecuador was $659 million, an increase of $267 million from the U.S. trade deficit of $392 million in 1995. U.S. merchandise exports to Ecuador were approximately $1.3 billion, a decrease of $281 million (18.3 percent) from the level of U.S. exports to Ecuador in 1995. Ecuador was the United States' fifty-first largest export market in 1996. U.S. imports from Ecuador were about $1.9 billion in 1996, a decrease of $14 million (0.8 percent) from the level of imports in 1995.

The stock of U.S. foreign direct investment (FDI) in Ecuador in 1995 was $830 million, an increase of 12.8 percent from the level of U.S. FDI in 1994. U.S. FDI in Ecuador is concentrated largely in the petroleum, manufacturing, and wholesale sectors.

## IMPORT POLICIES

Ecuador has substantially liberalized its trade regime since 1990, resulting in a reduction of tariffs and tariff dispersion, elimination of most non-tariff surcharges, and enactment of an in-bond processing industry law.

### Tariffs

When it joined the World Trade Organization (WTO) in January 1996, Ecuador bound most of its tariff rates at 30 percent or less. Ecuador's average applied tariff rate is about 17 percent ad valorem. Since February 1995, Ecuador has applied a common external tariff (CET) with two of its Andean Pact partners, Colombia and Venezuela. The CET has a four-tiered structure with levels of 5 percent for most raw materials and capital goods, 10 or 15 percent for intermediate goods, and 20 percent for most consumer goods. Ecuador harmonized its tariff schedule with the CET but took numerous exceptions in order to maintain lower tariff rates on capital goods and industrial inputs. Agricultural inputs and equipment are imported duty-free.

Since January 1995, Ecuador has been a part of a harmonized automotive policy with Colombia and Venezuela. The policy establishes CET rates of 35 percent for passenger vehicles, 15 percent for mass transit and cargo vehicles, and 3 percent for assembly kits, and includes regional content requirements.

Ecuador has concluded bilateral free trade agreements with Colombia, Bolivia, Venezuela, and Chile. Ecuador is negotiating trade agreements with Mexico and the MERCOSUR countries.

### Non-Tariff Measures

As noted, Ecuador joined the WTO in January 1996, but has failed to meet the deadlines for fulfilling many of its obligations to eliminate remaining non-tariff barriers.

Prior authorization for certain goods is required before the Central Bank can issue an import license. Import of psychotropic medicines and certain precursor chemicals used in narcotics processing, including acetone, ether, sulfuric acid, hydrochloric acid, toluene, and benzaldehyde, require prior authorization from the National Drug Council (CONSEP). Imports of weapons, munitions, explosives, armored vehicles, helicopters, airplanes, ships, and other defense-related products require prior authorization from the Ministry of Defense.

The Superintendency of Telecommunications must authorize the import of telecommunications equipment for standards purposes. There have been recent incidents in which such authorization has been delayed or denied, allegedly due to the refusal of U.S. companies to make illicit payments to telephone company officials.

In spite of Ecuador's WTO accession commitment not to impose arbitrary and quantitative restrictions on agricultural imports, the Ministry of Agriculture often denies sanitary/phytosanitary (SPS) permits. These clearances are often denied not for SPS reasons, but on the grounds that local producers need protection. The products most affected by this policy include frozen chicken parts and turkeys, and to a lesser extent, apples and wheat. In the case of poultry, the Minister of Agriculture announced an import "ban" on poultry in October 1996, although the policy does not appear to have any basis in local law. In 1996, Ecuador imported less than half of the minimum market access tariff-rate quota for frozen chicken parts. An estimated $2 million in U.S. exports are lost annually due to the de facto ban on poultry imports.

Some 138 agricultural products, including rice, barley, white and yellow corn, wheat, sugar, soya, soya and palm oil, chicken parts, and dairy products, are subject to a variable import tariff or price band system. Under this system, the ad valorem CET rates are adjusted according to the relationship between “marker” commodity reference prices and established floor and ceiling prices. These variable duties can drive up effective tariff rates significantly. Upon accession to the WTO, Ecuador bound its tariffs plus price bands on these products at between 20 to 95 percent. All price bands are to be phased out by 2001, with lower tariffs bound at 20 to 85.5 percent. In its WTO protocol, Ecuador agreed to provide minimum market access at tariff rates of 19 to 45 percent for 17 agricultural products, including wheat, chicken parts, and powdered milk. The price band system costs an estimated $15 million in lost U.S. sales annually.

Ecuador also continues to impose certain formal and informal quantitative restrictions that appear to be incompatible with its WTO obligations. Ecuador failed to meet the July 1, 1996, deadline for lifting bans on the import of used motor vehicles, tires, and clothing.

Since August 1996, Ecuador effectively has reverted to a system of having customs officials physically inspect most incoming merchandise to determine duties, resulting in long processing delays and frequent demands for illegal payments. During August-November 1996, non-military f.o.b. import value dropped 17.6 percent below the same period in 1995, which was 7.8 percent below the level projected based on trends earlier in the year. U.S. exports were down by $52 million from projected levels for the period.

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

Most products are subject to a 10 percent value-added tax (VAT) based on c.i.f. value. This tax applies to domestically-produced goods as well as imports. Imports exempted from VAT include agricultural inputs, books, medicines, and petroleum development equipment.

In addition, a special consumption or excise tax at a nominal rate of 103 percent (effectively 46 percent of the retail price) is levied on both imported and domestic cigarettes. Excise taxes also are levied on all liquor (63 percent), beer (43 percent), soft drinks (15 percent), and bottled waters (8 percent). In December 1996, a 10 percent excise tax was applied to both imported and domestic motor vehicles and aircraft. Since excise taxes on imports are calculated on values that include customs duties, the effective rate is higher for imports than domestic products. The Ecuadorian Government failed to fulfill its WTO accession commitment to equalize the application of the excise tax by July 31, 1996. In violation of its WTO national treatment obligations, Ecuador's 1996 tax amendments levied a 10 percent excise tax on imported, but not domestic, crystal and porcelain products, perfumes, cosmetics, furniture, artwork, jewelry, and precious stones.

**STANDARDS, TESTING, LABELING, AND CERTIFICATION**

The standards maintained in Ecuador are set by the Ecuadorian Norms Institute (INEN) of the Ministry of Commerce, generally following international standards. Ecuador committed itself in its WTO accession protocol to conforming with the WTO Agreement on Technical Barriers to Trade.

In January 1997, the Central Bank began requiring that certain products obtain a certificate of recognition from INEN based on a certificate of conformity with Ecuadorian standards to be issued by an INEN-approved laboratory in the country of origin and notarized by an Ecuadorian consulate. Such certification is required for each shipment and is only valid for 60 days. The new regulations apply to a variety of food products, including vegetable oils, processed meats, canned fish, milk products, and juices, as well as construction materials, motor vehicles, paper products, and shoes. According to Ecuadorian importers, the bureaucratic procedures required to obtain INEN clearance for imports will effectively discriminate against foreign products, while increasing the opportunities for corruption.

The "Izquieta Perez" National Hygiene Institute (INHIP) conducts tests on consumer products that are required to obtain a sanitary registration from the Ministry of Health. Sanitary registrations are required for imported, as well as domestic, processed foods, cosmetics, pharmaceuticals, and syringes, as well as some other consumer goods. Corruption and inefficiency in the sanitary registration process has had the effect of blocking the entry of some imports from the United States. In one case, a U.S. pharmaceutical company donated a testing lab to INHIP in order to speed up the approval process. Ecuador has not yet fulfilled its 1995 bilateral commitment to the United States to accept U.S. certificates of free sale as the basis for sanitary registrations.

The Ministry of Agriculture is responsible for administering Ecuador's sanitary and phytosanitary (SPS) import controls. Although Ecuador made a commitment in its WTO accession to comply with the Agreement on the Application of Sanitary and Phytosanitary Measures, denials of SPS certification often appear to lack scientific bases and have been used in a discriminatory fashion to block the import of U.S. products that compete with Ecuadorian production.

## Ecuador

### GOVERNMENT PROCUREMENT

Government procurement is regulated by the 1990 Public Contracting Law. In some instances, the military is not required to use this law for its purchases. Foreign bidders must be legally represented in Ecuador. There is no formal discrimination against U.S. or other foreign suppliers, however, tenders are often canceled. Bidding for government contracts can be cumbersome and insufficiently transparent. Ecuador is not a signatory to the WTO Agreement on Government Procurement.

### EXPORT SUBSIDIES

Ecuador does not have any explicit export subsidy programs. There is a drawback system to reimburse the cost of duties and taxes paid on raw material and other inputs incorporated in products that are subsequently exported. The government has terminated programs to compensate certain exporters for fuel costs. The government is considering the creation of an export credit agency.

### LACK OF INTELLECTUAL PROPERTY PROTECTION

Ecuadorian law does not appear to provide basic protection for intellectual property rights (IPR), and it can be difficult to gain effective protection through the legal system. As a result of its laws and practices, Ecuador was placed on the "Watch List" under the Special 301 provision of the 1988 Trade Act in 1996. The United States is pursuing its concerns with Ecuador over its IPR regime, its failure to implement the U.S.-Ecuador Intellectual Property Rights Agreement, its failure to implement the WTO Agreement on Trade-Related Aspects of Intellectual Property Rights (TRIPs), and its failure to repeal the 1976 Agents and Distributors Protection Law (Dealers' Act).

Ecuador offers limited protection for IPR under Andean Pact Decisions 344, 345, and 351. Ecuador has ratified the Berne Convention for the Protection of Literary and Artistic Works and the Geneva Phonogram Convention, but not the Paris Convention for the Protection of Industrial Property. Ecuador is a member of the World Intellectual Property Organization (WIPO).

As part of its WTO accession, Ecuador agreed to apply the TRIPs Agreement by July 31, 1996. After the TRIPs Agreement text and Ecuador's Accession protocol were published in the Official Registry in June 1996, and in spite of its assertion that this fully implemented TRIPs in Ecuador, Ecuador asserted that it would take up to four years to apply the provisions of the TRIPs Agreement. Since the change in government in February 1997, the position of the new Ecuadorian administration remains unclear.

In October 1993, Ecuador and the United States signed the bilateral Intellectual Property Rights Agreement (IPRA) that mandates full protection for copyrights, trademarks, patents, satellite signals, computer software, integrated circuit layout designs, and trade secrets, and obligates Ecuador to establish criminal and border enforcement systems. The Government of Ecuador promised to implement the IPRA by September 30, 1994, but has yet to secure either ratification of the IPRA or introduce legislation to harmonize the local IPR regime with the IPRA and TRIPs.

In response to a November 1996 Andean Pact Tribunal decision, Ecuador repealed its implementing regulations for Andean Pact Decision 344 on industrial property, which included provisions for transitional ("pipeline") protection for previously unpatentable products. In December 1996, another decree reestablished the National Directorate of Industrial Property (DNPI) as the competent patent and trademark authority and authorized the DNPI only to administer Decision 344 as written. The status of pipeline protection remains uncertain.

The Dealers' Act prevents U.S. and other foreign suppliers from terminating existing exclusive distributorship contracts without paying compensation, even if there is a valid termination clause in the contract. The law contravenes WTO national treatment guarantees and has been applied in ways that appear to contravene Ecuador's obligations under the TRIPs Agreement. The Government of Ecuador has made no effort to repeal this law since joining the WTO.

**Patents and Trademarks**

With the repeal of implementing regulations for Andean Pact Decision 344, it is unclear what legal protection and remedies are available in Ecuador in the patent, trademark, and trade secrets areas. Patent and trademark registration applications can still be filed with the National Directorate of Industrial Property.

Under the Dealers' Act, trademarks of a foreign company can be seized if that company loses a lawsuit in Ecuador. It is unclear whether a recent court decision will result in the cancellation of lawsuits against U.S. trademark owners regarding termination of license arrangements with Ecuadorian companies.

**Copyrights**

Andean Pact Decision 351 supplements Ecuador's 1976 copyright law. Printed and recorded works are protected for the life of the author plus 50 years. Computer programs are protected, albeit as a type of work distinct from literary works. The copyright law has been changed to cover software and satellite signals. Decision 351 still assigns copyrights only to individuals, not corporations, and restricts the right of copyright holders to sell those rights.

Semiconductor chip layouts are not specifically protected, but it may be possible to register layouts under either the copyright law or the industrial designs provision of Decision 344. The Ministry of Education deals with copyright matters, while the National Telecommunications Council (CONATEL) has jurisdiction over satellite signals.

Enforcement of intellectual property rights remains a problem for Ecuador. The national police and the customs service are responsible for carrying out IPR enforcement orders, but it can be difficult to get court orders enforced or to secure effective police action. There is a widespread local trade in pirated audio and video recordings, as well as computer software. Local registration of unauthorized copies of well-known trademarks is a problem since the government lacks the resources to monitor and control such registrations. Some local pharmaceutical companies produce or import patented drugs without licenses and have sought to block improvements in patent protection.

# Ecuador

## SERVICES BARRIERS

The 1993 Equity Markets Law and the 1994 General Financial Institutions Law established open markets in financial services and provide for national treatment. Foreign professionals are subject to national licensing legislation; accountants must be certified by the Superintendency of Banks. Foreign insurance companies may not present offers on government tenders.

Maritime transport services are generally open, subject to reciprocity with other countries, although the transport of hydrocarbons is reserved for a Navy-owned company. Andean Pact Decision 257 provides for freedom of land transportation within the region.

Telecommunications services are reserved to the state, but foreign companies enjoy national treatment in providing those services not monopolized by the state and can participate equally in the partial privatization of the state telephone company scheduled for 1997. In the recently concluded WTO negotiations on basic telecommunications services, Ecuador made commitments only for domestic cellular services. It did not make any commitments on regulatory principles.

## INVESTMENT BARRIERS

Ecuador's foreign investment policy is governed largely by the national implementing legislation for Andean Pact Decisions 291 and 292 of 1991 and 1993. Foreign investors are accorded the same rights of entry as Ecuadorian private investors, may own up to 100 percent of enterprises in most sectors without prior government approval, and face the same tax regime. There are no controls or limits on transfers of profits or capital, and foreign exchange is readily available. There are no performance requirements. A bilateral investment treaty with the United States that guarantees access to binding international arbitration has been ratified by both parties, but has not yet been implemented.

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

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

## OTHER BARRIERS

There have been questions raised about the WTO-consistency of the Government of Ecuador's implementation of safeguards and antidumping measures.

There have been cases in which U.S. company officials have been prevented by the courts from leaving Ecuador due to pending claims against the company. Ecuadoreans involved in business disputes can sometimes arrange for their opponents, including foreigners, to be jailed pending resolution of the dispute.

Ecuador has laws and regulations to combat official corruption, but they are unevenly enforced. Illicit payments for official favors and theft of public funds sometimes take place. During the Bucaram administration (August 1996-February 1997), U.S. firms experienced problems with customs corruption. Bribery can compromise the procurement process of the central government, as well as the autonomous agencies and the parastatals. Dispute settlement procedures are made difficult by the lack of transparency in the court system and the openness of some judges to bribery. Local authorities occasionally expect gratuities for issuing necessary permits. Tax evasion is an endemic problem in Ecuador. Corruption does not generally present a problem when making transfers or engaging in normal private sector business.

# Ecuador

# EGYPT

In 1996, the U.S. trade surplus with Egypt was $2.5 billion, an increase of $102 million from the U.S. trade surplus of $2.4 billion in 1995. U.S. merchandise exports to Egypt were $3.1 billion, an increase of $161 million (5.4 percent) from the level of U.S. exports to Egypt in 1995. Egypt was the United States' thirty-fourth largest export market in 1996. U.S. imports from Egypt were $665 million in 1996, an increase of $59 million (9.7 percent) from the level of imports in 1995.

The stock of U.S. foreign direct investment (FDI) in Egypt in 1995 was $1.4 billion, a decrease of 0.2 percent from the level of U.S. FDI in 1994. U.S. FDI in Egypt is concentrated largely in the petroleum, banking, and manufacturing sectors.

## IMPORT POLICIES

U.S. exports face a number of import barriers, such as high tariffs and quality control requirements that discriminate against imports. In 1996, Egypt's new prime minister reaffirmed the country's commitment to an economic reform program, supported by the IMF and the World Bank, to liberalize Egypt's highly centralized and regulated economy. Trade liberalization is an integral element of Egypt's reform program. Egypt acceded to the World Trade Organization (WTO) in April 1995.

### Tariffs

Egypt's current customs regime came into effect in 1986, significantly reducing tariffs. Further reductions were made in 1990, 1991, 1993, 1994, and 1996. Nevertheless, Egyptian tariffs are still relatively high compared to other developing countries with large internal markets and diversified industrial economies.

Since 1990, Egypt has gradually rationalized and lowered its tariff schedule, although some exceptions remain in place. In early 1993, the tariff range was narrowed to between 5 and 80 percent. In March 1994, Egypt further reduced tariffs. The maximum tariff rate was cut to 70 percent, and tariffs between 30 and 70 percent were reduced by 10 percentage points. In February 1995, the government reduced the customs duty on 18 categories of machinery and other durable imported goods to a flat rate of 10 percent. In January 1996, the government made a similar reduction on 25 other capital commodities. On October 1, 1996, Egypt reduced tariffs across the board by 10 to 15 percent, lowering the maximum tariff from 70 to 55 percent.

As for exceptions, high rates still apply to automobiles with engines larger than 1300cc (135 percent), alcoholic beverages, certain luxury items, and poultry. Further, Egyptian customs assess a service fee of 3 to 4 percent on imports, depending on the tariff applied. In addition, Egypt discriminates against imported flour by charging a 10 percent sales tax (in addition to customs duties), which does not apply to locally produced flour.

# Egypt

## Customs Procedures

In 1993, Egypt adopted the harmonized system of customs classification. Exporters and importers claim, however, that customs duty assessment is often arbitrary, and rates charged are often higher than those in in the tariff code. Tariff valuation is calculated from the so-called "Egyptian selling price," which is based on the commercial invoice that accompanies a product the first time it is imported. Customs authorities retain information from the original commercial invoice and expect subsequent imports of the same product (regardless of the supplier) to have a value no lower than that noted on the invoice from the first shipment. As a result of this presumption of increasing prices, and the belief that under-invoicing is widely practiced, customs officials routinely increase invoice values from 10 to 30 percent for customs valuation purposes.

## Import Bans

All commodities may be imported freely into Egypt upon payment of the assigned duty, except for those on a list of items banned from import. The import ban now applies only to textiles, apparel (to be abolished after the WTO's eight year transition period for textile expires), and poultry (currently maintained in apparent violation of WTO commitments).

Exemptions from the import ban list significantly reduce its impact. According to August 1993 regulations, an item may be imported if it is required for the petroleum, military, tourism or civil aviation sectors, or is a necessary production input approved by the appropriate minister. Because of these exemptions, the ban list has had a limited impact on U.S. exports, with the exception of poultry. Despite complaints by the United States in the WTO's Agriculture Committee, Egypt has not removed poultry from the import ban list.

Despite this progress, Egypt imposes obstacles to importing previously-banned products. Substantial increases in the duty rates of several products such as tractors, cement, and frozen vegetables were imposed immediately after their removal from the ban list in August 1992. The tariff on poultry, which remains on the import ban list, was increased from 5 to 70 percent.

## STANDARDS, TESTING, LABELING, AND CERTIFICATION

Many items removed from the ban list, including meats, fruits, vegetables, household appliances, and transformers, were added to the list of commodities requiring inspection for quality control before importation. Agricultural commodities have been increasingly subject to quarantine inspection, so much so that some importers have begun scheduling pre-inspection visits to the U.S. to facilitate import procedures upon arrival in Egypt. In August 1994, five more items were added to the quality control list, which now consists of 131 items, including foodstuffs, spare parts, construction products, electronic devices, appliances, and many consumer goods.

Although Egyptian authorities stress that standards applied to imports are the same as those applied to domestically-produced goods, importers report that testing procedures for imports differ and that tests are carried out with faulty equipment by testers who often make arbitrary judgments.

Five Egyptian ministries or agencies make rules for agricultural imports and issue permits: agriculture, health, economy, industry, and scientific research. The rules conflict and are not in accordance with international practice. For example, the Ministry of Health's regulations for labeling processed food conflict with those of the Ministry of Industry.

Further, Egypt sets the shelf life of processed foods by regulation, as opposed to the standard international practice of allowing producers to determine the life of their product. Early in 1994, the government decreed that food and certain other products entering Egyptian ports should have 50 percent or more of their shelf life remaining. Egyptian shelf life standards ignore quality differences between producers and often have been established without scientific basis. An August 1994 decree extended shelf life standards to certain non-food imports, such as syringes and catheters.

Product specifications also can be a barrier to trade. For example, the Ministry of Health requires that beef imported for direct human consumption have less than 7 percent fat, a level virtually never attained even in premium beef exports. Sales of up to $2 million of high quality U.S. beef annually have been jeopardized. Substantial sales of U.S. apples are estimated to be lost each year because the Ministry of Agriculture claims that the presence of dead insects constitutes a threat to local agriculture. The same concern over dead insects leads to mandatory refumigation of numerous grain shipments, significantly adding to the overall cost of importing the commodities.

Additional burdens to importers are caused by the Ministry of Agriculture's ability to refuse entry to imports because of the presence of cotton seeds, which ostensibly could harm Egypt's most important cash crop. Importers allege that cotton seeds are regularly "found" by inspectors in efforts to extort payments.

**GOVERNMENT PROCUREMENT**

Egypt by law gives national bidders a 15 percent price advantage. Closed bidding is rare, as national law requires tendering for all significant projects. Although the law states that no negotiations to modify tenders may take place except in final sessions with the lowest bidder, in practice bargaining with several competing low bidders is routine. The tender process is subject to frequent complaints of lack of transparency, poor enforcement of rules, and rigged outcomes. U.S. companies claim that European and Asian competitors make payments to win tenders that are forbidden under by U.S. law. Such claims are difficult to assess. Egypt is not a signatory of the WTO Government Procurement Agreement.

**LACK OF INTELLECTUAL PROPERTY PROTECTION**

Egypt, as a party to the Berne Convention for the Protection of Literacy and Artistic Works and the Paris Convention for the Protection of Industrial Property, bears a commitment to protect U.S. inventions, trademarks, and artistic works. The government passed an improved copyright law in 1992 and added software protection in early 1994.

In April 1994, the U.S. Trade Representative (USTR) lowered Egypt from the "priority watch list" to the "watch list" due to improvements in copyright protection, and in April 1995, the USTR placed Egypt on the list of countries "to be monitored for progress achieved." In April 1996, Egypt was placed on the

Special 301 “watch list.” The United States is working closely with Egypt to improve intellectual property rights protection.

### Copyrights

Copyright piracy, while still an issue, has been greatly reduced since 1993. It still affects most categories of works, including motion pictures (in video cassette format), sound recordings, printed matter (notably medical textbooks), and computer software.

The People's Assembly passed amendments to Egypt's 1954 copyright law in June 1992. Penalties against piracy were increased substantially and computer software was afforded specific protection. In March 1994, the People's Assembly passed additional amendments which treat computer software as a literary work, thus ensuring a fifty year term of protection consistent with the Berne Convention.

In April 1994, a ministerial decree established explicit protection for sound recordings, including rental rights and narrowed provisions for personal-use copying of computer software. The government made considerable progress in enforcing the new regulations in the business community, although much work remains to be done.

In a positive development, Egypt eliminated in 1993 its quota of 20 video cassette titles per foreign licensee. However, U.S. industry reports other discriminatory practices, including higher taxes applied to foreign-produced films and a screen quota which gives priority to exhibition of Egyptian films at certain times during the year.

### Patents

The existing Egyptian patent law dates from 1949 and provides protection far below international standards. It contains overly broad compulsory licensing provisions and excludes from patentability substances prepared or produced by chemical processes if such products are intended to be used as food or medicine. Moreover, the patent term is only 15 years from the application filing date, compared to the international standard of 20 years. A 5-year renewal may be obtained only if the invention is of special importance and has not been adequately worked to compensate patent holders for their efforts and expenses.

Compulsory licensing limits the effectiveness of patent protection. A compulsory license may be granted if the patent is not worked or is inadequately worked within three years following the patent grant. The law does not provide for the alternative period of four years from the date of filing, as the Stockholm Act of the Paris Convention requires. A patent may be forfeited for non-working two years after issuance of the first compulsory license. The Egyptian law's definition of infringement does not include the use, sale, or importation of a product manufactured through a process patented in Egypt.

In 1993 and 1994, U.S. experts met with Egyptian experts responsible for revising the patent law. The draft represents substantial progress toward implementation of a modern patent law. However, this legislation has never been finalized and submitted to the People’s Assembly.

The United States remains very concerned that Egypt has not yet passed a new, modern patent law. In addition, the United States is concerned about a delay in the implementation of pharmaceutical product protection until the year 2005. The value of U.S. export sales to Egypt lost due to deficient patent protection is unknown. Egypt has indicated that it is likely to submit an improved, new patent law to the People's Assembly soon, although the government did not do so during 1996.

### Trademarks

Allegations of trademark infringement are made periodically by U.S. and other foreign firms operating in Egypt. The Egyptian trademark law is not enforced strenuously, and the courts have only limited experience in adjudicating infringement cases. Fines amount to less than $100 per seizure, not per infringement, although criminal penalties are theoretically available. Egypt is currently considering revising its laws in order to significantly enhance legal protection for trademarks and industrial designs.

## SERVICES BARRIERS

### Insurance

A law passed in 1995 permits foreign companies to hold a minority stake in Egyptian insurance companies. Foreign firms may also operate as majority share holders in the free trade zones and in reinsurance, neither of which is likely to prove attractive to foreign investors. Four public-sector companies (one of which is a reinsurance company) dominate the market, although three private-sector Egyptian companies exist. Two joint ventures, with 49 percent foreign ownership, operate in the free trade zones.

### Other Services Barriers

Since March 1993, Egypt has allowed existing foreign bank branches to conduct local currency operations. Two U.S. bank branches have received licenses to do so. Foreign brokers are permitted to operate in the Egyptian stock exchange. In June 1996, the Egyptian Parliament passed a bill amending the banking law to allow foreign ownership in joint venture banks to exceed 49 percent, thus encouraging greater competition.

Despite these positive developments, Egypt maintains several barriers to the provision of services by U.S. firms. For example, only Egyptian nationals may become certified accountants. Private and foreign air carriers may not operate charter flights to and from Cairo except with the approval of the national carrier. As noted above, a screen quota exists for foreign motion pictures, and there is regular censorship of films and printed materials. Egypt has begun to open its telecommunications market to international participation by negotiating large build-own-operate-transfer style contracts with U.S. and other foreign companies.

## INVESTMENT BARRIERS

Under the 1992 U.S.-Egypt Bilateral Investment Treaty (BIT), Egypt is obliged to maintain critical elements of an open investment regime, including national and MFN treatment of foreign investment (with exceptions limited by the treaty), free financial transfers, and international law standards for expropriation and compensation. Moreover, the BIT establishes procedures for U.S. investors in Egypt to enforce the treaty's obligations, including through international arbitration. Generally, current Egyptian law meets or surpasses BIT standards in all categories. Although new laws and regulations are being drafted, company formation and operations are still hampered by an outdated and unnecessarily complex regime.

In principle, investors are now assured of automatic approval for projects in sectors which do not appear on a "negative list." This "negative list" includes the following: military and related products; tobacco and tobacco products; and investments in the Sinai (except for exploration of oil, gas, and mineral resources). Amendments in 1995 permit majority Egyptian investments in the Sinai in any sector.

Despite liberalization, new investments benefiting from incentives offered under Law 230 (under which most foreign investments are registered) must be approved by the General Authority for Foreign Investment (GAFI). This process often causes lengthy delays, since GAFI's board meets on an irregular basis. In January 1996, the government announced that investment could begin without prior GAFI approval. While promising, the impact of this change remains unclear.

Review of applications for investments under Law 159 (which covers national firms that do not benefit from special incentives) often take six months even if the investments at issue do not appear on the "negative list." The United States addressed liberalization of Egyptian investment screening requirements within the Uruguay Round negotiations on TRIMs and continues to discuss the topic bilaterally.

## ANTICOMPETITIVE PRACTICES

Egypt does not have laws prohibiting monopolies, cartels, or conflicts of interest. Given the relatively small size of the economy, most sectors are dominated by only a few players, whether private or public. Thus anticompetitive practices are a structural feature of the economy. Egypt hopes to pass an antitrust law during 1997.

## OTHER BARRIERS

Outside of energy, pharmaceuticals is the most important area in which prices are controlled. In many instances, the government has not allowed pharmaceutical prices to rise with general inflation. As a result, Egypt has some of the lowest drug prices in the world, and many foreign (including U.S.) companies are losing money on some products. Foreign companies occasionally allege discrimination in granting of price increases. However, pricing of new-to-market drugs is administered fairly, using a cost-plus formula agreed to with the World Bank. Another area of difficulty for foreign pharmaceutical companies is that the Ministry of Health does not allow more than four similar drugs in the market, reducing companies' ability to expand their product lines.

# EL SALVADOR

In 1996, the U.S. trade deficit with El Salvador was $2 million, a shift of $300 million from the U.S. trade surplus of $298 million in 1995. U.S. merchandise exports to El Salvador were $1.1 billion, a decrease of $39 million (3.5 percent) from the level of U.S. exports to El Salvador in 1995. El Salvador was the United States' fifty-second largest export market in 1996. U.S. imports from El Salvador were $1.1 billion in 1996, an increase of $261 million (32.1 percent) from the level of imports in 1995.

## IMPORT POLICIES

El Salvador is a member of the Central American Common Market (CACM), which also includes Costa Rica, Nicaragua, Guatemala, and Honduras. CACM members are working toward the full implementation of a common external tariff (CET) ranging between 5 and 20 percent for most products. In 1995 the members of the CACM agreed to reduce the CET to between 0 and 15 percent, but allowed each member country to determine the timing of the changes. With the exception of certain items, there are no duties for products traded among CACM members.

There are no legal barriers to U.S. exports of manufactured goods or bulk, non-agricultural commodities to El Salvador. Most U.S. goods face tariffs ranging from 0 to 20 percent, with rates scheduled to fall further by 1999. While higher duties are applied to automobiles, alcoholic beverages, textiles, and some luxury items, the Government of El Salvador may incorporate these excepted products into its general tariff schedule as it implements the 1996-99 reductions.

## STANDARDS, TESTING, LABELING, AND CERTIFICATION

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

### Sanitary Restrictions on Poultry

In August 1992, the Ministry of Agriculture imposed arbitrary sanitary measures to restrict U.S. poultry imports. These sanitary restrictions call for zero tolerance or negative laboratory tests for diseases such as aviana denovirus, chicken anemia, and salmonella. These disease agents are common worldwide and are not recognized as List "A" diseases by the International Office for Epizootics. Salvadoran standards are substantially in excess of what is required in the United States and other producing countries, including Canada, Japan, and the European Union. Given the ubiquitous nature of salmonella in poultry populations throughout the world, it would be difficult for any established poultry-producing country to guarantee zero tolerance or negative lab tests on meat that has not been cooked or irradiated. The Working Group of the Codex Committee on Food Hygiene (FAO/WHO 1979) concluded that no benefits would result for either public health or quality through the application of such microbiological criteria for raw meats and poultry.

These standards are applied in a discriminatory manner by El Salvador, since domestic production is not subject to the same requirements as imports. As a result of these restrictive measures, exports of U.S. poultry to El Salvador have virtually ceased. U.S. officials have met with Salvadoran agricultural officials since November 1992 to resolve this issue, with no success to date. Salvadoran officials have acknowledged that the restrictions were imposed to keep U.S. poultry out of the local market and are not intended to operate as “normal” sanitary measures. The U.S. Embassy estimates the value of lost U.S. poultry exports at $3-5 million per year.

**Phytosanitary Restrictions on Rice**

Salvadoran phytosanitary restrictions require rice shipments to be free of the Tilletia Barclayana (T. Barclayana) fungus. There is no chemical treatment that is both practical and effective against T. Barclayana. The Government of El Salvador requires that rice shipments be accompanied by a U.S. Department of Agriculture (USDA) certificate stating that the rice is free of T. Barclayana. The USDA cannot issue such a certificate because T. Barclayana is well established in the Western Hemisphere and occurs in the United States, as well as in Nicaragua, Mexico, Belize, Panama, Cuba, Trinidad and Tobago, Guyana, Brazil, and Venezuela. Given the prevalence of T. Barclayana in neighboring countries and in all rice-growing regions worldwide, it is highly unlikely that the fungus does not already exist in El Salvador. El Salvador failed to notify the WTO, under the Agreement on the Application of Sanitary and Phytosanitary Measures, of the restrictions and has no risk assessment upon which to base such restrictions.

## EXPORT SUBSIDIES

El Salvador offers a six percent rebate to exporters of non-traditional goods based on the f.o.b. value of the export, but exporters have found it very difficult to collect. Free trade zone operations are not eligible for the rebate but enjoy a ten-year exemption from income tax as well as duty-free import privileges.

## LACK OF INTELLECTUAL PROPERTY PROTECTION

In the past year, El Salvador has taken a number of important steps to enforce the 1994 Law for the Protection and Promulgation of Intellectual Property and, in general, more adequately protect intellectual property rights (IPR). In June 1996, a special unit was created in the Attorney General’s Office that now coordinates investigations and seizures. The Criminal Investigation Division of the National Civilian Police has been granted clear authority to act in IPR cases. The National Commercial Registry has begun to carry out its legally defined responsibility to inspect for cases of copyright violation. Training programs are being developed for these institutions and for judges. In early 1997, the Salvadoran authorities moved beyond the street-vendor level and closed down a major source of pirated audio recordings. All of these moves have been important first steps in building an effective enforcement regime.

To date, most of the actions taken by Salvadoran authorities have been in the areas of video and audio recordings and clothing bearing protected trademarks. The government has announced its intention to expand enforcement efforts in 1997 to the areas of cable television, software, and pharmaceuticals. Criminal prosecutions also are anticipated.

**Patents**

The Law for the Protection and Promulgation of Intellectual Property and El Salvador's acceptance of the disciplines of the Agreement on Trade-Related Aspects of Intellectual Property Rights (TRIPs) addressed several key areas of weakness in the patent regime. The intellectual property law lengthened patent terms to 20 years from the application filing date and broadened the definition of patentability. The law protects against parallel importation. Compulsory licensing applies only in cases of national emergency. Government officials report that they are working on a draft for a separate semiconductor layout design law.

**Copyrights**

El Salvador has taken significant steps to increase copyright protection in the last four years. It passed a copyright law in 1993, amended its penal code to provide for criminal penalties for copyright violations, and adhered to the Berne Convention. Computer software is also protected, as are trade secrets. However, a report prepared in 1995 by the International Intellectual Property Alliance estimated that losses in El Salvador due to copyright infringements continue, costing U.S. firms $39.3 million annually. 1996 estimates are not available.

**Trademarks**

Trademarks are still regulated by the Central American Convention for the Protection of Industrial Property. It is an occasional practice to license a famous trademark and then seek to profit by selling back to the legitimate owner when the legitimate owner wants to do business in El Salvador. In November 1994, El Salvador signed an amended version of the convention which, among other things, should address this issue. The revised convention will take effect if it is ratified by three of the participating Central American governments. In addition, the Government of El Salvador is currently drafting a special procedures law that will give customs officials authority to interdict merchandise for violating intellectual property rights. It will also establish a separate judicial track for IPR cases.

In addition to problems with enforcement, the Government of El Salvador suffers from antiquated and disorganized bureaucratic procedures for registering patents and trademarks that have caused delays of up to five years in granting patents and trademark registrations and adjudicating oppositions. The National Registry Office was reorganized in late 1995 in an effort to address some of these problems. El Salvador is a signatory to the Geneva Phonograms, Paris Industrial Property, and Berne Artistic and Literary Work Conventions, but it does not belong to the Plant Varieties (UPOV) or the Brussels Satellite Conventions.

El Salvador was removed from the Special 301 Watch List in July 1996, following a special out-of-cycle review. At the same time, the U.S. Government terminated its consideration of a GSP petition on intellectual property rights. El Salvador and the United States continue to work toward negotiating a bilateral agreement on intellectual property rights.

## El Salvador

### SERVICES BARRIERS

Restrictions on foreign banks entering El Salvador have been removed. Foreign banks now face the same requirements as Salvadoran banks and can offer a full range of services. Revisions to the 1991 Commercial Bank and Financial Institutions Law (approved in December 1995) lift restrictions on foreign investment in other local banks and further clarify the rules for opening branches in El Salvador. Foreign insurance companies can operate in El Salvador under the same conditions as local companies. Offshore companies may write policies for risks in El Salvador, an option that is commonly employed.

On October 10, 1996, the Legislative Assembly passed new legislation governing the insurance sector. The law establishes minimum requirements for net worth and capital investments, provides for a separate supervisory function, and lays out a framework for competition and transparency. The Salvadoran legal code, however, recognizes only those companies registered with the Bank Superintendency. Currently, insurance companies are regulated by the commerce code; however, the Central Bank and the Ministry of Economy have prepared legislation to regulate the operations of insurance firms and to establish a separate regulatory authority. A bill is pending before the Legislative Assembly.

### INVESTMENT BARRIERS

El Salvador generally has an open investment regime. The government officially promotes foreign investment in virtually all sectors of the economy. The foreign investment law allows unlimited remittance of net profits for most types of business and manufacturing, and up to 50 percent for commercial or service companies.

On September 12, 1996, the Legislative Assembly of El Salvador passed a law to create one of the most liberal telecommunications regimes in the region. The law encourages maximum competition in all aspects of telecommunications and permits foreign investment in all areas. The only functions reserved to the government are resolution of interconnection charge disputes and spectrum allocation, and in those cases the discretionary power of the government is limited. Follow-up legislation specifically allowing the sale of the state-owned telephone company (ANTEL) was passed in November 1996. The sale of ANTEL is scheduled for March 27, 1997.

On October 10, 1996, the Legislative Assembly passed the General Law of Electricity. The passage of this law establishes the framework for the privatization of the state-owned electric company (CEL), although the actual sale will require separate legislation. Like the telecommunications law, this measure encourages maximum competition in all aspects of energy production and distribution. El Salvador's government owned electricity distribution networks are scheduled to be sold in June 1997. Privatization of state-owned power generation plants is scheduled to take place within two years.

The United States and El Salvador are currently engaged in negotiations over the terms of the proposed U.S.-El Salvador Bilateral Investment Treaty.

# ETHIOPIA

In 1996, the U.S. trade surplus with Ethiopia was $113 million, a decrease of $2 million from the U.S. trade surplus of $115 million in 1995. U.S. merchandise exports to Ethiopia were $148 million, unchanged from the level of U.S. exports to Ethiopia in 1995. Ethiopia was the United States' ninety-eighth largest export market in 1996. U.S. imports from Ethiopia were $35 million in 1996, an increase of $2 million (6.1 percent) from the level of imports in 1995.

## IMPORT POLICIES

Ethiopia levies fairly high customs duties on a wide range of imports, despite three reductions in the past two years. The most recently tariff schedule reduction occurred in January 1997, although there has been some delay in publishing it. The new tariff schedule offers considerable decreases in most duties, but it especially targets imported goods that enhance exports. There are no quantitative restrictions on imports, and import licensing requirements do not present a notable barrier to trade, although customs clearance remains a hindrance to the business of importing. Not only is the process of clearance slow, but imported goods are sometimes charged at an attributed value instead of at invoice values, even when the invoice has been certified by trade officials of the exporting country.

## SERVICES BARRIERS

No foreign firm may participate in domestic banking or insurance services under Ethiopia's Investment Proclamation of June 1996. Professions must be licensed by the government to practice in Ethiopia.

## INVESTMENT BARRIERS

In addition to excluding foreign participation from financial services (banking and insurance), Ethiopia's June 1996 Investment Proclamation prohibits participation in several other sectors, including telecommunications, large-scale (over 20 megawatts) power production, and small services (such as barber shops).

## OTHER BARRIERS

Because of Ethiopia's history as a Marxist regime (1974-91), much of the formal economy remains under state control. The Government of Ethiopia is gradually privatizing state-owned enterprises, but many sectors remain owned and operated by the government.

Bribery and corruption do not appear to present obstacles to U.S. trade or investment in Ethiopia. Nonetheless, U.S. investment remains low at less than $10 million annually. Ethiopia is a relatively new market for U.S. goods and services. Nevertheless, the level of interest by U.S. firms in marketing in Ethiopia is increasing.

## Ethiopia

# EUROPEAN UNION

The European Union (EU) and the United States share the largest two-way trade and investment relationship in the world. In 1996, the U.S. trade deficit with the EU was $15.2 billion, an increase of $6.9 billion from the U.S. trade deficit of $8.3 billion in 1995. U.S. merchandise exports to the EU were $127.5 billion, an increase of $3.9 billion (3.2 percent) from the level of U.S. exports to the EU in 1995. U.S. imports from the EU were $142.7 billion in 1996, an increase of $10.8 billion (8.2 percent) from the level of imports in 1995.

The stock of U.S. foreign direct investment (FDI) into the EU in 1995 was $315.4 billion, an increase of 18.6 percent from the level of U.S. FDI in 1994. U.S. FDI in the EU is concentrated largely in the manufacturing, financial, and wholesale sectors.

## IMPORT POLICIES

### Customs Classification of Information Technology Products

Increased tariff rates resulting from the reclassification by the European Commission and EU Member State customs administrations of certain local area network equipment and multimedia personal computers have raised concern with information technology equipment manufacturers. On February 25, 1997, the WTO Dispute Settlement Body established a WTO dispute settlement panel to examine whether the following measures were inconsistent with the EC's obligations under Article II of the GATT 1994: (1) Regulation No. (EC) 1165/95, which reclassifies certain LAN adapter cards from category 8471, "automatic data processing machines and units thereof," to category 8517, "telecommunications apparatus;" (2) the actions of customs authorities in Member States in reclassifying and increasing tariffs on imports of all types of LAN equipment - including hubs, in-line repeaters, converters, concentrators, bridges and routers; and (3) the actions of customs authorities in Member States in reclassifying and increasing tariffs on imports of PCs with multimedia capacity. On March 7, 1997, the United States requested establishment of panels to examine the actions of the UK and Ireland in reclassifying and increasing tariffs on various types of LAN equipment and multimedia PCs.

### EU Implementation of Uruguay Round Grain Tariff Commitments

During the Uruguay Round, the United States obtained a tariff concession from the EU establishing a ceiling on the duty that could be charged on grains. The ceiling is based on the duty-paid import price of grains into the EU. However, the EU subsequently established a reference price system for grain imports. The reference price system deprived U.S. exporters of the significant duty reductions that they expected to receive on high-value grains, such as malting barley and packaged rice.

The United States held unproductive consultations with the EU under WTO dispute settlement procedures in September 1995 and requested a WTO panel later that month. The United States and the EU subsequently reached an agreement under which the EU committed to establish a cumulative recovery system for duty underpayments and overpayments on brown rice, and a side commitment to establish a system that would permit imports of a limited amount of malting barley at 50 percent or less of the duty that would otherwise be charged. The U.S. Government is working with the EU to ensure that it implements both commitments, and will proceed to a WTO panel if the problems in not resolved satisfactorily.

**Implementation of EU Import Quotas for U.S. Rice**

As part of the concessions made to the United States as compensation for the accession of Finland, Austria, and Sweden to the EU, the EU agreed to implement tariff rate quotas for imports of 38,000 metric tons of milled rice and 8,000 metric tons of brown rice from the United States. The EU has not implemented these tariff rate quotas, but has agreed to "roll over" the unused 1996 tariff rate quota into 1997. The U.S. Government continues to encourage the EU and the U.S. rice industries to address outstanding issues.

**Broadcast Directive and Motion Picture Quotas**

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

Since 1993, the Commission, Council, and European Parliament have been struggling to come to agreement on a revised directive. In June 1996, the Council reached a common position that essentially reaffirmed the flexibility of the original directive as regards the quota provision and rejected efforts to expand the scope of the directive to include new audiovisual services. However, in November 1996, the European Parliament voted amendments that are a source of further disagreement; the amendments call for guarantees of public access to major sports programs and for a "v-chip" type of system for coding programs according to their possible detrimental effect on minors. Since the Council decided not to accept the amendments as formulated by the Parliament, the Dutch presidency will now have to convoke a conciliation committee which will try to iron out the differences between the institutions and arrive at a workable compromise.

The United States continues to monitor developments with respect to the Broadcast Directive. The EU remains on the Special 301 "Priority Watch List" because the quota provisions of the directive appear to violate Member States' obligations under the GATT.

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

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

In December 1993, the French Parliament approved a law imposing a 40 percent quota of French songs on almost all French private and public radio stations. The 40 percent quota went into effect January 1, 1996, and applies only to prime time. Some 1,700 AM and FM stations are affected. French songs are defined as “variety music” written or interpreted by French or Francophone writers and artists. In addition, half of the 40 percent radio quota will have to be either new French songs (songs released within the previous six months) or French songs interpreted by new French or Francophone singers (singers or groups who have not yet had two albums sell at least 100,000 copies each).

The effects of the French radio broadcast quota are hard to evaluate. The French Government claims a high compliance rate, but there is little objective public information available on compliance and enforcement. The law has the effect of limiting the broadcast share of American music.

*Italy*: In keeping with the EU Broadcast Directive, Italy's 1990 Broadcast Law requires that upon conclusion of three years from concession of a national broadcast license, a majority of TV broadcast time for feature films be reserved for EU-origin films. The Italian law also requires that half of the European quota be dedicated to Italian films. The Italian law is more narrowly focused than the Broadcast Directive, since it encompasses only films produced for cinema performance, and excludes TV films and series and other programming. The film sector decree-law enacted on January 18, 1994, calls for application of the Italian broadcast quotas proportionally during evening viewing hours, but its language is strictly hortatory.

In 1996, the Italian Government introduced legislation to make European content restrictions more binding, by applying a 51 percent European quota to prime-time specifically, not counting news, sports, variety shows, and other non-film programming. The bill containing this proposal remains before the Italian Parliament, despite the European Parliament’s November 1996 decision to leave in place the more flexible EU quota regime.

*Portugal*: Television legislation passed in 1990 contains language taken from the EU Broadcast Directive requiring a “majority proportion” of works broadcast be of “Community or European” origin. In practice, however, this rule has not been enforced because Portuguese television production is minimal and production from other EU countries is inadequate to satisfy the networks' broadcasting commitments. The United States will monitor closely the implementation of this restrictive legislation.

*Spain*: In December 1993, the Government of Spain adopted legislation transposing the EU’s Broadcast Directive. Program restrictions for private television are contained in a law authorizing private television in Spain. The law includes restrictions on non-EU programming to be shown on private TV, including movie quotas. Government-owned and private television networks meet their quota restrictions. These restrictions, which are intended to encourage Spanish language production, follow the Broadcast Directive.

While the principal government-owned television networks now show more U.S. programs than the quota restrictions on private channels would permit, private network licenses match the private TV program quotas. U.S. programs would have greater sales without the quota restrictions.

## European Union

Spain requires a license for distributing each non-EU film dubbed domestically. Dubbing is deemed essential since dubbed movies account for about 95 percent of box office revenues for imported films. The rest is earned by subtitled original language films. On January 24, 1997, the government approved implementing regulations for the 1994 cinema law which established a system under which up to three licenses may be earned by showing a single EU-produced film: the first when the film's box office receipts exceed 10 million pesetas (about $77,000), the second when they exceed 20 million pesetas (about $154,00), and the a third when they exceed 30 million pesetas (about $231,000). If the film is dubbed, it must be dubbed into a minority language, and earn at least 5 million pesetas (about $38,500) in the minority language to qualify for the third license.

The implementing regulations also established screen quotas requiring theaters to show at least one day of new EU-produced films for every three days of non-EU-produced films. When the non-EU produced films are dubbed into a recognized minority language, a more generous proportion of one day of EU-produced films for every four days of non-EU-produced films applied.

The film dubbing license and screen quota requirements established in the regulations were reached after negotiations in which industry, including the distributors of U.S. films, participated, and in fact are less stringent than those established in the text of the 1994 law (which did, however, allow the Government of Spain some flexibility in implementation). Nonetheless, U.S. industry continues to object both to the added costs and to the restriction on freedom to make commercial decisions which the requirements entail.

### Restrictions Affecting U.S. Wine Exports to the EU

The United States seeks assurance of long-term access for U.S. wine exports to EU markets. Current EU regulations require imported wines to be produced with only those oenological practices (i.e., wine treating materials and processes), which are authorized for the production of EU wines. Since the mid-1980's U.S. wines have been permitted entry to EU markets by means of a series of extensions to temporary EU regulatory exemptions. Without these "derogations," the majority of U.S. wines would be immediately barred from entering the EU. This leaves in doubt both the foothold U.S. exporters have secured in the EU market and the prospects for export expansion in the future. The derogations have been renewed for 1997.

EU regulations also require that a wine-import certification document be provided for each wine in each shipment. While certain qualifying U.S. producers are permitted to use a simplified procedure, others must go through the full documentation and testing process.

The United States has renewed consultations with the EU on these and other wine-related issues. The main U.S. objective in the consultations is to ensure that the EU market remains open to U.S. wine.

### Ban on Fur from Animals Caught in Leghold Traps

In November 1991, the EU adopted a regulation banning the use of leghold traps in the EU. The regulation also requires a ban on imports of fur and fur products of certain species from countries which either do not ban leghold traps or do not conform their trapping practices to internationally agreed (though not yet developed) humane trapping standards. Implementation of the import ban, now expected in 1997, could hinder U.S. fur exports to the EU. In August 1995, the U.S. Government, the European Commission, and the Canadian Government (later joined by the Russian Government) agreed to facilitate the work of an experts group charged with developing a consensus on humane trapping standards. The work of the experts group led to negotiations beginning in 1996 aimed at fostering consensus among the four parties on humane trapping standards. The EU, Canada, and Russia initialed the text of an agreement on humane trapping standards in December 1996. The U.S. Government, which could not initial the December agreement text, has since continued talks with the EU in hopes of reaching a settlement which would allow the United States to join the consensus on humane trapping standards reached by the others.

**Import and Distribution of Bananas**

On July 1, 1993, the EU, as part of its Single Market exercise, implemented a new banana regime to replace individual Member State rules for banana imports. Elements of the new regime include a tariff-rate quota which limits imports of bananas from Latin America and a licensing system that burdens Latin American banana imports and favors EU firms to the detriment of third country importers and distributors. A GATT panel ruled in 1994 that the EU's new banana regime was not consistent with GATT rules, but the EU blocked adoption of the panel report. After efforts to resolve this issue through direct negotiations with the EU failed, the United States in 1996 joined Ecuador, Guatemala, Honduras, and Mexico in a WTO dispute settlement panel process. The panel is expected to issue its final report in spring 1997.

**STANDARDS, TESTING, LABELING, AND CERTIFICATION**

EU Member States still have widely differing standards, testing and certification procedures in place for some products. These differences may serve as barriers to the free movement of these products within the EU and can cause lengthy delays in sales due to the need to have products tested and certified to account for differing national requirements. Nonetheless, the advent of the "New Approach," which streamlines technical harmonization and the development of standards for certain product groups, based on minimum health and safety requirements, generally still points toward the harmonization of laws, regulations, standards, testing, quality and certification procedures in the EU. The European standardization process is still closed to U.S. firms' direct participation, although European standards bodies can be sympathetic to U.S. concerns when approached.

**Standardization**

Standardization continues to play an increasingly significant role in U.S.-EU trade relations. For example, the Transatlantic Business Dialogue (TABD) considers standards issues to be a major concern. The U.S. Department of Commerce anticipates that EU legislation covering regulated products will eventually be applicable to 50 percent of U.S. exports to Europe. Given the enormity of this trade, EU legislation and standardization work in the regulated areas is of considerable importance. Although there has been improvement in some respects in 1996, a number of problems related to this evolving EU-wide legislative environment have caused concerns to U.S. exporters, including lags in the development of EU standards; lags in the drafting of harmonized legislation for regulated areas; inconsistent application and interpretation by Member States of the legislation that is in place; overlap among directives dealing with specific product areas; grey areas between the scope of various directives; and unclear marking and labeling requirements for regulated products before they can be placed on the market. While many such problems are not deliberate "trade barriers," their existence can impede U.S. exports to the EU.

**Mutual Recognition Agreements**

The EU is implementing a harmonized approach to testing and certification, as well as providing for the mutual recognition within the EU of national laboratories designated by Member States to test and certify a substantial number of "regulated" products. The EU encourages mutual recognition agreements between private sector parties for the testing and certification of non-regulated products.

One difficulty for U.S. exporters is that only "notified bodies" located in Europe are empowered to grant final product approvals of regulated products. While there are some laboratories in the U.S. which can test regulated products under subcontract to a notified body, the limited number of such labs means that such subcontracting procedures are unlikely to provide sufficient access for U.S. exporters. Moreover, these labs cannot issue the final product approval but must send test reports to their European affiliate for final review and approval, delaying the process and adding costs for U.S. exporters.

The United States and the EU are involved in negotiations to address trade problems caused by certification and testing procedures through Mutual Recognition Agreements (MRAs). MRAs will permit a U.S. exporter to have its products undergo various conformity assessment procedures (such as testing and inspection) in the United States according to EU requirements. MRAs will similarly facilitate EU exports to the United States. U.S.-EU discussions concerning MRAs have been ongoing since October 1992. In 1996, U.S. and EU officials held several rounds of negotiations on "priority" sectors. The negotiators have narrowed the focus of the package to include telecommunications and information equipment, pharmaceuticals good manufacturing practices, medical devices, electrical safety, electromagnetic compatibility, and recreational craft. As a result of recommendations at the Chicago TABD meeting, the U.S.-EU Summit in December 1996 called for the conclusion of a package of MRAs by January 31, 1997. Substantial progress was made by the deadline and negotiators continue to work to conclude a package of MRAs.

**Approval Process and Labeling Requirements for Agricultural Biotechnology Products**

Both U.S. and European companies have had difficulties in having agricultural products developed with biotechnology approved in the EU. Existing laws for the approval of these products have not been applied in a predictable and transparent manner. Two recent U.S. product approval requests were subject to delays because of political opposition to biotechnology rather than legitimate health or safety concerns. It is extremely difficult for companies to plan their business activities given this regulatory environment.

The new EU Novel Foods Regulation, expected to come into force in April 1997, should improve the approval process. However, concern exists that the Novel Foods Regulation contains provisions for mandatory labeling of biotech foods that may, depending on how they are implemented, serve to mislead consumers by implying that there are legitimate health or safety heighten concerns with the food.

**Ban on Growth Promoting Hormones in Meat Production**

The EU bans the importation of animals, and meat from animals, to which have been administered any of six particular hormones for purposes of promoting the growth of the animals, even though scientists have reviewed these hormones and concluded that they are safe in normal use. At the same time, the EU permits some of these same hormones to be administered for herd management and other purposes. The ban has effectively eliminated most U.S. red meat and meat product exports to the EU.

The United States launched a formal WTO dispute settlement procedure in May 1996 challenging the EU's ban. Canada initiated a second WTO case against the EU hormone ban in October 1996. Panel reports are expected in the spring of 1997.

**Veterinary Equivalency**

As a part of the Single Market Initiative, the EU harmonized animal and public health standards among the Member States. In harmonizing these standards, the EU introduced new import controls for animal and animal products, which threatened to disrupt U.S. exports to the EU. The implementation of these new import requirements, which were to be effective at the end of 1993, has been postponed, most recently in December 1996, to allow for the completion of negotiations aimed at mutual recognition of U.S. and EU sanitary standards. On December 20, 1996, the EU Commission adopted a decision which would allow EU Member States either to implement the EU's harmonized import requirements or to continue applying their national rules until April 1, 1997. Some trade disruptions continue to occur as individual Member States implement their own policies. U.S. and EU negotiators continue to work toward an agreement concerning veterinary equivalence to provide a framework for continued trade.

**Voluntary Ecolabeling Program**

On March 23, 1992, the EU Council of Ministers approved an EU-wide ecolabeling program which permits a manufacturer to obtain an ecolabel for a product when its production and life-cycle meet general and specific criteria established for that particular product. The program is intended to encourage consumers to purchase products according to their overall environmental performance. EU ecolabel criteria have been adopted and published for twelve consumer product categories: washing machines, dishwashers, soil improvers, toilet paper, paper towels, laundry detergents, light bulbs (single-ended and double-ended), paints and varnishes, bed linens and t-shirts, photocopy paper, and refrigerators. The Commission plans to develop criteria for converted paper products (e.g., notepads), woolen and synthetic textiles, personal computers, and footwear in 1997.

U.S. and EU technical and policy officials met three times in 1996 to discuss the EU process for developing ecolabeling criteria, and in particular to address U.S. industry concerns about the adequacy of the scheme's programs, transparency and opportunity for meaningful participation by U.S. firms, and its potential for discrimination against U.S. firms whose production processes and methods differ from those used in the EU while having comparable environmental impacts. The U.S. industry concerns were focused on the paper and textile ecolabels and their criteria, as well as the process leading up to the establishment of those criteria. As a result of these consultations with the United States, the European Commission agreed to a continuing dialogue on ecolabeling, including bilateral environmental discussions commencing in 1997.

The Commission also agreed to brief U.S. consumer, environmental and business groups on the EU ecolabeling program at the first bilateral meeting taking place in the United States.

In October 1996, as it had the year before, the Office of the U.S. Trade Representative included the EU ecolabeling scheme in its annual report to Congress under the "Super 301" program as a practice which is the subject of ongoing consultations, but which is nonetheless a topic of continuing concern. In that report the U.S. Government expressed its concern that the process for developing ecolabeling criteria has been insufficiently transparent and has failed to provide for adequate participation by non-EU interest groups. The United States wants to ensure that these changes do not create de facto trade barriers that place U.S. producers at an unfair advantage. Despite the EU's stated commitment to improve the meaningful participation of non-EU interests, the U.S. Government believes there is considerable room for improvement. The United States has also urged that the criteria not reflect a single approach to environmental protection without adequate attention having been given to other potentially comparable approaches and that the EU ecolabeling program provide sufficient and accurate information to consumers regarding the relative environmental impacts of competing products. The United States will continue to monitor closely the development of and revision to the EU ecolabeling scheme.

**Packaging Labeling Requirements**

In 1996, the Commission approved a directive that would establish marking requirements for packaging, to indicate recyclability and/or reusability. The United States has expressed two potential concerns with this directive. First, to the extent that the EU's new marking requirements differ from other marks widely used in the United States and being developed in the ISO, the U.S. is concerned that packaging, marketing and distribution operations will become more complicated and costly for both U.S. and European firms wishing to sell their products abroad, without achieving any concomitant environmental benefit.

The second concern is related to Article 4 of the proposed directive, which would prohibit the application of other marks to indicate recyclable or reusable packaging. Based on U.S. experience, this requirement is likely to pose a particular problem for glass and plastic containers, as it would require companies to create new molds solely for use in the European market.

**Market Access for Gas Connector Hoses in Europe**

A U.S. producer of gas connector hoses has experienced difficulties in obtaining market access in some Member States for its products due to design-restrictive standards that arguably have no bearing on the safety and performance of the product. Although progress has been made in resolving the U.S. exporter's concerns in the UK market (see Member State Practices below), the problem has been extended to European markets generally with the establishment of a CEN Technical Committee to begin work on a harmonized standard for Europe. Reports of initial technical discussions within the committee indicate consideration is being given to standards containing design-restrictive requirements. The initiation of work on a European regional standard results in a "standstill" on standards work in individual Member States and thus can delay or, if it results in unnecessarily restrictive standards, prevent improved access to EU markets. The U.S. Government has been actively pursuing a resolution to this problem and in cooperation with industry will be closely examining the committee's progress.

**Member State Practices**

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

*Austria*: Certification procedures for telecommunications equipment and state-of-the-art technologies (now vested in the Austrian Federal Ministry of Science, Transportation, and Arts) have presented problems for U.S. exporters. The Ministry has been apprised of U.S. industry concerns, and has promised to improve the standards-setting process.

*France*: France's advance implementation in September 1996 of EU harmonized regulations has effectively cut off U.S. exports to France of pet food products. In 1995, U.S. pet food exports to France amounted to about $20 million, with every expectation that the market and U.S. market share would continue to grow. Although the United States has shown its willingness to resolve the issue at a technical level, as of early 1997, the French Government has been unwilling to modify its position. The United States regards the French position as being non-scientific and without justification.

*Italy*: Italy's interpretation of EU sanitary and phytosanitary requirements has caused, or threatened to cause, problems for the following U.S. agricultural exports: processed meat products, wood products, poultry meat products, game meats, and seafood. Finally, Italy's qualitative standards for bull semen, which limit the number of foreign bulls in favor of domestic animals, and the numerous testing fees, which are used to fund the national industry association, have proven to be cumbersome and expensive. In the absence of these restrictions, U.S. exports of these products to Italy could increase by an estimated $25 - 100 million.

*Spain*: In recent years, the transparency of Spain's product standards and certification processes has improved. Difficulties faced by telecommunications equipment suppliers have eased as Spain adapted its national regulations to conform to EU directives. Despite these changes, however, there is still some uncertainty as to whether the earlier exemption from homologation and certification requirements for equipment imported for military use is still valid. Pharmaceuticals and drugs still must go through an approval and registration process with the Ministry of Health requiring several years unless previously registered in another EU Member State or with the equivalent EU body, in which case the process is shortened to a few months. Vitamins are covered under this procedure; however, imports of other nutritional supplements are restricted, and they are dispensed only at pharmacies. In 1996, this had an impact on U.S. nutritional supplements exporter's efforts to develop the Spanish market.

*United Kingdom:* With support from the U.S. Government and cooperation from the British Government, a U.S. company has made progress in resolving its problems with design elements of a British Standards Institution (BSI) standard for commercial gas connector hoses. The BSI appears ready to finalize modifications to its standard which will allow the U.S. firm to certify its products to the standard and thereby enhance its marketing opportunities in the UK.

**GOVERNMENT PROCUREMENT**

## European Union

### Discrimination in the Utilities Sector

In 1990, in an effort to open government procurement markets within the EU, the EU adopted a Utilities Directive covering purchases in the water, transportation, energy, and telecommunications sectors. The directive, which went into effect in January 1993, requires open, objective bidding procedures (a benefit for U.S. firms) but discriminates against non-EU bids absent an international or bilateral agreement. Under the directive, EU procuring utilities may exclude bids with less than 50 percent EU value without additional justification. In addition, acceptable bids with a majority of EU-content must receive a three percent price preference over otherwise equivalent non-EU bids.

On May 25, 1993, the United States and the EU signed a bilateral Memorandum of Understanding (MOU) under which the EU agreed to waive the discriminatory provision of the Utilities Directive with respect to procurement by electrical utilities. At the same time, the EU agreed to expand coverage of the GATT Government Procurement Code procedures to procurement of services and construction by its Member States. In return, the U.S. agreed to remove "Buy American" preferences in procurement by federally-owned utilities (Tennessee Valley Authority and the five Department of Energy Utilities) and by executive branch agencies not previously subject to the GATT Government Procurement Code. The U.S. also agreed to waive "Buy American" requirements for construction contracts and to provide Code treatment to procurement of services. However, because the EU would not eliminate discrimination in telecommunications procurement, the U.S. simultaneously imposed sanctions on goods and services from the EU Member States. These sanctions do not apply to Spain, Greece, Portugal, and Germany, because these countries do not apply the discriminatory provisions of the Utilities Directive. The EU retaliated by imposing limited sanctions on U.S. goods and suppliers.

On April 15, 1994, the United States and the EU concluded a procurement agreement that expanded upon the 1993 MOU. The 1994 agreement extends non-discriminatory treatment to over $100 billion of procurement on each side, including all goods procurement by all EU subcentral governments, as well as to selected procurement by 37 U.S. States and seven U.S. cities. Much of the 1994 agreement is implemented through the WTO Government Procurement Agreement which took effect January 1, 1996. The 1994 agreement, however, did not end the discrimination with respect to telecommunications procurement. Consequently the U.S. retained the May 25, 1993, sanctions imposed against the EU. With the accession of the three new Member States on January 1, 1995, the U.S. extended to them the benefits of the 1993 MOU and the 1994 procurement agreement, as well as the sanctions.

On April 30, 1996, Acting USTR Barshefsky cited Germany under Title VII of the Omnibus Trade and Competitiveness Act of 1988 for its failure to implement its procurement obligations. On October 1, 1996, she announced that agreement had been reached with Germany to reform its procurement system (see below).

### Member State Practices

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

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

*Germany*: German implementation of the EU Utilities and Remedies Directive was accomplished through modifications to the German basic budget law in February 1994. Under the terms of the 1993 U.S.-EU Memorandum of Understanding on government procurement (and since January 1, 1996, the WTO Government Procurement Agreement), the system established for reviewing bid awards covered by the EU Utilities Directive has also been available to U.S. firms bidding on supply contracts in the heavy electrical equipment sector. The review mechanism has provided an administrative means for challenging procurement practices in the electrical utilities sector, considered by many to be relatively closed to foreign suppliers.

Since then, two U.S. firms have availed themselves of this review mechanism, alleging irregularities in public procurement bid procedures. Despite Germany's obligations in the 1993 MOU, however, there proved to be no effective remedies available to challenge these procedures. German authorities took no corrective measures in either case.

In October 1995, the European Commission formally challenged the adequacy of Germany's implementation of the EU Remedies Directive. Moreover, in April 1996, the U.S. Trade Representative identified Germany under Title VII of the Omnibus Trade and Competitiveness Act of 1988 for discrimination in the heavy electrical sector. USTR suspended the imposition of the sanctions available under Title VII on October 1, 1996, following a decision by the German Cabinet in late September to address U.S. concerns and reform German procurement regulations by providing for court-based review of bid challenges, in line with EU requirements. The German Government has drafted new legislation and plans to incorporate the new procurement regulations, which will combine administrative and judicial review, into existing German competition law. The draft bill will likely enter the formal legislative process in early spring 1997 and is expected to enter into force on January 1, 1998. The U.S. Government, in consultation with industry, is studying the proposed legislation.

*Greece*: Greek laws and regulations concerning government procurement nominally guarantee nondiscriminatory treatment of foreign suppliers. Officially, Greece also adheres to EU procurement policy, and Greece joined the WTO Government Procurement Code in 1992.

Nevertheless, many of the following problems still exist: occasional sole-sourcing (explained as extensions of previous contracts), loosely written specifications which are subject to varying interpretations, and allegiance of tender evaluators to technologies offered by longtime, traditional suppliers. It is also a widely-held belief that firms from other EU Member States have an automatic advantage over non-EU contenders in winning Greek Government tenders. It has been noted that U.S. companies submitting joint proposals with European companies are more likely to succeed in winning a contract. Greece continues to insist on offset agreements as a condition for purchase of defense items. In December 1996, the Greek Parliament passed legislation which allows public utilities in the energy, water, transport, and telecommunications sectors to sign “term agreements” with local industry for procurement. “Term agreements” are contracts to which Greek suppliers are given significant preference in order to support the national manufacturing base. This was made possible as a result of Greece’s receipt of an extension until January 1, 1998, to implement the EU Utilities Directive.

*Italy*: Italy’s fragmented, often non-transparent government procurement practices and previous problems with corruption have created obstacles to U.S. firms’ participation in Italian government procurement. Italy has, however, made some progress over the past year in making the laws and regulations concerning government procurement more transparent, although Italy has not yet fully implemented its government procurement obligations under either the WTO Government Procurement Agreement or EU directives.

## EXPORT SUBSIDIES

### Agricultural Product Subsidies

The EU grants export subsidies (restitutions) on a wide range of agricultural products including wheat, wheat flour, beef, dairy products, poultry, and certain fruits, as well as some manufactured products such as pasta. Payments are nominally based upon the difference between the EU price and the world price, usually calculated as the difference between the EU internal price and the lowest offered price by competing exporters.

The Uruguay Round agreement requires the EU to reduce export subsidies over six years by 21 percent in volume and 36 percent in value from a 1986-90 base period. Under the agreement, the EU is required to cut export subsidies by about $5-7 billion from recent levels.

## LACK OF INTELLECTUAL PROPERTY PROTECTION

The EU has adopted five intellectual property rights (IPR) directives since 1991 deemed essential to implementation of the Single Market. The Software Directive entered into force on January 1, 1993, and by now all Member States have implemented it in their national legislation. The Commission also has proposed a Directive aimed at harmonizing Member State legislation on the legal protection of designs together with a regulation on Community design that would create a Community Design Office. As currently drafted, the Directive would provide protection for up to a maximum of 25 years for registered industrial designs. U.S. firms, while supportive of the Commission's initiative in this area, argue that certain measures will make it more difficult than at present to qualify for valid design rights. U.S. car manufacturers object in particular to the regulation's “repair clause,” which would effectively eliminate design protection for spare styled car body parts after three years and might well encourage copying of designs. Insurance companies and spare parts manufacturers, however, do not share these objections.

The proposal submitted to the Council in 1993 to expand the regulation of counterfeit goods from trademarks to copyrights, related rights, and design rights is a positive development. The American business community would like it to be expanded even further to include patents and be made to apply to parallel imports from outside the community. However, progress remains slow on other directives in the copyright area. These include directives on home copying and reprography. Some of these directives would establish rights based on reciprocity, rather than on national treatment. One possible consequence of providing protection based on reciprocity is that in certain areas U.S. right holders and their assignees might not be granted those rights in EU Member States unless the United States were to enact the same rights under its laws. The U.S. Government is monitoring developments in these areas closely, and senior U.S. officials have intervened a number of times to discourage the EU from adopting directives establishing rights based on the principle of reciprocity.

Patent filing and maintenance fees in the EU and in its Member States are extraordinarily expensive relative to other countries. Fees associated with the filing, issuance and maintenance of a patent over its life far exceed those in the United States. However, it is encouraging that the EU has lobbied the European Patent Office (EPO) to reduce its fees. It appears that the Administrative Council of the EPO has decided to enact a 35 percent reduction.

In March 1995, the European Parliament rejected the text agreed by the Conciliation Committee that had been set up to work out differences between the Parliament, the Council, and the Commission on the directive on biotechnological inventions, including revised language on the patentability of human body parts. In December 1995, the Commission approved a new proposal for a directive aimed at striking a balance between the need to promote research in the biotechnology field and the need to address ethical concerns. It distinguishes clearly between inventions and discoveries; excludes completely from patentability methods of germ line gene therapy on humans; and makes an explicit derogation for farmers as regards breeding stock. With these changes, the directive may get approval more readily from both the Council of Ministers and the Parliament, which may complete its first reading by mid-1997. The 1993 Council regulation setting up a centralized marketing authorization procedure for human and veterinary medicinal products requires applicants to use a single trademark. This compromises pharmaceutical companies' ability to select different trademarks in different Member States, which they might prefer to do for linguistic or legal reasons, and sets an unfortunate precedent that might in the future affect other sectors.

**Member State Practices**

Some EU Member States have their own special practices regarding intellectual property protection. A brief discussion of those which are of concern to the United States follows:

*Austria*: Austria’s April 1, 1996, amendment to its copyright law introduced a statutory license requirement for exhibiting films via video cassettes in hotel rooms and other lodging accommodations. The United States has urged the government to rescind this provision of the law, which appears to be inconsistent with Austria’s international obligations.

*Belgium, France, Germany, and Spain*: Belgium, France, Germany, and Spain collect levies on blank tapes and recording equipment to compensate right holders for the private, home copying of their works and to provide a source of funding for local productions. These levies are distributed by national collecting societies to the various categories of right holders according to statutory provisions. National treatment is denied to some U.S. right holders, however, and the U.S. motion picture and recording industries have not been able to collect their rightful share of these proceeds. Recently, the Motion Picture Association (MPA) and the General Society of Authors of Spain (SGAE) reached an agreement granting MPA access to levies collected on behalf of screenplay authors through the levy on blank video cassettes and recording equipment. This agreement does not, however, include performers' or producers' rights. According to SGAE, some payment has already been remitted to the Hollywood studios, and the United States will continue to watch very closely to see impact from this agreement.

*Denmark:* Denmark's intellectual property law are generally adequate. However, certain problems exist. Enforcement is made difficult by the fact that the Danish Government does not make available provisional relief to prevent ongoing infringement or preserve evidence in the context of civil litigation, both after a case is filed and on an ex parte basis. The TRIPs Agreement requires that such provisional relief be made available in civil or criminal litigation. The availability of such relief is particularly important to the U.S. software industry because of the ease with which the evidence of infringing use can be eliminated if the infringers are forewarned of the right holder's interest. Furthermore, Denmark's equivalent of the Environmental Protection Agency is permitting competitors, in contravention of TRIPs Article 39.3, to rely upon extremely valuable test data that a U.S. firm must submit in order to receive approval to market its biocide chemical product in Denmark.

*Germany*: The level of software piracy continues to be a source of concern in Germany, as in other large developed markets. The effects of Germany's 1993 implementation of the EU's software directive, as well as an educational campaign by the software industry, may have helped reduce piracy from previous levels.

*Greece*: Copyright protection in Greece, especially of U.S. films and television programs, is inadequate and Greece remains on the Special 301 "priority watch list," where it was placed in November 1994, after several years on the Special 301 "watch list." Just prior to an out-of-cycle review in December 1996, the Greek Government presented an "action plan" of specific steps it will take by April 1997 to enforce its 1995 media law to end piracy of copyrighted audio-visual products and to protect copyrighted software.

Another IPR protection problem is lack of effective protection of trademarks, particularly in the apparel sector.

*Ireland:* U.S. motion picture industry representatives maintain that Ireland's 1963 copyright law does not comply with EU directives or the TRIPs Agreement (the latter's obligations came into effect for Ireland in January 1996). Faulting cumbersome procedures for prosecuting violators and insignificant penalties, U.S. industry estimates video piracy at 26 percent of all rentals/sales, costing the industry an estimated $15 million in lost revenue annually. U.S. software producers claim that Ireland has the highest incidence of software piracy in the EU, estimated at 70 percent. Although government officials have begun drafting a new copyright law intended to implement Ireland's TRIPs obligations, it is unlikely to be submitted to the Parliament until sometime in 1998, at the earliest, due to funding and staffing constraints. In addition, compulsory licensing provisions of Ireland's patent law fail to conform to the TRIPs Agreement, and Irish officials have not yet decided what legal action is required to bring them into compliance.

*Italy*: Italy has been on the Special 301 “watch list” since 1989, primarily due to problems with protection of copyrighted audio and visual material and computer software, despite substantially increased enforcement actions against copyright piracy.

Computer software piracy, while according to industry estimates falling from 60 percent in 1995 to 58 percent in 1996, remains a problem. In March 1996, the Italian Government raised criminal penalties (fines and prison sentences) for software piracy. Nonetheless, duplication of software internally by some Italian companies remains a problem, and there are reports of illicit software holdings in public institutions such as schools and universities.

Film video piracy remains a serious problem. U.S. motion picture distributors estimate that some 40 percent of the video market consists of pirated material copied in Italy. U.S. industry has noted persistent enforcement efforts involving police raids and confiscation of illegal cassettes and copying equipment.

Piracy of musical recordings is also a problem and may be on the rise due to the availability of more sophisticated reproduction equipment and rapid growth of the lucrative market for compact discs. Pirated products accounted for 22 percent of the market in 1996, down from 33 percent in 1995, according to industry estimates. There have also been reports of large-scale illegal photocopying of textbooks in and around Italian universities.

The U.S. Government has been monitoring the progress of an Italian Government bill to enhance protection of copyrighted material in Italy. The Italian Government introduced the bill in October 1996. In the November 1996 out-of-cycle review of Italy under “Special 301,” the U.S. Government took note of the Italian Government’s bill. However, the United States also expressed concern that the bill did not raise criminal penalties for most copyright violations, and urged Italy to enact penalties sufficient to deter piracy prior to the April 1997 “Special 301" review.

*Spain*: Public and private sector enforcement actions (especially private sector initiatives), using Spain's patent, copyright, and trademark legal framework, have sharply reduced the level of video piracy. Unlicensed “community video” systems illegally operating in neighborhoods and apartment blocks remain a concern, especially with regard to enforcement in Andalucia. A new legal framework for granting commercial cable television franchises has been created. As cable television becomes established, illegal “community video” systems are likely to disappear. Copyright holders also remain concerned with unauthorized public performances on local television stations and in buses and bars, and unauthorized exports to Latin America.

Despite overall improvement, software piracy remains a serious problem in Spain. Although the rate has been declining, U.S. software producers estimate that approximately 73 percent of the off-the-shelf personal computer software in use in Spain has been copied illegally, resulting in one of the highest piracy rates within the European Union. In 1993 the Spanish Government enacted legislation that transposed the EU's Software Directive, including a provision that allows authorities to conduct unannounced searches in civil cases. However, judges have been reluctant to exercise these powers. In any event, pursuing piracy cases through the Spanish courts remains a lengthy process, which diminishes the deterrent power of initial searches and arrests.

## European Union

In October 1992, Spain finally modernized its patent regime to provide protection for pharmaceutical products as required by the EU. However, the law offers no pipeline protection for products in the research and development stage, effectively postponing any practical effects another 10 years. The U.S. industry remains concerned about Spanish reluctance to provide full protection for pharmaceutical products and points to Spanish efforts to dilute EU requirements. These efforts include exempting itself from parts of EU rules, postponing implementation of other parts, challenging EU protection in the European Court of Justice and maintaining the most extensive system of compulsory licenses in Europe.

*Sweden*: While Sweden's intellectual property laws are adequate, its enforcement of them has been problematic. The Swedish Government has not provided sufficient financial and personnel resources or training to the police and to the prosecutor's office nor has it indicated that IPR enforcement is a top priority. Enforcement is made more difficult by the Swedish determination that it need not change its laws to establish provisional relief in the context of civil searches. This forces companies to pursue cumbersome criminal actions that militate against settlements between the parties involved, which harms the copyright holders' interests. Sweden has also invoked its constitutional guarantee of freedom of information to publicly disseminate a copyrighted but apparently unpublished work against the wishes of the copyright holder.

*United Kingdom*: The UK maintained for some time that compulsory patent licensing provisions inconsistent with the TRIPs Agreement are rendered void by Section 53 (5) of the Patents Act 1977. This section provides that no compulsory patent shall be granted if to do so "would be at variance with any treaty or international convention to which the UK is a party." Therefore, in the UK view, its ratification of the TRIPs Agreement voided existing compulsory licensing provisions in UK law. The UK has, however, come around to the view that specific amendments to the Patents Act to incorporate TRIPs commitments would make UK patent law more transparent. Amending legislation has been prepared and circulated for public comment. The UK patent office believes that legislation will be passed in 1997 although, with a general election scheduled for no later than May, passage could slip into 1998.

### SERVICES BARRIERS

### Computer Reservation Services

U.S. computer reservation systems (CRS) companies have had difficulty cracking the EU market, as some Member State markets tend to be dominated by the CRS owned by that Member State's flag air carrier. The EU's 1993 CRS "Code of Conduct" compelled one U.S. CRS firm to establish subsidiaries in virtually every Member State, at a cost of more than $10 million. The Code may be used to establish "charging principles" which could further erode the ability of U.S. firms to gain market share. In addition, German Rail, which owns one-third of the German marketing arm of the largest European CRS firm, has thus far refused to deal on an equal basis with U.S. CRS firms, severely affecting their ability to operate in the German market. German Rail's refusal to provide fare data to a U.S. CRS firm was the subject of a recent Statement of Objections issued by Germany's antitrust authority. U.S. CRS firms face similar problems in Spain and France.

Swedish data protection regulations also are discriminating against non-EU CRS firms. One U.S.-owned CRS firm maintains that Sweden is the only EU Member State in which it has not either already received or will soon receive data protection-related permits for its operations. Proposed Swedish requirements related to data privacy would be more stringent for U.S.-based CRS firms than for those based in the EU, based apparently on the assumption that U.S. data privacy laws are insufficient when compared to Swedish statutes (even though U.S. laws are regarded as sufficient by all other EU Member State data protection authorities).

**Airport Ground Handling**

In December 1995, the Council agreed on a common position liberalizing the market to provide ground-handling services at EU airports above a certain size by January 1, 1998. While generally welcoming this move, U.S. airline companies and ground-handling service providers remain concerned that airports can continue to have a monopoly service provider through January 1, 2002, and can also limit the number of firms which can provide certain services on the airport tarmac (ramp, fuel, baggage and mail/freight handling) either for themselves or for other carriers. To some extent, these potential barriers are offset by more liberal provisions in bilateral air services agreements with the individual Member States.

**Postal Services**

U.S. express package services like UPS and Federal Express remain concerned that the prevalence of postal monopolies in many EU countries restricts their market access and subjects them to unequal competitive conditions. Proposals to liberalize many postal services and to otherwise constrain the advantages enjoyed by the monopolies have not made sufficient progress to redress these problems.

**Discriminatory Value-Added Tax Treatment**

The United States has raised concerns with proposals by the EU to allow Member States to levy a value-added tax (VAT) on offshore suppliers of telecommunications and online services (i.e. companies not established or with their principal place of business in the EU). For EU Member States to levy the VAT in this manner, suppliers of these services would become liable for the VAT on the basis of where their services are consumed and would be taxed as if they were established in the EU (versus the standard practice, applicable to European service suppliers, of levying VAT on the basis of where the service was supplied or corporation established). As the proposals are currently drafted, EU providers of similar services are already captured under existing EU VAT practices. In its schedule of commitments in the General Agreement on Trade in Services (GATS), the EU has undertaken obligations to provide national treatment to value-added telecommunications services suppliers.

**Exemptions from Most-Favored-Nation Treatment**

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

### Legal Services

*France*: In 1992, the French Government made significant changes in its legal services system, including eliminating the "legal consultant" category under which most American lawyers practiced in the past. New-to-market lawyers must now pass one of two exams, the full French bar exam (which requires 200 hours of study and covers all aspects of French law), or the short form for foreign lawyers, which is more specialized but still time-consuming. Both exams have a large oral component and require substantial knowledge of French. To help facilitate better access to the French market by U.S. lawyers, the American Bar Association and the Paris Bar signed an agreement November 22, 1996. Under the agreement the two associations will work together to try to resolve mutual access issues. In the case of U.S. lawyers trying to gain access to the French market, the agreement calls for the Paris Bar to use its best efforts to ensure that exams take into account the professional experience of American lawyers. Meaningful access for U.S. lawyers now depends on the successful implementation of this agreement.

### Auditing Barriers

*Greece*: In November 1994, the Government of Greece mandated that the government-controlled accountancy organization SOL must be the auditor for all state-owned enterprises, financial institutions, publicly listed companies, and companies over a certain size. While Greece did not bar other companies, including U.S.-owned accounting firms, from providing auditing services, the law would effectively have denied them 70 percent of the auditing market in the country. The United States repeatedly emphasized to the Greek Government, as well as in multilateral fora such as the OECD, that this action would be inconsistent with Greek commitments under the General Agreement on Trade in Services. In November 1995, the Greek Council of State (Supreme Administrative Court) ruled that the Greek legislation was unconstitutional because it violated EU Directives, and the status quo ante liberalization of the audit sector was reaffirmed. The status quo ante has been maintained and is due to be formally established on July 1, 1997, when the transition period for liberalization of the audit sector ends.

### Shipping Restrictions

*Spain*: In 1992, the EU established a calendar for liberalizing cabotage practice. While cabotage within peninsular Spain has been liberalized, the EU has allowed Spain to restrict merchant navigation to and within the Balearic Islands, the Canary Islands and Ceuta and Melilla to Spanish flag merchant vessels until January 1, 1999.

### Telecommunications Market Access

U.S. access to basic telecommunications service markets remains constrained by several EU practices. The United States has requested that the European Union ensure that non-EU competitors have access to reserved services on an equal basis with EU competitors once those services are liberalized. U.S. subsidiaries incorporated under the laws of one of the Member States are afforded national treatment -- with certain exceptions -- by some Member States in the mobile telephone sector. As of July 1, 1996, the EU opened up infrastructure competition in mobile telephony.

The European Union is in the midst of proposing and implementing the legal framework necessary to prepare Europe for facilities- and, hopefully, resale-based competition in the infrastructure and voice telephony markets by January 1, 1998. Certain Member States received derogations from this requirement so they could open voice telephony to competition at a later date (provided below). Specific EU commitments regarding third country access to EU telecommunications markets will flow from the results of the recently concluded WTO negotiations on basic telecommunications services (WTO/GBT).

In the WTO/GBT, EU Member States made a variety of individual commitments, summarized in brief below:

*France*: France allowed 100 percent indirect investment in all telecommunications services and facilities. It retained a 20 percent direct investment limit for radio-based networks and a limit on investment in France Telecom.

*Greece*: Greece made commitments on all basic telecom services, with phase-in of some commitments. For instance, market access and national treatment for public voice telephony and facilities-based services will be provided in 2003. Greece adopted the reference paper on regulatory commitments.

*Ireland*: Ireland made commitments on all basic telecom services, with phase-in of some commitments. For instance, market access and national treatment for public voice telephony and facilities-based services will be provided as of January 1, 2000. Ireland adopted the reference paper on regulatory commitments.

*Italy*: Italy made commitments on all basic telecom services. It adopted the reference paper on regulatory commitments. Italy retained the ability to limit foreign investment in Stet.

*Portugal*: Portugal made commitments on all basic telecom services, with phase-in of some commitments. For instance, market access and national treatment for public voice telephony, telex, and telegraph will be provided as of January 1, 2000. It adopted the reference paper on regulatory commitments. Portugal made no commitment regarding investment limits and establishment requirements.

*Spain*: In the recently concluded WTO negotiations on basic telecommunications services, Spain made commitments on all basic telecom services as of December 1, 1998. It adopted the reference paper on regulatory commitments.

With respect to access to the EU telecommunications market generally, the United States will continue to have direct interest in EU and Member State implementation of EU liberalization directives, the effects of those directives on suppliers outside the EU, and the ultimate effects of adjusting EU and national practices to the results of the WTO/GBT.

## INVESTMENT BARRIERS

The EU has a growing role in defining the way in which U.S. investments in the Member States are treated. Although Member State governments traditionally were responsible for policies governing non-EU investment, in 1993 the Maastricht Treaty shifted competence over third country investment from the Member States to the Union. Member State barriers existing on December 31, 1993 remain in effect, but these may now be superseded by EU law. Direct branches of non-EU financial service institutions remain subject to individual member country authorization and regulation.

In general, the EU supports the notion of national treatment for foreign investors, and the Commission has traditionally argued that any company established under the laws of one Member State must, as a "Community company," receive national treatment in all Member States, regardless of its ultimate ownership. However, some restrictions on U.S. investment do exist under EU law and others have been proposed:

### Ownership Restrictions

The benefits of EU law in the aviation and maritime areas are reserved to firms majority-owned and controlled by EU nationals. In addition, the Commission has proposed that companies wishing to benefit from the mutual recognition of licenses for the provision of satellite network or communications services be 75 percent owned, and effectively controlled by, EU nationals.

### Reciprocity Provisions

EU banking, insurance and investment services directives include "reciprocal" national treatment clauses, under which financial services firms from a third country may be denied the right to establish a new business in the EU if the EU determines that the investor's home country denies national treatment to EU service providers. In the recently adopted Hydrocarbons Directive , this notion may have been taken further to require "mirror-image" reciprocal treatment, under which an investor may be denied a license if its home country does not permit EU investors to engage in activities under circumstances "comparable" to those in the Union. It should be noted, however, that thus far no U.S.-owned firms have been affected by these reciprocity provisions.

### Access to Government Grant Programs

The European Union does not preclude U.S. firms established in Europe from having non-discriminatory access to EU funded research and development grant programs, although in practical terms association with a known "European" firm helps win grant awards. In another area, the Commission in November 1995 proposed that only firms majority-owned and effectively controlled by EU nationals could receive loan guarantees to develop and distribute European films. This proposal has not yet been adopted and the United States is not aware that any U.S. firm has complained about this proposal.

**International Negotiations**

The EU and its Member States are participating actively in the OECD negotiations toward a Multilateral Agreement on Investment (MAI), which should help reduce existing and preclude any further discriminatory measures. The EU approach to the negotiations has been generally constructive, although in recent international negotiations the Union has argued for an "economic integration" provision that would allow it, and its Member States, to deny U.S. firms most favored nation treatment and potentially other rights and benefits under EU law.

The role of the EU in the treatment of foreign investment is still evolving, however, and in many instances Member State practices are of more direct relevance to U.S. investors. EU Member States negotiate their own bilateral investment protection and taxation treaties, and generally retain responsibility for their investment regimes.

**Member State Practices**

Principal national barriers include:

*Austria*: U.S. firms report that the Austrian Government's generally positive attitude toward foreign direct investment often contrasts with the arbitrary behavior of various authorities administering and enforcing regulations. In purchasing land for commercial purposes and in obtaining resident and work permits for key personnel (from countries outside the EU), U.S. firms are clearly at a disadvantage vis-a-vis EU competitors. Although no formal discrimination exists or is sanctioned by the Austrian Government, U.S. and other foreign investors must confront a complex and cumbersome regulatory system. Obtaining permits for operating plants is often cited as particularly complicated.

*France*: Effective in 1996, the French Government eliminated general screening and prior approval requirements for non-EU foreign investment. Certain restrictions, including notification requirements, continue to apply to all foreign investments, EU and non-EU, which affect national defense, public safety, or public health. The French Government also eliminated the restriction in the 1993 Privatization Law that prevented the French Government from selling to non-EU investors more than 20 percent of state-holdings in a firm being privatized. The Government has retained the ability the exert influence over privatized firms through "golden share" provisions, which it has invoked in a number of cases. France continues to apply reciprocity requirements to non-EU investments in a number of sectors. For the purpose of applying these requirements, the French Government generally determines a firm's residency based on the residency of its ultimate owners rather than on the basis of the firm's place of establishment or incorporation.

*Greece*: Both local content and export performance are elements which are seriously taken into consideration by Greek authorities in evaluating applications for tax and investment incentives. However, they are not legally mandatory prerequisites for approving investments.

Foreign exchange controls have been progressively relaxed since 1985. Medium and long term capital movements for EU and non-EU countries have been fully liberalized. Most restrictions on short term capital movements were lifted in 1994. This move brought Greece in line with EU rules on the movement of capital. However, some administrative obstacles in short-term capital movements still remain. For example, compliance with tax laws must be demonstrated prior to the transfer of capital.

Greece restricts foreign and domestic private investment in public utilities. Private power production for sale to the national grid is currently limited to "non-traditional" energy sources (e.g. wind and solar). U.S. and other non-EU investors also receive less advantageous treatment than domestic or other EU investors in the banking, mining, maritime and air transport sectors, and in land purchases in border regions and on islands near Turkey.

*Italy*: Implementation of EU financial market Directives in 1996 voided a 1992 Italian law requiring financial service firms to incorporate in Italy to operate on the Italian stock exchange. U.S. financial service firms wishing to trade on the Italian exchange no longer need to establish a subsidiary, and can operate based on administrative approval granted by the securities oversight body CONSOB.

*Portugal*: Portugal amended its foreign investment law via decree-law 321/95, effective December 4, 1995. Foreign investments are now subject only to post facto registration. The new regime replaces the prior declaration regime that in principle constituted a latent barrier to foreign investment. A new "safeguards" provision applies only in situations involving public order and security and applies equally to investment by EU and non-EU firms.

Portugal limits foreign investment in state-owned companies being privatized on a case-by-case basis. This barrier is relevant to U.S. business in the energy and telecommunications sectors. It is estimated that the potential increase in U.S. exports associated with greater U.S. investment in the energy and telecommunications sectors is in the range of $10-15 million.

## OTHER BARRIERS

### Canned Fruit

The U.S. cling peach industry has complained that the EU provides excessive support to certain Member State's canned fruit industry and that the EU has failed to observe and enforce a commitment made in the 1985 U.S.-EU Canned Fruit Agreement (CFA) not to subsidize EU processing operations for peaches in syrup. The U.S. industry also has claimed that fraud by Greek peach processors and growers in the EU's minimum grower price and fruit withdrawal programs is undermining the no-processing subsidies commitment made by the EU in the CFA, and that the sale of subsidized Greek canned peaches in the U.S. and a number of foreign markets is harming the U.S. industry. Because several other countries are having similar difficulties with the EU on this matter, in late 1996 Argentina, Australia, Brazil, Chile, South Africa, and the United States requested joint consultations with the EU. The consultations are occurred in February 1997. The United States is continuing to work with the U.S. industry and the other concerned countries on the canned fruit issue.

### France's Poultry Regulations

Currently, France’s regulations prohibit the import of poultry products, except offal, from the United States. A French decree of 1962 bans imports of poultry products from countries using arsenicals in poultry feed, as is the case with American poultry. The U.S. has recently renewed its objection to this barrier, which is imposed only by France. While harmonization of policies within the EU may end this ban, the United States will continue to monitor this issue closely.

**Government Support for Airbus**

The governments of Airbus Industrie consortium countries -- France, Germany, Spain, and the United Kingdom -- provided extensive support to their national company partners in the consortium to aid the development and production of large civil aircraft. The individual Airbus partner companies are leading aerospace and defense manufacturers in their home markets and, in some cases, have substantial government ownership. For example, 97 percent of Aerospatiale's shares are owned by the French Government.

Government funds facilitated the growth of Airbus Industrie and its introduction of a range of large transport aircraft by allowing the Airbus consortium companies to avoid bearing the commercial risks that U.S. manufacturers face when investing in new civil aircraft programs. The Airbus partner governments bore 75 to 100 percent of the development costs for all major lines of Airbus aircraft and also provided other forms of support including equity infusions, debt forgiveness, debt rollovers and marketing assistance. Airbus had approximately one third of the total value of the outstanding orders for large civil aircraft at the end of 1996.

In 1992, the United States and the EU signed a bilateral Agreement on the Application of the GATT Agreement on Trade in Civil Aircraft. This agreement expands on the 1979 GATT Agreement on Trade in Civil Aircraft to limit government support, both direct and indirect, for aircraft development and requires adherence to established repayment schedules for past supports, although in some cases those repayment arrangements were lax. In addition, the bilateral agreement includes a prohibition on production support for large civil aircraft programs and a clarification of disciplines on government intervention in aircraft marketing and procurement decisions. It also provides for increased transparency of direct and indirect government support and government-funded research activities.

The United States held formal consultations with the European Commission in February and October 1996 under the terms of the bilateral aircraft agreement. At these meetings, the parties discussed the operation of the agreement, information previously exchanged under its transparency provisions on direct and indirect government supports, and government aeronautic research activities, as well as other issues of concern. These included concerns about increased pressure for additional support on Airbus partner governments from their aircraft manufacturers which continued to experience profit and cash flow difficulties.

At the end of 1996, the Airbus partners agreed to transform Airbus into a limited public company by 1999; at present, it is an "economic interest group," meaning that all its profits and losses go directly to the four partners and work shares are allocated among the partners rather than determined by business efficiency criteria. At the beginning of 1997, Airbus stated its intention to pursue development of a 550-seat aircraft despite serious questions raised about the extent of the market for a super-Jumbo aircraft. These decisions could lead to Airbus requests for additional government direct and indirect support.

In 1996, the U.S. Government received reports that the EU and its Member States attempted to influence several commercial aircraft competitions in favor of Airbus aircraft in a manner inconsistent with the 1992 aircraft agreement, for example: In Fiji, the EU and EU Member State ambassadors were reported to have linked, in meetings with government officials, Fiji's access to preferential treatment for sugar under the Lome Convention to the purchase of Airbus aircraft by Fiji's national airline. In Croatia, EU-member governments reportedly tried to influence the Government of Croatia on the purchase of aircraft by Croatia Airlines by suggesting a linkage between acceptance of Croatia's application to join the Council of Europe and the purchase of Airbus aircraft by Croatian Airlines. In France, the French Minister of Transport said in Parliament, in November 1996, that he had instructed the government's three directors on the board of Air France to support the purchase of Airbus aircraft in a commercial competition in order to promote the interests of France's aircraft manufacturing industry. The Minister further indicated that the French Government had persuaded Air France to be the launch company for the Airbus A340-600 aircraft.

Political pressure may be less direct than in the above examples. In its most recent report on Japanese trade barriers, the EU cited Japan for Airbus' low penetration of that market, implying that the Japanese Government should encourage its airlines to substitute purchases of U.S. aircraft with Airbus aircraft to help ease European-Japanese trade frictions.

The United States will continue to monitor compliance with the terms of the 1992 U.S.-EU large aircraft agreement and the 1979 Agreement on Trade in Civil Aircraft.

*Belgium:* The Government of Belgium and Belgium regional authorities are reported to subsidize Belgian aircraft component manufacturers which supply parts to Airbus Industrie. According to information received, the subsidy is provided in a foreign exchange rate guarantee program under which payments are made to a consortium of Belgian companies, Belairbus, which is an "associate member" of Airbus. The Government of Belgium and Belgian regional governments provide payments to the Belairbus companies to cover the difference between actual (i.e., marketplace) foreign exchange rates and a guaranteed rate. The specific level at which the guaranteed exchange rate was established has varied with different levels set for various Airbus aircraft programs and for different numbers of aircraft within each aircraft program. The Belgium program appears similar to a foreign exchange rate guarantee program provided by the German Government to the benefit of its Airbus partner and its suppliers which, following a GATT Subsidies Code complaint by the United States, was found to be a prohibited export subsidy by a reviewing panel and dismantled in 1992. The United States has undertaken consultations with the European Union to address the Belgian foreign exchange rate program.

**Government Shipbuilding Industry Support**

Member States of the EU provide subsidies and other forms of aid to their shipbuilding and repair industries. These have included subsidized restructuring of domestic shipbuilding industries, direct subsidies for operations and investment, indirect subsidies, home credit schemes, subsidized export credits, and practices associated with public ownership of yards. The European Commission sets annual ceilings for subsidies under its Seventh Directive covering shipbuilding aid. In 1996, the ceiling was nine percent of gross investment for new ships and 4.5 percent for conversions and small vessels (under 10 million ECU, about $13 million).

U.S. shipbuilders have operated without U.S. Government subsidies since 1981. On June 8, 1989, the Shipbuilders Council of America (SCA) filed a petition, seeking the elimination of subsidies and trade distorting measures for the commercial shipbuilding and repair industry. In response, USTR undertook to negotiate a multilateral agreement in OECD Working Party six (WP6) to eliminate all subsidies for shipbuilding. WP6 members include the EU, Japan, Korea, Norway, Sweden, and the United States, which collectively account for roughly 80 percent of global shipbuilding.

An agreement was reached in July 1994 and signed in December 1994, to take effect on January 1, 1996, with a review after three years. The agreement will restrict direct and indirect subsidies for shipbuilding, extend antidumping rules to the industry, establish strict rules for government financing of shipbuilding, and authorize sanctions on imports of goods from participants found to be violating the agreement. Belgium, Portugal, and Spain have temporary derogations for their restructuring aid predating the accord. The agreement must be ratified by all Parties to it, including the United States, before it can enter into force. Korea, Norway, and the EU deposited their instruments of ratification in 1995. Japan ratified the Agreement in May 1996, leaving the United States as the only remaining non-ratifying Party.

U.S. implementing legislation was introduced in Congress in Fall of 1995, but was not acted upon in that year. In June, 1996, the U.S. House of Representatives passed, by a large margin, an amended form of implementing legislation that was inconsistent with the agreement and did not constitute a basis for U.S. ratification of the agreement. Subsequent attempts to develop compromise legislation in the Senate were unsuccessful and the 104th Congress adjourned without taking action on implementing legislation. At a March 1997 meeting of WP6, the United States pledged its intent to submit new implementing legislation to the 105th Congress that addresses the concerns previously expressed by the Congress. Other Parties expressed a willingness to consider U.S. legislative proposals to facilitate ratification but also warned against altering the agreement's text.

The EU's Seventh Directive governing shipbuilding aid was scheduled to expire on December 31, 1995. It has been extended until the OECD agreement enters into force, but not beyond December 31, 1997. If the agreement is not in force by June 1, 1997, the Commission will submit a proposal regarding shipbuilding aid rules as of 1998.

**Data Privacy**

The Council of Ministers formally adopted the Directive on the Protection of Personal Data in October 1995. This directive tries to strike a balance between the protection of an individual's right to privacy in regard to transmission of personal data and the need to facilitate the flow of such information within the EU. The directive allows for data transfer to third countries if they provide an adequate level of protection for the data under their own laws or through international obligations they have undertaken. U.S. companies are concerned because the text lacks clarity about data transmission to non-EU countries. The ease with which data moves across borders will depend on how individual Member States define what constitutes an adequate level of protection.

# GHANA

In 1996, the U.S. trade surplus with Ghana was $124 million, a shift of $153 million from the U.S. trade deficit of $29 million in 1995. U.S. merchandise exports to Ghana were $295 million, an increase of $128 million (76.7 percent) from the level of U.S. exports to Ghana in 1995. Ghana was the United States' seventy-fifth largest export market in 1996. U.S. imports from Ghana were $171 million in 1996, a decrease of $25 million (12.8 percent) from the level of imports in 1995.

## IMPORT POLICIES

Since it began its structural adjustment program in the early 1980's, Ghana has progressively eliminated or reduced its import quotas and surcharges. Currently, tariff rates are being adjusted in harmony with the Economic Community of West African States (ECOWAS) trade liberalization program. Since the elimination of Ghana's import licensing regime in 1989, importers are now simply required to sign a declaration that they will comply with the Ghanaian tax code and other laws. Special permits, however, are still required for some imports. Ghana's tariff structure addresses capital goods, intermediate goods and consumer goods. Only three ad valorem import duties are currently applied: 0 percent, 10 percent, and 25 percent. In addition, a specific duty of 10 to 40 percent is applied on 16 types of merchandise, including textiles, alcoholic and nonalcoholic beverages, and tobacco. These additional duties were intended to place the merchandise of local manufacturers on an equal competitive basis with imported goods. Due to a multitude of administrative problems, during 1996 the government issued directives (not yet implemented) to eliminate the supplemental duties.

To develop competitive domestic industries with exporting capabilities, the Government of Ghana continues to support domestic private enterprise with financial incentives, tax holidays, and other similar programs. Nevertheless, Ghanaian manufacturers contend that the country's tariff structure places local producers at a competitive disadvantage vis-a-vis imports from countries that enjoy greater production and marketing economies of scale. Reductions in tariffs have increased competition for local producers while reducing the cost of imported raw materials. Furthermore, the steady depreciation of the cedi during the past year has had the effect of partially offsetting reduced tariffs on imports of these materials.

## STANDARDS, TESTING, LABELING, AND CERTIFICATION

Ghana has issued its own standards for food and drugs. The Ghana Standards Board, the testing authority, subscribes to accepted international practices for the testing of imports for purity and efficiency. Under Ghanaian law, imports must bear markings identifying in English the type of product being imported, the country of origin, the ingredients or components, and the expiration date, if any. The purpose of this law is to set reasonable standards for imported foods and drugs. Locally manufactured goods are subject to comparable testing, labeling, and certification requirements.

## GOVERNMENT PROCUREMENT

Government purchases of equipment and supplies are usually handled by the Ghana Supply Commission (the official purchasing agency) through international bidding and, at times, through direct negotiations.

## Ghana

Former government import monopolies have been abolished, but parastatal entities continue to import some commodities, although they no longer receive government import subsidies. At its peak, the Government of Ghana controlled more than 300 state-owned enterprises, and nearly half of these remained under government control by the end of 1996. The political leanings of the Ghanaian partners of foreign investors are often subject to close government scrutiny. The privatization of a government-controlled enterprise may be stalled if an interested party is known to be sympathetic to the political opposition.

### EXPORT SUBSIDIES

There is no direct government subsidy of exports. However, concessionary credits and lower tax rates are not uncommon. The Export Processing Zone (EPZ) Law, enacted in 1995, does not tax corporate profits for the first 10 years of business operation. As with non-EPZ exporting companies, in subsequent years the corporate tax rate is 8 percent, compared to 35 percent for other nonexporting businesses.

As part of its economic reform program, the government has enacted various forms of personal and corporate tax relief. In 1993, the government eliminated the experimental "super sales tax" on luxury vehicles and consumer goods and maintained lower tax rates on annual personal income below the equivalent of $17,500. While the top corporate tax rate is 35 percent, the new investment code provides that income earned from nontraditional export industries will be taxed at a rate of 8 percent.

### LACK OF INTELLECTUAL PROPERTY PROTECTION

Ghana is a member of the Universal Copyright Convention, the World Intellectual Property Organization, the English-speaking African Regional Industrial Property Organization, and the World Trade Organization (WTO) Agreement on Trade-Related Aspects of Intellectual Property Rights (TRIPs). Holders of intellectual property rights have access to local courts for redress of grievances, although few trademark, patent, and copyright infringement cases have been filed in Ghana in recent years.

### SERVICES BARRIERS

The investment code excludes foreign investors from participating in four economic sectors that are reserved for Ghanaians: petty trading, the operation of taxi services, lotteries (excluding football pools), and the operation of beauty salons and barber shops.

In the recently concluded WTO negotiations on basic telecommunications services, Ghana made commitments for most basic telecom services, subject to the requirement that these services be provided through joint ventures with Ghanian nationals. It retained a duopoly for domestic and international voice services. Ghana has adopted the reference paper on regulatory principles.

### INVESTMENT BARRIERS

The operative investment code (revised in 1994) eliminates the need for prior project approvals by the Ghana Investment Promotion Center (GIPC). Registration, essentially for statistical purposes, is normally accomplished within five working days. Investment incentives are no longer subject to official discretion as they have been made automatic through incorporation into the corporate tax and customs codes. Incentives include zero rating import tariffs for plant and generous tax incentives. Immigrant quotas for businesses, though relaxed, remain in effect.

U.S. direct investment in Ghana is predominantly in the mining and fabricated metals sector. There is also significant U.S. investment in the petroleum, seafood, telecommunications, chemicals, and wholesale trade sectors. Labor conditions in these sectors of the economy do not differ from the norm. U.S. and other foreign firms in Ghana are required to adhere to Ghanaian labor laws, including restrictions on the number of expatriates employed.

The high cost of local financing (with interest rates currently around 45 percent) acts as a significant disincentive for local traders and investors. Such high interest rates and a lack of liquidity in the financial system constrain industrial growth and inhibit the expansion of most Ghanaian businesses from their current micro scale operations. The legalization of foreign exchange bureaus has made foreign currency readily available in Ghana, but strong demand for imported goods has led to a significant decline in the foreign exchange value of the cedi in recent years. Domestic inflation moderated during 1996 and is currently running at a 35 to 40 percent annual rate (down from 70 percent at the end of 1995). The Bank of Ghana continues to pursue a tight money policy in an effort to contain inflationary pressures.

The residual effects of a drastically overregulated economy and lack of transparency in government operations create an element of risk for potential investors. Bureaucratic inertia is sometimes a problem in government ministries, and administrative approvals often take longer than they should. Entrenched local interests sometimes have the ability to derail or delay new entrants, and securing government approvals may depend on an applicant’s contacts. Nonetheless, on balance, a positive direction is apparent in the investment climate overall.

# Ghana

# GUATEMALA

In 1996, the U.S. trade deficit with Guatemala was $109 million, a shift of $228 million from the U.S. trade surplus of $119 million in 1995. U.S. merchandise exports to Guatemala were $1.6 billion, a decrease of $82 million (5.0 percent) from the level of U.S. exports to Guatemala in 1995. Guatemala was the United States' forty-sixth largest export market in 1996. U.S. imports from Guatemala were $1.7 billion in 1996, an increase of $146 million (9.6 percent) from the level of imports in 1995.

The stock of U.S. foreign direct investment (FDI) in Guatemala in 1995 was $155 million, an increase of 15.7 percent from the level of U.S. FDI in 1994. U.S. FDI in Guatemala is concentrated largely in the manufacturing, petroleum, and finance sectors.

## IMPORT POLICIES

### Tariffs

Guatemala is a member of the Central American Common Market (CACM), which also includes Costa Rica, Nicaragua, El Salvador, and Honduras. CACM members are working toward the full implementation of a common external tariff (CET) ranging between 5 and 20 percent for most products. In 1995 the members of the CACM agreed to reduce the CET to between 0 and 15 percent, but allowed each member country to determine the timing of the changes. With the exception of certain items, there are no duties for products traded among CACM members.

### Customs Valuation Policies for Poultry

Notwithstanding agreement to switch to transaction value for the calculation of tariffs on chicken parts as part of its Uruguay Round commitments, the Government of Guatemala continues to use a reference price methodology. Guatemala still applies an artificial valuation policy on tariffs for poultry part imports. For tariff purposes, poultry parts are valued at $0.56 per pound, irrespective of the actual invoice price. This policy effectively doubles the tariff on imported poultry. Guatemalan poultry producers are seeking further protection by pressing the government to increase the valuation price to $0.69 per pound and to increase the out-of-quota duty to 200 percent. If taken, these actions will effectively prohibit legal imports of poultry meat correctly valued at over $6 million.

### Poultry Tariff Rate Quota

In October 1996, Guatemala announced a new poultry import policy that expanded the annual tariff rate quota (TRQ) from 3,600 to 7,000 metric tons for 1997. In addition, Guatemala reduced the in-quota tariff from 20 to 15 percent. The new import policy far exceeds Guatemala's negotiated World Trade Organization (WTO) obligations for poultry imports.

## Guatemala

### Grain Price Bands

Price bands for corn and rice were eliminated in late 1995. Guatemala has yet to formally eliminate price bands for sorghum. However, in view of the January 1, 1997, across-the-board reductions in tariffs on most agricultural products, price bands for sorghum have been effectively eliminated.

### Apple Import Permits

U.S. companies have cited the uncertainty of obtaining an import license as the reason they have not expanded their investment to distribute U.S. apples. The result is an estimated $1 million in lost export sales.

### STANDARDS, TESTING, LABELING, AND CERTIFICATION

Under Guatemalan law, products sold in the domestic market must be tested, registered, and carry labels in Spanish. Both enforcement of and compliance with the law are irregular. If fully enforced, the requirement could restrict and/or delay the entry of an estimated $43 million of U.S. exports due to the time required to test and register products.

### GOVERNMENT PROCUREMENT

Under the government procurement law, all government purchases over $161,000 must be submitted for public competitive bidding of no less than five bidders. Foreign suppliers must meet pre-qualification requirements and submit bids through locally-established representatives. Exceptions exist only when a project is considered to be so urgent as to be declared a national emergency, in which case the government can forego the bidding process and may acquire the goods or services from local firms or through direct importation. The U.S. Embassy is unaware of any discrimination against products of U.S. origin, which generally enjoy good success in the government procurement market.

### LACK OF INTELLECTUAL PROPERTY PROTECTION

Although Guatemala is making some efforts to modernize its IPR regime, its protection of intellectual property remains inadequate. Legislation enabling accession to the Paris Convention is pending in the Congress, accession to the Berne Convention is awaiting presidential signature, and Guatemala expects to complete the process of approving the Central American Convention on Industrial Property later this year.

### Copyrights

A new copyright law has been pending since 1994. Current Guatemalan law does not expressly protect computer software. A 1992 law authorized a federal regulatory entity to enforce the international IPR obligations of local cable television operators. To date, however, no implementing action has been taken and the entity has not been established. In 1994, on the basis of agreements between Guatemalan cable television operators and the Motion Picture Exporters Association of America (MPEAA), the MPEAA withdrew its Generalized System of Preferences (GSP) petition alleging persistent copyright infringement and piracy of satellite signals. In October 1995, citing violations of those agreements by cable companies, the MPA (successor to the MPEAA) voided the 1994 agreements and instructed cable operators to cease transmission of MPA member companies signals. A number of cable companies ignored the demand and continued pirating the signals while they sought to reopen negotiations with the signal providers.

A report prepared in 1995 by the International Intellectual Property Alliance estimated that losses in Guatemala due to copyright infringements cost U.S. firms $9.7 million annually.

**Patents**

Guatemala's patent law is out of date and deficient in several areas, including limits on protection to only fifteen years (ten years for food, beverages, medicines, and agrochemicals), broad compulsory licensing provisions, and lack of protection against parallel imports. A number of subject areas are not patentable, including mathematical methods, living organisms, commercial plans, and chemical compounds or compositions. Under the WTO Agreement on Trade-Related Aspects of Intellectual Property Rights (TRIPs), Guatemala was required to establish a patent “mailbox” for pharmaceutical and agricultural chemical products by January 1, 1995, but has not done so. In addition, Guatemala does not provide exclusive marketing rights for pharmaceutical and agricultural products, which are subject to “mailbox” applications, as required by the TRIPs Agreement.

**Trademarks**

Guatemala's law provides insufficient protection for owners of well-known trademarks, since the right to exclusive use is granted to the first to file. This has permitted third parties to register and use (or prevent the genuine trademark holder from using) internationally-well-known trademarks. Sales of falsified name-brand clothing and other merchandise are common in Guatemala. Guatemala is a signatory of the 1994 revision of the Central American Convention for the Protection of Industrial Property. If the convention comes into force and is ratified by Guatemala, some of these deficiencies should be overcome. In January 1996, however, the Guatemalan Congress voted against ratification of the Convention. The Government of Guatemala has indicated it will resubmit the protocol to the legislature in 1997.

## SERVICES BARRIERS

Majority foreign ownership in telecommunications services is not permitted. However, professional services, such as legal and medical services, may be offered by anyone who has passed the Guatemalan licensing exams and has properly incorporated. The major U.S. public accounting firms have affiliates in Guatemala.

## INVESTMENT BARRIERS

Guatemala generally welcomes foreign investment, although the complex and often confusing welter of laws and regulations can be discouraging. Legislation designed to assure national treatment, clarify investment rules, and speed registration was adopted in 1995, but has yet to be implemented. Restrictions on foreign investment remain in several sectors of the economy, including public utilities, auditing, insurance, mineral exploitation, forestry, and the media. In response to the need for additional investment in telecommunications and electricity supply, in late 1996 the government adopted legislation liberalizing ownership, access controls, and demonopolizing these sectors.

In February 1997, representatives of the Guatemalan State Railroad and Piliductos Del Pacifico, the Guatemalan subsidiary of the New Orleans-based engineering firm Waldemar Nelson International, resolved a long-standing contract dispute, signaling the Government of Guatemala's interest in developing an improved investment climate.

# GULF COOPERATION COUNCIL

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

In 1996, the U.S. trade surplus with the GCC was $868 million, a shift of $1.2 billion from the U.S. trade deficit of $350 million in 1995. U.S. merchandise exports to the GCC were $12.5 billion, an increase of $2.3 billion (22.3 percent) from the level of U.S. exports to the GCC in 1995. U.S. imports from the GCC were $11.6 billion in 1996, an increase of $1.1 billion (10.0 percent) from the level of imports in 1995. Improved U.S. export performance in the region in 1996 was in part attributable to higher export earnings of the GCC states due to sustained higher oil prices and consequently more robust economic performance in those predominantly oil-based economies.

Recent figures indicate that the stock of U.S. foreign direct investment (FDI) in Saudi Arabia had reached $3.4 billion in 1995. U.S. FDI in the U.A.E. was $675 million in 1995, up 27.1 percent from that in 1994. In the GCC as a whole, U.S. FDI is largely concentrated in the manufacturing, petroleum extraction, and petrochemical sectors.

The GCC is an economic and political policy-coordinating forum for its members. Since it cannot impose trade policies upon its member states, each is free to pass and enforce its own trade laws. However, there has been growing cooperation among GCC members on certain issues, such as intra-GCC investments, standards-setting, establishing tariff ranges, and intellectual property protection. There is also consideration being given to forming a customs union and continuing work on a free trade area between the GCC and the European Union (EU).

The United States favors strengthening common action among GCC members, as well as enhancing U.S.-GCC economic and commercial ties. The U.S. Government engages in high-level economic policy talks with GCC members through the U.S.-GCC Economic Dialogue. The most recent dialogue meeting took place in March 1996 in Bahrain, with follow-on working group meetings in Washington in June 1996.

## IMPORT POLICIES

### Tariffs

The GCC leadership has long discussed, but failed to attain, a unified tariff structure. Many GCC countries maintain high (15-20 percent) tariffs to protect similar products produced locally. The U.A.E., which is the regional commercial hub and has traditionally depended on foreign trade, continues to push for low tariff rates throughout the GCC. As the GCC moves to harmonize its tariff schedule, there is concern that a "highest common denominator" approach could significantly increase the number of products across the GCC that face high tariffs. For health reasons, GCC members plan to raise tariffs on cigarettes.

Of the GCC countries, Bahrain, Kuwait, Qatar, and the U.A.E. are members of the WTO. All four of these countries entered the GATT and WTO under simplified procedures, based on the United Kingdom's previous application of the GATT 1947 on their behalf. Saudi Arabia applied for GATT membership in

July 1993 and converted this application to WTO accession early in 1996. Negotiations for the terms of Saudi Arabia's accession are now underway, and are being conducted under the standard procedures of Article XII of the WTO.

Oman became an observer to the WTO in April 1995 and submitted its formal application for WTO accession in 1996.

**Import Licensing**

Except in Bahrain, varying degrees of licensing procedures are enforced to protect domestic industries or restrict importing to nationals of GCC countries. In Saudi Arabia, the importation of certain articles is either prohibited or requires special approval from competent authorities. The following products require special approval: agriculture seeds, live animals, fresh and frozen meat, books, periodicals, movies, tapes, religious books and tapes, chemicals and harmful materials, pharmaceutical products, wireless equipment, horses, products containing alcohol, and natural asphalt. In the U.A.E., only firms with the appropriate trade license can engage in importation. Restrictions are placed on the importation of alcohol, tobacco, firearms, and pork products.

**Documentation Requirements**

All GCC countries impose unusually complicated export documentation requirements for goods imported by the GCC. The documents must be certified by the National U.S.-Arab Chamber of Commerce and authenticated by the consulate of the country for which the goods are destined, a costly and time-consuming process. In Oman, this documentation is not required if the importing company has an existing agency agreement with the U.S. exporter, although for food products, health certificates, and (for meat) halal certificates must be certified as stated above. In late 1995, Oman committed to simply customs clearance documentation over the next few years, expedite the flow of goods, and promote its ports and airports. Arab League boycott certification is no longer required. Only Omani nationals, however, are permitted to submit documents to clear shipments through customs.

**STANDARDS, TESTING, LABELING, AND CERTIFICATION**

The United States has become concerned with certain restrictive standards in various GCC member states. In particular, shelf life requirements for a number of food products of interest to U.S. exporters are far shorter than necessary to ensure safety. These requirements favor European competitors over U.S. suppliers who face longer shipping times. This situation has worsened in recent years. Several GCC shelf life requirements have been shortened, in some cases by half, under Gulf Standard 150/1993, and GCC countries have begun to enforce these regulations more strictly.

In Saudi Arabia, the Saudi Arabian Standards Organization (SASO) imposes shelf life requirements on food products. Over the past few years, SASO has shortened shelf life standards for baby foods, eggs, stuffed cookies, chilled meats, and some snack foods, all products of interest to U.S. exporters. Most of the information regarding shelf-life problems originates from GCC members other than Saudi Arabia, but as the largest market among GCC members, Saudi Arabia has preponderant influence. Some sources claim that SASO has shortened shelf life standards to protect Saudi Arabia's expanding food processing industry; Saudi Arabia has become self-sufficient in egg production, and is growing in importance as a biscuit and cookie producer.

In 1990, the United States entered into a highly successful arrangement with SASO to encourage cooperation in the development of standards. SASO's work frequently leads to the creation of regional GCC standards. The United States-SASO partnership, which includes a U.S. technical advisor in Riyadh funded by the U.S. Government, has led to greater transparency in the Saudi system and has increased opportunities for American exporters to comment on draft Saudi standards. SASO has already adopted ISO 9000 as approved standards for Saudi Arabia and acts as an accreditation body through the Quality Assurance Department. The United States and the GCC concluded a Memorandum of Understanding on standards at the March 1996 Economic Dialogue meeting in Bahrain.

In October 1995, Saudi Arabia initiated a pre-shipment certification program to monitor and control the quality of certain products imported into the country. The International Conformity Certification Program (ICCP) currently applies to 76 regulated consumer products, and is designed for expansion to others. The ICCP is managed by Inchcape Testing Services, which inspects and tests, on behalf of SASO, shipments bound for Saudi Arabia. The United States and many other exporting countries have questioned the manner in which the ICCP has been implemented. Problems include the transparency of ICCP regulations, as well as the ad valorem-based fee system.

Standards and labeling issues are also a problem in Kuwait. In addition to processed food shelf life standards, electrical standards are based on those of the United Kingdom, placing U.S. products at a disadvantage. Similarly, telecommunications and computer equipment standards tend to lag behind market developments, which often results in government tenders that specify purchase of obsolete and more costly items.

Oman has invited technical assistance from the U.S. in establishing its own ISO certification process.

The GCC plans to implement a system for registering companies that comply with international standard ISO 9000. The central accreditation organization will be the Gulf Standards Organization (GSO). An agency in each of the six countries will inspect factories, make recommendations, and issue registrations. The GSO is negotiating with the EU to put the program in place, and the EU is sending experts to help the GCC in technical and training aspects of the program and to set up mutual recognition systems for certification and quality control mechanisms. In January 1995, a GCC standardization official reported that the GSO has set some 580 unified standards for the GCC countries to date, and plans to increase that number to 1,000 soon.

## GOVERNMENT PROCUREMENT

Most GCC countries maintain preferential “buy national” policies and/or offset provisions requiring that a portion of major (and usually military) government tenders be subcontracted to local firms. Oman prefers, but does not require, that a portion of a government tender be subcontracted to local firms. Qatar is reportedly considering establishing a formal offset program. In an attempt to engineer greater technology transfer, several GCC states, including Saudi Arabia and the U.A.E., actively support the creation of offset companies in diverse fields as part of defense procurement.

Kuwaiti government procurement policies specify use of local products when available and prescribe a 10 percent price advantage for local firms in government tenders. Offset regulations introduced in Kuwait since the liberation specify that foreign firms awarded government contracts worth over $17 million must invest 30 percent of the contract value in a project in Kuwait, the GCC, or other Arab nations.

Saudi Arabian government contracts on project implementation and procurement are regulated by several royal decrees which strongly favor GCC nationals. Most defense contracts, however, are negotiated outside these regulations. Under a 1983 decree, for example, contractors must sub-contract 30 percent of the value of the contract, including support service, to majority-owned Saudi firms. An exemption is granted in instances where no Saudi company can provide goods and services to fulfill the obligation. In addition, article 1(d) of the tender regulations requires that Saudi individuals and establishments have preference over all other entities in government dealings. The same regulations also accord preference to "mixed" entities as long as Saudi nationals hold at least 51 percent of the mixed entities capital. Article 1(e) gives preference to products of Saudi origin which satisfy the requirements of the procurement, even when the product specifications are inferior to those of a foreign counterpart.

Saudi Arabia gives priority in government purchasing programs to GCC products. These items receive up to a 10 percent price preference over non-GCC products in all government contracts contested by foreign contractors. Likewise, Oman provides a 10 percent price preference to Omani nationals for Omani goods and services. Additionally, the government considers quality of product or service and support as well as cost in evaluating bids. For most major tenders, Oman typically notifies firms either already registered in Oman or preselected by project consultants. Bidders' costs soar when some award decisions are delayed, in some instances for years, or when bidding is reopened with modified specifications and typically short deadlines. Oman is known to have an offset program only with the United Kingdom, although the investment can originate from any country. Offsets are not standard adjuncts to government contracts and have not been associated with any U.S. defense transaction, whether commercial or foreign military sales.

The U.A.E. has no requirement that a portion of any government tender be subcontracted to local firms. There is a 10 percent price preference for local firms on procurement and tenders. The U.A.E. requires a company to be registered in order to be invited to receive government tender documents. To be registered, a company must have 51 percent U.A.E. ownership. However, these rules do not apply on major project awards or defense contracts where there is no local company able to provide the goods or services required. The U.A.E. requires offset investments by winners of defense contracts. The requirements state that an investment must generate returns within seven years equal to 60 percent of the value of the contract.

Qatar gives preferential treatment to contractors that include high local content in bids for government tenders. As a rule, bids must be submitted through local Qatari agents, but exceptions exist. For example, government procurement of defense equipment does not require use of local agents. However, local agents are often used, and have proved to be very useful in securing contracts. Qatar gives a 10 percent price preference to local firms and a 5 percent price preference to GCC firms in all government procurement.

## EXPORT SUBSIDIES

While there appears to be no GCC-wide export subsidy program, certain member states have programs to support local industries that, in effect, equate to export subsidies.

Saudi Arabia contends that it has no export subsidy programs for industrial production. However, costs for establishing productive facilities in the industrial cities in Saudi Arabia are artificially low: land is available at little or no cost, utilities are priced below cost of production, and low interest loans are available from the Saudi Industrial Development Fund. Because input prices are relatively low in Saudi Arabia, industrial production and subsequent in petroleum and related downstream products is comparatively attractive. The Saudi Government contends that low input prices reflect Saudi Arabia's low costs for domestic oil production.

Saudi Arabia began a substantial reduction in wheat production subsidies in 1993. The Grain Silos and Flour Mills Organization (GSFMO) controls wheat production by assigning production quotas to each of the country's grain farmers. Farmers can only receive government support prices within preassigned quotas. GSFMO production quotas for 1996 were reduced to 1.3 million metric tons, compared to 2.0 million metric tons in 1995. The reduction in quotas coincides with a June 1995 decision by the Saudi Government to reduce production support prices for wheat from $533 per metric ton to $400 per metric ton, still well above world prices.

The Oman Development Bank offers interest subsidies to the relatively few non-petroleum sector exporters obtaining commercial bank letters of credit and some below market “insurance” against delay in payment of receivables.

## LACK OF INTELLECTUAL PROPERTY PROTECTION

Considerable progress has been made in recent years by GCC states in adopting laws and regulations regarding the protection of intellectual property. The GCC Secretariat has declared the protection of intellectual property rights (IPR) to be a priority and is working to facilitate this in the six member states, especially in the area of patent protection. The GCC has published a Unified Patent Law that has yet to take effect and has plans to set up a GCC patent office. In addition, all GCC states have trademark laws; the GCC itself is reportedly working on a unified trademark regulation.

Saudi Arabia enacted patent and copyright laws in 1989. The U.A.E. enacted copyright, trademark, and patent laws in 1992. Bahrain enacted a highly deficient copyright law in 1993. Qatar enacted a strong copyright law in 1995. Oman enacted a copyright law in June 1996. Kuwait remains in the process of drafting its copyright law.

Qatar provides protection for trademarks registered with the Commercial Registration Department of the Ministry of Finance, Economy and Trade. Promulgated in the early 1980's, Qatar's trademark law is known as the "commercial indications law." Bahrain, Kuwait, Saudi Arabia, and the U.A.E. have patent laws, although Saudi Arabia's patent office is grappling with a backlog of thousands of unprocessed applications.

## Gulf Cooperation Council

The GCC countries are in various stages of acceding to international intellectual property conventions, such as the Berne Convention for the Protection of Literary and Artistic Works, the Paris Convention for the Protection of Industrial Property, and the Geneva Phonograms Convention. Saudi Arabia became a member of the Universal Copyright Convention on July 13, 1994. Bahrain became a signatory of the Berne and Paris Conventions on October 29, 1996. The U.A.E. has recently joined the Paris Convention for the Protection of Industrial Property, the first treaty for protection of intellectual property to which the U.A.E. has acceded. The U.A.E. is also a member of the World Intellectual Property Organization (WIPO).

Despite the progress to date, IPR protection problems continue throughout the region due primarily to difficulties with enforcement. Pirated video cassettes, computer software, and sound recordings are available to varying degrees in all GCC countries, and improperly reproduced videotapes are generated for export in Bahrain. Counterfeit products such as clothing, auto parts, and household products are also widely available.

**Saudi Arabia**

Saudi Arabia enacted copyright and patent laws in 1989, and the Saudis assert the copyright law is consistent with international standards. The United States has raised a number of concerns about the law, the most important of which is that U.S. sound recordings are not clearly protected. Saudi Arabia claims that through its accession to the Universal Copyright Convention, it is obliged to protect U.S. and other non-GCC member works.

While Saudi Arabia's patent law provides a generally adequate legal basis for protection, as of December 1996, the patent office has issued only four patents, and has a backlog of over 4,000 applications. Saudi Arabia has made significant progress on copyright enforcement in the video and sound recordings market, particularly in clearing shelves in retail stores of pirated video and music cassettes. However, much pirated video and audio material has reportedly gone "underground" in Saudi Arabia. In addition, U.S. software manufacturers look for greater Saudi Government enforcement action against software copiers.

**The United Arab Emirates**

The U.A.E. Government has cracked down on piracy of audiovisual works and sound recordings. As a result, shops in the U.A.E. do not carry pirated audio/video works and sound recordings. Modern movie theaters have opened since September 1994 and show western movies obtained from licensed distributors. Pirate video products enter the country from neighboring Oman but are not generally available in shops registered and licensed by government authorities.

Underground piracy remains an issue of concern. The central government is starting to counter computer software piracy, which is widespread. The U.A.E. patent law, currently being amended, protects pharmaceutical processes but not products. A factory in the U.A.E. produces pirate versions of patented drugs.

**Bahrain**

Recent industry reports indicate that Bahrain has become an export center for pirated video cassettes. Evidence available to the U.S. Embassy indicates that the Government of Bahrain has improved its copyright enforcement record, although the 1993 Copyright Protection Law remains deficient in that it does not explicitly protect foreign works and sound recordings. Bahrain has relatively good patent and trademark laws.

**Kuwait**

Kuwait became a member of the World Intellectual Property Organization in April 1996. Kuwait continues to enforce ministerial decrees against copyright violation of U.S. and U.K. audio and video materials, but has not made progress in passing a strong copyright protection law that would meet WTO requirements. Kuwait drafted a new copyright law in early 1993, but the law remains under consideration.

Kuwait has had patent and trademark laws in effect since 1962, but penalties under both are so low as to be ineffective in deterring illegal activities. The patent law, moreover, excludes certain chemical inventions involving foods, pharmaceuticals and medicines, and grants a term of protection of only 15 years, rather than the standard 20 from the date of application. It also contains provisions for compulsory licensing whenever a patent is insufficiently worked in Kuwait or is of "great importance to national industry."

**Qatar**

Qatar's copyright law officially took effect on October 20, 1996, but the Qatari Government has yet to define what agency is responsible for implementation of the law. The Qatari Customs Department is taking de facto responsibility for current enforcement, but no official pronouncement has endorsed this. Qatar provides no patent protection for pharmaceutical products.

**Oman**

In June 1996, Oman issued a copyright decree that provides no more than 25 years of protection, or the balance of protection under an existing international copyright, whichever period is shorter. Oman may not establish an enforcement mechanism, however, until late in 1997. In the prelude to copyright enforcement, imported pirate software and imported and domestic copies of video and audio cassettes remain readily available in retail outlets. However, government offices and major firms acquire legal software copies. As part of their contract, applicants for Internet access must pledge to respect international copyrights. Oman has no patent law, but points to its acceptance of future GCC patent protection. Also, the Omani Ministry of Health plans to verify patent compliance when reviewing import applications for pharmaceutical products.

**Gulf Cooperation Council**

The GCC Secretariat has issued a patent law whose ultimate purpose is to create one patent system for the member states. The law has several significant problems, including a lack of protection for pharmaceuticals (products or processes for production) and biological inventions. In addition, the law contains a broad compulsory licensing regime. The GCC Secretariat Patent Office, which exists largely in name only, has no registration or enforcement mechanism. The GCC also has made efforts to create common trademark and copyright laws, although these are not as far advanced.

## SERVICES BARRIERS

### Visa Issuance Policy

Saudi Arabia took steps to liberalize its business visa policy in 1993. Formerly, all persons coming for business had to be sponsored by a local citizen, and the Saudi Embassy or Consulate required approval from the Foreign Ministry in Riyadh to issue a visa, resulting in substantial delays. The new policy was aimed at improving upon the old system by eliminating the need for businessmen representing well-known U.S. firms to have a Saudi sponsor. The new policy allows business travelers whose firms are involved in joint ventures in the kingdom to obtain multiple-entry visas valid for six months. The Saudi Embassy or Consulate has the discretion to issue a visa without obtaining approval from the Foreign Ministry. These policies have not yet been fully implemented, and few American executives have multiple entry visas.

Kuwait in 1995 significantly liberalized its visa policy for U.S. citizens. U.S. citizens no longer need a Kuwait sponsor for travel to Kuwait for business or personal reasons. Americans traveling to Kuwait receive 10 year multiple entry visas. Only in the case of extended visits (beyond 30 days) are residency visas and Kuwaiti sponsors required.

Oman has liberalized its visa issuance policy. Oman reciprocally offers U.S. citizens two-year multiple entry business or tourist visas, with each stay up to six months for a business visitor, through its diplomatic missions, including those in Washington and New York. These, and single entry "no objection" certificates, can be obtained with the assistance of an Omani sponsor, typically a major hotel for tourists, or an Omani firm or the Oman Chamber of Commerce and Industry for a business visitor. A U.S. citizen with proof of more than one year's residence in a GCC country, more than six months remaining validity on his/her resident visa, and the required four visa-sized photographs, may apply for a "no objection" certificate on arrival in Oman, without prior arrangement, as can U.S. citizens arriving directly from a country without Omani diplomatic representation.

The U.A.E. issues multiple entry visit visas to U.S. citizens through U.A.E. embassies. These visas require no sponsor and are valid for up to 10 years. The U.A.E. also permits Americans residing in another GCC country and possessing a residence permit valid for at least a year beyond the duration of their intended visit to travel to the U.A.E. without obtaining visas in advance. Such visitors receive U.A.E. visas in the airport upon arrival, upon payment of a 100 dirham ($27.49). However, recent reports from the U.S. business community in the U.A.E. indicate that the U.A.E. Embassy in Washington often declines to issue long-term multiple entry visas, even when specifically requested by qualified U.S. citizen applicants.

The United States has a reciprocity agreement with Qatar and Bahrain for ten-year and five-year multiple entry visas, respectively. Many U.S. citizens using the multiple entry visas in their commercial dealings with these countries.

### Insurance

Most GCC countries discriminate against foreign insurance companies, generally by restricting foreign participation (as in Kuwait), or by requiring operation through a local sponsor (as in Saudi Arabia and Oman). Foreign insurance companies can establish a presence in the U.A.E. by operating a branch or representative office. This option allows 100 percent foreign ownership, but, in general, limits business activities to offshore operations. At present, Qatar bans the establishment of new insurance companies, and there is no indication the ban will be lifted soon. In December 1996, Bahrain issued a decree amending the country's insurance law to allow foreign companies to open life insurance businesses. The companies are being allowed to enter the life insurance sector because of a lack of local experience in the field. Prior to the new law, companies could establish only representative offices in Bahrain. While Saudi Arabia has permitted foreign insurance companies to operate in the kingdom, there is no insurance law governing the sector. In 1996, Saudi authorities raised questions regarding the nature of policies issued by foreign life insurance companies. The Saudi authorities insist that these policies, which contain an investment component, ought to be regulated under the banking laws.

### Banking

Banking activity in GCC states is subject to a variety of restrictions. Saudi regulations require that Saudi nationals must own 60 percent of any bank. In Kuwait, foreigners are permitted to own up to 40 percent of Kuwaiti banks. Bahrain has not issued licenses for new commercial banks since 1983, though the majority of commercial banks in Bahrain are foreign bank branches. Bahrain encourages the establishment of offshore or representative offices of foreign banks.

While Oman, Qatar, and the U.A.E. have laws permitting foreign banks to operate, these countries have barred new foreign banks from establishing operations on the grounds that their countries are "over-banked." There are more foreign bank branches in the U.A.E. than domestic banks. Foreign banks may open representative offices in the U.A.E., but offshore banking is not permitted in the U.A.E. Like the U.A.E., Qatar does not allow foreign banks operating in the country to open branch offices; this right is restricted to Qatari-owned banks.

### Shipping

Kuwait has prevented foreign shipping lines access to government project cargo by granting the United Arab Shipping Company the right of first refusal on all such cargoes, but no longer applies this requirement to shipments from U.S. ports. Bahrain continues to favor the United Arab Shipping Company on cargo contracts for government projects. Saudi Arabia gives preferences to national carriers for up to 40 percent of government cargoes. Under these rules, the Saudi National Shipping Company and United Arab Shipping Company receive preferences.

## INVESTMENT BARRIERS

Foreign equity is limited to 49 percent in Kuwait, Qatar, and the U.A.E. Although the U.A.E. has exempted the Jebel Ali Free Zone from this barrier, products entering the U.A.E. from the free zone are treated as foreign products. The 49 percent limit on foreign equity in Qatar can be overcome by the issuance of an emiri decree.

Oman provides national tax treatment for joint venture public shareholding firms with no more than 49 percent direct foreign investment. Corporate tax rates on net profits have dropped from 50 percent to no more than 30 percent for most other forms of foreign investment. Further legislation now under consideration would make Oman more attractive as a site for foreign investment in joint ventures. Special authorization is required for projects with majority direct foreign ownership. Five year, one-time renewable tax holidays can initially offset higher tax rates imposed on firms not granted national tax treatment.

Kuwait maintains restrictions on foreign investment, including limits on foreign ownership (a maximum of 49 percent, and 40 percent in bank investment) and discriminatory taxation policies (see below). The Government of Kuwait has authorized establishment of a free trade zone in which many of these restrictions would not apply, but final agreement on the free trade zone remains under discussion.

While Saudi Arabia maintains no legal restrictions on the share of foreign ownership, under current policy wholly foreign-owned investment proposals are unlikely to receive government approval. Moreover, Saudi government incentives such as tax holidays and Saudi industrial development fund lending normally are not available unless there is at least 25 percent Saudi ownership. Wholly foreign-owned branch offices are generally approved, however. The foreign capital investment regulation requires that foreign investment be made consistent with the nation's development priorities and that investments include some technology transfer. Foreigners may not invest in joint ventures engaged solely in advertising, trading, distribution, or marketing. Real estate ownership is restricted to wholly-owned Saudi entities or citizens of the GCC. Foreign equity is taxed at the rate of 40 percent of profits; Saudis are not subject to a tax on profits, although they do pay a wealth tax ("zakat").

Bahrain may allow 100 percent foreign equity ownership of direct investments. Oman permits 100 percent foreign ownership on a case-by-case basis, with approval of the Council of Ministers.

Non-GCC investment in real estate and stocks of publicly traded companies is banned in all GCC countries.

## OTHER BARRIERS

### Agent and Distributor Rules

In GCC countries, U.S. firms may find that compliance with U.S. law presents special challenges when selecting a local agent. Many GCC business leaders are also prominent government officials. Local agents are required in all sales transactions in Kuwait and Oman.

Saudi law requires that in-country distributors be licensed by the Ministry of Commerce. Only Saudi citizens can obtain licenses, although a recent GCC decision may broaden this to include GCC citizens. Direct sales are possible except in the case of sales to government agencies, where a "service agent" is required. The U.A.E. permits two types of commercial entities to import and distribute products. One is a 100 percent U.A.E.-owned business and the other is a limited liability company in which foreign ownership up to 49 percent of equity is permitted. All U.A.E. commercial agents must be registered with the Ministry of Economy and Commerce. U.S. exporters seeking U.A.E.-wide coverage must appoint a separate agent for each of the seven emirates, or appoint a master agent with offices or sub-offices in each emirate. Once chosen, agents/distributors have exclusive rights, and cannot be replaced without their agreement. Since September 1996, Oman will register non-exclusive agency agreements. Since 1993, Oman has permitted an importer to bring in goods without paying a commission to a registered agent, provided that the goods are imported through an Omani port or airport. The Government of Kuwait is currently discussing elimination of agency requirements in its military procurement contracts.

Termination of agency agreements can be difficult in all the GCC countries and may involve considerable financial losses to the foreign supplier. A commercial agency law adopted by Bahrain in 1992 makes it easier to terminate agency agreements in cases where the agent has not carried out his responsibilities satisfactorily.

**Corporate Tax Policies**

Saudi Arabia, Oman, and Kuwait tax foreign companies but not domestic entities. Additionally, several GCC countries tax royalties as if they were 100 percent profit and maintain a variety of other tax policies considered to be unfair to foreign companies. The U.A.E. imposes a 20 percent income tax on foreign banks. No tax is levied on domestic banks. As of January 1997, Oman provides national tax treatment to joint venture public shareholding firms with no more than 49 percent direct foreign investment. Taxes were reduced from a maximum rate of 50 percent to 30 percent for other categories of joint ventures with no more than 90 percent foreign direct ownership. In Saudi Arabia, foreign investors may receive incentives, including a ten year tax holiday, for approved agricultural and manufacturing projects with a minimum 25 percent Saudi participation. However, foreign equity investors in joint ventures are taxed at 40 percent of profits. Saudi Arabians are not taxed on income. Qatar levies corporate income taxes at rates from 5 to 35 percent of net profits earned by foreign firms in Qatar. While no income tax is charged to Qatari owned firms or to Qatari shareholders of joint ventures, foreign firms only avoid income taxes through the issuance of an emiri decree. Kuwait currently imposes a maximum income tax rate of 55 percent on foreign firms doing business in Kuwait. Kuwaiti firms are not subject to income tax. The Minister of Finance, however, recently announced plans to lower the maximum income tax rate to 30 percent.

**Procedural and Financial Irregularities**

Procedural and financial irregularities can be significant barriers to trade in GCC countries. Such irregularities have resulted in lost opportunities for U.S. suppliers of goods and services and have forced some U.S. businesses out of some markets. Disregard of irregularities may subject U.S. citizens or companies to prosecution under the Foreign Corrupt Practices Act (FCPA).

In August 1995, Kuwait passed Law Number 251, requiring disclosure of all commissions and other payments made in relation to securing a government contract valued at 100,000 Kuwaiti dinars or more (approximately $335,000). This requirement increases transparency in procurement practices, assists U.S. firms in their compliance with the FCPA, and represents a modest first step toward addressing the problem of illicit payments.

**The Arab League Boycott of Israel**

## Gulf Cooperation Council

On September 30, 1994, the GCC announced that it would end adherence to the secondary and tertiary aspects of the Arab League boycott of Israel, eliminating a significant trade barrier to U.S. firms. In January 1996, Oman and Israel signed an agreement to open trade missions in the other country. In April 1996, Qatar and Israel agreed to exchange trade representation offices. Israel opened its office in May 1996. In March 1996, the GCC reiterated its commitment to end the secondary and tertiary boycott, and recognized the "total dismantling of the Arab boycott of Israel as a necessary step in advancing the peace process and promoting regional cooperation in the Middle East and North Africa." Although all GCC states are complying with these stated plans, some commercial documentation continues to contain boycott language; consequently, U.S. companies must notify the U.S. Office of Antiboycott Compliance. Since the adoption of these policies, the incidence of boycott language in commercial documentation is decreasing (see the Arab League chapter for further information).

Kuwait no longer applies a secondary boycott of firms doing business with Israel and has taken steps to eliminate all direct references to the boycott of Israel in its commercial documents. Kuwait still applies its primary boycott of goods and services produced in Israel.

In 1996, some Omani procurement documents contained vestigial boycott language, although Omani policy no longer requires compliance with the boycott. Current difficulties in the peace process have complicated Oman-Israel normalization and resulted in the recall of the Oman trade representative in late 1996. Subsequent to the agreement between Israel and the Palestinian Authority concerning the withdrawal of Israeli troops from Hebron, Oman informed U.S. authorities that it hoped to have a new trade representative in Tel Aviv early in 1997.

# HONDURAS

In 1996, the U.S. trade deficit with Honduras was $155 million, a decrease of $6 million from the U.S. trade deficit of $161 million in 1995. U.S. merchandise exports to Honduras were $1.6 billion, an increase of $360 million (28.1 percent) from the level of U.S. exports to Honduras in 1995. Honduras was the United States' forty-fifth largest export market in 1996. U.S. imports from Honduras were $1.8 billion in 1996, an increase of $354 million (24.6 percent) from the level of imports in 1995.

The stock of U.S. foreign direct investment (FDI) in Honduras in 1995 was $236 million, an increase of 26.9 percent from the level of U.S. FDI in 1994. U.S. FDI in Honduras is concentrated largely in the manufacturing, finance, and wholesale sectors.

## IMPORT POLICIES

### Tariffs

Honduras is a member of the Central American Common Market (CACM), which also includes Costa Rica, El Salvador, Guatemala, and Nicaragua. CACM members are working toward the full implementation of a common external tariff (CET) between ranging 5 to 20 percent for most products. In 1995 the members of the CACM agreed to reduce the CET to between 0 and 15 percent, but allowed each member country to determine the timing of the changes. With the exception of certain items, there are no duties for products traded among CACM members.

### Agricultural Price Bands

Honduras implemented a price band mechanism for yellow corn, sorghum, rice, and soybeans in August 1992. Similar to the price band practices of other countries in the region, the Government of Honduras calculates the price band from a time series built on international prices for the prior 60 months on a given product. The fifteen highest and lowest prices are eliminated, with the remaining highs and lows establishing the price band. Imports entering with values within the defined band are assessed a 20 percent tariff. Imports entering with prices above the band are assessed lower duties, according to a predetermined schedule; those imports priced below the band are assessed a higher tariff. The United States has strongly opposed this policy, which limits access of U.S. agricultural products.

### Customs Documentation and Clearance Procedures

In accordance with its World Trade Organization (WTO) commitments Honduras no longer requires "consular invoicing." The Honduran Government instructed its consulates in June 1995 to end the practice of charging consular fees for the legalization of commercial import documents and instructed its customs authorities to cease requiring consular certification.

## STANDARDS, TESTING, LABELING, AND CERTIFICATION

## Honduras

Although all import licensing requirements have been eliminated, Honduras has resorted to a sanitary inspection system that effectively denies market access to U.S. chicken parts. The Government of Honduras has committed formally not to use sanitary standards to artificially restrict U.S. imports of chicken, rice, and corn. Despite that commitment, Honduran authorities continue to restrict the issuance of sanitary and phytosanitary permits for chicken parts. Although Honduras has announced that it will discontinue its "discretionary" use of sanitary permits to control chicken imports, to date, the United States has seen no movement on this issue.

During 1996, the Government of Honduras implemented strict phytosanitary restrictions which effectively block U.S. exports of rough rice to Honduras. Honduras requires phytosanitary certificates from the country of origin to state that the rice comes from areas free of the tilletia barclayana fungus and that the rice itself is free of this fungus. The United States cannot meet this requirement as this harmless fungus is endemic to the United States and all other major rice producing areas of the world. The U.S. Government has voiced its opposition to these practices with Honduras and in the WTO. Although the Government of Honduras has committed formally not to use sanitary and phytosanitary standards to artificially restrict imports of chicken, rice, or corn, it continues to restrict the issuance of phytosanitary permits for rough rice.

### GOVERNMENT PROCUREMENT

The Government Procurement Law (Decree No. 148.5) governs the contractual and purchasing relations of Honduran state agencies. Under this law, foreign firms are given national treatment for public bids and contractual arrangements with state agencies. In practice, U.S. firms frequently complain about the mismanagement and lack of transparency of the governmental bid processes. These deficiencies are particularly evident in telecommunications, pharmaceuticals, and energy public tenders.

### LACK OF INTELLECTUAL PROPERTY PROTECTION

In 1996, Honduras was identified in the "other observations" category of the U.S. Government's annual Special 301 review due to a lack of effective protection of intellectual property rights (IPR). Since 1992, Honduras has been the subject of a continuing review under the Generalized System of Preferences (GSP) for deficiencies in its IPR regime. On September 1, 1993, the Honduran Congress approved comprehensive copyright, trademark, and patent legislation. The Government of Honduras has drafted and submitted to the Honduran Assembly amendments intended to address shortcomings found in Honduras's 1993 copyright law, but that legislation has been pending for more than two years. The United States continues to work with Honduras to improve patent and trademark laws and to better its enforcement, particularly through negotiations on a bilateral IPR agreement and implementation of the WTO Agreement on Trade-Related Aspects of Intellectual Property Rights (TRIPS). The United States continues to monitor the adequacy and effectiveness of IPR protection in Honduras, particularly in the area of copyright protection.

#### Copyrights

The piracy of books, sound and video recordings, compact discs, computer software, and television programs is widespread in Honduras. In 1992 the U.S. Trade Representative accepted a petition filed by the Motion Picture Export Association of America (MPEAA) under the GSP legislation which alleged widespread video/cable television piracy, estimated at $2.5 million in lost revenue per year. Although Honduras enacted a reformed copyright law in August 1993 that addressed many of the substantive concerns raised in the GSP petition, the law failed to establish effective criminal penalties for copyright infringement and contained some technical problems related to cable television piracy. Since then, significant progress has been made toward curbing cable piracy and currently 85 percent of the cable market is legal. However, the payment of royalties by local cable companies to U.S. copyright holders has been late or, in some cases, local companies have not concluded royalty contracts. In May 1995, the Government of Honduras submitted to Congress major reforms in its copyright laws. This legislation is still under consideration.

A report prepared by the International Intellectual Property Alliance estimated that losses in Honduras due to copyright infringements cost U.S. firms $5 million in 1996.

**Patents**

The patent law enacted in September 1993 provides patent protection for pharmaceuticals, although the patent term of seventeen years from the date of application must be extended by at least three years to meet international standards.

**Trademarks**

The illegitimate registration of well-known trademarks is a persistent problem in Honduras, in spite of 1993 modifications to the trademark law.

## INVESTMENT BARRIERS

The Honduran Government reserves the right to reject any foreign investment based upon the effect on economic activity, market stability, and other factors. Establishment of banks and life insurance companies is subject to approval by the Central Bank, in accordance with market needs; foreign ownership of other insurance companies is limited to 40 percent. Under Honduran law, special government approval must be obtained to invest in the tourism, hotel, and banking services sectors. In addition, under the 1992 investment law, special government approval must be obtained for foreign investment in the forestry, telecommunications, air transport, and aquaculture industries. This law also requires majority Honduran ownership in certain areas, such as investments in commercial fishing, direct exploitation of forest resources, local transportation, and those areas benefiting directly from the national agrarian reform law. Foreign investors are prohibited from holding a majority stake in foreign exchange trading companies. Moreover, foreign owners may not hold a seat or provide direct brokerage services in either of Honduras' two stock exchanges. Furthermore, the Honduran Government prohibits the establishment of investments of less than 150,000 lempiras (about $11,500).

Historically, U.S. firms and private citizens have found corruption to be a problem and a constraint to foreign direct investment. Corruption appears to be most pervasive in the recurring following areas: government procurement, performance requirements, the regulatory system, and in the buying and selling of real estate, in particular, land titling. President Reina's "moral revolution" has helped thwart corruption, although it remains a serious problem.

The United States and Honduras signed the U.S.-Honduras Bilateral Investment Treaty (BIT) on July 1, 1995. The BIT has not yet been ratified by either the U.S. or the Honduran Congresses.

# HONG KONG

In 1996, the U.S. trade surplus with Hong Kong was $4.1 billion, an increase of $162 million from the U.S. trade surplus of $3.9 billion in 1995. U.S. merchandise exports to Hong Kong were nearly $14.0 billion, a decrease of $264 million (1.9 percent) from the level of U.S. exports to Hong Kong in 1995. Hong Kong was the United States' eleventh largest export market in 1996. U.S. imports from Hong Kong were $9.9 billion in 1996, a decrease of $427 million (4.2 percent) from the level of imports in 1995.

The stock of U.S. foreign direct investment (FDI) in Hong Kong in 1995 was $13.8 billion, an increase of 5.9 percent from the level of U.S. FDI in 1994. U.S. FDI in Hong Kong is concentrated largely in the wholesale, financial, and manufacturing sectors.

**Overview**

On July 1, 1997, Hong Kong will become a special administrative region (SAR) of the People's Republic of China (China). China will assume the responsibility for Hong Kong's foreign affairs and defense. However, under China's policy of "one country, two systems" as guaranteed by the 1984 Sino-U.K. Joint Declaration and the 1990 Basic Law, Hong Kong has been promised "a high degree of autonomy" from China in managing its trade, financial, social, legal, and other internal matters for fifty years.

This commitment means that Hong Kong will remain a separate customs territory with all of its current border arrangements. Hong Kong will retain its independent membership in economic organizations such as the World Trade Organization (WTO), and retain control of its internal economic and financial policies.

## LACK OF INTELLECTUAL PROPERTY PROTECTION

Hong Kong's laws provide a good legal framework for the protection of intellectual property rights (IPR), but distribution and retail sale in Hong Kong of pirated compact discs (software, video, and music) illegally produced in China remains widespread. Retailers of pirated software and music operate openly, and U.S. property rights industry representatives believe that individuals and firms in Hong Kong are an important link in distributing pirated goods from China within Hong Kong and for export around the world. The International Intellectual Property Alliance estimated 1996 losses due to piracy in Hong Kong at $239.7 million, including more than $115 million in entertainment software.

The United States has urged the Hong Kong Government at the most senior levels to crack down on the major distributors of pirated goods as well as retailers, and to work with Chinese authorities to pursue Hong Kong individuals alleged to be involved in illegal production in China. Hong Kong has responded by increasing manpower in the Customs Department devoted to IPR enforcement, conducting more retail-level raids, strengthening law enforcement links with Guandong provincial customs officials, and including in the new draft Copyright Bill provisions that would facilitate enforcement. A 1996 increase in penalties for copyright violations resulted in the first two convictions at the district court level, a sign of progress, albeit at a slow pace.

## Hong Kong

So far, however, government action has had little if any demonstrable impact on the availability of pirated goods in Hong Kong. Well-known arcades full of shops selling pirated goods continue to flourish. Citing the establishment and operations of new arcades, industry sources claim that the availability of pirated goods in Hong Kong actually increased in the latter part of 1996. Investigations into alleged involvement by Hong Kong residents in the financing (in China) and distribution (in Hong Kong and for export worldwide) of pirated compact discs have not yet resulted in action.

When authorities have moved against infringers, effective prosecution has been hampered by burdensome evidentiary requirements imposed by some prosecutors. The government has attempted to address this problem by including provisions in the draft Copyright Bill clarifying some of the evidentiary requirements.

The United States will continue to press Hong Kong to toughen its stance towards IPR piracy.

# HUNGARY

In 1996, the U.S. trade deficit with Hungary was $346 million, an increase of $94 million from the U.S. trade deficit of $252 million in 1995. U.S. merchandise exports to Hungary were $331 million, an increase of $36 million (12.2 percent) from the level of U.S. exports to Hungary in 1995. Hungary was the United States' seventy-third largest export market in 1996. U.S. imports from Hungary were $677 million in 1996, an increase of $130 million (23.8 percent) from the level of imports in 1995.

U.S. foreign direct investment (FDI) in Hungary since 1989 totaled more than $5 billion at the end of 1996, in comparison to a total FDI stock of about $14.3 billion. Hungary is the leading recipient of U.S. investment in the region.

Hungary was among the first of the former communist central and eastern European countries to implement capitalist economic reform measures prior to the democratic transition in 1989-90. The government continues to push forward economic restructuring and the establishment of a market economy.

The impact of privatization and direct foreign investment is having positive multiplier effects throughout the economy. Continued foreign investment is a reflection of the government's ability to maintain current economic stability, reduce inflation, and successfully pursue its goal of privatizing at least 80 percent of gross domestic product (GDP) output by the end of 1997.

## IMPORT POLICIES

Import policies have been progressively liberalized in an effort to encourage competition and to allow imports of material necessary for restructuring. Over 93 percent of products can be imported without an import license. An import license is required for energy, fuels, precious metals, military goods, and certain pharmaceutical products. The state monopoly on foreign trade has been eliminated.

Hungary's 1997 import quota on consumer and industrial goods will be around $520 million, up from the $500 million quota in 1996 but down from the $750 million quota in 1994. Hungary plans to eliminate quotas on cars, footwear, and household detergent for 1998. Under an agreement with the World Trade Organization (WTO), Hungary will eliminate quotas on textiles, clothing, and other industrial products by 2004. The global system of quotas for import goods will be maintained in 1997, but the quotas for new and used clothing and for fish will be left open, since these quotas have not been fully exploited in recent years.

Hungary's average import duties have been cut from 50 to 8 percent over the past four years. The 8 percent import surcharge introduced in March 1995 has been reduced in stages to 4 percent and is slated to be eliminated totally by July 1, 1997. In late 1994, the U.S. Trade Representative launched a review of Hungary's reverse tariff preferences to the European Union (EU) that was part of a review of all Generalized System of Preferences (GSP) beneficiaries mandated by a statement of administrative action attached to the Uruguay Round Agreements Act. The review did not establish enough evidence to determine that Hungary's preferential treatment of EU imports has had an adverse effect on U.S. commerce. The Hungarian Government announced its new EU harmonized tariff schedule for 1997 wherein tariffs for imports from the EU and CEFTA were lowered.

## Hungary

The Government of Hungary is expected to grant import licenses for 90,000 new cars and 58,000 used cars in 1997, up 6 percent from 1996, but still well below the 200,000 total cars imported in 1991. The steep loss of local purchasing power in 1995-1996 inhibited car purchases. Half of each category was reserved for imports from the EU. The Customs Duty Law of 1995 forbids the importation of used cars over four years old. Specialized older vehicles may still be imported after passing a special technical test. These regulations, combined with standards for used cars which tend to exclude older U.S. models, will effectively curb most U.S. imports in this category. On January 1, 1997, the government eliminated for all WTO member states the previously applicable 2 percent statistical fee and the 1 percent customs clearance fee. These fees, however, are still required of goods coming from non-WTO states.

In January 1995, Hungary increased its border protection by raising many agricultural tariffs to Uruguay Round ceiling bindings and introduced numerous tariff rate import quotas that are assigned to most-favored-nation (MFN) or preferential suppliers.

As part of its association agreement with the EU, Hungary will phase out import fees on EU products by the end of 1997. Hungary will eliminate present import duty drawbacks in the first half of 1997 as it plans to join the Pan-European Free Trade Zone on July 1, 1997.

### STANDARDS, TESTING, LABELING, AND CERTIFICATION

Importers must file a customs document with a product declaration and, upon importation, present Hungarian Commercial Quality Control Institute certified documentation to clear customs. This permit may be replaced by other national certification and testing agency documents, such as those of the National Institute for Drugs. Some standards are reciprocal with those of recognized U.S. standard enforcement agencies. Hungary participates in the International Organization for Standardization and the International Electro-technical Commission.

#### Animal and Plant Health Regulations

Hungarian import regulations limit or delay imports of breeding animals, semen, and planting seeds. Relevant authorities (Institute for Agricultural Qualification and Ministry of Agriculture) set minimum breeding value limits to import semen and require repeated tests before distribution of the import shipment. These measures may restrict imports, increase costs, and expand the duration of the import process. The process of registration and testing of new plant varieties imported is time-consuming and costly as well.

### GOVERNMENT PROCUREMENT

Foreign access to government-funded construction and service or supply contracts is regulated by the Act on Public Procurement that took effect in November 1995. The act increased transparency in public procurement. Tenders must be invited for the purchase of goods worth over 10 million forints (currently 165 forints equals one dollar). However, bids with more than 50 percent Hungarian content will be considered equal to non-Hungarian content bids which are up to 10 percent lower in price. Purchases deemed to be related to state secrecy, as well as purchases of gas, oil, and electricity, remain exempt from these regulations.

## EXPORT SUBSIDIES

Hungary maintained agricultural export subsidies in excess of its WTO commitments during 1995 and 1996 and is budgeted to exceed its commitments again in 1997. Hungary has sought to modify its WTO commitments based on the claim that its base-period calculations underestimated actual export subsidies in terms of value and specific product coverage. Hungary proposed a revised schedule which would substantially surpass its original commitments in the number of items covered and monetary level. New Zealand, Australia, Argentina, Japan, Thailand, the European Union, Canada, and the United States conducted informal consultations on the Hungarian export subsidies issue under the sponsorship of the chairman of the WTO Committee on Agriculture starting in the fall of 1995, followed by formal Article XXII consultations. These consultations failed to resolve the problem. In January 1997, the United States, Argentina, Australia, and New Zealand requested establishment of a WTO dispute settlement panel to judge this issue.

## LACK OF INTELLECTUAL PROPERTY PROTECTION

### Patent Protection

Protection of intellectual property rights (IPR) in Hungary was strengthened following the conclusion of a comprehensive U.S.-Hungary Bilateral Agreement on Intellectual Property Rights Protection in 1993. Under this agreement, Hungary agreed to provide product patent protection; under prior law, patents were limited to industrial processes. The IPR agreement also provides transitional protection for U.S. pharmaceutical products otherwise ineligible for new product patents in Hungary; provides that patents are available and patent rights are enjoyable regardless of whether products are imported or locally produced; and provides limitations on the use of compulsory licenses. Legislation to provide the protection called for in the IPR agreement was passed by the Hungarian Parliament and entered into force on July 1, 1994.

### Copyright Protection

Hungary has copyright laws which largely conform to international standards. The 1993 IPR agreement requires an exclusive right to authorize the public communication of work, including to perform, project, exhibit, broadcast, transmit, retransmit or display; it also requires that protected rights be freely and separately exploitable and conferrable (contract rights), and requires an exclusive right to authorize the first public distribution including importation for protected works.

In previous years, some U.S. companies complained about widespread video piracy in Hungary. In May 1993, Hungary added stiff penalties for copyright infringement to its criminal code. Despite the law, limited enforcement resources allow piracy to continue in the thriving underground or grey economy. A media law passed in late 1995 links broadcast transmission licenses to respect for intellectual property rights.

The 1993 IPR agreement also requires Hungary to protect all types of computer programs as literary works under the meaning of the Berne Convention; protect collections or compilations of data where the selection and arrangement of the contents constitute copyrightable authorship; and grant an exclusive right to authorize or prohibit the commercial rental of a computer program. Counterfeited computer software is reported to be widely used in Hungary. Nevertheless, the Hungarian Government stepped up enforcement in 1996, notably with several convictions and fines to businesses using pirated software. Protection is also provided for sound recordings, trademarks, semiconductor layout designs, and trade secrets.

Hungarian IPR laws permit numerous challenges and appeals in the adjudication process, thereby delaying judgement on IPR cases. Injunctions on offending parties are rarely employed. The Hungarian Government, however, is studying ways to modify the legal code to strengthen the use of injunctions on IPR cases in the future.

**SERVICES BARRIERS**

A liberalized currency convertibility law took effect on January 1, 1996. The Hungarian Government further liberalized the capital account as of January 1, 1997, eliminating the tourist allowance and making the forint fully convertible. Hungary, when it became a member of the OECD in May 1996, committed to allow bank branching by the beginning of 1998. A large number of bank subsidiaries and insurance companies with foreign ownership operate in Hungary. Screening of most investments will be eliminated under Hungary's Uruguay Round services schedule.

While there are currently no film quotas for private television, Hungarian film quotas in the 15 to 20 percent range apply to public television. Excluding advertising, news, sports, game and quiz shows, public television is also required to fill 70 percent of its air time with European production, 51 percent of which must be Hungarian. If one were to assume that 30 to 40 percent of all broadcast time is spent on the excluded categories, then the maximum amount of time available for non-European, non-film programming on public television is in the 20 percent range. These quotas are not currently seen as cutting actual U.S. market share and further privatization of the television industry should boost the overall U.S. market share.

**INVESTMENT BARRIERS**

The Hungarian Government passed a new privatization law in May 1995 that reduces to 25 percent from 50 percent the average amount of permanent ownership the government would retain in the 163 companies it identified as requiring permanent state participation. This opened a significant number of companies to foreign investment. Small portions of other privatized firms are being reserved for Hungarian citizens, for employee stock ownership programs and/or management buyouts.

After a sharp increase in privatization efforts in late 1995, privatization continued into 1996, notably in the banking and energy sectors. The decision in October 1996 to delay energy price hikes until January 1, 1997, and not to allow price hikes to match all claimed costs affected U.S. energy companies which invested in power companies in 1996. These investors believe the set price hikes do not equate to costs plus an eight percent profit, a stipulation of the 1995 privatization law. The foreign energy companies hope to gain further price increases in separate agreements with the government.

Hungary terminated its blanket tax incentives on foreign investment as of January 1, 1994, and replaced them with incentives open to all large investors, based on export promotion, reinvestment of profits, and job creation in areas of high unemployment. A customs law, passed in late 1995, eliminated duty free importation of capital goods by foreign-owned companies. This law was intended to “level the playing field” for domestic investors, but it eliminated a prior incentive to invest in Hungary.

## Hungary

# INDIA

In 1996, the U.S. trade deficit with India was $2.9 billion, an increase of $411 million from the U.S. trade deficit of $2.4 billion in 1995. U.S. merchandise exports to India were $3.3 billion, an increase of $22 million (0.7 percent) from the level of U.S. exports to India in 1995. India was the United States' thirty-second largest export market in 1996. U.S. imports from India were $6.2 billion in 1996, an increase of $433 million (7.6 percent) from the level of imports in 1995.

The stock of U.S. foreign direct investment (FDI) in India in 1995 was $836 million, an increase of 6.8 percent from the level of U.S. FDI in 1994. U.S. FDI in India is concentrated largely in the banking, manufacturing, and services sectors.

## IMPORT POLICIES

In June 1991, the then newly-elected government recognized that India's budget deficit, balance of payments problems, and structural imbalances would require re-evaluation of past economic policies and structural adjustment assistance from international financial institutions. As part of economic reform, the Indian Government has taken consistent steps towards a more open and transparent trade regime, leading to a significant increase in Indo-U.S. trade and investment. With substantial additional liberalization, U.S.-India trade could become quite significant.

Despite recent tariff reductions and liberalization of quantitative restrictions, India's restrictions on consumer goods imports, quantitative restrictions under the negative (restricted imports) list, and high tariffs remain serious impediments to U.S. trade, especially for agricultural and consumer items. The United States continues to raise and discuss India's restrictive trade practices in all trade-related meetings with Indian officials, in the World Trade Organization (WTO), and in regular bilateral consultations.

### Tariffs

The Government of India continues to reduce tariff rates from a peak rate of 300 percent in 1991 to a top rate of 52 percent in the 1996/97 budget and an anticipated ceiling of 42 percent in the 1997/98 budget. The 1996/97 budget announced a special customs duty of 2 percent on all imports except those with a zero rate of duty or are imported duty free for export production.

India has selectively lowered tariffs on some capital goods and semi-manufactured inputs to help Indian manufacturers and has steadily reduced the import weighted tariff from 87 percent to the current level of 20 percent. The Government of India has reduced the maximum and the imported-weighted average tariffs in each of its last five budgets. Despite reforms, Indian tariffs are still among the highest in the world, especially for goods that can be produced domestically. Most agricultural products face trade barriers which severely restrict or, in the case of processed foods, prohibit their import. Consumer goods are similarly restricted.

India maintains a variety of additional charges on imports that might be border tax adjustments (the so-called countervailing duties), further raising the cost of imports as they enter the stream of domestic commerce. For example, the increased cost of imported soda ash is estimated to be 50 percent, including a basic tariff rate of 30 percent with an additional countervailing duty rate of 20 percent. In some cases the countervailing duty has increased. For example, the 1996/97 budget increased the countervailing tax on instant print film from 10 to 15 percent, and the 1997/98 budget recommends an increase to 18 percent. Some telecommunications projects are granted a special status which allows imports of infrastructure equipment at a 25 percent duty rate; however, the duties on other telecommunications equipment remain high (e.g., 40 percent for built-up units and 30 percent for sub-assemblies and components). Higher 1996/97 effective rates also affect chocolate and confectionery products (40 percent); raisins (130 percent); mayonnaise, corn oil, and peanut butter (50 percent); potato products including potato chips, seed potatoes, and french fries (50 percent); appliances (25-50 percent); and toys and sporting goods (30 percent). Exorbitant effective rates of 275 percent are assessed on still and sparking wines and on distilled spirits imports, plus additional duties of $0.15-0.26 per liter (for wines) or 45-50 percent (for distilled spirits).

Progress made thus far in tariff reduction has helped U.S. producers, but further reductions of basic tariff rates and elimination of additional duties would benefit a wide range of U.S. exports. For example, the tariff on almonds is calculated at 44 rupees per kilogram for shelled almonds. The market potential, were the tariff removed, is estimated to be $100-150 million. Other industries that might benefit from reduced tariff rates include (actual basic tariff rate in parenthesis) fertilizers (0-40 percent); wood products (10-30 percent); jewelry (50 percent); camera components (50 percent); paper and paper board (20-50 percent); ferrous waste and scrap (30 percent); computers, office machinery, and spares (5-50 percent); motorcycles, BU and CKD vehicles and components (50 percent); air conditioners and refrigeration equipment (50 percent); heavy equipment spares (20-50 percent); medical equipment components (30 percent); copper waste and scrap (30 percent); hand tools (30 percent); soft drinks (50 percent); cling peaches (50 percent); citrus fruits (50 percent); vegetable juice (50 percent); and canned soup (50 percent).

In the Uruguay Round, India undertook a two-tiered offer on industrial products, binding tariffs on certain items in excess of 40 percent at a rate of 40 percent and binding certain items with tariffs below 40 percent at 25 percent. Certain industrial goods (e.g., automobiles) and all consumer products were excluded from India's offer. As a consequence, India's scope of bindings on industrial goods increased substantially, from 12 percent of imports to 68 percent once all reductions are staged in. The overwhelming majority of these bindings exceed current Indian applied rates of duty.

In agriculture, Uruguay Round tariff bindings are higher than actual rates in important sectors, ranging from 100 to 300 percent.

As a result of Uruguay Round commitments, India and the United States concluded successful bilateral textile negotiations, giving the United States tariff reductions on all categories of textile products. India committed to reduce and bind its tariffs over a period of seven years, with some of these reductions being implemented within four years. By January 1, 1998, Indian tariffs will be reduced to levels no higher than 35 percent for fibers; 40 percent for yarns, industrial fabrics and home furnishings; 45 percent for apparel fabrics; and 50 percent for apparel. These reduced tariffs are to be applied on a most-favored-nation (MFN) basis.

**Import Licensing**

In addition to high tariff rates, U.S. industries must deal with India's import licensing regime. The regime has been liberalized, but still limits market access for U.S. goods which would be competitive in a more open trading environment. Importation of "consumer goods" is virtually banned except for some imports under special import licenses (SIL), which are import permits traded in the market for a 6-13 percent premium that involve performance requirements. Consumer goods are defined very broadly as goods that can directly satisfy human needs without further processing. As a result, products of agricultural or animal origin must be licensed and are therefore, with few exceptions, effectively banned. Importers of theatrical films must obtain a certificate from the Central Board of Film Certification, stating that the film is suitable for import according to guidelines laid down by the government. U.S. industry maintains that this constitutes a pre-censorship "quality check" obstacle. A special import license is required for vehicle knock-down kit imports after a manufacturer signs a MOU with the Director General of Foreign Trade, covering plans on investment, capacity, local content, value of CKD imports and export earnings. Some commodity imports must be channeled (“canalized”) through public sector companies, although many “canalized” items have been decontrolled recently. Currently, the main “canalized” items are petroleum products, bulk agricultural products (such as grains and vegetable oils), and certain pharmaceutical products.

India's import policy is administered by means of a negative list. The negative list is divided into three categories: (1) banned or prohibited items (tallow, fat, and oils of animal origin); (2) restricted items which require an import license, including all consumer goods (as defined in the "tariffs" section), such as instant print cameras, distilled spirits, canned soup, vegetable juice, seeds, plants, animals, insecticides, pesticides, electronic items and components, chemicals and pharmaceuticals, and a wide variety of other items; and (3) “canalized” items importable only by government trading monopolies (bulk agricultural commodities) and subject to cabinet approval regarding timing and quantity.

In October 1995, the Indian Government published for the first time a correlation between its negative list of import restrictions and India's harmonized tariff schedule (HTS) import classification scheme. This document, entitled "Export and Import Policy Aligned on an ITC (HS) Classification" has helped to instill a degree of transparency, consistency, and clarity to the importation of goods into India.

India has liberalized many restrictions on the importation of capital goods. The importation of all second-hand capital goods by actual users is permitted without license, provided the goods have a residual life of five years. In March 1993, India abolished the two-tiered exchange rate regime, moving to a single market-determined exchange rate for trade transactions and inward remittances. The rupee is convertible on current account transactions, with limits remaining on foreign exchange for travel and tourism. Capital account transactions for foreign investors, both portfolio and direct, are fully convertible. However, Indian firms and individuals remain subject to capital account restrictions.

India has committed to remove many apparel, fabric, and yarn imports from the restricted licensing list as a result of the United States - India Market Access Agreement for Textiles and Clothing of January 1, 1995. India agreed to provide immediate “unrestricted” access for fibers, yarns, and industrial fabrics. Similar “unrestricted” access for apparel fabrics, home furnishings, and clothing will be provided as soon as India lifts its balance of payments exemption, or no later than January 1, 2000, for home furnishings and apparel fabrics; and January 1, 2002, for most apparel and other made-up textile items. Removal of these licensing restrictions will be on a most-favored-nation (MFN) basis.

**Balance of Payments Justification for Restrictive Import Licensing**

India has claimed that virtually all its quantitative restrictions are justified on balance of payments grounds under GATT 1994 article XVIII:B. India has invoked these justifications for over thirty years. These represent significant barriers to doing business in India and removal of balance of payments restrictions would represent a significant liberalization of the Indian economy, affecting a wide range of U.S. industries. The WTO Balance of Payments Committee meeting with India in January 1997 laid the foundation for India's phased removal of quantitative restrictions justified under article XVIII:B. Balance of Payments Committee consultations will resume in June, 1997 with the expectation that India will provide a phase-out plan then, as well as agree soon thereafter to forego article XVIII:B as a justification for its quantitative restrictions.

**Customs Procedures**

The opening of India's trade regime has reduced tariff levels but it has not eased some of the worst aspects of customs procedures. Documentation requirements, including ex-factory bills of sale, are extensive and delays frequent. Private sector complaints also include mis-classification of imports, incorrect valuation of goods for the purposes of duty assessment, and corruption. The Indian Customs Service would also benefit from a significant streamlining of its procedures for moving products from the border into the stream of domestic commerce.

## STANDARDS, TESTING, LABELING, AND CERTIFICATION

Indian standards generally follow international norms and do not constitute a significant barrier to trade. Requirements established under India's food safety laws are often outdated or more stringent than international norms, but enforcement has been weak. Opponents of foreign investment have tried to apply these laws selectively to U.S. firms (e.g., Pepsi/KFC), but these attempts have not withstood judicial scrutiny. Where differences exist, India is seeking to harmonize national standards with international norms. No distinctions are made between imported and domestically produced goods, except for some bulk grains.

## GOVERNMENT PROCUREMENT

Indian government procurement practices and procedures are neither transparent nor standardized, and discriminate against foreign suppliers. Specific price and quality preferences for local suppliers were largely abolished in June 1992, and recipients of preferential treatment are now supposedly limited to the small-scale industrial and handicrafts sectors, which represent a very small share of total government procurement. Despite the easing of policy requirements to discriminate, local suppliers are favored in most contracts where their prices and quality are acceptable. Reports persist that government-owned companies cash performance bonds of foreign companies even when there has been no dispute over performance.

A second area of discrimination affecting U.S. suppliers is the prohibition of defense procurement through agents. Most U.S. firms do not have enough business in India to justify the high cost of resident representation.

Some major government entities routinely use foreign bids to pressure domestic producers to lower their prices, permitting the local bidder to resubmit tenders when a foreign contractor has underbid them. For just one large project (e.g., power projects), this could cost U.S. contractors hundreds of millions of dollars in lost opportunities.

When foreign financing is involved, principal government agencies tend to follow multilateral development bank requirements for international tenders. However, in other purchases, current procurement practices usually result in discrimination against foreign suppliers when goods or services of comparable quality and price are available locally.

**EXPORT SUBSIDIES**

Export earnings are exempt from income and trade taxes, and exporters may take advantage of a variety of tariff incentives and promotional import licensing schemes, some of which carry export quotas. Export promotion measures include duty exemptions or concessional tariffs on raw material and capital inputs, and access to special import licenses for restricted inputs. Commercial banks also provide export financing on concessional items.

**LACK OF INTELLECTUAL PROPERTY PROTECTION**

Based on past practices, India was identified in April 1991 as a "priority foreign country" under the "Special 301" provision of the 1988 Trade Act, and a Section 301 investigation was initiated on May 26, 1991. In February 1992, following a nine-month Special 301 investigation, the USTR determined that India's denial of adequate and effective intellectual property protection was unreasonable and burdens or restricts U.S. commerce, especially in the area of patent protection. India is not a member of the Paris Convention, nor does it have a bilateral patent agreement with the United States.

In April 1992, the United States suspended duty-free privileges under the Generalized System of Preferences (GSP) for $60 million in trade from India. This suspension applied principally to pharmaceuticals, chemicals, and related products. Benefits on certain chemicals, added to GSP in June 1992, were withheld from India, increasing the trade for which GSP is suspended to approximately $80 million. Significant revisions to India's copyright law in May 1994 led to the downgrading of India as "priority foreign country" to the “priority watch list,” a designation under which India remained in 1995 and 1996.

**Patents**

India's patent protection is weak and has especially adverse effects on U.S. pharmaceutical and chemical firms. Estimated annual losses to the pharmaceutical industry due to piracy are $450 million. India's patent act prohibits patents for any invention intended for use or capable of being used as a food, medicine, or drug, or relating to substances prepared or produced by chemical processes. Many U.S.-invented drugs are widely reproduced in India since product patent protection is not available.

Under existing law, processes for making such substances are patentable, but the patent term for these processes is limited to the shorter of five years from patent grant or seven years from patent application filing. This is usually less than the time needed to obtain regulatory approval to market the product.

Where available, product patents expire 14 years from the date of filing. Stringent compulsory licensing provisions have the potential to render patent protection virtually meaningless, and broad "licenses of right" apply automatically to food and drug patents. India also fails to protect biotechnological inventions, methods of agriculture and horticulture, and processes for treatment of humans, animals, or plants.

Indian policy guidelines normally limit recurring royalty payments, including patent licensing payments, to 8 percent of the selling price (net of certain taxes and purchases). Royalties and lump sum payments are taxed at a rate of 30 percent.

Many of these barriers must be removed as India undertakes its Uruguay Round obligations on Trade-Related Aspects of Intellectual Property Rights (TRIPs). The Indian Government has announced its intention to conform fully to the IPR-related requirements of the Uruguay Round as a first step. The Government of India promulgated in late 1994 a temporary ordinance and introduced in early 1995 patent legislation in an attempt to comply with India's TRIPs obligations relating to the "mailbox" provisions. The patents bill failed to pass in the upper house of Parliament in 1995, leaving India in violation of this TRIPs provision since early-1995, when the patent ordinance expired. In November 1996, the WTO Dispute Settlement Body established a panel at the request of the United States to review India's failure to meet these TRIPs obligations.

Aside from failing to meet its immediate obligations, the Indian Government has announced its intention to take full advantage of the transition period permitted developing countries under TRIPs before implementing full patent protection. The United States continues to press for passage of the "mail box"-related legislation and to urge more accelerated implementation of the TRIPs patent provisions. A small domestic constituency, consisting of certain Indian educational/research institutions, pharmaceutical companies, and technology firms, favors an improved patent regime, including full product patent protection.

**Copyrights**

Under pressure from its own domestic industry, India implemented a strengthened copyright law in May 1995, placing it on par with international standards for copyright protection. However, piracy of copyrighted materials (particularly popular fiction works and certain textbooks) remains a problem for U.S. and Indian producers. Video, record, tape, and software piracy are also widespread, but improvements have been made. Indian copyright law has undergone a series of changes over the last 10 years to provide stronger remedies against piracy and to protect computer software. In 1994, Parliament passed a comprehensive amendment to the 1957 Copyright Act. India's law now provides: rental rights for video cassettes; protection for works transmitted by satellite, cable, or other means of simultaneous communication; collective administration of rights; and limitations on judicial discretion with respect to the level of penalties imposed on copyright pirates. However, there is no statutory presumption of copyright ownership and the defendant's "actual knowledge" of infringement must be proven.

Indian copyright law offers strong protection, but the Indian Constitution gives enforcement responsibility to the state governments. Classification of copyright and trademark infringements as "cognizable offenses" has expanded police search and seizures authority, while the formation of appellate boards has speeded prosecution. The new law also provides for new minimum criminal penalties, including a mandatory minimum jail term that U.S. industry believes will go far in controlling piracy, if implemented. Other steps to improve copyright enforcement include: the establishment of a copyright enforcement advisory council, including a judiciary commissioner, with responsibility for policy development and coordination; the initiation of a program for training police officers and prosecutors concerned with enforcement of copyright laws; and the compilation of data on copyright offenses on a nationwide basis to assist in enforcement and application of penalties. However, because of backlogs in the court system and documentary and other procedural requirements, few cases have been prosecuted recently. While a significant number of police raids have been planned and executed, the law requires that to seize allegedly infringing equipment, the police must witness its use in an infringing act.

Cable piracy continues to be a significant problem, with estimates of tens of thousands of illegal systems in operation in India at this time. Copyrighted U.S. product is transmitted over this medium without authorization, often using pirated video cassettes as source materials. Widespread copyright infringement has a significant detrimental effect on all motion picture market segments -- theatrical, home video and television -- in India. A cable bill to regulate the industry was submitted to parliament in 1993, but has been sent back to the Ministry of Information for revision with no further progress in this area since that time.

**Trademarks**

The Government of India has committed to upgrading its trademark regime, including according national treatment for the use of trademarks owned by foreign proprietors, providing statutory protection of service marks, and clarifying the conditions under which the cancellation of a mark due to non-use is justified. In May 1995, the Government of India introduced in Parliament a trademark bill that passed the lower house. However, opposition in the upper house of Parliament stalled discussion of the legislation, which is still pending.

Protection of foreign marks in India is still difficult, although enforcement is improving. Guidelines for foreign joint ventures have prohibited the use of "foreign" trademarks on goods produced for the domestic market (although several well-known U.S. firms were authorized in October 1991 to use their own brand names). The required registration of a trademark license (described by U.S. industry as highly bureaucratic and time-consuming) has routinely been refused on such grounds as "not in the public interest," "will not promote domestic industry," or for "balance of payments reasons." The Foreign Exchange Regulation Act restricts the use of trademarks by foreign firms unless they invest in India or supply technology.

In an infringement suit, trademark owners must prove they have used their mark to avoid a counterclaim for registration cancellation due to non-use. Such proof can be difficult, given India's policy of discouraging foreign trademark use. Companies denied the right to import and sell products in India are often unable to demonstrate use of registered trademarks through local sale. Consequently, trademarks on restricted foreign goods are exposed to the risk of cancellation for non-use.

No protection is available for service marks. Trademarks for several single ingredient drugs cannot be registered. There have been several cases where unauthorized Indian firms have used U.S. trademarks for marketing Indian goods. However, the Indian courts have recently upheld trademark owner rights in infringement cases.

## SERVICES BARRIERS

Indian Government entities run many major service industries either partially or entirely. However, both foreign and domestic private firms play a large role in advertising, accounting, car rental, and a wide range of consulting services. There is growing awareness of India's potential as a major services exporter and increasing demand for a more open services market.

### Insurance

All insurance companies are government-owned, except for a number of private sector firms which provide reinsurance broker services. Foreign insurance companies have no direct access to the domestic insurance market except for surplus lines, some reinsurance, and some marine cargo insurance. A government-appointed committee recommended in 1994 that the insurance sector be opened up to private sector competition, both domestic and foreign. In December 1996, the Finance Minister introduced the Insurance Regulatory Authority (IRA) bill in Parliament. This bill would grant statutory status to the already constituted interim IRA and is the first step in the reform of the insurance industry. If the legislation is adopted in its present form, the IRA could have the authority to formulate guidelines for private and foreign entry as well as issue capital adequacy norms for all players. In the WTO Financial Services Negotiations that concluded on an interim basis in July 1995, India has bound the limited range of insurance lines currently open to foreign participation. The United States will continue to seek further commitments in this sector in the 1997 WTO negotiations.

### Banking

Most Indian banks are government-owned and entry of foreign banks remains highly regulated. The Reserve Bank of India issued in January 1993 guidelines under which new private sector banks may be established. Approval has been granted for operation of 25 new foreign banks or bank branches since June 1993. Foreign bank branches and representative offices are permitted based upon reciprocity and India's estimated or perceived need for financial services. As a result, access for foreign banks has traditionally been quite limited. Five U.S. banks now have a total of 16 branches in India. They operate under restrictive conditions including tight limitations on their ability to add sub-branches. Operating ratios are determined based on the foreign branch's local capital, rather than global capital of the parent institution.

### Securities

Foreign securities firms have established majority-owned joint ventures in India. Through registered brokers, foreign institutional investors (FII), such as foreign pension funds, mutual funds, and investment trusts, are permitted to invest in Indian primary and secondary markets. However, FII holdings of issued capital in individual firms are limited; total aggregate holdings by FIIs cannot exceed 24 percent of issued capital, and holdings by a single FII are limited to 10 percent of issued capital. Foreign securities firms may now purchase seats on major Indian stock exchanges, subject to the approval of a regulatory authority.

### Motion Pictures

In the past, restrictions imposed on the motion picture industry were quite burdensome, costing an estimated $80-300 million according to industry estimates. The United States pressed for removal of these restrictions, and received commitments from the Government of India in February 1992 that addressed most industry concerns. Beginning in August 1992, the Indian Government began implementation of its commitments, introducing a number of significant changes in film import policy. The Government of India has carried out its commitments in good faith.

A few minor issues of concern remain. For example, the pre-censorship “quality check” procedures entail fees, and some Indian states apply high entertainment taxes, amounting to 100 percent of the price of admittance in certain cases. More significant, however, are concerns regarding the $6 million annual ceiling applied to remittances by all foreign film producers for balance-of-payments reasons. In addition, India has continued to use a 1956 cabinet resolution to bar any foreign ownership of the media, preventing even the approval of joint ventures.

### Telecommunications

India has taken partial steps towards introducing private investment and competition in the supply of basic telecommunications services. However, licensing delays, caps on the number of licenses per bidder, alleged irregularities, and new restrictions on investors in basic telecommunications services have limited the value of the liberalizing steps taken so far.

The national telecommunications policy announced in 1994 allows private participation in the provision of cellular as well as basic and value-added telephone services. Foreign equity is limited to 49 percent. Private operators will provide services within regional “circles” that correspond roughly to India’s states. Private operators will not be permitted to operate long–distance networks. The policy limits changes in partners for existing joint ventures, reducing the value of existing foreign investment. Delays in implementing licensing for both cellular and basic service as well as the imposition of new rules, limits, and restrictions, particularly for basic services, have slowed progress and created an environment that is likely to inhibit rapid growth in India’s telecommunications infrastructure. Local production requirements remain an important factor in negotiations to establish service operations. The government has still been unable to establish an independent regulatory authority to oversee the implementation of the new policy. An early January cabinet ordinance provided legal sanction, but no action was taken and the authority lapsed with the termination of the March Parliament session. The government has indicated its intention to re-issue the ordinance in the near future.

In the recently concluded WTO negotiations on basic telecommunications services, India made commitments on basic telecom services. It adopted some pro-competitive regulatory principles but did not set a date certain for the end of its economic needs test and did not guarantee resale. India mandated the GSM standard for cellular services and took an MFN exemption for accounting rates.

India has recently been working on legislation that would regulate aspects of the broadcasting industry. The draft broadcasting bill is intended to regulate all television and radio delivery services: terrestrial broadcast television, cable services, and satellite (including direct-to-home, or DTH) services. A recent version of the bill would restrict foreign equity investment, require local incorporation, require local uplink of satellite signals, and require local licensing of programs and channels. The bill is also likely to contain cross-media ownership restrictions, spectrum auctions, and program standards. As such, the bill will have a tremendous impact on the commercial development of India's satellite and cable industries and the ability of foreign companies to access the Indian market, both for delivery of communications services and for program access.

## INVESTMENT BARRIERS

The new industrial policy announced in July 1991 marked a major shift, relaxing or eliminating many restrictions on investment and simplifying the investment approval process. However, many of these changes were instituted by executive orders and have not yet received legislative sanction through parliament. The United States and India still have not negotiated a bilateral investment treaty, although an agreement covering operations of the Overseas Private Investment Corporation (OPIC) remains in force.

### Equity Restrictions

The complicated and burdensome Foreign Exchange Regulation Act has been amended to increase access for foreign investment in India. Automatic approval is granted by the Reserve Bank of India for equity investments of up to 51 percent in 35 industries. The Indian Government has also authorized existing foreign companies to increase equity holdings to 51 percent. All sectors of the Indian economy are now open to foreign investment, except those with security concerns, such as defense, railways and atomic energy. Government approval is still necessary for majority foreign participation in the passenger car sector. Proposals for foreign equity participation exceeding 51 percent and projects considered to be "politically sensitive" are considered by the Foreign Investment Promotion Board (FIPB). Through 1994, the FIPB had approved almost all the requests made for higher foreign ownership and for other "exceptional" cases, but still reserved the right to deny requests for increased equity stakes. However, foreign firms report that increases in foreign equity, especially to 100 percent foreign ownership, have become more difficult to obtain since 1994. Although local content laws have been abolished, foreign equity must cover the foreign exchange requirement for imported capital equipment. Exports are encouraged by basing dividend and profit repatriation on export earnings for the first seven years of production for passenger cars.

**Trade Restrictions**

Though not an investment barrier per se, India's import restrictions and high tariffs have constrained investors from importing competitive inputs.

## ANTICOMPETITIVE PRACTICES

As in any country, private and public firms will engage in a variety of anticompetitive practices to the extent they perceive their practices are in their interest and to the extent they can get away with them. One can find examples of both state-owned and private Indian firms engaging in most types of anticompetitive practices with little or no fear of reaction from government overseers or action from a clogged court system. India suffers from a slow bureaucracy and regulatory bodies that reportedly apply monopoly and fair trade regulations selectively.

These practices are not viewed as major hindrances to the sale of U.S. products and services at this time. U.S. firms are more concerned with addressing such basic issues as market access, corruption, arbitrary or capricious behavior on the part of their partners of government agencies, and procurement discrimination from both public and private institutions.

## OTHER BARRIERS

India has an unpublished policy that favors counter trade. The Indian Minerals and Metals Trading Corporation is the major counter trade body, although the State Trading Corporation also handles a small amount of counter trade. Private companies are encouraged to use counter trade. Global tenders usually include a clause stating that, all other factors being equal, preference will be given to companies willing to agree to counter trade. The exact nature of offsetting exports is unspecified as is the export destination. However, the Indian Government does try to eliminate the use of re-exports in counter trade.

# INDONESIA

In 1996, the U.S. trade deficit with Indonesia was approximately $4.2 billion, an increase of $167 million from the U.S. trade deficit of nearly $4.1 billion in 1995. U.S. merchandise exports to Indonesia were approximately $4.0 billion, an increase of $609 million (18.2 percent) from the level of U.S. exports to Indonesia in 1995. Indonesia was the United States' twenty-eighth largest export market in 1996. U.S. imports from Indonesia were slightly more than $8.2 billion in 1996, an increase of $776 million (10.4 percent) from the level of imports in 1995.

The stock of U.S. foreign direct investment (FDI) in Indonesia in 1995 was about $7.1 billion, an increase of 44.3 percent from the level of U.S. FDI in 1994. U.S. FDI in Indonesia is concentrated largely in the petroleum and manufacturing sectors.

## IMPORT POLICIES

In recent years, Indonesia has liberalized its trade regime and has taken a number of important steps to reduce protection. Since 1996, the Indonesian Government has issued deregulation packages that have reduced overall tariff levels, simplified the tariff structure, removed restrictions, replaced non-tariff barriers with more transparent tariffs, and encouraged foreign and domestic private investment. The most recent of these packages were issued in January and June 1996.

### Tariffs

Indonesia's applied tariff rates range from 5 to 30 percent. A major exception to this range is the 170 percent duty applied to all imported distilled spirits. In May 1995, the Indonesian Government unveiled a comprehensive tariff-reduction package covering roughly two thirds of all traded goods, designed to reduce most tariffs to under 5 percent by 2003. The package stipulated that all tariff items with a rate of 20 percent or less would be reduced to no greater than 5 percent by 2000, and items with rates of more than 20 percent would be reduced to no more than 20 percent by 1998, and 10 percent by 2003. However, some products in the automotive, chemical, metal, and agriculture sectors were excluded. This tariff reform generally extends Indonesia's commitments under the Association of Southeast Asian Nations (ASEAN) Free Trade Area (AFTA) on an MFN basis.

The deregulation packages announced in January and June 1996 advanced some of this tariff reform. The January 1996 package included a consolidation of the tariff code, reducing the total number of tariff lines by 22 percent, to a total of 7,284. This package also lowered tariffs on 428 items, primarily capital equipment, raw materials, and intermediate goods used by export industries. The June package detailed a schedule of tariff reductions on 1,497 items and eliminated import surcharges on a number of goods, although on 80 tariff lines the surcharge amount was folded into the tariff. The June 1996 package also contained immediate tariff reductions on 385 categories of capital goods. With the June package, Indonesia's average unweighted tariff is 12.2 percent, down from nearly 20 percent in 1994. In the Uruguay Round market access negotiations, Indonesia committed to bind 94.6 percent of its tariff items, mostly at ceiling bindings of 40 percent. Exceptions to the 40 percent binding include automobiles, iron, steel, and some chemical products. In accordance with the WTO Agreement on Agriculture, Indonesia has agreed to tariffy its non-tariff barriers on agricultural products. Some of the exceptions to the 40 percent tariff bindings are still heavily protected. For example, when the Indonesian Government lifted the import ban on completely built-up cars in 1993, the ban was replaced with duties of up to 200 percent and import surcharges of 100 percent. The import levies were decreased in a subsequent deregulation package, but tariffs of up to 125 percent are still compounded by import surcharges of up to 75 percent on completely built-up models. Indonesia has committed to remove import surcharges on items bound in the Uruguay Round by the year 2005. The pioneer auto program (see also "Investment Barriers") provides tax- and duty-free treatment for one designated company which uses a unique Indonesian-owned trademark.

All processed goods are subject to a 10 percent value-added tax. A luxury tax ranging from 20 percent to 35 percent is also levied on certain products.

**Quantitative Restrictions**

Many major bulk food commodities, such as wheat, rice, sugar, and soybeans, are subject to non-tariff barriers. The sole importer is the National Logistics Agency (BULOG), a state trading entity. Prices of these commodities are often higher than world market prices; sugar and soybean prices are about 40 percent higher than import parity prices. Rice and wheat flour prices are currently fairly close to world market prices. Other agricultural products are subject to local purchase requirements. Effective April 1, 1996, the government lifted the requirement that 20 percent of all soybean meal used by feedmills be purchased domestically, but a similar restriction remains in place for milk products. Under Uruguay Round commitments, dairy product protection must be phased out by 2003.

**Import Licensing**

The government continues to reduce the number of items subject to import restrictions and special licensing requirements. As a result of the January 1996 reform package, 203 tariff lines still remain subject to restrictive import licenses, down from 261 in 1994 and 1,112 lines in 1990. The January package reduced restrictions on imports of 23 tariff lines, including seven categories of steel products.

For goods that continue to be regulated, the following import license categories exist (number of affected tariff codes provided in parentheses): registered importers -- alcoholic beverages (27), milk products (7), hand tools (6); producing importers -- soy meal (4), salt (2), artificial sweeteners (3), propylene granules (2), iron and steel products (7), engines and pumps (5), tractors (3), knocked-down electronic keyboards (1), and scrap materials (57); approved importers/sole agents -- motor vehicles (47); BULOG -- garlic (2), wheat (3), rice (4), flour (3), soybeans (2), sugar (7); state oil company PERTAMINA -- lube oil (3); clove marketing board -- cloves (2); PT Dahana -- explosives (4). In accordance with Indonesia's WTO commitments, the non-tariff barriers on items not controlled by state trading agencies will be removed over a ten-year period.

**STANDARDS, TESTING, LABELING, AND CERTIFICATION**

In May 1990, the Indonesian Government issued a decree that states that the Department of Health must decide within one year of receipt of an application whether to grant registration for new foreign pharmaceutical products. In practice, registration can take much longer, although companies report the process is slowly improving. Foreign pharmaceutical firms have complained that copied products sometimes become available on the local market before their products are registered.

New maximum pesticide residues (MRLs) for all food commodities were announced in August 1996. These MRLs are largely consistent with the international CODEX standards. However, the government has not yet announced the details on exporter obligations to ensure that the MRLs are not exceeded. The United States has commented on the unworkability of Indonesia's WTO notification that shipment-by-shipment certification would be required.

The Indonesian Government also introduced a new broadly based food law in November 1996 and now is in the process of drafting implementing regulations. Early indications of the plans for these regulations has caused concern among U.S. and other exporters, particularly about how issues such as labeling (including "halal" certifications), product expiration, and advertising will be handled.

**GOVERNMENT PROCUREMENT**

In 1994, the government enacted a new procurement law to regulate government procurement practices and to strengthen the procurement-oversight process. Most large government contracts are financed by bilateral or multilateral donors each of which imposes its own procurement requirements. For large, government-funded projects, international competitive bidding practices must be followed. The government seeks concessional financing, which includes a 3.5 percent interest rate, a 25-year repayment period, and a 7-year grace period.

Some projects do proceed on less concessional terms. Foreign firms bidding on certain government-sponsored construction or procurement projects may be asked to purchase and export the equivalent in selected Indonesian products, but this rarely occurs. Government departments and institutes and state and regional government corporations are expected to utilize domestic goods and services to the maximum extent feasible, but this is not mandatory for foreign-aid-financed goods and services procurement. State-owned enterprises that have offered shares to the public through the stock exchange are exempted from government procurement regulations.

Foreign joint ventures are not eligible to tender for government pharmaceuticals procurement. The requirement that doctors employed in government institutions prescribe only listed generic drugs also prevents the procurement of foreign pharmaceutical products. Foreign companies are generally prohibited from competing in the generic drug market.

**EXPORT SUBSIDIES**

As part of its June 1996 deregulation package, the Indonesian Government extended rediscount facilities for "special exporters" in certain industries, namely textiles and textile products, shoes, electronics, timber and rattan products, and leather goods. Eligible exporters may sell their export letters of credit or other instruments to the central bank, Bank Indonesia (BI), through foreign exchange banks. BI rediscounts the export drafts at SIBOR for special exporters and SIBOR plus one for general exporters. Through a decree issued on December 31, 1996, the Indonesian Government extended this rediscount facility to exporters of crude palm oil and its derivatives and pulp and paper products, as well as to "special suppliers" to the special exporters. BI also announced that it will rediscount in U.S. dollars, in addition to rupiah.

Companies producing 65 percent for export may apply for restitution of import duties paid on inputs that are subsequently re-exported in a finished form. Import-duty exemptions may also be granted for all capital equipment, machinery, and raw materials needed for the initial investment. Companies located in bonded or export-processing zones pay no duty until the portion of production destined for the domestic market is released, at which time duty is owed only on that portion.

## LACK OF INTELLECTUAL PROPERTY PROTECTION

Although Indonesia is making progress in this area, it still provides inadequate intellectual property protection for patents, trademarks, copyrights, trade secrets, industrial designs, and integrated circuit layout designs. Under the "Special 301" provisions of the 1988 Omnibus Trade and Competitiveness Act, the U.S. Trade Representative raised Indonesia to the "priority watch list" in 1996, from the "watch list" where it had been since 1989. The Indonesian Government often responds to U.S. companies that raise specific complaints about pirated goods and trademark abuse, but the court system can be capricious, and punishment of pirates of protected intellectual property is very rare. New patent, trademark, and copyright laws, which were submitted to the Indonesian Parliament in December 1996, are designed to bring Indonesia's laws into compliance with the WTO Agreement on Trade-Related Aspects of Intellectual Property Rights. It is hoped that the laws will address many of the remaining legal deficiencies that pose problems for companies but it is unclear at this time whether they will.

### Patents

Indonesia's first patent law went into effect on August 1, 1991. Several areas of concern remain, including compulsory licensing provisions, a relatively short term of protection (14 years), and a provision allowing the import of certain patented raw materials. In addition, concerns remain regarding Indonesia’s law and regulations on local working requirements and patent cancellation. Finally, the 1989 Indonesia patent law offers no "pipeline" protection. When enacted, the new patent law may address many of these concerns.

### Trademarks

The April 1993 trademark law provides for determination of trademark rights by registration rather than by first use. The law provides for protection for well-known marks but offers no procedures or grounds for owners of well-known marks to clear the trademark register of existing registrations infringing on well-known marks. Currently, the only avenue for challenging existing trademark registrations in Indonesia is to bring a court challenge. Cancellation must be sought within five years from the date of registration. But U.S. companies have found it difficult to protect their well-known marks, since the judicial process can be very time consuming and unreliable. Injunctive relief apparently is not provided, even when a lower court invalidates false trademark registrations. The new trademark law may enhance protection by providing for administrative cancellation of registrations competing with well-known marks.

**Copyrights**

In 1987, Indonesia enacted amendments to its copyright law which generally brought it closer to conformity with international standards for copyright protection. A bilateral copyright agreement between the United States and Indonesia that went into effect in August 1989 extended national treatment to each other's copyrighted works. The Indonesian Government has demonstrated that it wants to stop copyright piracy and that it is willing to work with copyright holders toward this end. There is good enforcement of the ban on pirated audio and video cassettes and textbooks, but efforts to combat software piracy are still at an early stage. In 1996, rampant piracy of video compact disks (VCDs) developed in Indonesia. This is disrupting the market for cinemas, as well as sale and rental markets for videos and laser disks. Enforcement efforts targeting pirated VCDs have just begun.

**New Technologies and Trade Secrets**

Biotechnology and integrated circuit layout designs are not protected under Indonesian intellectual property laws. The government is in the process of preparing laws on trade secrets, industrial designs, and integrated circuits.

Indonesia is a member of the World Intellectual Property Organization (WIPO) and is a party to the substantive provisions of the 1934 London Text of the Paris Convention for the Protection of Industrial Property. Indonesia withdrew from the Berne Convention for the Protection of Literary and Artistic Works in 1959.

## SERVICES BARRIERS

Despite some loosening of restrictions, particularly in the financial sector, services trade barriers to entry continue to exist in many sectors. Foreign accounting firms must operate through technical assistance arrangements with local firms, and citizenship is a requirement for licensing as an accountant. Foreign agents and auditors may act only as consultants and cannot sign audit reports. Foreign law firms cannot establish a practice in Indonesia, and graduation from an Indonesian legal faculty or an institution recognized as the equivalent is a requirement to be admitted to the bar. Foreign consulting engineers can only operate by forming a joint-venture with local partners in Indonesia.

**Distribution**

Distribution in the domestic market remains quite restricted. The June 1996 deregulation package included a first step in opening the distribution sector to majority foreign investment by allowing foreign firms with plants in Indonesia to import and sell complementary goods from affiliated companies. Majority-owned foreign plants may also sell their own products down to the wholesale level. An Indonesian agent or distributor must be employed for wholesale distribution if the foreign company does not manufacture in Indonesia. All retail distribution and sales must be handled by Indonesian firms or individuals.

A number of U.S. companies have expressed concern that existing restrictions increase costs and impede their ability to effectively market and service their products in Indonesia. Analysis has also shown that distribution barriers in Indonesia (which are more stringent than virtually anywhere else in ASEAN) reduce the efficiency of the Indonesian economy and increase prices for Indonesian consumers.

**Financial Services**

*Insurance*: In 1988, Indonesia opened several insurance subsectors to foreign participation. All foreign investment must be made through joint ventures; the minimum Indonesian ownership is 20 percent. Foreign joint ventures in the insurance sector must be capitalized at up to five times the level of domestic operations. In ongoing WTO negotiations in financial services, Indonesia has offered to phase out the differential in this capital requirement over time.

In January 1992, the Indonesian Parliament approved a framework law on insurance. The law stipulates that the insured individual is free to choose his or her insurer except in the case of social insurance programs. The Workers Social Security Act of 1992 states that only state-owned enterprises may carry out the Act's social insurance program.

All insurance in Indonesia must be purchased from either a domestic or joint venture company. The only exceptions are for unavailability of coverage in Indonesia and total foreign ownership of the insured entity.

*Banking*: Any new foreign bank must be a joint venture between an Indonesian bank and a foreign bank from a country that offers reciprocity; the Indonesian partner must supply at least 15 percent of the capital. The capital requirement for new joint venture banks is now about $49 million, twice the requirement for domestic banks. However, the Central Bank has issued a regulation that requires all foreign exchange banks, whether 100 percent domestic or foreign joint ventures, to raise their capital to $66 million by the year 2001.

*Securities*: Foreign securities firms may only enter the Indonesian securities market in a joint venture with an Indonesian firm; the Indonesian partner must have at least 15 percent equity participation. Foreign joint venture firms are also subject to discriminatory capital requirements: to obtain a license as a securities broker/dealer, underwriter/broker/dealer, or investment manager, paid-in capital required for a foreign joint venture is twice that for a local firm.

**Motion Picture Market Access**

Indonesia prohibits foreign film and videotape distributors from establishing branches or subsidiaries. All importation and distribution is restricted by the film law to 100 percent Indonesian-owned companies. Importation and in-country distribution of U.S. films must be handled through a single organization, the European and American Film Importers' Association (AIFEA). Annual import quotas apply to foreign films and videotapes. Duties, taxes, licensing, and other necessary payments also act as barriers to the film industry.

**Telecommunications Services**

In the recently concluded WTO negotiations on basic telecommunications services, Indonesia made commitments for some basic telecom services. These commitments limit the number of operators allowed for certain services, such as the provision of domestic and international satellite and international telex/ telegraph services, which is limited to a duopoly, subject to future government review. PT Telkom has exclusive rights to provide long-distance service. Indonesia also imposes a limit of 35 percent on foreign ownership in the telecommunications sector. Indonesia has adopted the reference paper on regulatory principles.

## INVESTMENT BARRIERS

The Indonesian Government is committed to increasing foreign investment and to reducing burdensome bureaucratic procedures and substantive requirements for foreign investors. The most substantial measure taken in this regard, was in June 1994, when the government dropped initial foreign-equity requirements and sharply reduced divestiture requirements. Indonesian law provides for both 100 percent direct-foreign-investment projects and joint ventures with a minimum Indonesian equity of 5 percent. In addition, the government opened several previously restricted sectors to foreign investment, including harbors, electricity generation, telecommunications, shipping, airlines, railways, roads, and water supply. Some sectors remain restricted or closed to foreign investment and are implemented through a “negative list.” These include retail trade, television and radio broadcasting, aircraft manufacture, logging, and wood processing.

In general, foreign capital investment is primarily governed by the foreign capital investment law, as well as by presidential and ministerial decrees. The Capital Investment Coordinating Board (BKPM) and other relevant agencies must approve all proposed foreign-manufacturing investments in Indonesia. Investment in petroleum extraction, mining, forestry, telecommunications, and banking is covered by specific laws and regulations and handled by relevant technical agencies. Joint ventures with a majority Indonesian share, or in which Indonesians own 45 percent of shares and in which at least 20 percent of total stock is sold through the Indonesian stock market, are treated as domestic companies for certain purposes. This includes the ability to borrow short-term working capital in rupiah from state banks.

Despite the central government's plans to reduce red tape, regional license requirements and other levies can also make investing difficult. Every foreign investment project requires presidential approval. In practice, this means that the approval of investment applications can be delayed for indeterminate periods of time.

In 1996, the Indonesian Government issued a regulation under which tax exemptions may be provided to certain companies. This "tax holiday" was apparently created to attract large investments which Indonesia believes it is losing to other countries in the region with better tax incentives. In October 1996, the government formed an interdepartmental team to develop criteria under which companies could qualify for this exemption, but as of January 1997, the team had not yet completed its work.

### Pioneer Auto Program

In February 1996, Indonesia’s president issued a decree modifying the existing, WTO-inconsistent auto policy to grant tax and tariff exemptions to wholly owned Indonesian companies that use a unique

Indonesian-owned trademark. Only one company, PT Timor Putra Nasional, was designated under the program to be exempt from the payment of any tariffs and luxury taxes if it increased the share of local content in the vehicles it produced over a three-year period. In June 1996, the government conferred further benefits on PT Timor by issuing a decree allowing the company to import from Korea, tax- and duty-free, up to 45,000 units of the “pioneer” car, during the first year of operation. The United States, Japan, and the EU have each requested formal consultations with Indonesia under the WTO Dispute Settlement Understanding to address their concerns with Indonesia’s auto program.

**OTHER BARRIERS**

Indonesia's wood products sector remains heavily protected. Earlier government prohibitions on the export of raw rattan, logs, and timber were replaced with prohibitively high export taxes in May 1992. High export taxes on sawn timber have been in place since 1989. The Indonesian Government's practices in the wood industry have acted as obstacles not only to entry into the Indonesian market but also into the third-country markets such as Japan and Europe where U.S. finished and processed wood products compete with Indonesian products.

Some companies benefit from restrictive licensing regulations that severely inhibit competition in a number of areas in the domestic economy such as cement, fertilizer, and household gas.

# ISRAEL

In 1996, the U.S. trade deficit with Israel was $417 million, an increase of $287 million from the U.S. trade deficit of $130 million in 1995. U.S. merchandise exports to Israel were $6.0 billion, an increase of $416 million (7.4 percent) from the level of U.S. exports to Israel in 1995. Israel was the United States' twenty-second largest export market in 1996. U.S. imports from Israel were $6.4 billion in 1996, an increase of $703 million (12.3 percent) from the level of imports in 1995.

The stock of U.S. foreign direct investment (FDI) into Israel in 1995 was $1.6 billion, an increase of 16.0 percent from the level of U.S. FDI in 1994. U.S. FDI in Israel is concentrated largely in the manufacturing and services sectors.

**The United States-Israel Free Trade Area Agreement**

The United States-Israel Free Trade Area Agreement (FTAA), implemented on September 1, 1985, called for phased tariff reductions culminating in the complete elimination of duties on non-agricultural products effective January 1, 1995. The agreement eliminated most trade barriers between the United States and Israel, leaving the sensitive agricultural sector as the only one where substantial non-tariff barriers and levies remained. With these in mind, on November 4, 1996, the United States and Israel entered into agreement on a five-year program of gradual and steady improvement in agricultural market access.

The FTAA provides for a consultative mechanism between the Parties. The Joint Economic Committee (JEC), created to supervise implementation of the agreement, has proved itself a useful mechanism for addressing bilateral trade issues.

Overall, the FTAA has substantially liberalized trade between the United States and Israel. Problems which remain are pursued in the bilateral FTAA framework, particularly through the JEC.

## IMPORT POLICIES

### Agriculture

Israel maintained extensive restrictions on agricultural imports in 1996. These included tariff rate quotas, licensing restrictions, levies, and outright prohibitions on a range of agricultural goods. Agricultural non-tariff measures (such as tariff-rate quotas (TRQs) and bans) are permitted under the FTAA, although the World Trade Organization (WTO), of which Israel is a member, prohibits the maintenance of non-tariff barriers to agriculture. The official Israeli standards on weights and measures, which, inter alia, exclude packages of sizes in multiples of half pounds, also remain a major barrier to expansion of U.S. food exports. The United States consulted with Israel in 1996 on implementation of the WTO Agreement consistent with the FTAA requirement that all tariffs between the United States and Israel be reduced to zero. As a result of these consultations, Israel and the United States on November 4 executed a five-year agreement on agriculture which covers all agricultural products and provides for increased access during each year of the agreement via TRQs and reductions in tariff levels for a significant number of U.S. goods.

## Israel

Israel has agreed to improve transparency in the calculation of levies, but progress has been uneven to date. The principal transparency problem lies in the calculation of domestic costs of production in Israel as the basis for high import levies imposed on U.S. goods. Lack of consistency in the treatment of imports remains a serious impediment to expansion of agricultural trade. For example, Israel imposes levies on products such as almonds, pasta, pastry, baked goods, and salt water fish.

U.S. meat exports face an especially difficult environment due to legislation passed in December 1994 that bans imports of all non-kosher meat and meat products. The ban is administered in violation of Israel's international obligation to accord national treatment to foreign producers. In addition, the ban undermines a previous commitment by the Israeli Government to allow limited imports of U.S. non-kosher beef. Israeli importers challenged the ban in a petition to the Israeli High Court of Justice, but in December 1996 the court found against the importers.

Exports of kosher, high quality U.S. beef have also been restricted due to the lack of national treatment with respect to kosher certification. Price controls on frozen beef, an important barrier to U.S. kosher beef imports, were abolished by the Government of Israel, effective March 1, 1996. The lifting of price controls should open an important market for U.S. kosher beef once the kosher certification problem is solved.

### TAMA

In 1991, at United States urging, the Government of Israel amended its practice of using a system known as "TAMA" to approximate the local wholesale price of a good by adding estimated profits, insurance, and inland freight to the declared value of an import for purposes of calculating purchase taxes. Coefficients for calculation of the TAMA vary from industry to industry and from product to product, but the effect is to establish higher taxes on imports than are applied to domestic products. Most registered importers now have the option of declaring the actual wholesale value of their products. Although the new arrangement has been in force for over four years, to date not a single importer has opted for the new system. Israeli officials attribute this reluctance to estimation by importers that the former TAMA rates are more advantageous to them, while importers cite a variety of problems with the optional system, including the inability to modify prices once they have been declared. As the new optional TAMA has not operated as anticipated, the United States will continue to seek to eliminate the discriminatory effect of TAMA on U.S. exports.

### Harama

In addition to the TAMA system, Israel maintains a customs practice known as "harama," meaning "uplift." Harama is applied at the pre-duty stage to the c.i.f. value of goods to bring the value of the products to an acceptable level for customs valuation. Israel calculates import value according to the Brussels definition of value (BDV), a method which tolerates uplifts of invoice prices. For purposes of calculating duty and other taxes, the Israeli Customs Service arbitrarily “uplifts” the value of most products which exclusive agents import by 2 to 5 percent (and by 10 percent or more of value of certain products). This has the effect of increasing the rate of indirect taxes which must be paid by U.S. importers, thereby making U.S. products more expensive in the Israeli market. Since 1995, Israel has used only the actual wholesale price for large importers. Israel is not a signatory to the GATT Valuation Code.

### Purchase Taxes

Purchase taxes of 25 to 95 percent are applied on goods ranging from automobiles to some alcoholic beverages and cigarettes. On many other products, including consumer electronics, building inputs, and office equipment, Israel has reduced or eliminated purchase taxes. Where remaining, purchase taxes apply to both local and foreign products. However, where there is no local production of the imported good, the purchase tax becomes a duty-equivalent charge.

### Wharfage and Port Fees

Until 1995, Israel's customs authorities charged importers 1.5 percent of the c.i.f. cost of imports into Israel for use of the ports and stevedores, whereas exporters faced no charges. In effect, imports were subsidizing exports. After several years of pressing Israel to eliminate this GATT-inconsistent discrimination, in 1995 the United States received a commitment from the Government of Israel to equalize port fees for exporters and importers at 0.6 percent, with effect in 1996. As a first step, Israel reduced the import fee to 1.3 percent and imposed an export fee of 0.2 percent. No further progress occurred and 1996 ended without fulfillment of the commitment. Although Israel has indicated it will narrow the gap between the two fees, the United States will continue to pursue full equalization of these fees in 1997.

## STANDARDS, TESTING, LABELING, AND CERTIFICATION

Israel has reduced the burden of some discriminatory measures against importers. In 1990, Israel agreed to harmonize standards treatment, either dropping health and safety standards applied only to imports or making them mandatory for all products. Implementation of this promise has been slow. Enforcement of mandatory standards on domestic producers can be spotty. In some cases (e.g., refrigerators, auto headlights, plywood, carpets, and packaging/labeling for food items), standards are written so that domestic goods meet requirements more easily than imports. Israel is in the process of amending its law on standards which should facilitate entry of some standard U.S. units. Israel has agreed to notify the United States of proposed new, mandatory standards. However, packaging and labeling standards continue to prevent the importation of a broad range of U.S. foods.

The Standards Institution of Israel is proposing a bilateral mutual recognition agreement of laboratory accreditation with the United States that could result in the acceptance of U.S.-developed test data in Israel. The proposed program would eliminate the need for redundant testing of U.S. products in Israel to ensure compliance with mandatory product requirements.

The United States-Israel FTAA permits measures relating to prohibitions on religious grounds, "provided that they are applied in accordance with the principle of national treatment." In certain cases, U.S. businesses have complained that the process for granting kosher certificates in Israel is discriminatory, and serves to protect domestic products. While a few U.S. wine and beef exporters have received kosher certification, others have not. Significant problems remain in these sensitive sectors. The United States is pursuing these complaints directly with the Government of Israel.

## GOVERNMENT PROCUREMENT

## Israel

Israel is a signatory to the WTO Government Procurement Agreement, which provides wide coverage of Israeli Government entities to enable more open and transparent international tendering procedures. While the Israeli Government provides information to the U.S. Government on existing and proposed tenders issued by government entities valued at over $50,000, some U.S. companies report problems in receiving timely notice of Israeli Government tenders. U.S. suppliers are totally excluded from Ministry of Defense food tenders for the army and other security forces. Complex technical specifications and kashrut requirements discourage foreign participation.

The Government of Israel frequently seeks offsets (subcontracts to Israeli firms) of up to 35 percent of total contract value for purchases by ministries, state-owned enterprises, and municipal authorities. Failure to enter or fulfill such industrial cooperation agreements (investment, co-development, co-production, subcontracting, purchase from Israeli industry) may disadvantage a foreign company in government awards. Although Israel pledged in the FTAA to relax offset requests on civilian purchases, U.S. firms still encounter requests to enter into offset arrangements. Israeli Government agencies and state-owned corporations not covered by the WTO Government Procurement Agreement follow a "buy national" policy to promote national manufacturers.

Recent legislation codified and strengthened a 15-percent cost preference given domestic suppliers in many Israeli public procurement purchases, although the legislation also recognized the primacy of Israel's bilateral and multilateral procurement commitments. For domestic suppliers located in priority development areas, this preference can reach as high as 30 percent.

### LACK OF INTELLECTUAL PROPERTY PROTECTION

Cable television, video, and software piracy is common in Israel. Israel currently has an antiquated copyright law which, combined with weak enforcement, has led to piracy in these industries. A new draft copyright law with updated requirements is under review. The proposed legislation includes enhanced rights of distribution in connection with rental rights and imports of copyrighted materials. Rental rights would cover all protected works, including sound recordings, cinematographic works, and computer programs. Protection for software has been improved, and the two major movie distribution chains generally comply with copyright requirements. A cable broadcast law is also under consideration. Israel is a member of the International Center for the Settlement of Investment Disputes (ICSID) and the New York Convention of 1958 on the Recognition and Enforcement of Foreign Arbitral Awards.

Current Israeli patent law contains overly broad licensing provisions for dependent patents and for patents that have not been “worked” in Israel. A draft revision of Israel's patent law, now under review, would upgrade patent protection and eliminate compulsory licensing. In addition, revised laws are under consideration for the protection of industrial designs, trademarks, and integrated circuits.

The Government of Israel is also considering an amendment to the patent law which would allow non-patent holders to manufacture patented pharmaceutical products prior to the expiration of patent rights in order to submit data to foreign and Israeli health authorities to gain marketing approval. The U.S. Government has been engaged in discussions with the Israeli Government to ensure that whatever system is adopted is consistent with the Agreement on Trade-Related Aspects of Intellectual Property Rights (TRIPs).

Israel is a member of the Paris Convention for the Protection of Industrial Property, the Universal Copyright Convention, and the Berne Convention for the Protection of Literary and Artistic Works. In addition, as a signatory of the WTO Agreements, including the TRIPs Agreement, Israel is in the process of making all revisions necessary to meet TRIPs requirements.

## SERVICES BARRIERS

The Government of Israel is reviewing plans for the sale of its interests in the country's major banks. To limit the dominant role of the banks in the economy, the Knesset approved legislation in early 1996 mandating that banks reduce their ownership of nonfinancial companies to a maximum 20 percent by 1999. The collective value of such nonfinancial holdings will be limited to 15 percent of the banks' capital.

Other structural reforms in progress will increase competition in services now provided by the public sector. Other measures to increase competition in domestic telecommunications have been approved for implementation by 1998. In 1996, a U.S.-based company was awarded the first contract for the construction of a privately-operated independent electric power generating plant. In the future, up to 10 percent of Israel's electricity will be generated by such independent producers; another 10 percent may be imported. Israel is also designing its first natural gas importation and distribution system and is considering a variety of mechanisms to ensure competition in this sector.

### Basic Telecommunication Services

In the recently concluded WTO negotiations on basic telecommunications services, Israel made commitments on all basic telecom services, with phase-in of most commitments as of January 1, 2002. It adopted the reference paper on regulatory commitments.

In the past year, two telecommunications consortia, each including a U.S. firm, have won bids to provide international telephone service in competition with the existing public company, and a third cellular phone service will be licensed in 1997.

## INVESTMENT BARRIERS

The Israeli Government actively solicits foreign private investment, including joint ventures, especially in industries involving exports, tourism, and high technology. Foreign firms are accorded national treatment in terms of taxation and labor relations, and are eligible for incentives for designated "approved" investments in priority development zones. There are generally no ownership restrictions, but the foreign entity must be registered in Israel. Profits, dividends, and rents can generally be repatriated without difficulty through a licensed bank. About 700 U.S. companies have subsidiaries or offices in Israel and some 170 Israeli companies have subsidiaries in the United States. Investment in regulated sectors, including banking, insurance, and defense industries, requires prior government approval.

# JAPAN

In 1996, the U.S. trade deficit with Japan was $47.7 billion, a decrease of $11.6 billion from the U.S. trade deficit of $59.3 billion in 1995. U.S. merchandise exports to Japan were $67.5 billion, an increase of $3.2 billion (5.0 percent) from the level of U.S. exports to Japan in 1995. Japan was the United States' second largest export market in 1996. U.S. imports from Japan were $115.2 billion in 1996, a decrease of $8.4 billion (6.8 percent) from the level of imports in 1995.

The stock of U.S. foreign direct investment (FDI) in Japan in 1995 was $39.2 billion, an increase of 6.9 percent from the level of U.S. FDI in 1994. U.S. FDI in Japan is concentrated largely in the manufacturing, wholesale, and finance sectors.

**Overview**

The Administration continued in 1996 to place the elimination of trade barriers and improved market access at the center of the U.S.-Japan economic relationship. Although trade issues did not dominate media perceptions of bilateral relations in 1996 as they have in years past, the Administration continued, with considerable success, to use complementary policy approaches to reduce Japanese market access barriers. By the end of 1996, agreements had been reached and disputes had been resolved in many important sectors which will offer significantly expanded opportunities for American businesses in Japan. The United States also clearly indicated those areas where market access problems warrant further attention, and continued to monitor closely the implementation of past agreements. The Administration will continue to employ, as appropriate, a mix of bilateral negotiations, multilateral negotiations, and the application of relevant U.S. trade laws to pursue aggressively the elimination of remaining or emerging trade barriers in Japan.

In February 1996, the United States brought the first intellectual property case in the World Trade Organization (WTO) by initiating proceedings against Japan for its failure to implement retroactive copyright obligations for pre-existing sound recordings under the new Agreement on Trade-Related Aspects of Intellectual Property Rights (TRIPs). The Japanese Diet passed legislation in December 1996 providing the required protection. As a result, in January 1997 the United States withdrew its case against Japan at the WTO.

In March 1996, the United States reached a new agreement with Japan on all-cargo aviation services which will create new opportunities in the cargo sector by introducing additional flights, additional carriers, and greater operational flexibility.

In April 1996, USTR placed Japan on the "Priority Watch List" under the "Special 301" provisions of the 1988 Trade Act, for insufficient protection of intellectual property rights. Japan was cited for patent practices, protection of trademarks and trade secrets, end-use software piracy, and the sound recordings dispute, which were subject to WTO consultations.

In April 1996, USTR placed Japan on the Title VII "Watch List" for construction.

## Japan

In June 1996, USTR invoked the WTO dispute settlement provisions to seek elimination of Government of Japan practices with respect to the sale and distribution of consumer photographic materials in Japan which appear to contravene Japan's obligations under the General Agreement on Tariffs and Trade. The WTO established a panel in December 1996 to decide the dispute. The panel's decision is anticipated in October 1997.

In July 1996, a WTO panel established under the Dispute Settlement Understanding ruled in favor of the United States, Canada, and the European Union (EU) in finding that Japan's tax system for distilled spirits discriminates against imported products. This ruling was upheld on appeal, and the reports of the panel and the WTO Appellate Body were adopted on November 1, 1996. On December 24, the United States requested arbitration of the reasonable period of time to be given Japan to implement fully the rulings when it became apparent that Japan intended to take five years to bring the offending measures into compliance. In his decision of February 14, 1997, the arbitrator ruled that Japan should be given no more than 15 months to comply fully.

In July 1996, USTR removed the wood products sector from the "Super 301 Watch List" after the Government of Japan made commitments in key technical areas and for reporting future market trends so U.S. market penetration can be more fully evaluated. In particular the Japanese Government agreed to approve construction of 3-story apartments in suburban areas, recognize the U.S. grading system as satisfying Japan's quality standards, move toward a performance-based system and away from its prescriptive system, and provide technical data to promote U.S. companies' understanding of the Japanese market.

In August 1996, the United States reached a new semiconductor arrangement with Japan, succeeding the 1991 arrangement. The new arrangement seeks to preserve the gains U.S. and other foreign semiconductor firms have made in penetrating the Japanese market and to continue cooperative activities between suppliers and users in key market segments, and will involve the United States, Japan, and other semiconductor producing nations in monitoring market access and policy issues in this important sector.

In October 1996, USTR, in its annual "Super 301" review, identified Japanese practices in the insurance, telecommunications, and paper/paper products areas as "bilateral priorities that may warrant identification as priority foreign country practices in the future." USTR also identified the implementation of the bilateral auto/auto parts agreement with Japan as an area where the Administration was pursuing a policy of "strategic enforcement."

In November 1996, the Federal Maritime Commission (FMC) voted to propose sanctions against Japanese ocean freight operators in response to restrictions and requirements on the use of Japanese ports, and requested comments on the proposed sanctions within 60 days. On February 26, 1997, the FMC announced sanctions of $100,000 per entry on ships owned and operated by three Japanese companies, effective April 14, 1997, if the issue is not resolved prior to that date.

In December 1996, the United States and Japan reached agreement on a package of "supplementary measures" to augment the 1994 agreement on insurance. These measures will lead to substantial deregulation of the primary sectors of the Japanese insurance market, especially auto and fire insurance, and will ensure that there will be no radical change in the third sector markets important to foreign insurers until 2001.

**The Framework**

When President Clinton took office in 1993, he pledged to take a new, results-oriented approach to trade with Japan. Even though the U.S. Government had previously reached bilateral and multilateral agreements with Japan, long term access to Japan's market for foreign goods and services remained elusive. While Japan has reduced its formal tariff rates on imports to very low levels, it has maintained non-tariff barriers -- such as non-transparency, discriminatory standards, and exclusionary business practices -- and a business environment that protects domestic companies and restricts the free flow of competitive foreign goods into the Japanese market.

Determined to crack the structural obstacles to market access in Japan, President Clinton and then-Prime Minister Miyazawa signed in July 1993 the U.S.-Japan Framework for a New Economic Partnership (the Framework), a new vehicle for addressing the myriad of barriers that foreign companies encounter when doing business in Japan. Under the Framework, the Administration has sought agreements with distinctly defined commitments from Japan that can be measured using objective criteria, both quantitative and qualitative.

This approach, which assesses the implementation and success of agreements through "tangible progress," has been successful in creating and expanding opportunities for imported products in the Japanese market. Under the Framework, Japan committed to address major barriers in five sectoral and structural "baskets":

*Government Procurement*: Japan committed to establish and implement measures significantly expanding Japanese Government procurement of competitive foreign goods and services. Under this basket, the United States and Japan reached agreements in the telecommunications and medical technology sectors in 1994.

*Japanese Regulatory Reform and Competitiveness*: To reduce the pervasive regulations that both burden foreign and domestic firms and minimize competitiveness, Japan pledged to reform its regulatory regime. The two countries negotiated the financial services and insurance agreements under this basket, and the Deregulation and Competition Policy Working Group is addressing key structural issues within the context of this basket, including deregulation, administrative reform, and competition policy.

*Other Major Sectors*: In 1995, the United States and Japan completed negotiations in the automotive sector -- the key sector under this basket -- and reached an agreement which is beginning to substantially open Japan's market to foreign autos and auto parts.

*Economic Harmonization*: To address the outstanding structural barriers to Japan's marketplace, especially Japan's low receptivity to foreign direct investment, negotiations under this basket resulted in the conclusion of a bilateral arrangement aimed at increasing foreign direct investment in Japan. In addition, the United States and Japan reached two intellectual property agreements in 1994 under this basket.

*Implementation of Existing Arrangements and Measures*: Under this basket, all existing bilateral agreements are being monitored -- and in some cases have been renegotiated, as in the case of flat glass -- to ensure full implementation and market access for U.S. companies. Ongoing monitoring and enforcement of existing arrangements and measures are essential to achieving the tangible results in market access that this Administration seeks with Japan.

In addition to these sectoral and structural initiatives, Japan also committed under the Framework to address the fundamental economic asymmetries that have afflicted Japan's international economic relations. In particular, Japan agreed to work toward reducing its current account surplus as a percentage of its GDP. While in 1992 Japan's current account surplus was 3.2 percent of GDP, by 1996 it had dropped to around 1.5 percent ($66 billion) despite minimal economic growth in Japan over the past three years. Additionally, in 1996, U.S. exports to Japan reached an historic high of $67.5 billion, nearly 26 percent greater than in 1994 and 41 percent more than in 1992. More specifically, in those sectors covered by recent trade agreements with Japan, exports have grown by more than 85 percent since President Clinton took office, and 3 times as fast as other U.S. exports to Japan.

## IMPORT POLICIES

In the Uruguay Round, Japan agreed to "zero for zero" tariff eliminations on pharmaceuticals, paper and printed products, beer, whisky, and brandy, agricultural equipment, medical equipment, construction equipment, furniture, steel, and toys. These tariff concessions are being phased in over six years, and will be complete on January 2, 2000. Japan also adopted the chemical harmonization initiative. Japan cut tariffs on copper and aluminum, with the top rate reduced from 12.8 percent to 7.5 percent. At the Singapore WTO Ministerial meeting in December 1996, Japan committed, as part of the Information Technology Agreement (ITA), to eliminate remaining tariffs on computers and telecommunications goods, services, components, and equipment. Japan's remaining high tariffs affect primarily agricultural and food products, including white distilled spirits, corn grits, wood and wood products, and leather and leather products.

### General Food Products

In the Uruguay Round, Japan agreed to bind tariffs on all agricultural products and to reduce bound rates by an average of 36 percent during the six-year period 1995-2000, with a minimum 15 percent reduction on each tariff line. Japan also agreed to gradually reduce tariffs on imports of beef, pork, fresh oranges, cheese, confectionery, vegetable oils, and various other items. Even after the Uruguay Round cuts, however, imports of many intermediate and consumer-oriented food and beverage products will still face relatively high tariffs, including: beef, fresh oranges, fresh apples, citrus and other fruit juices, corn grits, confectionery, snack foods, ice cream, and processed tomato products.

Japan also agreed in the Uruguay Round to convert all import bans and quotas (except for rice) to tariffs, which would be reduced between 1995 and 2000. Strict import quotas for wheat, barley, starches, peanuts, and dairy products were replaced by tariff rate quotas. However, Japan retains state trading authority and price stabilization schemes.

The United States is closely monitoring Japan's implementation of the Uruguay Round measures for agriculture, particularly rice imports (and exports of imported rice) and safeguard measures for beef and pork. Bilateral efforts have also focused on countering any technical or food safety-related measures that threaten to impede imports, including product standards and labeling issues.

**Leather and Leather Products**

In March 1991, Japan liberalized treatment of footwear imports, setting a footwear quota of 2.4 million pairs per year. In 1994, Japan raised the quota to 8.34 million pairs. The Japanese Fiscal Year (JFY, April 1 - March 30) 1996 quota was roughly 12 million pairs. MITI will not confirm whether it will continue to expand the quota in the future, but U.S. industry expects continued annual quota increases of about 20 percent. The U.S. Government and U.S. leather and leather footwear industries have been pushing for elimination or further liberalization of the quotas.

In the Uruguay Round, Japan undertook to reduce tariffs over an eight-year period: on under-quota leather footwear (from 27 percent to 21.6 percent); on the tariff category that includes crust leather (from 20 percent to 13 percent); and on other leather categories (from 20 percent to 16 percent). Footwear imported above tariff rate quota levels face a tariff of 52.3 percent or 4,675 yen, whichever is higher. By 2002, this will drop to 30 percent or 4,300 yen, whichever is higher. In principle, the over-quota tariff rate was reduced 50 percent from the 1994 rate, and the yen minimum alternative rate will be reduced by 10 percent over the eight-year phase-in period. In practice, the yen minimum alternative rate is applied in a manner which negates the effect of the significant over-quota tariff rate reduction.

As a result of the quota, high quality and high fashion manufacturers in France and Italy have taken a large percentage of Japan's leather shoe import market. The American share of the leather shoe market has fallen. Leather shoe manufacturing continues to decline slowly in Japan, while imports of leather uppers grew by 30 percent to 18.3 million pairs in JFY 95. Finally, it should be noted that 48 million pairs of athletic shoes were imported into Japan in 1995. Most of these were American-branded products manufactured in Asia.

**Wood Products**

Japan is the United States' largest export market for wood products. U.S. exports to Japan totaled $3.31 billion in calendar year 1996, up just over one percent from the level in 1995. However, raw logs still constitute more than half of this trade flow.

The 1990 U.S.-Japan Measures Affecting Wood Products addresses: tariff reduction, tariff reclassification, consistency of subsidies with international agreements, improvements in product standards and JAS certification procedures, and liberalization of building codes/standards -- particularly for regulations that are not performance-based.

Japan was placed on the Super 301 "Watch List" in 1994 and 1995 for its failure to fully implement certain measures and the spirit of the 1990 agreement. Discussions over the past two years, under the auspices of the U.S.-Japan Wood Products subcommittee, culminated in an exchange of letters in July 1996. In this exchange of letters, Japan agreed to specific steps which will improve access for U.S. value-added products including oriented strand board, structural glue laminated lumber, and veneer lumber. Agreements were reached on: elements of an annual data exchange to assess effectiveness of the agreement, import procedures for tariff classification of laminated lumber products, and future expert-level exchanges on codes/standards issues. In recognition of this progress and related deregulatory steps, USTR removed Japan's wood products sector from the Super 301 “watch list” in 1996.

In February 1996, Prime Minister Hashimoto announced, during a meeting with President Clinton, that Japan would accelerate efforts to reduce housing costs by one-third by the year 2000 through increased importation of housing products and reform of regulatory obstacles to woodframe housing construction. This announcement has aided U.S. efforts to improve export opportunities for wood products over the past year. Subsequent approvals by the Ministry of Construction of U.S. softwood lumber grademarks for 2x4 construction in April 1996 and January 1997 are among a series of promising deregulatory measures. Further efforts are underway to gain recognition of other U.S. wood products, including structural panel and finger-jointed lumber.

U.S. agencies will monitor closely Japan’s ongoing efforts to make their standards performance based and to ensure that they do not discriminate against imported wood products. This includes efforts to allow multi-story wood frame construction in semi-fire protection zones. A dialogue will continue under the Wood Products Subcommittee and through informal expert-level contacts.

Tariffs, although slated for further reduction as part of the Uruguay Round, remain an impediment to expansion of U.S. value-added exports.

**Fresh Horticultural Products**

Japan continues to restrict, for phytosanitary reasons, the entry of numerous U.S. fresh fruits, vegetables and other horticultural products. Some U.S. products, like tomatoes, potatoes, and plums, are banned outright due to Japanese concerns about entry of pests or plant diseases. Elimination of the prohibition on imports of tomatoes has been discussed intensively over the past year, with approval of 25 U.S. tomato varieties expected in mid-1997.

Phytosanitary protocols for several other horticultural products, such as apples, cherries, and nectarines, include only specific limited product varieties, excluding other almost identical varieties. This has occurred despite presentation of scientific evidence that effective treatments against pests of one variety can be extended easily to new varieties. Under the current system, new varieties must undergo costly and time-consuming additional scientific research and testing to be allowed entry under a phytosanitary protocol. U.S. experts contend these requirements are unfounded scientifically and are a barrier to trade. Bilateral technical discussions continue on approval of new apple, cherry, and nectarine varieties.

The United States also is seeking systemic reform, including elimination of Japan's variety-by-variety approval policy. Under the current policy, Japan requires that an imported product be treated in accordance with an approved phytosanitary treatment; it further requires inspection at the exporting country production site by Japanese Government inspectors, even if the Ministry of Agriculture, Forestry and Fisheries cannot provide enough inspectors to accomplish the job expeditiously and at reasonable cost. In annual bilateral discussions and under the auspices of Japan's own deregulation initiative, the U.S. Government has requested that Japan allow U.S. authorities to perform the work under Japanese Government supervision. Significant progress has been made on these requests over the past year, particularly for the cherry program. The issue will continue to be discussed, however, as additional liberalization is warranted.

Another area of major, ongoing concern is the lack of transparency in Japan's fumigation policy. Japanese plant quarantine regulations require fumigation of imported fresh horticultural products if, upon import inspection, a shipment is found to be infested with live insects, regardless of whether or not such pests are already present in Japan. In addition to the added expense and delays in import clearance, this requirement has proven particularly detrimental for maintaining the quality of delicate fresh produce such as leafy vegetables, strawberries, some citrus, and avocados after import.

In 1996, largely in response to U.S. and foreign pressure for deregulation, the Government of Japan announced its intention to amend the Plant Quarantine Law effective April 1, 1997, to exclude a number of pests (both insects and plant diseases) from plant quarantine authority. While this appears to be an important positive step, the list of non-quarantine pests proposed does not include various commonplace pests of interest for U.S. horticultural product exports. The U.S. Government will continue to press the Government of Japan in all available technical and deregulatory fora to develop a comprehensive list of non-quarantine pests and transparent inspection procedures in an effort to reduce excessive fumigation.

**Low-Malt Beer**

Since 1994, two major Japanese brewers have been marketing low-malt beers called “happoshu” or "sparkling brew" in Japan. One purpose for producing this beer was to take advantage of a lower domestic liquor tax (excise tax). The excise tax on beer in Japan is divided into three categories according to malt content, with lower rates applying to beverages with lower malt contents. Under the 1994 Liquor Tax Law "beer" was categorized as a beverage with malt content of 67 percent or more, and sparkling brew was categorized as “miscellaneous liquor,” with a lower excise tax than regular beer. Some imported malt beverages (beer) were categorized in the same, lower-tax sparkling brew category. However, for imports, this favorable tax treatment is negated by a tariff rate for sparkling brew that is nearly seven times higher than the duty charged for regular beer.

This discriminatory tariff treatment is compounded by the lack of transparency in determining classification criteria for sparkling brews. Unlike the excise tax categorization, which is determined by a set percentage of malt content, the criteria applied to distinguish between beer and sparkling brews is not clearly established.

In October 1996, the Ministry of Finance redefined the categories of malt beverages to reduce the significant tax advantage enjoyed by the sparkling brews. As a result, some U.S. exporters of lower-malt content beer had to reformulate their products to retain the lower tax treatment and remain competitive with domestic sparkling brews. However, reformulation to the lower malt content (49 percent or less) apparently results in a customs classification as "other fermented beverages," with approximately seven times higher duty than beer.

The net effect has been a near-halt in U.S. export sales of low-malt beer in Japan. The prohibitive tariff rate levied on imports has also given the two major Japanese companies producing sparkling brews a major advantage in a growing product category for which retail sales total nearly $100 million.

**Fish Products**

Japan maintains seven global and two bilateral import quotas on fish products. U.S. fishery exports to Japan subject to import quotas include: pollock surimi, pollock roe, herring, cod, mackerel, whiting, squid, and several other fish products. These quota-controlled imports into Japan account for hundreds of millions of dollars in sales annually, approximately one-fourth of total fishery exports to Japan. In the past several years, there has been a downward trend in sales of these import-quota controlled items, largely due to the economic recession in Japan.

In the Uruguay Round, Japan agreed to cut tariffs by about one-third on a number of fishery items, but avoided commitments to modify or eliminate import quotas. (Because the Uruguay Round agricultural negotiations did not require commitments on fish, Japan has no obligation to convert non-tariff measures to tariff rate quotas.) While Japan has taken steps to improve its administration of the import quotas, especially the application procedures, the lack of transparency still causes concern for U.S. exporters. At the January 1996 session of the annual fishery trade consultations, the United States and Japan agreed to continue formal discussions to identify solutions to these import quota issues at the 1997 session. The two governments also are exchanging papers on these issues.

**Distilled Spirits**

In July 1996, a WTO panel ruled against Japan in the dispute settlement proceeding initiated in 1995 by the United States, Canada, and the European Union regarding the discriminatory effects of Japan's excise tax system on imported distilled spirits. In October 1996, the WTO Appellate Body upheld the panel’s ruling and reaffirmed that the Government of Japan's unequal taxation of domestic and imported distilled spirits is discriminatory and violates Japan’s GATT obligations. The ruling requires that Japan bring its liquor tax laws into conformity with GATT standards. Japan's proposed solution maintains a three percent difference between domestic shochu and imported spirits and calls for a 23-month and five year implementation period for high grade and low grade shochu, respectively. The United States requested WTO arbitration, and the arbitrator ruled that Japan has 15 months to come into full WTO compliance. The United States fully expects Japan to implement tax law changes in 1997 which will bring it into full compliance with the WTO DSB ruling.

**Racehorses**

The Japan Racing Association (JRA) restricts participation of foreign horses in Japanese races. In addition, only Japanese residents may register with the JRA as racehorse owners in Japan. The United States and other interested countries have pressed Japan to liberalize access for foreign horses, with modest success. By 1996, seven JRA races have been opened to foreign racehorses with race experience outside Japan. The JRA has announced that it will increase this number to twelve by 1999. The United States will continue to press Japan for further liberalization.

**Rice**

Under the WTO Agriculture Agreement, Japan committed to provide market access concessions for imported rice. Specifically, Japan agreed to increase the amount of imported rice to eight percent of domestic consumption by JFY 2000. For JFY 1996, Japan agreed to import 454,800 tons (milled rice basis). Within this import commitment, Japan also has established a simultaneous-buy-sell (SBS) system for some imported rice, allowing importers and exporters to set quality and other requirements, subject to Food Agency approval.

During JFY 1996, Japan imported 465,650 tons of rice (actual tonnage basis). Of this amount, 215,134 tons (46.2 percent) originated in the United States. Of the total, 201,000 tons of rice entered under the food agency's "ordinary import" system (U.S. share: 45.3 percent), and 14,134 tons were imported under the SBS system (U.S. share: 64.2 percent). Japan also imported rice flour for use in textile dyeing and bumped rice for the manufacture of breakfast cereal.

The U.S. Government protested strongly when Japan decided to imported rice for food donations because this policy prevents imported rice from reaching Japanese consumers, contrary to the spirit of Japan’s WTO market access commitments.

**Import Clearance Procedures**

Despite progress in recent years, Japanese import clearance procedures remain slow and cumbersome by industrial country standards, raising costs for U.S. cargo companies and Japanese consumers. The U.S. and Japanese Governments have been working to improve import clearance, first through the Working Group on Import Procedures set up under the Structural Impediments Initiative, and subsequently in the Deregulation and Competition Policy Working Group established under the U.S.-Japan Framework and regular bilateral consultations between customs agencies.

These discussions have helped promote changes in Japan's import processing procedures, including the elimination of the requirement to process all air cargo through a separate cargo holding area (Baraki-cargo area) 30 kilometers from Narita airport, the institution of a computerized customs processing system, integration of that computer system with inspection authorities from the Ministry of Health and Welfare and the Ministry of Agriculture, Forestries and Fisheries, and establishment of a pre-arrival approval customs clearance procedure.

As a result of these changes, the cargo directly cleared at the Narita Airport has increased from 51 percent to 76 percent and customs clearance is less time-consuming. However, overall import clearance time has improved only slightly. This is in part due to slow processing by inspection authorities other than Customs; the U.S. Government hopes this problem will be addressed when the computer connection between Customs and other inspection agencies is completed in April 1997. Other remaining problems include high user fees at the Narita and Kansai Airports, non-uniform application of customs regulations and rulings throughout Japan, and the need for smoother implementation of the pre-arrival clearance system to encourage importers to use this procedure on more routine basis. The Japanese Government should take all possible steps to realize its goal of reducing processing time to less than 24 hours.

**STANDARDS, TESTING, LABELING, AND CERTIFICATION**

Certification problems hamper market access in Japan. In some cases, advances in technology make Japanese standards outdated and restrictive. Japanese industry often supports safety and other standards that are unique and restrict competition. In some areas, however, the Government of Japan has simplified, harmonized, and eliminated restrictive standards to follow international practices.

The principal organization that adjudicates standards and certification disputes between foreign companies and the Government of Japan is the Office of the Trade and Investment Ombudsman (OTO). In 1994, the OTO was transferred to the Prime Minister's office and authorized to recommend actions to appropriate ministries. However, this transfer has not resulted in greater success for U.S. firms taking cases to the OTO, because it has no enforcement authority and its recommendations do not have the force of law.

For example, in October 1996, the U.S. Government submitted a request to the OTO urging further deregulation of nutritional food supplements and vitamins, in line with the OTO's March 1996 directive supporting significant deregulation of these products. The OTO's market access ombudsman council recommended, among other things, that products that are normally distributed and marketed overseas as foods -- such as nutritional supplements, vitamins, and herbs -- should be treated as foods, and not as pharmaceuticals. However, the Ministry of Health and Welfare has been reluctant to adopt the OTO's recommendations. The Ministry is currently considering some incremental deregulation measures, but appears inclined to maintain its excessive controls on the manufacturing, packaging, and sale of vitamins and food supplements. The U.S. Government also continues to press for meaningful deregulatory steps through the U.S.-Japan Deregulation and Competition Policy Working Group and other bilateral channels.

**Pharmaceuticals/Medical Devices**

The Administration continues to pursue improved medical and pharmaceutical product market access in the context of the Market-Oriented Sector-Selective (MOSS) Medical Equipment and Pharmaceutical talks. One issue of regular discussion is the reimbursement process and schedule under Japan's national health insurance system for U.S. medical equipment and pharmaceutical products. Reimbursement prices in Japan often do not adequately, or in a timely fashion, compensate firms for the costs inherent in developing and marketing new, innovative equipment and pharmaceutical products in Japan. The United States is monitoring this issue through consultations with industry and through the MOSS.

At the February 1997 MOSS meeting, Japan announced a possible reduction of the “R zone” for medical devices from the current 15 percent. If implemented, this action will make it even more difficult for U.S. firms to sell their products in Japan at reasonable prices. At present, the U.S. Government is working to resolve this issue. In addition, the U.S. Government is concerned with a variety of other obstacles facing U.S. pharmaceutical and medical equipment manufacturers when they seek to market their products in Japan. These range from a slow and sometimes non-transparent approval process to regulations that prevent certain products from being sold in hard gelatin capsules in Japan. In addition, the U.S.

Government advocates greater industry access to policy-making councils from which they are presently excluded.

The U.S. medical products industries continue to support Japan's deregulation initiatives. For the third year in a row, these industries, and the U.S. Government, provided the Government of Japan with a list of regulations that inhibit the ability of health care firms to do business in Japan and raise costs to the end-user and the health care system. Several of these issues also have been raised in the MOSS process.

**Food Additives**

Processed food imports into Japan often are hampered by Japanese "use" standards for additives that are generally recognized as safe in every other part of the world. As part of an ongoing general revision of the Food Sanitation Law, Japan is conforming its positive list for food additives to the WTO's Sanitary and Phyto-Sanitary (SPS) measures, but its regulation of chemically-synthesized food additives remains unusually strict. The U.S. Government encourages U.S. firms and industry associations to file applications with Japan's Ministry of Health and Welfare to initiate approval processes for new food additive approvals. The subject has also been taken up in bilateral talks on deregulation.

**Pesticide Residues**

The Ministry of Health and Welfare continues to establish new residue standards for pesticides, including full notification to the WTO and provision for comment and review. The Ministry is providing full notification to the WTO and allowing for comment and review. The U.S. Government is providing scientific data pertaining to relevant U.S. and international standards for the chemicals concerned.

Japan is currently in the process of adding residue standards for an additional eleven chemicals to its pesticide registration list. Once these chemicals are subjected to the WTO notification/comment procedures, they are expected to be finalized and become effective in Japan later in 1997.

While the Government of Japan has made progress in establishing residue standards in line with internationally recognized tolerance levels, further government action remains necessary to help counter misleading information regarding the safety of imported food and agricultural products (see the fresh horticultural products entry in the “Import Policies” section of this chapter).

**GOVERNMENT PROCUREMENT**

The United States has negotiated bilateral agreements with Japan to help improve foreign firms' access to six Japanese public sector markets; computers, telecommunications equipment and services, medical technologies products and services, satellites, public works, and supercomputers. Structural problems and an entrenched legacy of restrictive "domestic" purchasing practices, especially at the local level, still hamper foreign firms from gaining market access.

The lack of uniform, centralized procurement processes and the difficulty in establishing long-term relationships with Japanese Government procurement officials hurt foreign firms in Japan. Japanese law, cabinet orders, and MOF ministerial ordinances specify general government contracting procedures, but many details are governed by ministry and agency regulations, including administrative guidance (informal internal notices). The Government of Japan is developing a standardized bid format for all ministries.

The WTO Government Procurement Agreement (GPA) took effect January 1, 1996. Japan extended coverage bilaterally to central government entities, certain subcentral governments (prefectures and 12 designated cities) and 84 government related entities. Until the GPA entered into effect, prefectures and other local governments were not subject to international procurement disciplines. As a result, complying with the GPA has been difficult for some sub-central governments because of their unfamiliarity with the new obligations. In addition, local governments have long posed challenges to foreign suppliers, in part because their own procurement procedures often limit access to information on planned projects and hinder foreign firms' participation in early development of systems. For example, in the first half of 1996, the U.S. Embassy in Tokyo observed that certain municipal and other non-central government authorities were engaging in procurement practices for helicopters that raised concerns with Japan's compliance with its obligations under the GPA. Dialogue with the central government and the local entities themselves brought about a number of corrective actions, including establishment by local governments of GPA-mandated grievance procedures. Monitoring will be necessary to ensure compliance with the GPA and in particular that public sector procurement is not shielded from open bidding by inappropriate use of GATT and bilateral agreement exceptions. In addition, under the 1994 Framework Procurement Agreements, the Japanese Government has agreed to urge local and prefectural governments to adopt more transparent procedures and to give full consideration to foreign suppliers.

Because Japan did not extend coverage of its National Space Development Agency and its electrical power generation entities to the United States, the United States did not extend coverage of NASA and U.S. Government-owned power generation entities with respect to Japan. Quasi-governmental entities and third sector projects (Japanese Government and private sector joint ventures) are not covered by Japan's WTO Procurement Code commitments or Action Plans, but they increasingly purchase services and goods that formerly were the responsibility of national and local governments. Official Japanese data show that there are 6,659 quasi-government entities with more than 25 percent local government equity. (The figure would be higher if entities with central government equity were included.) Because most of these entities are not covered by the GPA, bilateral agreements, or Japanese action plans, and thus are not required to use fair, open and transparent procurement procedures, the United States remains concerned that a large amount of potential procurements of U.S. goods and services by quasi-governmental entities and third sector projects will be lost.

**Computers**

The United States and Japan signed a government procurement agreement on computers in January 1992, which commits Japan to use non-discriminatory and transparent procurement procedures to expand government purchases of competitive foreign computer products and services. Under this agreement, Japan made major commitments designed to improve the procedures used in the public procurement of computer products and services, and addressed the various stages of the procurement process, including the following:

- All potential bidders are to be granted equal access to pre-solicitation information and equal opportunities to participate in that stage of the procurement;

- Specifications are to be formulated in an impartial manner, and any supplier involved in the development of specifications for a procurement may not bid on that procurement if doing so would result in an unfair competitive advantage;

- All potential suppliers are to be accorded fair and equal opportunities to submit bids, and sole sourcing is used only in exceptional cases justified under the GATT Code/WTO GPA; and

- Evaluation of bids is to be conducted based on evaluation factors set forth in the tender documentation.

The agreement also establishes a complaint mechanism. In addition, it provides that bidders submitting unjustly low bids in violation of Antimonopoly Act rules on fair competition will be excluded from bidding on the procurement, and that information regarding such unfair bids will be provided by the procuring entity to the Japan Fair Trade Commission. The procedural provisions of the computer procurement agreement apply to both national government and quasi-governmental entities. With regard to local and prefectural governments, the Japanese Government committed to inform these entities of the measures and seeks their cooperation in following procurement policies and procedures consistent with the computer agreement.

While the foreign share of the Japanese Government computer market increased somewhat from the signing of the agreement through 1994, preliminary indications suggest slippage in all sectors in 1995. Foreign computer manufacturers' (FCM) share of the national government market (excluding personal computers) increased from nine percent in 1992 to 14 percent in 1994 but declined in 1995. Furthermore, FCM's share of the national government market still lags far behind the FCM share of Japan's private sector computer market, which was estimated at 37 percent in 1994. The FCM share of the national central government market has, however, tripled since 1992, though the FCM share of the growing local sector decreased from 6.2 percent in 1991 to 3.5 percent in 1995.

Although some progress has been made in opening Japanese Government procurement of computers to foreign suppliers, it is clear that more work remains to be done. The "greatest overall value" evaluation system for public procurement, introduced as part of the Government of Japan's action plan on government procurement of March 1994, is not being implemented in a sufficiently transparent manner, with the relative weighting of factors in the evaluation left to procuring agencies. Moreover, there continue to be problems with deep discounting of personal computers and related equipment by Japanese computer makers -- in some cases reportedly as high as 90 percent. This not only restrains fair competition in the procurement market, it also leads to greater follow-on costs as successful bidders seek to offset losses on the initial procurement with inflated costs on subsequent equipment and service procurements. The Government of Japan also could take additional measures to improve access to information by potential bidders.

The two governments conduct annual reviews to assess implementation, and the U.S. Government raised these issues with the Government of Japan in the February 1996 review. Owing to these concerns, particularly to reports of continued discounting practices in government procurement, on April 30, 1996, USTR highlighted Japanese Government procurement of computers as a problem trade area, but did not “identify” this area under Title VII. The Administration is strongly committed to ensuring that the 1992 computer agreement is fully implemented and that U.S. computer makers have fair access to Japan's government procurement market. The next annual review is scheduled to take place in the spring of 1997.

**Major Projects Arrangement**

The United States-Japan Major Projects Arrangement (MPA), signed in 1991, is discussed under the title “Construction, Architectural, and Engineering Services” in the section of this chapter entitled “Services Barriers.”

**Medical Technology**

The United States concluded an agreement on medical technology with Japan on October 1, 1994, under the Framework to improve market access and transparency for U.S. medical device manufacturers in the government procurement market. The agreement also contains both a comprehensive complaint mechanism and procedures for dealing with unfair bids. The agreement and accompanying exchange of letters represent an important step forward in the ability of foreign firms to sell medical technology products and services to Japan's public sector. The agreement establishes fair and transparent procedures that must be used by national medical institutions in procuring major medical equipment and services for Japan's $2.6 billion government procurement sector. Also, for the first time, the agreement requires government hospitals in Japan to make procurement information public, regardless of value. Each hospital will publish, on an annual basis, information on the top ten medical technology products it plans to purchase during the upcoming year. Previously, this important information had not been readily available.

U.S. firms are highly competitive in medical technology, and hold a global market share of 52 percent. In the Japanese market, however, the U.S. industry’ share is 26 percent, reflecting the existence of substantial market access barriers in this sector. The 1994 agreement calls for the Framework goal of a "substantial" increase in access and sales of foreign competitive products and services. It specifies a set of five quantitative and five qualitative criteria to assess the implementation of this agreement, including: yearly measurement of the number of Japanese entities procuring foreign products and services; the number and value of contracts awarded each year as a result of a decrease in single tendering; and the results of reviews conducted by the procurement review board.

A key element of the agreement is the requirement that procurement decisions for certain procurements, including purchases above a specified threshold be made on the basis of the overall greatest value method (OGVM), instead of the current minimum price system. The threshold will be reduced in value over a three-year period from 800,000 Special Drawing Rights (SDRs) on April 1, 1996, to 385,000 SDRs on April 1, 1998. For the first time, equipment costs of these items will be calculated on a life-cycle basis. This means that the highly sophisticated medical technology products manufactured by U.S. and foreign firms will not be excluded automatically because of initial price. The technical excellence of those products, and the value they provide over the long term, will now be taken into account.

The U.S. Government is pleased that the national government hospitals are using OGVM in selecting medical equipment valued above the established thresholds, and that they have found the methodology to be very effective in procuring the kinds of equipment they need to provide quality medical care to their patients. U.S. firms are concerned, however, that prefectural and municipal hospitals continue to use the lowest-bid procedure of evaluation in procurement of advanced technology products. Under the medical technology agreement, the Japanese Government is required to encourage prefectural and local/municipal governments to utilize measures similar to those adopted by the central government entities. The fact these entities do not use OGVM hinders the ability of U.S. companies to sell in this significant portion of the market, as U.S. equipment is usually innovative and/or high-end equipment offering special features or extraordinary performance. This equipment may have a higher initial price, but provides significant cost savings over the life of the product. The United States continues to actively encourage the Japanese Government to have local and prefectural governments adopt this methodology.

The terms of the measures went into effect on November 1, 1994. The two countries held the second annual review of the agreement in October 1996 to assess market share data and progress in the implementation of procedures to establish more transparent tendering practices. The Japanese Government calculated a foreign market share of the government procurement market covered by the agreement (equipment procurements above the threshold for the agreement's procedures) of 38.5 percent. This figure includes sales of all foreign products including those by Japanese distributors, all imports from overseas Japanese production facilities, and all products sold under foreign brand-name regardless of location of manufacture or capital affiliation. The U.S. Government could clearly identify only 21 percent of the market as being held by foreign firms, although this figure almost certainly undercounts the foreign share since sales of U.S. products by Japanese distributors are particularly difficult to track.

The review also found that the Japanese Government had made good progress toward implementing the transparent and open procurement procedures called for in the agreement. Almost no procedural concerns were identified by U.S. firms, and the issues that have been raised were satisfactorily addressed during the reviews.

**Satellites**

The 1990 U.S.-Japan satellite procurement agreement binds the Japanese Government to open non-R&D satellite procurements to foreign satellite makers. Coverage includes procurement for broadcast satellites by the NTT and NHK, the government-owned television/radio service.

U.S. satellite makers won all five contracts (with a combined value exceeding $1 billion) openly bid under this agreement from 1990 through 1995. The most recent contract was a $100 million weather/navigation satellite procured by the Ministry of Transport in 1995, which was won by Space Systems Loral.

Despite U.S. firms' success under the agreement, the United States continues to be concerned about the National Space Development Agency's (NASDA) categorization and exclusion of certain satellite procurements from the agreement as “R&D” satellites. The United States recognizes that R&D satellites can be excluded from open bidding under the agreement, but it is concerned that an overly-broad definition of R&D could unfairly deny U.S. and other foreign satellite companies legitimate procurement opportunities.

In October 1996, NASDA awarded a $350 million contract to a Japanese firm for two data relay satellites outside the open bidding procedures. The United States will closely monitor this and subsequent Government of Japan procurements to ensure that such R&D procurements are consistent with the terms of the agreement -- namely that they incorporate technology new to Japan, and are not intended for the provision of regular services.

**Supercomputers**

Following the failure of the 1987 U.S.-Japan Agreement on Government Procurement of Supercomputers to improve access to Japanese Government procurement of supercomputers, the United States and Japan concluded a second supercomputer arrangement in June 1990. Under the arrangement, the Government of Japan committed to implement a fair, transparent, and non-discriminatory public procurement process. The provisions of the arrangement called for procuring entities establish and apply objective criteria for evaluating bids, and to subject supercomputers under consideration to identical benchmark tests of forecasted workload problems (rather than theoretical maximum speeds). To address unlawful discount pricing by Japanese supercomputer makers, the agreement specified that contract awards would be made based not only on price but also on performance. The arrangement also stipulated that bids so low as to constitute unfair competition would not be permitted, and a protest mechanism was established.

Results of the 1990 supercomputer arrangement have been mixed. The U.S. share of Japanese supercomputer procurements has varied considerably from year to year. U.S. supercomputer makers won only 27 percent of the procurements in the first three years of the arrangement, then received roughly 40-45 percent of procurements in JFY 1993 and 1994. This positive trend was reversed in 1995, when U.S. firms won only 9 percent of the procurements. In 1996, U.S. firms won two of eight Government of Japan supercomputer bids and lost to a Japanese firm in the only head-to-head competition between U.S. and Japanese firms.

Notwithstanding year-to-year fluctuations in market share, several persistent market access barriers have emerged. U.S. share of the public procurement market has remained well below the U.S. makers' roughly 50-percent share of the Japanese private sector supercomputer market. Moreover, the majority of recent U.S. sales to Japanese government entities have augmented or replaced an existing U.S. supercomputer installation; the U.S. share of "new" Government of Japan installations is even lower than its share of total procurement. Deep discounting of pricing remains a problem, and procuring entities continue to give insufficient weight to non-price factors. The agreement allows for new supercomputers to be bid based on forecasted performance provided performance standards are met after installation, there have been concerns that some installed supercomputers have been unable to meet the forecasted performance standards.

The U.S. Government will continue to vigorously monitor this arrangement and, as necessary, take steps to ensure Japanese compliance with its measures.

**Telecommunications**

*NTT Arrangement:* In 1994, the NTT procurement agreement was renewed for the fifth time since 1980. The renewed agreement contained improved NTT procurement procedures, designed to increase procurement transparency, increase reliance on international standards, and reduce sole sourcing of telecommunications equipment by NTT. NTT, Japan's single largest purchaser of telecommunications equipment, accounts for almost one half of Japan's $30 billion telecommunication equipment market. Three NTT subsidiaries (NTT Data Communications, NTT Mobile Communications, and NTT Power and Building Facilities) agreed to voluntarily adopt the procedural improvements. The current agreement is due to expire in September 1997.

NTT's procurement of all foreign products increased from 135 billion yen in JFY 1994 to 152 billion yen in JFY 1995 (approximately $1.5 billion, at 100 yen/dollar). While NTT's purchases of foreign telecommunications equipment also increased, the increase in market share for these products was minimal. Considering U.S. firms' competitiveness -- evidenced by favorable exchange rates, worldwide export growth of over 20 percent, and significantly better results in the Japanese private sector market -- these results are disappointing.

The poor results U.S. companies have achieved with NTT compared with the private Japanese telecommunications sector suggests that NTT is still captive to its monopoly legacy and not fully responsive to market principles in its procurement. NTT's favoring of its "family companies" for the bulk of its telecommunications equipment, its tendency to over-engineer and under-document specifications -- often based on Japan-specific or NTT-specific standards -- and its allocation of supplier market share for products based on non-transparent criteria raise costs to NTT and its customers and pose significant market access barriers.

NTT's practices hamper competition not only in the market for equipment, but for services as well. In many categories of equipment, telecommunication service companies competing against NTT are required to use NTT-family developed equipment at higher costs than comparable equipment. To support a truly multi-vendor market for such equipment, and thus encourage cost-effective facilities-based competition, the standards, specifications, and interfaces for equipment connecting to the public switched network should not be determined solely by NTT and its family-companies. Rather, a neutral, open organization, to which any vendor or service supplier can belong, should be mandated.

These issues all point to the need to closely monitor procurements under the NTT agreement and to continue to seek ways to improve implementation of this agreement. Until vigorous competition is introduced in both the equipment and service markets, such oversight is vital. These issues will be the subject of review in mid-1997.

*Public Sector Procurement Agreement on Telecommunications Products and Services:* The 1994 U.S.-Japan Public Sector Procurement Agreement on telecommunications products and services was intended to improve access and sales for foreign telecommunications firms selling to Japan's public sector. Pursuant to the agreement, Japan has introduced procedures to eliminate barriers such as: obstacles to participation in pre-solicitation and specification-drafting for large-scale telecommunications procurements; ambiguous award criteria; excessive sole sourcing; and the absence of an effective bid protest mechanism. The public sector procurement agreement also includes quantitative and qualitative criteria for measuring progress such as: annual value and share of foreign products; annual numbers of entities buying foreign products and services; annual numbers and values for contracts awarded as a result of single tendering; and new subcontracting opportunities for foreign suppliers.

The United States and Japan held the second annual bilateral review of this agreement in October 1996. While Japanese data showed that foreign share of Japanese government procurement of telecommunications products and services increased from 7 percent in 1994 to 13 percent in 1995, the United States questions the Government of Japan’s estimates of the size of the market covered by this agreement. (1995 data show the agreement covering a market of only 88 billion yen, or about $880 million at 100 yen to the dollar.)

The United States also has continuing concerns about the high number of contracts awarded through single tendering in 1995. The agreement calls for a reduction in sole sourcing and the U.S. Government has asked the Japanese Government to take steps to remedy this.

One particular case falling under this agreement is of serious concern. In April 1996, a U.S. company was excluded from the specifications-development for a major wireless telecommunications system to be procured by the National Police Agency. This exclusion appears to violate provisions of this procurement agreement and efforts to resolve this issue continue.

## LACK OF INTELLECTUAL PROPERTY PROTECTION

Since 1994, Japan has been placed on the Special 301 “Priority Watch List” of countries from which the United States sought stronger intellectual property rights (IPR) protection. IPR has been the focus of U.S.-Japan discussions in a number of multilateral and bilateral fora.

In February 1996, the United States initiated the first intellectual property case at the WTO by invoking dispute settlement proceedings against Japan for its failure to provide full “retroactive” protection to pre-existing sound recordings in accordance with the TRIPs Agreement. Although the TRIPs Agreement required developed countries as of January 1996 to protect sound recordings produced in other WTO countries within the past 50-years (i.e., produced in 1946 or later), Japan only protected foreign sound recordings produced in 1971 or later. Japan ultimately agreed to provide such protection and did so through legislation adopted in December 1996 that will come into effect in March 1997. In January 1997, the United States and Japan jointly notified the WTO that the matter had been resolved.

In April 1996, USTR placed Japan on the Special 301 "Priority Watch List" under the provisions of the Trade Act of 1988, for its failure to provide adequate and effective protection for intellectual property rights. Japan was cited for problematic patent practices, inadequate protection of trademarks and trade secrets, high levels of end-use software piracy, and the sound recordings dispute, which at the time was under discussion at the WTO. Another major concern is the practice of Japanese courts interpreting patents very narrowly, allowing competitors to conduct activity that would be considered infringing in the United States and in most other countries.

**Copyrights**

U.S. computer software groups remain concerned about the significant problem of end-user piracy in Japan. U.S. and some Japanese software developers seek much stronger legal and procedural provisions to allow the prosecution of end-user pirates, including the establishment of a more effective system of applying for and receiving ex parte provisional relief on a timely basis.

**Patents**

*IPR Agreements*: During 1994, two bilateral agreements on IPR were concluded under the Framework. The first agreement, signed on January 20, 1994, addressed a number of outstanding issues, including permission to file patent applications with the Japanese Patent Office (JPO) in English, correction of translation errors after patent issuance (as long as it does not substantially expand the scope of protection), and changes in the U.S. patent term from 17 years-from-grant to 20 years-from-filing. Japan and the United States have implemented these commitments.

On August 16, 1994, a second agreement was signed in which the JPO agreed: to end the practice of allowing third parties to oppose a competitor's patent before it is granted and to hear all opposition claims at the same time; to establish an accelerated patent examination procedure that will enable applicants to obtain disposition of their patent applications within 36 months, upon request; and to end the practice of awarding dependent-patent compulsory licenses in cases other than where anticompetitive practices have been found. The threat of the imposition of dependent-patent compulsory licenses had been used in the past to force patent holders to license the use of their technology to competitors, effectively limiting their exclusive rights in their inventions. Japan has fully implemented these commitments.

*Remaining Problems:* Even with Japan’s implementation of the 1994 agreements, significant problems with the Japanese patent system remain. Two important examples are narrow patent claim interpretation before the JPO and narrow patent claim interpretation in the courts.

During 1995, Japan modified its patent examination guidelines in a manner that appears to alleviate U.S. concerns about narrow patent issuances by the JPO. In the past, Japan limited the scope of patent claims to cover only what had been specifically "reduced to practice" and described in the application; i.e., a claim could be no broader than the specific examples actually made and listed in the application. In contrast, the United States and most other countries permit claims to be broader than the actual examples provided if: (1) the applicant clearly describes how one skilled in the art can make the products described by the "prophetic example;" and (2) that these examples are not otherwise known to the public. The ability to base claims on prophetic examples is particularly important in the chemical area, where thousands of variations are possible and it is impractical to list each example after reducing it to practice. The Government of Japan has confirmed: (1) the issuance of revised guidelines to JPO examiners, directing them to grant patents based on prophetic as well as working examples; and, importantly, (2) application of the new guidelines to outstanding patent applications, some of which have been pending for many years. Some U.S. companies have hundreds of such pending applications with the JPO.

Concerns remain about the narrow patent interpretation practices in Japanese courts. As a general practice, Japanese courts impose liability based only on the literal infringement of patents; as a result, competitors can avoid liability by changing an element of the invention even if the resulting product is substantially similar to the patented product. In contrast, courts in the United States and in most other countries, as a general practice, will find infringement if the defendant has either literally or substantially infringed the patent. That is, infringement will be found even if the infringer has deviated from the patent in certain marginal and unimportant ways. This latter practice is known as the "doctrine of equivalents." This doctrine has been used by Japanese courts only in rare instances.

Another problem has been the occurrence of "patent flooding" in which companies in Japan will flood the JPO with applications that deviate marginally from a particular previous filing, thereby adding to JPO's already considerable backlog and creating uncertainty in the marketplace by making it difficult for foreign parties to determine what applications are likely to mature into patents.

### Trademarks

The trademark registration process remains slow, requiring approximately 36 months to register a trademark in Japan versus 16-18 months in the United States. Trademarks must be registered in Japan to ensure enforcement so that delays make it difficult for foreign parties to enforce their marks. Protection of well known marks also remains weak.

### Trade Secrets

Japan's protection of trade secrets is inadequate because Japanese courts require disclosure of trade secrets when a case is brought to them. This puts the owner of a trade secret in the untenable position of being unable to protect the trade secret without disclosing it publicly. An amendment to Japan's Civil Procedures Act (which was pending before the Diet in 1996), should be enacted by the Diet later this year, should improve the protection of trade secrets in Japanese courts by excluding court records containing trade secrets from public access. However, this legislation does not adequately address the problem. Court discussions of trade secrets will remain open to the public and there are no confidentiality obligations on the part of parties to the case or their attorneys. Thus protection of trade secrets in Japan's courts will continue to be considerably weaker than in the courts of the United States and other countries.

## SERVICES BARRIERS

### Construction, Architectural, and Engineering Services

For the past three years, the Government of Japan has made efforts to reform its public works bidding system in accordance with its "action plan on reform of the bidding and contracting procedures for public works." This action plan, coupled with additional understandings in an exchange of letters between then Commerce Secretary Ronald Brown and Japanese Ambassador Takakazu Kuriyama, constitutes the 1994

U.S.-Japan Public Works Arrangement. Under this arrangement, Japan must use open and competitive procedures on procurements valued at or above WTO threshold levels. As part of the arrangement, Japan re-affirmed its commitments under the 1991 Major Projects Arrangement (MPA) which will remain in effect until all projects covered by the MPA are completed.

Since the 1994 arrangement was signed, the Department of Commerce has held two annual reviews to assess the impact of the reform measures on Japan's public works market. At the first review, the U.S. Government acknowledged that 1994 was a transition period, but expressed dissatisfaction with the limited business awarded to foreign firms, and voiced an expectation of increased future business for U.S. and other foreign firms. In addition, the United States offered numerous procedural recommendations to facilitate greater foreign participation in Japan's public works market at the central and local government levels.

Although Japan's Ministry of Construction (MOC) has taken some steps to accommodate the U.S. Government's procedural recommendations, there has been little real impact on foreign firms’ access to the overall Japanese public works market. The limited success of U.S. firms has resulted in part from implementation problems in both the 1994 arrangement and the 1991 MPA. Furthermore, U.S. firms have described specific instances where the Japanese Government and industry either have been uncooperative or unforthcoming in allowing foreign participation in the bidding process. Consequently on April 30, 1996, Japan was placed on the Title VII “Watch List” due to continued concern over the implementation of the 1991 MPA and the 1994 arrangement.

Against this backdrop, the U.S. Government held the second annual review of the arrangements in June 1996. Despite the fact that JFY 1995 marked the first year in which the new open and competitive procedures were fully implemented, the number of real opportunities available for foreign firms to bid on contracts in accordance with the agreement, particularly in the area of design contracts, was limited. Market access barriers resulting from a combination of procedural requirements, such as restrictions on the size and scope of joint venture consortia, and exclusive business practices, continued to frustrate foreign firms in their efforts to bid on contracts. In particular, the U.S. Government made clear its concerns regarding the lack of genuine market access for foreign firms on projects covered by the 1991 MPA -- notably the Chubu New International Airport in Nagoya (CNIA) and the Kansai International Airport near Osaka.

The CNIA is an "if and when" project identified under the 1991 MPA. As such, Japan is obligated to add CNIA to the list of MPA projects as soon as the Government of Japan decides to proceed with the development of the project. The Government of Japan has indicated that coverage will not begin until a formal decision on the development of the airport is made, and that this decision is not expected until 1998. However, the U.S. Government was pleased to learn recently that Japan’s Ministry of Transport (MOT) has decided to begin voluntary use of the MPA procedures for CNIA as soon as the budget for JFY 1997 is approved. In addition, the Japanese Government recently informed the U.S. Government that the commissioning entities for the Kansai International Airport are using MPA procedures, as required by the agreement.

Although these actions represent a step forward, the U.S. Government continues to monitor developments closely. It is important that by the beginning of JFY 1997 (April 1, 1997), that the data collected show a significant increase in the level of foreign participation in the Japanese public works market.

**Financial Services**

Japanese financial markets traditionally have been highly segmented and strictly regulated, and as such, have restricted the entry of foreign financial services firms and discouraged the introduction of innovative products in which foreign firms may have enjoyed a competitive advantage. Some of the restrictions that have impeded access include the use of administrative guidance, “keiretsu” (interlocking business relationships), lack of transparency, inadequate disclosure, the use of a positive list to define a security, and lengthy processing of applications for new products. These restrictions have hindered the emergence of a fully competitive market for financial services in Japan.

With a view to eliminating or reducing these barriers, on February 13, 1995, the United States and Japan concluded a comprehensive financial services agreement, "Measures by the Government of Japan and the Government of the United States Regarding Financial Services." This agreement features an extensive package of market-opening actions in the key areas of asset management, corporate securities, and cross-border financial transactions.

In the two years since the agreement was signed, the Japanese Government has implemented the vast majority of the commitments made within the specified time frame. In some instances, the timetable for implementation was accelerated. In a few areas, the Japanese Government has taken or announced additional actions for future implementation to improve the liberalization of Japanese financial markets.

The U.S. Government is currently monitoring the agreement to ensure that implementation remains on schedule and to assess the impact of the actions undertaken using the qualitative and quantitative criteria included in the agreement. At the March 1997 review, the U.S. Government emphasized the need for further improvements in financial disclosure and transparency.

In an announcement on November 11, 1996, Prime Minister Ryutaro Hashimoto committed the Japanese Government to conducting broad-based deregulation of Japan's financial sector, aimed at making Tokyo's financial markets comparable to those of New York and London by 2001. The Japanese Government's plans, while still very preliminary, indicate the possibility of such major changes as allowing mutual entry across financial sectors, tax changes, liberalization of commissions, liberalization of foreign exchange transactions, tightened disclosure rules, and further liberalization of asset management regulations. These changes could create important new business opportunities for U.S. financial services providers. The U.S. Government will watch developments closely.

**Insurance**

Japan is the world's second largest market for insurance with annual premium revenues of $410 billion in JFY 1995. It is also one of the most heavily regulated of all major insurance markets, with Ministry of Finance regulations, informal guidance, and industry associations all serving to limit competition in the market. While foreign market shares of other G-7 countries' domestic insurance markets ranged from 10 to 33 percent, foreign firms' share of the Japanese market is only 3.5 percent. Foreign firms have only a 1.5 percent share of the primary life insurance market and a 2.8 percent share of the primary non-life market (mostly auto, fire and marine insurance). Together these two primary sectors account for roughly 95 percent of Japan's entire insurance market. Foreign firms have played an important role in developing new products and sales channels in the remaining five percent of the market, the so-called third sector, as reflected in their roughly 40 percent share of this sector.

On October 11, 1994, a U.S.-Japan insurance agreement was concluded as one of four priority areas for negotiation under the U.S.-Japan Framework. Negotiations resumed in the fall of 1995, when it became apparent that Japan intended to allow Japanese insurance subsidiaries to operate in the third sector in a manner contrary to key provisions of the 1994 agreement. Following a year of difficult negotiations, on December 24, 1996, the United States and Japan reached agreement on a package of "supplementary measures" which will significantly deregulate Japan's market. The Administration is committed to monitoring the implementation of these agreements closely to ensure that the anticipated opportunities materialize.

*1994 Insurance Agreement:* The October 1994 insurance agreement commits Japan to enhance regulatory transparency, strengthen antitrust enforcement, introduce a "notification system" for approval of insurance rates and products, and undertake specific liberalization measures. The Ministry of Finance (MOF ) has, to varying degrees, implemented these provisions. The agreement also sets forth MOF's intention to allow insurance brokers to operate in Japan; while MOF has established the framework for a broker system, continued inability to differentiate product form and type has limited opportunities for brokers.

The agreement calls for five government corporations with large annual insurance requirements to use fair, transparent, non-discriminatory, and competitive criteria in their annual allocation of insurance premium shares. This remains a key concern: only one of those five government corporations (the Housing Loan Corporation) has disclosed its premium allocation criteria; and for all five corporations, the foreign share of premiums remains negligible, even relative to foreign insurers' small share of the private sector Japanese insurance market. The agreement also calls for Japanese and foreign insurers in Japan to complete by March 1995 a study of the impact of "keiretsu" business relationships and case agents on insurance purchasing patterns in Japan, and for the Japan Fair Trade Commission to conduct its own study of the same issues. As of February 1997 work on neither of those studies has begun.

Finally, the 1994 agreement contains a provision related to "mutual entry" of life insurers into non-life markets and of non-life insurers into life insurance markets. Until enactment of a new Insurance Business Law (IBL) on April 1, 1996, life and non-life insurance firms were strictly prohibited from doing business in their counterpart sectors. The new IBL allows such activity in the form of subsidiaries and the specific parameters under which these subsidiaries will operate was addressed at length in bilateral negotiations throughout 1996.

*1996 Insurance Agreement:* Under the 1994 agreement, the Government of Japan committed to avoid "radical change" in the third sector until foreign, small and mid-sized insurers (which have a greater degree of dependence on the third sector markets) have had a reasonable period to compete in significantly deregulated primary life and non-life sectors. The “supplementary measures" agreed to in December 1996 define the extent and timing of primary sector deregulation by MOF. These measures also define the scope of business activities of the Japanese insurance subsidiaries in the third sector consistent with the commitment to avoid radical change.

Under the 1996 agreement, the Government of Japan committed to approve by September 1997 applications for automobile insurance with differentiated rates based on a range of risk criteria, e.g., age, gender, driving history, geography, and vehicle usage. It also committed to obtain Diet passage and implement legislation amending the Rating Organizations Law to eliminate the rating organizations’ authority to set industry-wide rates for automobile and fire insurance. Currently, the rating organizations, comprised of all non-life insurers, operate as rate-setting cartels exempt from Japan’s Antimonoply Act. The reforms Japan committed to will introduce significant new competition into Japan’s insurance sector.

In addition, Japan committed to expanding the list of products to be included under the "notification system." This is anticipated to accelerate the introduction of innovative products, including several important liability lines. MOF also will reduce the threshold above which insurers will be permitted to offer flexible rates for commercial fire insurance from the current 30 billion yen (contract value) to seven billion yen in several stages by April 1998.

With respect to the third sector, the 1996 agreement commits the Government of Japan to prohibit or substantially limit the Japanese insurers' new subsidiaries from marketing certain third sector products of particular importance to foreign insurers, e.g., cancer, hospitalization, and personal accident insurance, until foreign firms have had sufficient time to establish a presence in the deregulated primary sectors. The agreement envisions completion of primary sector deregulation by July 1998. If completed on schedule, restrictions on the activities of the subsidiaries in the third sector will be lifted in two-and-a-half years, i.e., by January 2001, consistent with Prime Minister Hashimoto's "Big Bang" financial services deregulation initiative.

In the 1996 agreement Japan committed to significantly deregulate Japan's insurance market. This will result in far greater competitive opportunities for American insurers and choice for Japanese consumers. Both countries will review implementation of these agreements semiannually.

**Legal Services**

The U.S. Government's Deregulation and Competition Policy Working Group under the Framework has repeatedly requested that the Government of Japan eliminate or drastically reduce its severe restrictions on foreign lawyers working in Japan. Since the 1970s, U.S. lawyers have sought greater access to the Japanese legal services market and full freedom of association in employment arrangements with Japanese lawyers. However, strong opposition from the "Nichibenren" (Japan Federation of Bar Associations) and an unwilling bureaucracy have consistently refused to redress all of the U.S. concerns. Of particular concern are the prohibition on Japanese lawyers and quasi-legal professionals joining foreign law firms either as partners or employees, restrictions on the scope of practice with respect to the law of third countries, as well as the small number of Japanese lawyers capable of handling international business transactions which constrains the ability of foreign companies to obtain proper legal advice on doing business in Japan.

Under the current 3-year (JFY 1995-97) Government of Japan Deregulation Action Plan, the Ministry of Justice (MOJ) has taken incremental steps to ease some restrictions on partnerships in 1995 and to allow qualified foreign lawyers to represent parties in international arbitration proceedings in Japan starting in JFY 1996. However, the MOJ has rejected other key U.S. deregulation requests, including: (1) lifting the prohibition against foreign lawyers licensed in Japan (“gaikokuho jimu bengoshi”) employing, or entering into partnerships or other fee-sharing arrangements with, Japanese lawyers and quasi-legal professionals; and (2) easing the restrictions on legal experience that can be counted toward satisfying the five-year requirement. In its January 1997 interim deregulation report, the MOJ reiterated its weak 1996 pledge to complete a "study" of foreign lawyer issues by the end of JFY 1997, but rejected the U.S. request to consider allowing foreign lawyers and law firms in Japan to enter into full partnerships with Japanese lawyers and quasi-legal professionals. Combined with the overall insufficient number of qualified lawyers, the Government of Japan's restrictions will continue to place a burden on the operations of foreign firms in Japan.

**Telecommunications Services**

Japan has made significant progress in formulating mandatory interconnection rules, the lack of which had posed a major barrier to entering the local telecommunications service market dominated by the monopoly supplier NTT. Such rules are key to making the WTO telecommunications agreement meaningful.

The development of these rules proved a major step forward in transparent rulemaking, providing all interested parties an opportunity to participate in the process. The United States has urged the Ministry of Posts and Telecommunications (MPT) to ensure that the maximum incentives for encouraging competition are provided, by introducing long run incremental costing (LRIC) as the price standard for access to monopoly-controlled facilities.

Since the new rules are not expected to come into effect until late 1998, the United States has urged that the MPT take intermediary steps to ensure fair, cost-based interconnection with NTT. Two unresolved issues of immediate concern are access by competing service providers to all NTT services, and the costs NTT is asking competing service providers to bear for network modification. The U.S. Government also remains concerned about restrictions on foreign investment in direct broadcasting services (DBS), and in NTT and KDD, Japan’s two dominant telephone carriers.

In the recently concluded WTO negotiations on basic telecommunications services, Japan made commitments on all basic telecom services. It adopted the reference paper on regulatory commitments. Japan retained a 20 percent foreign investment limit in KDD and NTT. The United States will monitor these and other telecommunications issues to help ensure that new entrants, including U.S.-affiliated carriers, benefit from pro-competitive treatment.

Although the 1990 and 1991 International Value-Added Network Services (IVANS) agreements have been successful and have permitted foreign companies to introduce a wide variety of enhanced services in Japan, certain issues remain. As with Type I carriers, IVANS providers should benefit from inter-connection rules applying to NTT, and any interim measure the MPT undertakes to ensure a competitive market. MPT has indicated that it will extend interconnection obligations to cover Type II carriers.

MPT has expanded the scope of carriers eligible for the less burdensome designation "general Type II" carriers. Unfortunately, all services involving international telecommunications face the more burdensome requirements applicable to "special" Type II carriers. The United States has recommended that the MPT eliminate this distinction, and treat all resellers as general Type II carriers. As Japan opens up the market for international services using leased lines connecting to the public switched network (scheduled for 1997), these issues may become more important.

Japan proposed deregulatory measures in the DBS sector in 1996, but failed to liberalize two key areas: restrictions on the transponder bandwidth a single company can control, and limits on both foreign investment and corporate board representation. The United States has urged that such restrictions, which stifle the development of a competitive, technically progressive market, be relaxed.

**INVESTMENT BARRIERS**

Japan's stock of inward foreign direct investment (FDI), relative to the overall size of the Japanese economy, is minuscule compared to that of other advanced industrialized countries. In 1995, for example, the value of Japan's stock of inward FDI totaled only 0.7 percent of the nation's 1995 gross domestic product, as compared to 7.0 percent for the United States. Japan's outward investment flows, on the other hand, dwarf investment into Japan: the ratio of outward-to-inward FDI was roughly 19-to-1 from 1990 to 1994. In 1995, Japanese overseas FDI was $51 billion; Japan's inward FDI was only $4 billion. The scarcity of foreign investment into Japan contributes to large external trade imbalances and helps block market access to competitive foreign companies. The legacy created by the Government of Japan actively discouraging foreign investment during the high growth periods of the 1950s to the 1980s, combined with still negative attitudes and a high-cost, over-regulated environment, leads to extremely low participation by foreign firms in Japan, which remains a barrier to trade.

Acknowledging that inward investment lags far behind that of other industrialized economies, the Japanese Government has taken some limited steps to address the problem, aimed at making the environment for foreign investment in Japan more attractive. In July 1994, the Government of Japan established the Japan Investment Council (JIC), chaired by the prime minister and charged with identifying measures to improve Japan's investment climate, coordinating policies of ministries and agencies concerned with investment, and disseminating information on investment-promotion measures. In June 1995, the JIC released a statement on investment that encouraged FDI and listed a few useful policy measures.

Although many direct legal restrictions on foreign direct investment have been eliminated, bureaucratic obstacles remain. Japan's low level of inward FDI flows in recent years also reflects the impact of exclusionary business practices, high market entry costs, and discriminatory use of bureaucratic discretion. While Japan's foreign exchange laws currently require only ex-post notification of planned investment in most cases, a number of sectors (e.g., agriculture, mining, forestry, fishing) still require prior notification to government ministries. Restriction on foreign investment in direct broadcasting services (DBS), and the NTT and KDD telephone carriers remain a concern.

Difficulty in acquiring existing Japanese firms -- as well as doubts about whether such firms, once acquired, can continue productive business relations with other Japanese companies -- make investment access through mergers and acquisitions much more difficult in Japan than in other countries. Foreign companies have little access to mergers and acquisitions (M&A) in Japan, the major avenue for FDI (some 80 percent) in the rest of the Organization for Economic Cooperation and Development (OECD). Extensive cross-shareholding among allied companies and difficulties foreign firms encounter in hiring employees also works to inhibit direct foreign investment.

Japan's Antimonopoly Act provides that "no entrepreneur shall enter into an international agreement or an international contract which contains such matters as constitute unreasonable restraint of trade or unfair trade practices." This language has allowed the Japan Fair Trade Commission (JFTC) to require that it be notified of and be allowed to review certain types of international contracts, in a manner that disadvantages the foreign parties since it results in greater scrutiny of contracts involving foreign parties than of contracts solely between Japanese parties. In 1992, the JFTC revised but did not eliminate its regulations specifying types of international contracts subject to notification, resulting in substantial decreases in the numbers of notifications. In its January 1997 interim deregulation report, the Government of Japan indicated its intention to amend the Antimonopoly Act to eliminate this notification requirement.

*Investment Arrangement:* In July 1995, the United States and Japan agreed to "Policies and Measures Regarding Inward Direct Investment and Buyer-Supplier Relationships." This arrangement lays out the inward FDI promotion policies instituted by the Japanese Government during the course of the Framework agreement investment negotiations, and commits Japan to: expand efforts to inform foreign firms about FDI-related financial and tax incentives, and broaden lending and eligibility criteria under these programs; make low-interest loans and provide tax incentives under the 1992 Inward Investment Law available to foreign investors; propose measures to improve the climate for foreign participation in mergers and acquisitions; and strengthen the FDI promotion roles of such organizations as the Japan Investment Council, Office of the Trade Ombudsman, Japan External Trade Organization (JETRO), and the Foreign Investment in Japan Development Corporation. Subsequently, the Inward Investment Law was extended from May 1996 to May 2006. In addition, MITI has lowered the interest rate charged by the Japan Development Bank (JDB) to foreign investors in high-technology projects, and as of April 1996, foreign firms' eligibility for tax incentives was extended from the first five years to the first eight years of operation of a foreign firm in Japan.

In reality, however, Japan's FDI promotion policies are mostly grafted onto domestic regional development promotion programs. They are small in scale and inflexible, and far from able to offset major impediments to create an attractive climate able to reverse low foreign investment levels in the near term.

## ANTICOMPETITIVE PRACTICES

### Exclusionary Business Practices

## Japan

American firms trying to enter or participate in the Japanese market face exclusionary Japanese business practices and close government-to-industry relations that give domestic insiders an unfair advantage in the market. These include the following:

- Anticompetitive private practices -- such as bid-rigging, price-fixing, and refusals to deal -- which may violate the Antimonopoly Act and other Japanese laws, but often go unpunished;

- Corporate alliances and exclusive buyer-supplier networks often involving companies belonging to the same business grouping (or "keiretsu") that work to protect "market stability" (i.e., stable market shares and profit margins);

- Problematic corporate practices that inhibit foreign direct investment and foreign acquisitions of Japanese firms (e.g., nontransparent accounting and financial disclosure, cross-holding of shares among "keiretsu" member firms, low percentage of publicly traded common stock relative to total capital in many companies, and restrictions on foreigners serving on corporate boards);

- Industry associations and other business organizations that develop and enforce industry-specific rules that limit or regulate, inter alia, fees, commissions, rebates, advertising, and labeling for the purpose of maintaining “orderly competition” among their members, and often also applying to non-members.

Exclusionary Japanese business practices exact a heavy toll on the Japanese economy. By constraining market mechanisms, such practices reduce the choices available to businesses and consumers, and raise the cost of goods and services, as reflected in Japan's large internal-external price gap. Many products and services cost substantially more, often two to three times more, in Tokyo than in other international cities. In addition, by discouraging competitors that seek to break into the market with innovative products and services, these practices impede the development of new domestic industries and technologies (e.g., in software, multimedia, and telecommunications). Moreover, exclusionary business practices discourage potential foreign investors, whose market presence and technological innovation would stimulate the economy, as well as provide critical channels for exports and sales by foreign firms.

Cartels can pose serious barriers for foreign exporters and foreign companies that seek to invest in Japan. The Japan Fair Trade Commission (JFTC) is responsible for deterring and punishing illegal cartel behavior, but is an uneven enforcer with limited resources and strength to use its prosecutorial powers. (See also the sections below on the JFTC’s enforcement record; consumer photographic film and paper; and sea transport and freight.)

Japanese regulators view their role not simply as neutral arbiters of a legal rule-based system, but as active players in the control and guidance of their respective industries. Two aspects of this particularly disadvantage new domestic and foreign entrants to the market: the high degree of discretionary authority regulators maintain at both the national and local levels, and the regulator's tendency to rely on incumbent industry players to develop and self-enforce consensus on policy and regulatory changes.

**Government-Industry Relationship**

The close government-industry relationship in Japan often works to the disadvantage of foreign firms trying to participate in the Japanese market because the relationship favors domestic companies. Several aspects of the relationship are of particular concern.

*Privatization of Regulations:* The Government of Japan delegates, both formally and informally, governmental or public policy functions, such as industry standard development, product certifications, and entry authorizations, to industry associations and other business-related organizations that are generally not under any obligation to conduct their operations in an open, transparent, and non-discriminatory manner or to include foreign firms in their operations.

*Informal Management of Industry:* Business in Japan is more heavily regulated than in the United States, with much of the regulation taking place through cooperative consultations between the government ministry or agency and the affected industry, industry association, or other business-related organization; the issuance of “administrative guidance” to Japanese companies; or the placement of retired bureaucrats in companies and trade associations in a practice called “amakudari” (literally, “descent from heaven”).

**Lack of Transparency in Administrative Practices**

Foreign firms are disadvantaged by the lack of transparency in Japanese administrative practices, in particular with regard to the following.

*Lack of Rulemaking Process:* Japanese ministries and agencies prepare regulations in a “black box” with participation generally limited to bureaucrats, former bureaucrats and special interests. Others with an interest in the regulation are denied the opportunity to take part in the process.

*Use of Administrative Guidance:* The lack of transparency in the Government of Japan’s extensive use of informal directives or "administrative guidance" remains a serious concern despite requirements in the 1994 Administration Procedure Law (APL) that oral administrative guidance must be put in writing upon request and administrative guidance issued to multiple persons must be issued in written form.

*Use of Advisory Councils:* The Government of Japan often relies upon advisory councils (“shingikai”), established by ministries and agencies, to formulate policies and recommendations which give an appearance of objectivity and independence from the bureaucracy, when in fact the members include former bureaucrats, and the councils are essentially expected to endorse policies developed or advocated by the ministry.

*Absence of an Information Disclosure Law:* To date, Japan has not enacted an information disclosure law, analogous to the U.S. Freedom of Information Law, that would provide foreign firms, as well as the Japanese public, with access to records and other information in the control of governmental entities. (However, based upon a recommendation by the Administrative Reform Council, the Government of Japan is expected to submit information disclosure legislation to the Diet by March 1998.)

# Japan

## Japan Fair Trade Commission's Enforcement Record

A key reason for the prevalence of anticompetitive business practices is the JFTC's historically weak antitrust enforcement record. The JFTC routinely faces domestic criticism for its lack of bureaucratic clout and reluctance to exercise its enforcement powers aggressively. While there have been some improvements in recent years due to sustained U.S. efforts under the 1989-91 Structural Impediments Initiative, the U.S.-Japan Framework, and annual bilateral antitrust consultations, which have helped the JFTC muster domestic support for its gradual strengthening, the JFTC's enforcement efforts fall far short of those needed to ensure that Japanese markets are open to fair competition from U.S. and other foreign companies.

The JFTC's ability to enforce Japan's fair competition laws is hindered by its historically weak stature among Japanese ministries, shortage of personnel, and perceived lack of autonomy. The JFTC was "upgraded" last year to allow the formation of an administrative general affairs bureau, an economic bureau, investigations bureau, and a new special investigation division to handle major cases. Previously, the JFTC only had departments, which relegated JFTC officials to a lower status relative to ministry officials. However, the JFTC failed to gain approval for the creation of a competition policy bureau and did not achieve the substantial gains it needs in antitrust enforcement personnel. The JFTC currently has a total of about 540 staff personnel, of which about 236 work in the investigation bureau. There are 46 investigators in the special investigation department -- a number too small to handle more than one or two major cases at a time. The United States has actively supported the JFTC and encouraged the commission to continue pressuring Government of Japan leaders for more investigative resources. However, the JFTC has few real allies on budgetary matters, and, in the current tight fiscal environment, JFTC personnel expansion will likely proceed incrementally.

Over the past five years, the JFTC has improved its enforcement performance, but not enough to shed its public image as an ineffective watchdog. For example, after maintaining surcharge orders for cartel practices at very low levels during the 1980s, since 1990, the JFTC has steadily increased its penalties, imposing 6.4 billion yen in surcharges against 741 companies in JFY 1995. However, the JFTC still rarely criminally prosecutes antimonopoly violators -- on average, tackling one case every two years -- and actual imprisonment for antimonopoly violations is unheard of. The JFTC's infrequent use of the AML's criminal provisions undermines deterrence of illegal business practices.

Although the JFTC is nominally an "independent" commission with "independent" enforcement authority, its leaders are often drawn from other ministries, raising doubts about the commission's autonomy. Indeed, the JFTC's chairman and commissioners always include some former senior officials from trade-related ministries -- notably, from the Ministries of Finance, International Trade and Industry, and Foreign Affairs. Historically, the vast majority of JFTC chairmen have been former top career officials of the powerful Finance Ministry. Japanese economic observers agree that as long as these "ex" ministry officials are involved in JFTC decisionmaking, the commission cannot be considered truly "independent." The JFTC's current chairman is a former public prosecutor and ex-official (Ministry of Justice) who has raised some public expectations of a more activist JFTC enforcement role. The United States has yet to see whether a 1996 amendment raising the mandatory retirement age of the JFTC chairman from 65 to 70 will facilitate the candidacy of non-bureaucrats for the top JFTC job, and thus questions about the JFTC's independence remain.

The JFTC itself administers a number of laws and regulations that have an anticompetitive effect or include inappropriate exemptions.

*Law Against Unjustified Premiums and Misleading Representations:* The JFTC imposes unrealistic limits on the use of premium offers (prizes), and thereby discourages even legitimate cash lotteries and product giveaways used in sales promotions. Foreign newcomers, who depend on innovative sales techniques to market their company names and products, are severely impaired by the JFTC's restrictions on premiums. In addition, the law aims to deter misleading or fraudulent advertising and labeling -- in itself, a worthy policy. However, the JFTC's practice of allowing "fair trade associations" (essentially, private trade associations) to set their own promotion, advertising and labeling standards through self-imposed "fair competition codes" creates difficulties, especially for newcomers who are unfamiliar with local guidelines. Trade associations can and often do use the cover of these codes to set additional standards that are stricter than the JFTC’s regulations under the Premiums Law. Indeed, at least 27 such premium codes have been authorized. Recently the JFTC has incrementally liberalized its rules on premiums and other sales promotions, among other steps, by raising the maximum value of "open" cash lotteries (not requiring a purchase) to ten million yen; repealing restrictions on premiums offered by department stores; and eliminating the 50,000 yen ceiling on consumer premiums (while retaining price caps as a percentage of the transaction value). However, these changes fall short of the dramatic liberalization measures requested by the U.S. Government in Framework discussions and in the November 1996 deregulation submission to the Government of Japan.

*Resale Price Maintenance (RPM):* The Antimonopoly Act exempts resale price maintenance (RPM) in the distribution of selected products, such as cosmetics, pharmaceuticals, and copyrighted products (books, magazines, newspapers, and CDs). There is no reason that retail price maintenance should be treated any differently under the Antimonopoly Act than any other practice. The JFTC has recently announced that it will terminate the RPM exemption for cosmetics and pharmaceuticals and is considering limiting or eliminating the RPM exemption for copyrighted products.

*International Contract Notification:* Under the Antimonopoly Act, the JFTC is authorized to screen certain notifiable international contracts -- such as joint ventures involving foreigners -- and to prohibit specific contracts that, in the JFTC's judgment, might cause unreasonable restraints on trade or involve the use of unfair trade practices. Any Japanese entrepreneur who enters into an international contract that is notifiable under JFTC rules must file with the commission within 30 days of concluding such an agreement. Recognizing that this practice needlessly burdens business operators, the JFTC has pledged to submit draft legislation by the end of March 1997 calling for, in principle, the elimination of the current notification system.

*Abolition of Cartels:* The JFTC's planned elimination of 33 antitrust-exempted cartels by the end of JFY 1998 is a positive step, but most of the under-used cartels targeted for abolition -- such as the price cartel for cultured pearls and silk cocoons -- will not significantly affect U.S. trade interests. Some mainly Japanese firms will benefit from the abolition of cartels in coastal shipping and import/export enterprises. However, these measures do not address more important U.S. concerns, such as Japan's monopolistic port practices by the Japan Harbor Transport Association. The JFTC should implement additional deregulation measures to remedy these serious problems.

## OTHER BARRIERS

### Aerospace

The Government of Japan offers Japanese firms incentives, such as interest rate subsidies and preferential loans, for aircraft and engine development. Policy and regulations allow MITI to nurture the Japanese aerospace industry by importing, developing, and distributing new technology and by apportioning work among Japanese manufacturers. Despite the focus on development, long term prospects for Japan's aerospace industry are far from certain. Nonetheless, Japan has become a major supplier to foreign aircraft assemblers by supplying fuselage sections for large civil aircraft.

The lack of a dynamic general aviation (i.e., neither airline nor government) industry in Japan severely restricts development of aviation-related infrastructure and the purchase of business or general aviation aircraft. Sales of U.S. business jets, light aircraft, air traffic technology and equipment, airport-use equipment, and services remain far below that generally expected in a nation with an economy as developed as Japan's. Japanese demand for helicopters is also stifled by restrictive flight rules and lack of heliports.

U.S. manufacturers of business jets have reported that the limited landing slots for business aircraft at airports near Tokyo have inhibited the use and sales of these aircraft to both Japanese and foreign businesses. In 1996, two additional slots per day at Tokyo's Narita airport were made available to business jets. Reports from operators indicate that the system operates more smoothly now, but that additional access is still needed.

### Motor Vehicles

Japan's domestic motor vehicle sales were approximately 7.08 million units in 1996, valued at about 13.5 trillion yen. Imported motor vehicle sales reached a record 427,525 units in 1996, up 10.2 percent from 1995. The sales growth in 1996 is due in large part to the sustained sales and marketing efforts of U.S. and other foreign auto makers which has led to the increasing acceptance of their products by Japanese consumers.

Although sales of imported motor vehicles have increased four years in a row and set records during the last three years, import penetration is still only six percent of total sales, far below the level of other industrialized nations. Sales of U.S.-made motor vehicles were 147,683 units in 1996, or 2.1 percent of the market. If vehicles produced by the U.S. subsidiaries of the Japanese auto makers are subtracted, import penetration decreases to 1.1 percent. Sales in Japan of Big Three vehicles originating in North America were only 78,105 units. Since announcement of the auto agreement in August 1995, the Big Three auto makers have obtained 113 (as of February 21, 1997) new sales outlets, up from 19 new sales outlets they had obtained a year ago, but far below the industry’s expectation of obtaining 200 new sales outlets by the end of 1996. U.S. Big Three auto makers began selling several new right hand drive cars and recreation vehicles in Japan in 1996 and several more right hand drive products are scheduled to go on sale in Japan during 1997. At the same time, the Big Three are following through with major investments in expanded distribution networks and research facilities in Japan.

U.S. access to the motor vehicle market is restricted primarily through Japanese auto manufacturers' informal control over dealer networks. In many respects, dealers function as captive distributors of vehicle manufacturers rather than independent businesses. This system tends to keep dealers marginally profitable and highly dependent on a single manufacturer. Improving foreign access to Japan's auto dealer network will remain a high priority in the monitoring of the agreement.

*Automotive Parts:* In 1996, Japan's automotive parts market was valued at an estimated $140 billion; of which aftermarket parts accounted for an estimated $65 billion. The U.S. share of the total Japanese parts market was estimated to have been less than 1.5 percent, while U.S. parts makers sales to aftermarket repair were well under 0.5 percent.

The reason for the small presence of foreign parts sales in Japan is that close Japanese intercorporate relationships make it difficult for foreign automotive parts suppliers to compete with Japanese-owned suppliers for original equipment (OE) sales to Japanese motor vehicle makers. On the aftermarket side, complex, strict, and often nontransparent regulations governing vehicle inspections, modifications and repairs continue to limit foreign suppliers' access to this segment of the market. These regulations encourage consumers to have their vehicles repaired at auto dealerships or other designated/certified garages that use almost exclusively Japanese origin, or "genuine," replacement parts. Because parts distributors, wholesalers, and jobbers seldom stock non-OE parts, even the independent garages have no choice but to use genuine parts. Parts price surveys have shown that these OE parts can cost three times as much as similar parts sold in the United States, creating windfall profits for OE parts suppliers at an enormous cost to Japanese consumers.

Regulations limiting where and by whom repairs may be made further restrict creation of a competitive, independent parts aftermarket. For example, parts deemed essential to vehicle safety ("critical parts") cannot be replaced without inspection by a Ministry of Transport (MOT) Land Office official, unless repairs are done at a certified garage. A noncertified garage cannot perform any safety related repairs. Consumers may replace critical parts themselves, but must then take the vehicle to a MOT Land Office for a time consuming inspection.

These regulations create strong incentives for consumers to use only dealerships or other designated garages, simply for convenience's sake. These garages depend heavily on vehicle manufacturers and their OE suppliers for their business and, as a rule, do not use foreign aftermarket parts. In addition, in order to sell to the manufacturer or its distribution channel, a foreign supplier must be accepted by each Japanese vehicle manufacturer as a potential supplier for a given vehicle model, and then must go through an expensive and lengthy approval process.

*Market Opening Negotiations:* In 1993, the United States and Japan agreed to include motor vehicles and parts under the Framework talks. In August 1995, after nearly two years of intensive negotiations, the United States and Japan signed a market opening agreement with the following provisions under which the Japanese Government:

- and industry will help develop dealer networks in Japan by promoting business connections among dealers and manufacturers, by publicly informing dealers of their options to distribute more than the manufacturer's product, and by establishing key contacts in both government and industry for problem resolution.

- will conduct a study to see if any "critical parts" could be eliminated from the disassembly repair, and establish a procedure to allow requests to eliminate additional parts from the disassembly repair regulations.
- will relax regulations for the number of mechanics, amount of floor space, and machinery and tool requirements for certified garages.
- will authorize more than one certified garage to pool resources in order to perform repairs for required vehicle inspections and allow a new type of garage, called a "specialized certified" garage, to perform repairs on one or more systems, such as brakes or transmissions, without having to meet the costly requirements for repairing the entire vehicle.
- no longer will require a MOT inspection for a minor modification on a vehicle.
- will deregulate 23 standards and certification barriers and streamline the type design system.
- will allow equal access to data registration information which will allow U.S. vehicle makers to analyze competitors' customer bases and, thus, target their marketing efforts.

*Government of Japan and Industry Actions Since Signing of Agreement:* As a result of the automotive agreement with Japan, in the fall of 1995 MOT eliminated most restrictions on minor modification of vehicles (for example, the addition of side mirrors, air dams, etc.), and eliminated four parts from the "critical parts lists" (shock absorbers, struts, power steering equipment, and trailer hitches). It also issued regulations decreasing the amount of floor space, the number of tools, and the number of mechanics required for certified garages. MOT undertook a year long study of further deregulation of "critical parts," as specified by the agreement. In August 1996, MOT removed from the "critical parts" list four additional categories of parts: stabilizers, torque rods, torsion bar springs, and clutches for motorcycles, but did not revise the overall regulation.

The regulation by MOT of critical parts items such as brake parts constitutes an important barrier to the sale of American auto parts in Japan. Deregulation of these critical parts will be very important for expanded participation of American suppliers in the Japanese aftermarket. For this reason, the four major U.S. parts associations (Automotive Parts and Accessories Association, Automotive Service Industry Association, Motor and Equipment Manufacturers Association, and Specialty and Equipment Market Association) filed a petition January 6, 1997, to have brake parts removed from the disassembly repair regulations (i.e., the "critical parts list"). MOT denied the petition on February 5, citing safety considerations as the principal reason.

Equally significant to American auto parts suppliers will be the conditions under which the Japanese garage system is opened to independent participation. By limiting the ability to conduct compulsory inspections to garages that are closely linked to Japanese automobile manufacturers, MOT regulations have been an important deterrent to foreign participation in the huge Japanese replacement parts market.

MOT took a potentially important step towards liberalization with the February 20 announcement of regulations permitting the new special garages called for in the auto agreement. MOT will now allow garages, called Specialized Certified Garages, to perform repairs on one or more of the seven "critical parts" assemblies (brake systems, transmissions, engines, etc.). Prior to this announcement, a certified garage had to have the capability of fixing a vehicle bumper-to-bumper -- and only a fully certified garage could fix any of the critical parts.

To facilitate this, MOT has reduced space and tool requirements and tailored these to specific needs of each of the seven new types of specialized garage. For example, a fully certified garage is required to have 72 square meters of floor space and 30 necessary machines and tools. A specialized certified brake shop will now need only 53 meters and 16 tools. These reductions will make it easier and cheaper for small independent garages (who will have an incentive to seek competitively priced parts) to enter into one or more of the specialty repair markets.

The new regulations also created Special Designated Garages, which will make it possible for repairs related to the periodic *shaken* inspections to be performed at smaller certified garages that have not earned the rating of "designated" certified garages. Prior to this announcement, *shaken* repairs made at certified garages had to be taken to MOT for time-consuming inspections, while those made at designated garages (mostly dealerships) could be self inspected by the garage. Now, a group of independent local certified garages can pool resources and form a joint inspection facility that can perform *shaken* inspections.

The auto agreement has been, and will continue to be, closely monitored by an interagency team headed by Commerce and USTR. The team has issued two semiannual reports on progress achieved under the agreement. The first annual consultation on the agreement was held in San Francisco in September 1996, and was attended by observers from the EU, Canada, and Australia.

Progress in opening the Japanese automotive market has generally been good. As a result of the agreement, significant inroads have been made in deregulating the parts aftermarket and increasing access to the vehicle distribution system in Japan. These structural changes have resulted in increased sales of U.S.-made vehicles and U.S.-made parts, particularly those that have been directly deregulated.

Much more, however, needs to be done to fully open the Japanese market to competitive U.S. and other foreign automotive vehicle and parts manufacturers. The U.S. Government has expressed disappointment in the slow pace of progress in three key areas: the reluctance of existing Japanese dealers to sign franchise agreements with U.S. automakers, the lack of additional progress in eliminating high market value components from the "critical parts list," and a slowing in the rate of increase in the purchases of U.S.-made parts by the Japanese automakers. Progress in these areas will provide important indications of the commitment of the Government of Japan to an open and competitive automotive market.

# Japan

## Civil Aviation

In 1995, roughly 13 million passengers traveled by air between the United States and Japan. U.S. airlines carried almost two-thirds of them. U.S. carriers also are highly competitive in the cargo sector, holding a market share of about 55 percent. With nearly 40 percent of U.S. exports to Japan moving by air, Japan is by far the largest air freight market for U.S. carriers. A 1996 private study estimated that the U.S. economy could gain $100 billion in new economic activity, over 2,000 jobs, and nearly $20 billion in trade receipts under a more liberalized civil aviation agreement.

For many years, Japan has maintained that U.S. carriers carry an excessive amount of Asia traffic. Japan claims that the 1952 agreement is outdated and unbalanced in favor of the United States because there are three “incumbent” U.S. carriers (Northwest, United, and Federal Express) serving Japan with broad rights to fly passenger and cargo routes, while Japan has only one such carrier (Japan Air Lines). The United States strongly disagrees with this argument.

In July 1995, the United States and Japan agreed to begin all-cargo negotiations to liberalize air cargo transport and expand opportunities for both countries. In March 1996, an agreement was reached which created significant new commercial opportunities in the cargo sector. United Parcel Service (UPS) can now serve Osaka's Kansai International Airport with 12 additional flights a week; six of those have "beyond" rights. Another U.S. all-cargo carrier (Polar Air) has been designated to serve Japan for the first time, and Northwest, United, and Federal Express gained new operational flexibility and the right to serve three additional Japanese airports. Japanese carriers obtained comparable opportunities to serve new U.S. destinations and new operating flexibility, and a new Japanese all-cargo carrier (not yet designated by Japan) has the right to fly to the United States.

The Japanese Government advocates restraining the growth of U.S. carriers' services, both in the bilateral market and "beyond" Japan, while gaining expanded rights for Japanese carriers to and beyond the United States. In an apparent effort to pressure the United States into a revision of the 1952 agreement, Japan periodically refuses to grant rights to U.S. carriers that the United States believes are authorized in the agreement. In mid-1996, Japan declined to approve certain new routes for Federal Express that included beyond rights to the Philippines and Indonesia. Requests to start Northwest and United service from Osaka to Jakarta have not been approved. In response, the Department of Transportation proposed to restrict certain all-cargo service by Japan Air Lines. In turn, Japan threatened to block Federal Express and Northwest from flying U.S. cargos via Japan to several Asian destinations, including the Philippines and Singapore.

This potential cycle of sanctions-counter sanctions was put on hold when President Clinton and Prime Minister Hashimoto met at the Manila APEC summit in November and authorized the start of high-level civil aviation discussions in early 1997 to explore prospects for comprehensive passenger negotiations. The President has called upon Japan to negotiate an "open skies" agreement which would provide full and equal opportunities for Japanese and U.S. passenger and cargo carriers to compete in each other's markets. High-level meetings took place in Tokyo in January 1997 and in Washington in March 1997.

## Deregulation

Japan's recent government deregulation efforts notwithstanding, the Japanese economy remains clogged with excessive and often outdated regulations, which constrain economic growth and contribute to trade frictions by impeding imports, limiting foreign investment opportunities, raising business costs, and hampering employment mobility and business formation.

As established by the 1993 U.S.-Japan Framework, the bilateral Deregulation and Competition Policy Working Group holds consultations on deregulation, competition policy, and administrative reform issues. Since 1994, the focus of this group has been Japan's efforts to formulate and implement a three-year Deregulation Action Plan which will conclude in 1997. Each year the United States has submitted extensive recommendations to the Japanese Government for consideration in that process.

The United States continues to press Japan to implement meaningful deregulation and to emphasize that deregulation must be regarded as a dynamic process if it is to be responsive to changing circumstances. Combined with stronger antitrust enforcement and administrative reforms to increase the transparency and objectivity of regulatory regimes, effective deregulation in Japan will enhance competition and provide greater market access for foreign goods, services and investment. The enhanced economic efficiencies and competition that deregulation would bring will, over the long run, benefit the Japanese economy as a whole by lowering production, distribution, and retail costs; strengthening industrial competitiveness; and expanding product and service choices in the marketplace.

The Government of Japan issued the second revision of its Deregulation Action Plan in March 1996 which included significant deregulation measures in housing, financial services, and telecommunications. Included in the revision was a housing promotion initiative that will change building and building material regulations that limit market access for U.S. construction products and services, further opening of the private pension fund market to foreign investment advisory companies, liberalization of foreign exchange controls, and some relaxation of the Ministry of Posts and Telecommunications' control over telecommunications market entry and introduction of pro-competition interconnection rules. However, the revised 1996 Deregulation Action Plan failed to address adequately many issues, including: competition policy, distribution, transportation, legal services, labor, and administrative reform.

Over the past two years, an increasing number of Japanese and other foreign government and business organizations have spoken out in favor of deregulation. In 1996, the Japanese Economic Planning Agency (EPA) issued two reports that underscored the need for deregulation: (1) a January report which estimated that failure to deregulate costs Japan about 1.25 percentage points in real economic growth per year; and (2) a September 1996 report which concluded that the economic impact of deregulation in major industries -- such as distribution and telecommunications -- has equaled, on average, 1.69 percent of Japan's annual GDP over the last five years, with over one million new jobs created. In addition, the Economic Council, an advisory council to the EPA, issued a report in December 1996 that emphasized the need for structural reform in six major areas: advanced telecommunications, physical distribution, financial system, land and housing, employment and labor, and medical care and welfare.

## Japan

In November 1996, Prime Minister Hashimoto publicly announced his commitment to implement a "Big Bang" liberalization initiative of the financial services sector to revitalize Tokyo financial markets through dramatic deregulation and structural reform.

In December 1996, the government Administrative Reform Council (ARC) issued policy recommendations for inclusion in the second and final revision of the Three-year Deregulation Action Plan. The ARC proposed useful measures in 13 areas including financial services -- an area where deregulation has gained momentum recently due to the Prime Minister's "Big Bang" initiative, Government of Japan commitments made under the U.S.-Japan Financial Services Agreement, and domestic pressures for change.

Despite these calls for reform, opposition to specific deregulation proposals remains strong among vested interests in Japan. In particular, Japanese regulators are often reluctant to relinquish their discretionary authority over formal and informal rules. While many Japanese businessmen perceive that over-regulation impedes the critical changes necessary to adapt Japanese business to the demands of international competition, some are unwilling to challenge the status quo.

In January 1997, Japanese ministries issued their interim reports on how they planned to address the numerous proposals they had received from the United States, the EU, and other countries, as well as business groups. Other than areas such as telecommunications and housing which showed promise, most of the interim reports were disappointing. While the United States has been encouraged by Prime Minister Hashimoto's strong statements of support for deregulation, competition policy, and administrative reform, the United States continues to believe that deregulation must remain a priority until meaningful deregulation becomes a reality.

### Distribution

Japan's highly regulated, inefficient distribution system is widely recognized as a significant trade and investment barrier. In its November 1996 "Submission by the Government of the United States to the Government of Japan regarding Deregulation, Administrative Reform and Competition Policy in Japan," the United States requested the implementation of significant deregulation measures to address key distribution problems faced by foreign firms. Among other items, the United States asked that Japan:

- liberalize entry into the warehousing industry to reduce shortages of storage space, reduce costs, and minimize burdens for foreign firms related to the distribution of their products;

- eliminate the Large Stores Law by JFY 2000, including all adjustment provisions concerning store approval, floor space reductions, closing days, and hours of operation; and

- review all laws and regulations affecting distribution services in Japan, with the goal of eliminating all regulatory barriers which impede the approval, construction, licensing, and business operations of retail establishments.

*Large Stores Law*: The Large Stores Law continues to challenge foreign investors and exporters by limiting the establishment, expansion, and business operations of large stores in Japan which are most likely to serve as distributors of imported products. Large retailers, both domestic and foreign, continue to face serious problems advancing into the market. Under the Large Stores Law, Japanese consumers also lose. By impeding the business operations of large stores, the law reduces productivity in merchandise retailing, raises costs, discourages new domestic capital investment and ultimately decreases the selection and quality of goods and services.

In June 1996, as part of its consumer photographic film and paper dispute, the United States requested bilateral consultations at the WTO under the General Agreement on Trade in Services (GATS) on the Large Stores Law and other Japanese retail laws which constitute a barrier to foreign suppliers and to Japanese importers and distributors of foreign consumer products. The United States is now examining Japan's responses to these consultations, which were held on November 7-8, 1996, and is considering next steps. (See section below on consumer photographic film and paper.)

**Electrical Utility Companies' Procurement**

Japan's electric utilities are among the largest and most profitable companies in Japan. Although private sector enterprises, the ten generating companies enjoy regional monopolies in their service areas and are regulated closely by MITI's Natural Resources and Energy Agency in accordance with the Electric Utilities Industry Law. The MITI administered electricity rates have virtually guaranteed profits despite the utilities' very heavy capital investment programs (the industry accounts for about ten percent of Japan's total industrial investment). A number of the larger utilities are periodically ranked by the financial press as among the most profitable companies in Japan, a glaring contradiction for a regulated public service monopoly.

Japan is said to have the most expensive electric power of any industrialized nation. The high cost of electricity is of obvious concern to a nation like Japan, which relies so heavily on exports of electricity-intensive manufactured goods. This has motivated the MITI Minister recently to call for a 20 percent reduction in electricity rates within the next five years. This also was one of the concerns which prompted revision of the Electric Utilities Industry Law, effective December 1995, to introduce a limited degree of competition into the industry, including the establishment of a framework for independent power producers (IPPs). As a result, 3,047 megawatts of annual supply was secured by six utilities in the first round of bidding (1996). Although the IPPs will only be permitted to sell to the utilities handling their respective service areas, the bids by prospective IPPs to date suggest that these newcomers are prepared to produce electricity at markedly lower rates than the "avoided costs" indicated by the utilities as ceiling prices for bids. This in turn should increase the already formidable pressure on the utilities to cut power costs. In order to cut costs, however, the utilities need to introduce real competition in to their non-fuel procurement practices. The introduction of substantial and varied foreign products would provide real cost saving and drive down the prices of domestically produced equipment and materials through greater competition. To date, efforts by utility companies have varied across Japan, with some utilities making notable progress and others lagging behind.

## Japan

In recent years, the annual non-fuel procurement requirements of the Japanese electric power utility industry have totaled around $25 billion. Purchases from foreign suppliers comprise only a small fraction of this enormous market, despite the fact that many overseas firms can offer high quality goods and services at very competitive prices. Barriers which foreign suppliers face in doing business with the utilities include the following:

- Expensive and time consuming procedures to become a designated supplier to a given utility, and a lack of standardization among the utilities, which requires prospective vendors to repeat the process for each utility to which they wish to market;

- Lack of uniform technical standards and specifications among the utilities;

- Lack of harmonization between MITI technical standards and international standards; and

- A bias against the introduction of foreign products, which discourages initiatives to seek lower priced foreign goods.

In addition to addressing the foregoing problems, the following measures should be taken to improve the openness and transparency of utility company procurement and increase imports:

- Sharply increase the number of foreign companies on the product category lists from which utilities solicit estimates under the "competitive cost estimates method" ("kyoso mitsumori hoshiki");

- Increase the proportion of procurements using the "competitive cost estimates method;"

- Minimize the number of documents required from new suppliers to apply for type approval or registration;

- Shorten the time required for type approval of equipment; and

- Increase procurements of non-power related foreign goods and services.

In July 1995, the Japanese utility industry took a positive step toward international cooperation by agreeing to participate with U.S. suppliers in the New Orleans Association (NOA), a forum for U.S. suppliers of power generation, transmission, and distribution equipment to promote awareness of their products among Japanese utilities while also learning about the procurement procedures and business practices of the latter. NOA has held a number of meetings and is being watched with interest.

Despite several encouraging procurements by individual utilities, the percentage of overseas procurement by Japan's power companies remains low. While some companies have set up large integrated procurement divisions which actively seek foreign products, others lag far behind in this regard. American and other foreign products are sweeping other electrical equipment markets in Asia and demand is increasing throughout the region. Japan remains the most notable exception where foreign market share remains low. Middle market goods can be shipped in bulk for just in time delivery to Japanese utilities at competitive prices. Many of the goods need little or no after sale service and could be easily integrated into the utilities procurement systems. But unreasonable and unnecessary products specifications often pose barriers to these products. Japanese utilities have advertised that they are searching the world for competitively priced products but knowledge of the middle market in the United States and other foreign countries is minimal and real initiatives to seek out such cost-cutting products are lacking.

This is the fourth year that utility company procurement has been identified as posing significant barriers to American goods and services. While some progress has been made, there is no question that Japanese utility companies could go further. The United States will continue to maintain strong interest in individual utilities' efforts to achieve fair and open access, and will evaluate progress in providing real opportunities to foreign suppliers.

**Flat Glass**

Japan's $4.5 billion flat glass market, the second largest in the world, is an oligopoly dominated by three manufacturers: Asahi Glass, which controls about 50 percent of the market; Nippon Sheet Glass, which controls about 30 percent; and Central Glass, with about 20 percent. Foreign suppliers accounted for only approximately 3 percent of the Japanese market (by value) in 1994 and 5 percent in the first half of 1995.

With few exceptions, wholesalers and distributors in Japan have represented only one Japanese glass manufacturer, thereby significantly restricting competition. Japanese flat glass makers also have controlled many of the 15,000 retail glass stores in Japan. By controlling the distribution system, Japanese manufacturers have been able to limit the use of imported glass throughout Japan.

In January 1995, the United States and Japan signed an agreement to open the Japanese flat glass market to foreign suppliers. Pursuant to the agreement, Japanese glass distributors publicly stated that they will diversify supply sources to include competitive foreign glass suppliers and that they will not discriminate among suppliers based on capital affiliation. Japanese glass makers also voiced support for diversifying their *de facto* exclusive distribution networks. The Government of Japan committed to promote increased competition in glass procurement for construction projects based on nondiscriminatory technical and performance specifications and competitive commercial terms.

The agreement includes qualitative and quantitative criteria for measuring progress. The United States is monitoring implementation of all phases of the agreement, especially to ensure that Japanese distributors begin to procure glass from several different manufacturers. Consultations to assess implementation of the agreement are held at six month intervals. The two governments conducted the first review of the glass agreement in the fall of 1995 and the first annual review in April 1996.

Although trade statistics for 1995 showed a small increase in imports, updates from industry suggest 1996 sales were weak. The Government of Japan is gathering new survey data on recent trends in the flat glass market. This data will be considered in March at a government-to-government review. The data also will be reviewed by the private sector as part of an ongoing industry-to-industry dialogue conducted under the auspices of the U.S.-Japan Business Council. The United States strongly supports this private sector dialogue as a forum for addressing issues that arise under the agreement.

Much more remains to be done to open the Japanese retail/wholesale distribution system to competitive foreign glass products; improve access for U.S. glass products such as mirrors and automotive glass; and promote the use of energy efficient insulating glass, where foreign glass companies have a strong competitive advantage. The U.S. Government hopes to see an increase in foreign suppliers' market shares and looks to the Government of Japan to continue its efforts to open further the retail/wholesale distribution system. Access to public sector procurement in Japan is also a key part of the agreement, which the U.S. Government is monitoring closely.

**Paper and Paper Products**

In April 1992, the United States and Japan signed "Measures to Increase Market Access for Paper Products," a five-year agreement aimed at substantially increasing access to Japan's market for paper products. That agreement expires in April 1997. In the agreement, the Japanese Government committed to: encourage companies to increase imports of competitive foreign paper products; introduce transparent corporate procurement guidelines; encourage key end-user segments of the Japanese market to use foreign paper; and introduce Antimonopoly Act compliance programs. The Government of Japan also committed to provide assistance to foreign paper suppliers in the form of market information and low-interest loans.

There has been no meaningful increase in Japanese imports of paper products. In 1995 the U.S. share of the Japanese paper market stood at 1.8 percent, only one-tenth of one percent higher than in 1991, the year before the agreement was concluded. Japan's paper and paperboard imports from all sources accounted for just 4.2 percent of the country's consumption in 1995, only slightly higher than the 1991 total import share of 3.7 percent and the 1994 total import share of 3.9 percent. This is still the smallest such ratio of any major industrialized country.

While the agreement has failed to produce anticipated results, U.S. paper companies point to some areas where it has led to improved market access. The paper agreement has led to virtual elimination of the practice of "post-purchase price adjustment," and has made industry selling practices more transparent. U.S. industry believes the agreement also provided useful political cover to Japanese customers inclined to purchase imported paper, but fearful of retaliation from Japanese suppliers.

The U.S. Government and the Government of Japan continue to hold semi-annual reviews of the implementation of the agreement. At the eight, and final, review meeting, in March 1997, the U.S. Government stated that the agreement had not addressed the agreed-upon goal of substantially increasing market access for foreign paper, and stated that further efforts would be needed. The lack of progress in this sector prompted the U.S. Government to list market access for paper and paper products as a practice that may warrant future identification as a "priority" foreign country practice under the provisions of "Super 301" for the third consecutive year in September 1996.

**Consumer Photographic Film and Paper**

Foreign film manufacturers face a variety of barriers that restrict access and sale of foreign-produced photographic film and paper in the Japanese market, the second largest film market in the world. These include barriers that prevent foreign firms from obtaining adequate access to the Japanese film distribution network and retail outlets.

On July 2, 1995, in response to a petition by Eastman Kodak, the USTR initiated an investigation under Section 302(a) of the 1988 Trade Act of barriers to access to the Japanese market for consumer photographic film and paper. At that time, the United States requested bilateral consultations with the Government of Japan. Consultations were held in October 1995, but failed to resolve the issue.

On June 13, 1996, after an extensive investigation which included careful examination of voluminous evidence submitted by interested parties and an independent inquiry by the U.S. Government, and in the absence of rebuttal from the Government of Japan, USTR made a determination of unreasonable practices by the Government of Japan with respect to the sale and distribution of consumer photographic materials in Japan. The investigation showed that the Government of Japan built, supported, and tolerated a market structure that impedes U.S. exports of consumer photographic materials to Japan, and in which practices occur that also impede U.S. exports of these products to Japan, thereby denying fair and equitable market opportunities.

The USTR also concluded that Japanese Government liberalization countermeasures, including measures to restructure the distribution system for photographic products, as well as the Premiums Law, and the Large Stores Law and related measures, appear to contravene Japan's WTO obligations, and nullify or impair benefits accruing to the United States under the WTO Agreements. Therefore, the United States made three separate requests for consultations under WTO auspices on the broad range of market access barriers in the consumer photographic materials sector in Japan. These included consultations under: (1) the General Agreement on Tariffs and Trade (GATT), (2) the General Agreement on Trade in Services, and (3) a GATT contracting parties' decision on restrictive business practices.

The first set of consultations was held on July 10-11, 1996, and addressed GATT violations and nullification and impairment of GATT benefits. When those consultations failed to resolve the issue, the U.S. Government formally requested the formation of a WTO panel to hear the U.S. complaint. The panel was established at the October 16, 1996, meeting of the WTO Dispute Settlement Body. The European Union and Mexico requested to join as third parties to the case.

On February 20, 1997, the United States submitted its opening brief to the WTO dispute settlement panel. The submission describes the extensive array of measures put in place by the Government of Japan over the past 30 years to offset the effects of tariff, import, and foreign investment liberalization and limit the sale of imported consumer photographic film and paper in the Japanese market. Beginning with the Kennedy Round and continuing to the present, Japan has imposed laws, regulations, and administrative actions to strengthen the dominant position of domestic consumer photographic material manufacturers and curtail opportunities for imports that otherwise should have been available. Through these "liberalization countermeasures," Japan deliberately restructured its market to discriminate against imports and systematically nullified and impaired benefits that trading partners expected from Japan's tariff concessions while discriminating against imported photographic film and paper.

*Distribution Countermeasures*: Japan's Ministry of International Trade and Industry (MITI) consolidated wholesale operations in the photographic materials sector, changing what formerly had been a dynamic and open system to one with narrow distribution channels under the control of domestic manufacturers. As a result of these Japanese Government measures, less than three percent of film that flows through Japanese wholesale channels is foreign.

*Restrictions on Large Retail Stores*: In addition to denying foreign manufacturers of photographic film and paper access to the primary distribution network, Japan has restricted the next best available alternative: large retail stores. Whereas wholesalers are needed to reach Japan's multitude of photospecialty retailers, large retail stores have sufficient economies of scale to make direct-to-retail sales efficient. Moreover, the greater amount of shelf space in large stores increases the likelihood that imports will be displayed beside domestic brands. Japan, however, has established a highly restrictive regulatory system limiting the expansion and operation of large retail stores.

*Promotion Countermeasures*: Japan has reinforced the foregoing measures affecting wholesalers and retailers by limiting the extent to which foreign producers might rely upon their marketing strength to promote sales through the use of economic inducements, or "premiums," and other marketing techniques. Such promotions stimulate demand for products and thereby serve as incentives for wholesalers and retailers to carry them. Japan adopted a series of "promotion countermeasures" restricting the ability of suppliers to use certain discounts, coupons, lotteries, give-aways or other economic incentives, and particular representations in advertising, especially where price or price discounts are discussed.

The panel will hear the first round of arguments on April 16, after both the United States and Japan have submitted their opening briefs. The final panel report is due in October 1997.

On November 7-8, 1996, the United States held consultations with Japan on possible violations of the GATS arising from the Large Stores Law and related measures. The United States is examining Japanese Government responses to questions it raised during the consultations and considering next steps.

The United States also requested consultations pursuant to the GATT contracting parties' "Decision on Restrictive Business Practices: Arrangements for Consultations" to discuss with the Government of Japan significant evidence of anticompetitive activities in the Japanese photographic materials sector, and to ask it to take appropriate action. The Japanese Government has refused the U.S. request unless the United States agrees to consult on alleged restrictive business practices in the U.S. photographic materials market. The United States has made it clear that such linkage is contrary to longstanding GATT principles and therefore is unacceptable. The European Union requested to join in these consultations on July 5, 1996, and the United States accepted this request on August 15, 1996.

Japan's photographic film and paper market is valued at about $4.0 billion per year. The leading U.S. producer, Eastman Kodak Company, estimates that the barriers in this market have cost it at least $5.6 billion in lost revenues since 1975.

### Semiconductors

On August 2, 1996, the United States and Japan announced new measures to replace the 1991 semiconductor arrangement, which expired on July 31, 1996. The new measures, like the preceding 1991 and 1986 semiconductor arrangements, were negotiated to address persistent problems of market access for U.S. manufacturers of semiconductors. The new measures represent an innovative, four-dimensional approach to a sector in which market access is promoted not only through government-level discussion, but through concrete industry-level discussion.

The cornerstone is a new industry-to-industry agreement under which industries have established a "Semiconductor Council" to promote cooperative activities, discuss market access concerns, and expand international cooperation. Included within its scope are both a continuation of existing user/supplier cooperative activities as well as new supplier/supplier cooperative activities in such areas as standards, intellectual property, environmental and safety issues, market development, and trade and investment liberalization. Industry experts also will collect and analyze data on the situation and outlook for the market and report this quarterly to governments. The intention is to provide a complete picture of the market situation in the Japanese and other key markets. Industry organizations may join the Council if the countries where they are headquartered have either eliminated tariffs, committed to eliminate tariffs expeditiously, or suspended tariffs pending their formal elimination.

Second, the measures, through a bilateral government statement, establish a multilateral government consultative mechanism, essentially to oversee and interact with the Semiconductor Council. Governments whose industries have joined the Council may participate in these consultations. Such consultations will occur at least once per year for the purpose of reviewing the reports prepared by industry, the cooperative activities of the Council, and market trends and developments in Japan and other major markets.

Third, the measures, also through the bilateral government statement, establish the "Global Governmental Forum" (GGF). Governments of all major semiconductor-producing countries are invited to participate without precondition. This multilateral forum also will meet at least once per year to discuss policy issues of interest to the semiconductor industry, including: trade and investment liberalization, legal regimes, environmental issues, worker health and safety, standardization, intellectual property rights, approaches to basic scientific research, and promotion of the information society.

Fourth, in December 1996, the Semiconductor Industry Association (SIA) and the Electronics Industries Association of Japan (EIAJ) announced an industry-level agreement on antidumping consistent with the August 2 industry agreement and government statement reaffirming the need to avoid injurious dumping through effective and expeditious antidumping measures consistent with the GATT and WTO Antidumping Agreement. Individual semiconductor producing companies will continue to collect and maintain specified data on a voluntary basis which can be produced in an antidumping investigation on an expedited basis.

The first meeting of the Global Governmental Forum was held in Tokyo on December 16, 1996, with the Governments of Japan, the United States, the European Union (represented by European Commission) and the Republic of Korea participating. The United States will host the next session in the latter half of 1997. Industry is planning to hold the first Semiconductor Council meeting in April 1997, and is planning for one user-supplier symposia in the spring in telecommunications and emerging applications. While Japanese industry has committed under the new agreement to continue the cooperative activities that existed under the 1991 agreement, it has not yet agreed to a full schedule of activities. The Administration is concerned about Japanese industry's commitment to sustain the level of cooperation attained under the previous agreement, and will be working closely with U.S. industry and the Japanese Government to ensure that the commitments made in the new semiconductor agreement are fully and successfully implemented.

Progress under the 1991 agreement was limited in its first year, with foreign market share stalled at around 16 percent through September 1992. However, in the fourth quarter of 1992, foreign market share jumped to 20.2 percent. Due to the concerted efforts made by all parties to the agreement, foreign market share reached an average 22.4 percent market share in 1994, a 25.4 percent market share in 1995, and 26.8 percent market share in January-September 1996.

**Sea Transport and Freight**

American carriers serving Japanese ports encounter a highly restrictive, inefficient and discriminatory system of port services. The Japan Harbor Transport Association (JHTA), a trade association of stevedoring companies, uses a system of "prior consultations" (the requirement that carriers submit to the JHTA 60 days in advance notification of any new request or change in operational plans) to control competition, allocate harbor work among JHTA member stevedores and terminal operators, and frustrate the implementation of any cost-cutting by carriers. Other restrictive JHTA practices include the mandatory weighing and measuring of cargo regardless of commercial necessity and restrictions on the provision of harbor work on Sundays. The MOT protects the JHTA's position by refusing to license new entrants into port service businesses and by supporting the requirement that lines submit their plans to JHTA to prior consultation.

On November 6, 1996, the Federal Maritime Commission (FMC) proposed sanctions against Japanese ocean freight operators in response to restrictions and requirements on the use of Japanese ports. The FMC determined that the Government of Japan appears to be discriminating against U.S. carriers by refusing to issue licenses to non-Japanese companies to perform stevedoring or terminal operating services. The FMC also determined that the Government of Japan through its licensing and support of the prior consultation system appears to protect the Japan Harbor Transport Association. Effective April 14, 1997, if the issue is not resolved prior to that date, the FMC announced sanctions of $100,000 each time a liner vessel owned or operated by Mitsui-OSK Line, Nippon Yusen Kaisha (NYK Line), and Kawasaki Kisen Kaisha (K Line) entered the United States from abroad. Government-to-government discussions on the prior consultation system were held in Washington D.C. in early 1997, with no resolution.

# KENYA

In 1996, the U.S. trade deficit with Kenya was $2 million, a shift of $14 million from the U.S. trade surplus of $12 million in 1995. U.S. merchandise exports to Kenya were $104 million, a decrease of $10 million (8.8 percent) from the level of U.S. exports in 1995. Kenya was the United States' one hundred and seventh largest export market in 1996. U.S. imports from Kenya were $107 million in 1996, an increase of $5 million (4.9 percent) from the level of imports in 1995.

In 1996, Kenya's economy continued its recovery from a period of near-zero growth in 1992-1993. The preliminary estimate of the country's gross domestic product (GDP) growth rate in 1996 is about 4 percent, slightly lower than in 1995. The Government of Kenya predicts about 6 percent growth in GDP in 1997, although many private economists believe it is likely to be lower as the result of the current drought and continuing power interruptions that slow business and manufacturing.

## IMPORT POLICIES

Kenya has progressively reduced its number of custom duty bands (including the zero rate) from 8 to 5 between June 1994 and June 1996. The maximum tariff rate has fallen steadily from 45 percent in June 1994 to 40 percent in June 1995 and 35 percent in June 1996. The duty on computers, specifically, was reduced in 1995 from 10 to 5 percent. Tariff rates on agricultural imports, such as vegetable oil and breakfast cereal, remain high. The potential increase in U.S. exports, if agricultural tariffs were to be reduced, would probably be less than $10 million, based on shipping distance and past market experience.

Kenya abolished import licensing in 1993, except for a list of items based on health, environmental, and security concerns. The list includes livestock and commercial seeds. From April through June 1995, the government banned the import of sugar, soft wheat, and corn. Imported dairy products were also banned in April 1995. In January 1996, the government imposed a one-year ban on the import of dairy products.

All imports with an f.o.b. value of more than $1,000 require pre-shipment inspection (PSI). Shipments originating in the United States are inspected by the Swiss firm Cotecna Inspection S.A. In addition to a "clean report of findings" (CRF) certifying that the goods are consistent with the invoice, the inspection agency also furnishes a "valuation certificate" which enables the Kenyan Government to determine the correct duty. The import declaration fee, which includes a pre-shipment inspection fee, is 2.75 percent of the export (f.o.b.) value. Most of the funds collected from the fee go to the general treasury rather than to pay for pre-shipment inspection services. Moreover, effective February 1, 1996, if importers fail to obtain the inspection in advance, a penalty of 10 percent (20 percent for motor vehicles) is applied.

The government has taken steps to counter corruption at the Port of Mombasa. In early 1996, 22 officials were suspended and charged with duty evasion. The government has since appointed a new management team at the port; beginning in September 1996, the UK Port of Felixstowe assumed management of Mombasa's container facility under a two-year contract.

## Kenya

### STANDARDS, TESTING, LABELING, AND CERTIFICATION

In July 1995, the Kenya Bureau of Standards began inspecting imports to ensure conformity to national standards. The inspection fee is 1 percent of c.i.f. value. Certain agricultural goods are subject to further inspection by the Kenya Agricultural Research Institute (KARI). Commercial hybrid grain seed must be evaluated for a period of three years by KARI. Furthermore, in early 1996, Kenya, citing environmental standards, effectively banning commercial seed imports by requiring that nearly all approved seed be grown in the country. The rule, if enforced, would reduce U.S. exports by less than $10 million.

The Weights and Measures Act requires products to be labeled with metric measurements and packaged in even units (e.g., 2.5 liters, not 2.51). Shipments that violate these rules may not be re-exported.

### GOVERNMENT PROCUREMENT

Although not repealed, Kenya's "buy national" requirement, which provides local firms with a 10 percent preference in government tenders, is no longer observed. According to government regulations, goods worth over $4,000 must be purchased through open tender. In practice, however, tenders are frequently awarded to uncompetitive firms in which government officials have a significant interest. Conflict-of-interest regulations are not enforced. Some of the largest government contracts, including $83 million for an international airport in 1994 and $50 million for a presidential jet in 1995, have been awarded in secret. More transparent government procurement could boost U.S. exports by $100-500 million, based on government procurement opportunities available.

### EXPORT SUBSIDIES

In 1992, the government enacted a duty/value-added tax remission facility that allows exporters to purchase imported inputs tax free. There is no general system of preferential financing, but sectoral government development agencies in areas such as tourism and tea are supposed to provide funds at below-market rates to promote investment and exports by Kenyans.

### LACK OF INTELLECTUAL PROPERTY PROTECTION

Kenya is a member of the World Intellectual Property Organization (WIPO) and the African Regional Industrial Property Organization. It has joined both the Paris Convention on Protection of Industrial Property and the Berne Convention for the Protection of Literary and Artistic Works. Although a unified system for the registration of trademarks and patents from Anglophone Africa was signed in 1976, the effort has not proceeded due to lack of cooperation and funds. Future protection may be achieved through the African Intellectual Property Organization, although the enforcement and cooperation procedures are untested. Kenya, as a member of the WTO, must also implement the Agreement on Trade-Related Aspects of Intellectual Property Rights (TRIPs).

Kenya is in the process of amending its intellectual property laws to conform to WIPO guidelines, the TRIPs Agreement, and other international conventions. In December 1995, the Kenyan Parliament revised the Copyright Act, incorporating, among other changes, protection for computer technology and satellite transmissions. The Industrial Property (Patent) and Trademark Acts are scheduled to be amended in 1997. The Copyright Act protects sound as well as video recordings. Violations are subject to a fine of up to $3,600 or imprisonment for five years or both. In practice, however, the Attorney General's office (which is responsible for copyright matters) and the police seldom enforce the laws. Pirated sound recordings are common, and virtually all videos available in shops are unlicensed.

For the fiscal year ending June 1996, the Kenya Broadcasting Corporation owed the local music copyright community nearly $182,000 for artists' royalties. Kenya Film Corporation, a bankrupt parastatal that controlled the importation, distribution, and exhibition of feature films until 1993, routinely showed unlicensed films at Nairobi's biggest movie theater. Other commercial theaters and a Kenyan cable television company also violated copyright norms in 1996. Given the small size of the market, improved copyright protection might increase exports by less than $10 million.

## SERVICES BARRIERS

There are no explicit barriers on the provision of services by U.S. professionals. For example, a U.S. bank prepared flotation of shares by Kenya Airways and a U.S. life insurance firm is the leader in its industry sector. Nevertheless, foreign companies offering services in construction, engineering, and architecture may face discrimination when bidding for public projects, and the Kenyan Bar has declined to admit foreign lawyers for over 10 years. New foreign investors with expatriate staff are required to submit plans for the gradual elimination of non-Kenyan employees.

## INVESTMENT BARRIERS

Foreign equity investment on the Nairobi Stock Exchange has been authorized since January 1, 1995, subject to certain limits. The limits were increased in June 1995 to 40 percent for combined foreign ownership and 5 percent for individuals. Life insurance companies are required to have at least 33 percent local ownership. In other industrial sectors, local partners are encouraged but not mandatory. Small-scale commercial enterprises no longer require a Kenyan partner. Technology transfer requirements and foreign exchange controls have been abolished. Difficulty in obtaining clear title to land, lack of confidence in speedy and fair resolution of disputes, and requests from officials for illicit payments continue to hamper investment. If these investment barriers were lifted, U.S. investment might increase by $25-100 million.

### Nonstrategic Parastatals

While Kenya, the most industrialized country in East Africa, maintains an open foreign exchange system and liberal investment regulations, its parastatal sector is large and could be reduced. The Kenyan Government began privatizing parastatals in 1994, and by June 1996, had either completely divested from or reduced its shareholding in 140 of the original 207 "non-strategic" parastatals. Divestitures took the form of preemptive rights (41 firms), tea factories sold to farmers (39), receiverships and public flotation (14 each), liquidations (12), subsidiaries of those sold through flotation (5), and a management buy out (1). Total gross proceeds as of June 1996 amounted to $10 billion. In December 1995, the government sold 26 percent of Kenya Airways to KLM. The government sold an additional 48 percent of the national carrier to the public (including foreign investors) in April 1996.

# Kenya

Expected privatizations in 1997 include a large reinsurance company, two chains of hotels, and the largest sugar refinery in the country. In addition, the government is committed to reform and partial privatizations in the power and telecommunications sectors. These programs, however, are behind schedule.

### Strategic Parastatals

The Government of Kenya has removed most of the monopolies, including all trading monopolies, formerly enjoyed by the country's "strategic" parastatals. Nevertheless, several state corporations remain barriers to open investment. Kenya continues to restrict access to radio and TV licenses for independent media organizations. Kenya Broadcasting Corporation (KBC) is no longer the sole provider of television through its two channels. However, one of the other two current operators is controlled by the governing party, while the other belongs to a private Kenyan firm with close ties to the government. Since the fall of 1996, KBC radio has had two competitors, both firms with connections to the governing party. A suit against the government by a local independent company seeking a TV broadcasting license is still pending in court.

The government has been hesitant to open public infrastructure to competition, although there may soon be progress in this area. At the beginning of 1997, the Kenya Power and Lighting Company (KPLC) was split into two entities, Kenya Power Company, to deal with all power generation, and KPLC, which will now be responsible only for distribution of electricity. There has been discussion of allowing private firms to build and operate roads. Since 1994, refined oil products may be imported, but they are subject to high duties to protect the national refinery's market share. The state reinsurance company is still entitled to 20 percent of all general insurance business. Kenya Posts and Telecommunications Corporation (KPTC) provides both postal and telecommunications services and regulates the provision of these services. It has authorized pay telephones for use in private group houses. KPTC also authorized private very small aperture terminals (VSAT), but these must receive presidential approval. So far KPTC has not approved various satellite and internet projects and more direct competition in telephone services. KPTC stopped licensing private telephone bureaus beginning mid-December 1996. In addition, and more damaging to U.S. firms, KPTC shut down home country direct telephone services in October without warning.

KPTC is scheduled to be split into three parts at the end of December 1998: a post office, a telecommunications company, and a regulatory authority. Thereafter, at least a 30 percent share in the telecommunications company will be sold to the public. A consulting contract has been awarded for the separation of the three independent entities, and draft legislation is being prepared.

## OTHER BARRIERS

The state agriculture sector is an area in which trade barriers flourish. Only the National Cereals and Produce Board (NCPB) is permitted to export corn. All coffee produced in Kenya must be sold through the Coffee Board of Kenya. Kenya Seed Company and the National Dairy Cooperative are subsidized. One of the biggest problems is the unclear, ever-shifting agricultural policies. For example, some tariffs are variable and can change overnight; import bans come and go. Private firms do not restrict the sale of U.S. goods and services. There is, in fact, significant demand for U.S. products. The difficulty lies in overcoming the preference by importers and distributors toward suppliers in Europe and the United Kingdom, Kenya's former colonial ruler, in particular.

# KOREA

In 1996, the U.S. trade surplus with Korea was $3.9 billion, an increase of $2.7 billion from the U.S. trade surplus of $1.2 billion in 1995. U.S. merchandise exports to Korea were $26.6 billion, an increase of $1.2 billion (4.6 percent) from the level of U.S. exports to Korea in 1995. Korea was the United States' fifth largest export market in 1996. U.S. imports from Korea were $22.7 billion in 1996, a decrease of $1.5 billion (6.3 percent) from the level of imports in 1995.

The stock of U.S. foreign direct investment (FDI) in Korea in 1995 was $5.3 billion, an increase of 30.4 percent from the level of U.S. FDI in 1994. U.S. FDI in Korea is concentrated largely in the banking, manufacturing, and wholesale sectors.

## IMPORT POLICIES

### Tariffs

Korea bound 92 percent of its tariff lines as a result of the Uruguay Round negotiations. The average bound rate for industrial products will be 8.2 percent once the commitments are fully implemented. The average applied tariff rate is 7.9 percent.

Except for rice, all agricultural products are bound. In January 1995, Korea began implementation of its Uruguay Round commitments to lower duties on over 30 agricultural products of primary export interest to the United States, including such intermediate and high value products as vegetable oils and meals, processed potatoes, mixed feeds, feed corn, wheat, fruits, nuts, popcorn, frozen french fries and breakfast cereals. Duties on these products will be reduced by 40 percent from the 1993 applied levels in 10 equal installments between 1995 and 2004.

Korea also established tariff-rate quotas that provide for minimum access to a previously closed market, or maintain pre-Uruguay Round access (see also Quantitative Restrictions). Within-quota tariff rates are to be maintained at zero or low levels. However, as a result of this "tariffication" of previous non-tariff trade barriers, the over-quota tariff rates on some products are quite high. For example, there are a number of agricultural products that have out-of-quota tariff rates of over 200 percent. Products with significant export interest from U.S. suppliers include natural and artificial honey, skim and whole milk powder, barley and barley malt, popcorn, ginseng root, and some processed ginseng products. Korea is in the process of phasing in tariff reductions to zero tariffs on most or all products in the following sectors: paper, toys, steel, semiconductors, and farm equipment. Korea is also in the process of harmonizing tariffs on chemicals to final rates of 0, 5.5, or 6.5 percent, depending on the product, and reducing tariffs on scientific equipment by 65 percent from pre-Uruguay Round levels.

Korea harmonized and bound most tariffs on textiles and apparel products at least at the level of U.S. rates: 7.5 percent for man-made fibers, 15 percent for yarns, 30 percent for fabrics and made-up goods, and 35 percent for apparel. However, duties still remain very high on a large number of high-value agricultural and fisheries products. Korea imposes tariff rates above 45 percent on most horticultural products of interest to U.S. suppliers, such as shelled walnuts, table grapes, and citrus. Products subject to a tariff rate of 30 percent or higher include certain meat, poultry, offal, most fruits and nuts, many fresh and processed vegetables, all flour and starches, peanuts, various vegetables oils, juices, jams, peanut butter, soups, beer and distilled spirits, and dairy products.

U.S. firms in a number of sectors continue to report that the combination of current tariffs and value-added taxes for agricultural and manufactured products is often sufficient either to keep imports out of the market or to raise their prices such that competitiveness is significantly diminished. The example of distilled spirits illustrates the burden that tariffs plus discriminatory domestic taxes can create. Although Korea reduced its tariffs on distilled spirits (other than grape brandy) to 20 percent on January 1, 1996, imported and domestic western-style distilled spirits are assessed significantly higher excise taxes than "Soju," a traditional local spirit. While Soju is taxed at 35 percent, whisky and brandy are taxed at 100 percent, other distilled spirits are taxed at 80 percent, and liquors are taxed at 50 percent. Korea's "Education Tax" further compounds the discrimination between imported and domestic distilled spirits. A 30 percent "Education Tax" is imposed on distilled spirits whose excise tax is 80 percent or higher, but the tax is only 10 percent on spirits, such as Soju, whose excise tax is under 80 percent.

Another example is foreign passenger vehicles, which are subject to an applied tariff rate of 8 percent, more than three times that of the United States. Korea then levies a "cascading" system of multiple, high taxes on top of the 8 percent tariff, three of which are based on engine size. For a car with a 2,000cc or larger engine, these nine taxes combine with the tariff to make the car significantly more expensive than a domestic equivalent. Korea also maintains the option within the WTO of increasing its tariff rate on passenger cars to as high as 80 percent.

Korea uses "adjustment tariffs" to respond to import surges and protect domestic producers. While Korea has not imposed any new adjustment tariffs since 1994, previous tariff increases have not been completely phased out. For example, in 1992, Korea raised the tariff on all carbon zinc and alkaline cell batteries from 11 percent to 30 percent. Although the rate has been subsequently reduced to 13 percent, Korea has still not restored tariffs to the 1992 level. Korea is also imposing antidumping duties on U.S. firms with increasing frequency. In 1996, the Korean Government imposed antidumping duties on lithium batteries, ethanolamine, fiberglass, and choline chloride, all of which affected U.S. firms. The Korean Government has also threatened to initiate antidumping actions against makers of razor blades and electric shavers.

**Quantitative Restrictions**

Korea implements quantitative restrictions through its import licensing system. All goods entering Korea previously required a foreign-exchange bank-issued import license, but from January 1, 1997, separate approval for payment in foreign currency is no longer required. The export-import notice contains lists of products which are restricted or prohibited. Most imported goods no longer require approval, but some tariff line items (mostly agricultural and fishery products) are restricted for import, i.e., subject to quotas or tariff-rate quotas with prohibitively high rates.

Under a 1989 agreement relating to liberalization of Korea's General Agreement on Tariffs and Trade (GATT) Balance of Payments (BOP) Measures, an additional 283 items (primarily agricultural and fishery products) are to have been liberalized between 1992 and 1997. Of these products, 133 items were liberalized under the 1992-1994 Agricultural Liberalization Program. Under a subsequent program, 50 items were liberalized in 1995 and 30 in 1996. Another 62 items will be liberalized in 1997. The remaining items, namely live cattle and beef products, will be liberalized on January 1, 2001, under an agreement reached during the Uruguay Round negotiations.

A bilateral agreement on beef imports was signed in 1990, and in July 1993, the United States and Korea concluded the second of three agreements aimed at fully establishing free-market conditions for the importation and distribution of imported beef in Korea. The third agreement was negotiated in the Uruguay Round. This agreement establishes the "Simultaneous Buy Sell" (SBS) system, which (1) lays out annually increasing minimum access levels; (2) guarantees direct commercial relations between foreign suppliers and Korean retailers and distributors (e.g., five star hotels and supermarkets) and (3) ensures that growing volumes of beef will be sold through that channel instead of through a government corporation. New retailers and distributors are added to the direct access system over the term of the SBS agreement. Each year the United States and Korea meet on a quarterly basis to ensure full implementation of the Agreement's provisions. The minimum import quota for beef is to expand from this year's 167,000 ton quota to 225,000 tons by the year 2000. The proportion of the quota imported for private sector sales through the SBS system in 1997 is 83,500 tons and will increase until January 1, 2001. Korea has agreed to remove all non-tariff barriers to beef imports, including state trading, by January 2001.

Also as part of its Uruguay Round commitments, in 1995 and 1996, Korea began phasing out all import restrictions on a number of important U.S. agricultural exports, including beef, frozen pork, frozen chicken, oranges, orange juice, grapes, grape juice, apple and other fruit juice beverages, and dairy and whey products. Apples were also liberalized in 1995, though imports are prohibited for phytosanitary reasons. Under Korea's Uruguay Round commitments, the final tranche of products will be liberalized on July 1, 1997. This includes frozen pork, frozen chicken, fresh oranges, orange juice, beef jerky and beef offal. A corresponding tariff-rate quota will continue to exist for fresh oranges through 2004.

Korea's administration of the tariff-rate quotas for certain products agreed under the Uruguay Round raises new market access problems. Over the past two years, the United States has expressed its concerns with Korea regarding the fair operation of quotas on several products. Products of interest to U.S. suppliers include fresh oranges, value-added soybean products, value-added corn products, whey products, and rice. For oranges, Korea has designated Korea's only citrus cooperative as the sole importer of fresh oranges under the tariff-rate quota. The United States has repeatedly expressed its concern that such an arrangement can present a conflict of interest. For soybean, corn and whey products the Korean Government continues to control allocation of the quotas, effectively restricting access to the Korean market for value-added products, such as soyflakes and corn grits.

As for rice, a state trading organization imports the product while the government assumes immediate control upon entry into Korea. Thus, the government maintains full control over distribution and end-use. This process effectively restricts access to the Korean market for U.S. suppliers of high-quality table rice. The Korean Government has repeatedly stated that it will not allow imported table rice to be directly marketed to Korean consumers.

## Korea

In contrast, the Korean Government has been relatively responsive to U.S. comments about the implementation of the tariff-rate quota on frozen pork and poultry. Though problems with Korea's quota auction system (QAS) occurred during the first year of implementation in 1995, the process has proceeded much more smoothly in 1996 and 1997. Both products become fully liberalized on July 1, 1997.

Since 1987, Korea has maintained an “import diversification” policy which effectively bans Japanese products (see also “Motor Vehicles”). Japan has declined to challenge the WTO-inconsistent law. However, U.S. companies that source their products or parts from Japan or use Japanese components have been adversely affected by the ban. In response to U.S. requests, Korea allowed the importation of Japanese parts for heavy equipment and autos in 1996. On January 1, 1997, the number of items subject to import diversification restrictions dropped from 152 to 127, and Korea plans to abolish the system by the end of 1999.

**Import Clearance**

In 1996, U.S. suppliers of food and agricultural products experienced an upsurge in the number of restrictive measures encountered at Korean ports of entry. This trend developed as the Korean Government began expressing with greater frequency its concern over the rising overall trade deficit. Korea’s agricultural sector trade deficit of almost $10 billion has made imported food products an obvious target for any import-curbing efforts.

Most disturbing is the scrutiny at Korean ports that is affecting products for which market access was liberalized under bilateral or multilateral trade agreements. As trade in specific products began to increase with implementation of liberalization commitments, Korean Government officials used alternative measures to impede imports of those products.

Prior to 1996, Korea’s import clearance process was already one of the most frequently cited trade barriers to U.S. exports. Although Korea has made changes to its import clearance procedures over the last year, clearance times are still excessively slow and clearance procedures are arbitrary. Surveys of U.S. trading partners in Asia indicate that import clearance for most agricultural products requires less than three to four days. The lone exception is Korea, where import clearance typically still takes two to four weeks (except for clearance times for perishable fruits and vegetables), and sometimes up to three months.

The Korean Ministry of Health and Welfare (MOHW) and the Ministry of Agriculture and Forestry (MAF), including its National Plant Quarantine Service (NPQS), account for the greatest delays. These departments share responsibility for administering Korea’s health and food safety system, which includes sampling, inspection and testing procedures, as well as standards-setting. Both MOHW and MAF impose numerous requirements that prohibit access or inhibit import clearance while adding costs to importers (see also the section of this chapter entitled “Standards, Testing, Labeling, and Certification”).

Problems with Korea’s import clearance procedures have included (1) 100 percent, rather than random, or “suspect,” sampling; (2) requirements for listing of ingredients by percentage, i.e., proprietary “recipe” information; (3) mandatory incubation testing for horticultural products from areas certified as “<u>pest free</u>”; (4) mandatory sorting for separation of spoiled produce; (5) mandatory fumigation for insects <u>found and</u>

not controlled in Korea; and (6) standards in Korea's Food and Food Additives Codes and associated conformity assessment procedures that are not based on scientific risk assessments and that do not conform with international norms.

The United States has been raising its concerns about Korea's import clearance procedures for a number of years at high political levels, as well as at the technical working level. In April 1995, the United States requested consultations under the World Trade Organization's (WTO) dispute settlement procedures after U.S. citrus exporters complained that grapefruit and orange shipments had been detained at the port for up to three weeks, causing catastrophic levels of decay. After two rounds of talks, Korea revised its inspection procedures to allow fresh fruit and vegetables to clear customs within five working days. While this positive step significantly reduced delays for many perishable products, delays for other agricultural and food products still remain unacceptably long.

In December 1996, Korea announced implementation of specific changes to its import clearance procedures. The Plant Protection Act, which revised NPQS testing procedures, became effective in December 1996. A government gazette notice published in December 1996 revised MOHW's guidelines on sampling and testing procedures.

In January 1997, in another round of dispute settlement consultations in Seoul, Korean officials indicated that they had (1) established a new sampling system; (2) developed a quarantine pest list for purposes of determining fumigation requirements; (3) eliminated mandatory incubation testing for California fruit; (4) eliminated all sorting requirements; and (5) made ingredient listing by percentage requirements less onerous. However, the January consultations also revealed areas in which Korean import clearance procedures remain burdensome, slow, and out-of-step with scientific and international norms, even after implementation of changes. The United States will continue its dialogue with the Korean Government on its import clearance procedures until clearance times in Korean ports of entry are comparable to those in other Asian ports and Korean procedures are based on science and comport with international norms.

In addition to the import clearance issues described above, U.S. exporters also cite Korea's country-of-origin and general labeling regulations as barriers to entry for agricultural and processed food products. These regulations impose unnecessarily burdensome labeling requirements. For example, "inner packaging" labels are required if agricultural imports are to be distributed in packaging other than that which is evident in the customs clearance process.

At least three separate ministries maintain regulations governing labeling of imported food products. This leads to non-transparent requirements and enforcement procedures that are often arbitrary. Korea's country-of-origin and other labeling requirements change frequently, often without notice. Shipments will have already arrived at the port when an exporter discovers that the products must be unpacked and relabeled at considerable expense. Many U.S. exporters believe Korea's excessive country-of-origin and other labeling requirements reflect the government's efforts to discourage Korean consumers from purchasing food products.

The Korean Customs Service's (KCS) unannounced, unpublished, and arbitrary changes in customs classifications are also of great concern. Recently, customs reclassifications have become a particularly frequent problem cited by U.S. firms attempting to enter the Korean market.

## STANDARDS, TESTING, LABELING, AND CERTIFICATION

While traditional border barriers to imports have fallen in Korea, the government maintains numerous internal, regulatory barriers that undercut the major trade reform initiatives of the late 1980s.

Lack of transparency and inadequate notification by the Korean Government of its changes to laws and regulations continue to impede trade with Korea. Korea often fails to meet its obligations to notify WTO members of a planned legislative or administrative change and to allow an adequate time period for review and comment. When Korea does notify the WTO, the change notified frequently is not described in full, nor are requests granted for extensions on comment periods to allow time for translation. On some occasions, Korea has notified changes only after their implementation.

Most Korean laws and regulations are very general and discretionary. Their implementation is directed by unpublished "internal guidance," which is developed by the relevant ministries. The Korean Government generally does not provide advance or timely notice of changes to laws and regulations in domestic official publications. Importers and exporters therefore have little if any time to familiarize themselves with these changes before they are applied. Implementation periods are unrealistically short; this tends to disrupt trade.

Laws and regulations characterized by the Korean Government as intending to protect health and safety often deviate substantially from international norms and practices both on substantive content and implementation method. Such rules do not appear to be based on scientific risk assessments and are frequently drafted to target imports. For example, the Korean Food Code lists specific products that are familiar to Korean regulations. Unless a product is included in the Food Code, it is subject to regulatory review prior to import. Such products have ranged from peanut butter to popcorn. One of the most frequent subjects of U.S. industry complaints has been Korea's requirement that importers of foods provide a listing of product ingredients by percentage. This requirement has effectively restricted trade since this information is often either of a proprietary nature or simply unavailable.

Korea's Food Additives Code also restricts food imports by failing to recognize additives that have already been approved by the CODEX Alimentarius Commission of the Food and Agricultural Organization (FAO), the Joint FAO-World Health Organization Expert Committee on Food Additives, or the U.S. Food and Drug Administration.

Contrary to international practice, Korea approves food additives on a case-by-case basis, rather than allowing additives that are "generally recognized as safe" (GRAS) to be used in <u>all</u> food products. In particular, the Food Additives Code will often allow a food additive in a traditional Korean food product and not allow it in an imported product. This is the case even when the average daily intake (ADI) of the Korean product would presumably be much higher than the ADI of the imported product.

Korea's Imported Food Products Management Guidelines also restrict imports. Prior to 1996, under the Guidelines, Korea maintained a 100 percent sampling, inspection and testing regime, rather than using random, or "suspect," sampling for purposes of organoleptical inspection and laboratory testing. Although Korean officials have indicated in dispute settlement consultations with the United States that they have revised their sampling, testing, and inspection system for imported food and agricultural products, questions remain as to whether the new system will prove any less trade restrictive than the previous regime.

Also of concern is the assignment of jurisdiction over testing of imported and domestic fruit to different authorities in Korea. The Korean Food and Drug Administration (KFDA) tests imported fruit, while provincial or municipal authorities have jurisdiction over testing of domestic fruit. This leads to questions on national treatment and conflict of interest.

In addition, Korea has required incubation testing for all imported fruit, even if the fruit has been in transit for weeks and even when the shipment was accompanied by an APHIS certificate indicating that the fruit originated in a "pest-free" area. Requiring fruit to be unnecessarily tested and treated is costly, discourages imports and often leads to deterioration and eventual destruction of the fruit. Korea's Plant Protection Act includes language that has removed the incubation testing requirement for California fruit, but Korea maintains this requirement for fruit from Florida.

For horticultural products, Korea also continues to maintain fumigation requirements that are premised on a definition of "quarantine pest" that differs from the internationally accepted definition.

Korea's government-mandated shelf-life requirements were the subject of a Section 301 petition filed by the U.S. beef and pork industries in November 1994. These requirements effectively prohibited shipping because expiration dates were so short that, by the time a product cleared Korean customs, the dates had expired. Korea's shelf-life requirements were not based on scientific studies, nor were they enforced equally for domestic and imported products.

After consulting under WTO dispute settlement procedures, the United States and Korea reached a settlement agreement on shelf life in July 1995. Under the 1995 agreement, Korea agreed to phase in the common international practice of manufacturer-determined "sell-by" dates for many food products, including meat, beginning in October 1995 and ending in July 1996. The United States continues to consult with Korean authorities to ensure that the 1995 agreement is implemented fully and faithfully, including through proper notifications to the WTO and internal guidance that in no way undercuts the liberalization mandated by the agreement.

Korea continues to maintain government-mandated shelf-life requirements for sterilized milk products such as ultra heat-treated (UHT) milk, and for bottled water. The United States reserves the right to use WTO dispute settlement procedures to address these restrictions.

U.S. cosmetic producers often cite Korea's duplicative testing requirements as impediments to trade. The Korean Government requires annual testing of cosmetic products and batch testing for each shipment, including animal testing, and does not accept a certificate of analysis from a U.S. firm as a substitute.

Importers of cosmetics are still required to share confidential business information (on both quantities and pricing) with the Korean trade associations that are their competitors. American pharmaceutical firms cite similar problems.

U.S. pharmaceutical companies report significant delays in obtaining final approval from the Ministry of Health and Welfare (MOHW) for the local sale of products developed outside of Korea within the last three years. New products developed in Korea can proceed directly from phase 2 to phase 3 clinical trials. For products developed outside of Korea, however, MOHW has thus far refused to allow Korean phase 3 clinical trials to begin until they are first completed in a third country and the product receives a Certificate of Free Sale (CFS) from a third country. After the presentation of the CFS, there is a 145-day delay in registration approval before the approximately one-year clinical trial can begin. This process delays the introduction of foreign-developed products into the Korean market by about two years.

Non-transparent standards also affect imports of industrial products, such as medical equipment and veterinary instruments. U.S. suppliers report that product approval requirements not only lack clarity but are being applied inconsistently both across product categories and among the several Korean agencies designated to register and test medical devices.

After consultations in 1995, Korea agreed to reform its standards for medical equipment to base them on international standards. Korea’s proposed amendments were notified to the WTO on January 20, 1997. Comments were due on February 28. The United States has asked the Korean Government to provide written clarification of its new rules and to delay finalizing them until the United States can provide substantive comments.

Although the 1995 U.S.-Korea Memorandum of Understanding on automobiles liberalized many Korean standards and certification procedures, burdensome standards and certification procedures still make it difficult and costly to introduce new car models to the Korean market. The U.S. industry claims that although U.S. safety and emission standards meet or exceed Korea's, documentation related to vehicle preparation and testing consumes nearly 500 hours per model. Korea’s plans to adopt new auto safety and emissions standards that are not compatible with international standards will increase this burden.

## GOVERNMENT PROCUREMENT

The newly-renamed Supply Administration (SAROK) is responsible for procurement on behalf of government agencies and at times on behalf of public corporations or other enterprises in which the government holds a majority share. The ministries concerned formulate their government agency procurement needs.

The Ministry of Trade, Industry and Energy (MOTIE) no longer officially screens procurement requests to determine whether they can be met from local sources. However, the Korean Government still encourages local procurement through a variety of less explicit means. As a result, U.S. participation in attractive public sector projects is often precluded, or made feasible only by participating in consortia led by Korean conglomerates or industrial groups (“chaebol”).

Korea completed its accession negotiations to the WTO Government Procurement Agreement (GPA) and agreed to cover goods and services procurement (including construction) by central government entities, sub-central entities and many government-owned commercial enterprises. Korea also agreed to provide access to its computer network procurement. The special regulations and presidential decree implementing the GPA took effect on January 1, 1997. Limits regarding national treatment, non-discrimination in international tendering, local content, offsets and technical transfers will no longer be required. In construction projects, a new provision allows performance bonds by foreign firms. Dispute settlement and bidding procedures are specified in the WTO Agreement. The Korean Government will publish its international bidding schedules in English, French, and Spanish.

Among the major government-owned enterprises covered by the GPA are the Korea Electric Power Corporation, the Korea Petroleum Development Corporation, Korea Gas and Korea Telecom (KT). In the case of KT, telecommunications commodity products, network equipment and satellites were excepted, thereby removing KT's most important purchases from Korea's WTO obligations.

Prior to the agreement, U.S. companies reported that bids including offsets were encouraged, but no longer required outright. Offsets are still a condition of sale for major military procurement. In Korea, such offsets can range from 30 to 50 percent of the total contract value. The Korean Government argues that procurement for national security and defense purposes (munitions) is recognized as an exception by Article XXIII of the GPA, and that Korea's offsets are relatively moderate when compared to those of other countries. Other purchases by the Ministry of National Defense are subject to the agreement.

The Ministry of Trade, Industry and Energy estimates Korean total procurement for 1997 at around 40 trillion won, or $47.6 billion, about half of which will be subject to international bidding. Out of SAROK's expected 1997 purchases of goods worth 4 trillion won, about 20 percent, worth $933 million will be under international tendering. One analyst predicted that contracts worth about 10 trillion won, or $12 billion will be awarded to foreign bidders. All of these estimates for procurement from foreign sources seem highly inflated, especially given the procurement provisions emphasizing small enterprises and regional development.

Under the terms of the 1992 bilateral agreement on telecommunications with Korea, U.S. providers of commodity products and network equipment should already be able to compete for KT's procurement contracts. The United States reviews annually Korea's compliance with this bilateral agreement, as required under Section 1377 of the 1988 Trade Act. Each year, U.S. companies report serious instances of non-compliance with the 1992 agreement, including excessive type approval requirements, lack of protection for trade secrets and proprietary information, and de facto "buy local" policies. Korea was designated in July 1996 as a priority foreign country under Section 1374 of the 1988 Trade Act, and bilateral negotiations are continuing (see also Other Barriers). Korea has not yet fully liberalized mobile communications services, or "special service providers." The current Korean regulatory structure and practice continue to restrict foreign access to various mobile services, including cellular, paging, and various trunking services.

U.S. companies operating in Korea do not receive national treatment with respect to drug reimbursement under Korea’s national health insurance system, which effectively discourages hospitals and other large end-users from buying imported drugs. Under the system, imported pharmaceuticals are reimbursed based on their actual transaction prices, while domestically manufactured pharmaceuticals are reimbursed on a schedule established through local price reviews. This allows hospitals, clinics, and pharmacies to profit from reimbursement from domestic products, but not from imported products. Dispensers of imported products must also comply with additional administrative procedures for reimbursement. Korea is reviewing the reimbursement system to redress these differences, but the review's outcome is uncertain.

## EXPORT SUBSIDIES

In the past, Korea aggressively promoted exports through a variety of policy tools. Korea has committed to phasing out the remaining programs which are not permitted under the WTO Agreement on Subsidies and Countervailing Measures, to which it is a signatory. Korea will retain permissible programs under the WTO Agreement, principally in the form of tax incentives and targeted credit, and focused on small and medium-sized enterprises and research and development.

### Shipbuilding Support

Traditionally, the Korean Government has provided large subsidies to its shipbuilding industry. U.S. shipbuilders have operated without U.S. Government subsidies since 1981. In response to continuing foreign shipbuilding subsidy practices, the Shipbuilders Council of America filed a Section 301 petition in 1989 seeking the elimination of subsidies and trade distorting measures for the commercial shipbuilding and repair industry. As a result, a shipbuilding agreement was negotiated under the auspices of the Organization for Economic Cooperation and Development (OECD). On December 12, 1995, Korea, the European Union, and Norway formally ratified the OECD Shipbuilding Agreement, which is designed to eliminate all subsidies and to create a new antidumping mechanism to address the predatory pricing of ships. The agreement text was scheduled to enter into force after its ratification by all parties to it. The United States has not yet ratified the agreement.

## LACK OF INTELLECTUAL PROPERTY PROTECTION

Korea has made an effort to strengthen its intellectual property rights (IPR) laws and the enforcement of those laws. Korean officials have placed priority on prosecution and increased penalties. The publication by the supreme prosecutor's office of a manual of guidelines for IPR enforcement in May 1996 significantly addressed the difficulties caused by Korea’s inconsistent application of its various laws. The Korean Government has continued this campaign, including sponsoring public awareness seminars. Since 1992, Korea has been identified as a “priority watch list” country under Special 301 procedures.

In order to comply with its obligations under the WTO Agreement on Trade-Related Aspects of Intellectual Property Rights (TRIPs), Korea passed four acts (patent, utility model, design, and trademark) in December 1995, and implemented new copyright, computer software, and customs laws in 1996. Although Korea has attempted to implement developed-country IPR obligations in many areas, it still claims developing country status. Of particular concern is the fact that Korea’s copyright law provides limited retroactive copyright protection to 1957, rather than providing 50 years of retroactive protection, as required under the TRIPs Agreement.

There has been some improvement over the past several years in removing pirated and counterfeit goods from the Korean market. In particular, through administrative guidance, Korea significantly curtailed the copying and sale of certain U.S. copyrighted works created before 1987. Korea also established "special enforcement periods," during which significant resources are devoted to raids, prosecution and other copyright enforcement activities. The 1996 special enforcement period resulted in a 7.5 percent increase in prosecuted cases. Enforcement against audio, video and software piracy has improved considerably. U.S. businesses and industry groups have reported that piracy by large Korean corporate end-users has diminished. Piracy for home use continues to be a problem, however.

Also of concern to the software industry is that Korea's customs valuation of software is not based on the value of the medium but on the full value of the content. This valuation method is not transparent and leaves great room for future discretion. Korea's decision in 1996 to unilaterally reduce its duty on software has temporarily quieted the issue. Upon implementation of the Information Technology Agreement (ITA), Korea will bind the relevant tariffs at zero.

Korea has taken steps to reduce the number of cases in which Korean companies register trademarks similar to U.S.-owned marks, but cases of unauthorized registration were still a problem in 1996. These "sleepers" are marks that were filed and registered by Koreans without authorization during the late 1980s and early 1990s, when the Korean Industrial Property Office (KIPO) was still developing a more effective and accurate trademark examination and screening process. "Sleeper" registrations were not commercially used until the U.S. owner of the mark wanted to enter the lucrative Korean market, but found it was blocked by the previous first-to-file registration. KIPO has worked to resolve individual cases more expeditiously.

Trade dress is only partially protected under both the prevention of unfair competition law and the design law, and the design law grants protection only after registration is completed. To strengthen trade dress protection, Korea plans to introduce a draft trade dress law in 1997, to become effective in 1998. Although the Korean trademark law does not allow the registration of three-dimensional marks and trade dress per se, the law text authorizes their registration as long as they are filed in pictorial forms. In addition, the protection of color or combination of color trademarks with a sign, character, figure, or any combination thereof was introduced in the trademark law in 1996. Korea has long been a source of exports of infringing goods. As textile designs are not fully protected, some Korean companies pirate U.S.-copyrighted textile designs and export them to third countries, competing with genuine U.S.-produced goods. Progress has been made in improving customs procedures and cooperating with the U.S. private sector to identify and stop exports and imports of counterfeit goods to and from third countries. The U.S. Government continues to seek more active involvement of Korean Government officials in this area.

It is difficult to estimate the size of potential sales lost by U.S. firms due to IPR violations; but the scale of the problem can be illustrated by customs seizures of counterfeit goods. The Korean Customs Service claims that it seized pirated products valued at approximately $456,000 in 1995, and that it has a program of intensively inspecting exports of commonly-pirated products such as clothing and shoes. U.S. Customs Service seizures of counterfeit goods from Korea were valued at $5.1 million in fiscal year 1996. The actual volume of counterfeit goods produced is probably much higher than seizures reflect.

## Korea

Although Korean laws on unfair competition and trade secrets provide some trade-secret protection in Korea, they remain deficient. For example, U.S. firms face significant problems with government regulations requiring submission of very detailed product information (i.e., formulae or blueprints) as part of registration or certification procedures. Korea claims that its requirement for the submission of semiconductor product information is similar to that of Japan or the United States. U.S. firms, however, report that although the release of business confidential information is forbidden by Korean law, submitted information is not given sufficient protection by government officials and, in some cases, is made available to Korean competitors or to their trade associations.

Korea's copyright law provides protection only for cartoon characters that possess artistry and creativity, while the trademark law does not protect some famous U.S. cartoon characters because they have not been registered as trademarks with KIPO. The Korean Supreme Court exonerated infringers of famous U.S. characters, including Mickey Mouse, because the specific product with the infringing design had not been registered. Subsequent enforcement efforts by prosecutors, however, has helped mitigate the negative impact of the supreme court decision.

Korea does not have effective laws or procedures to protect various industrial designs. Although the 1996 revision of the design law allows firms to claim compensation for infringements of industrial designs, the firm must first publish its design in the official gazette or complete registration with KIPO before it can make a claim. Even though some U.S. product designs or machinery layouts have been copied by Korean competitors, U.S. firms have no legal recourse.

**SERVICES BARRIERS**

Korea continues to maintain restrictions on some service sectors through a "negative list." In these sectors, foreign investment is prohibited or severely circumscribed through equity or other restrictions. Korea continues to restrict foreign investment in a number of services sectors which are of interest to U.S. companies.

**Telecommunications Services**

Each year the United States reviews foreign telecommunications trade practices under Section 1377 of the 1988 Omnibus Trade and Competitiveness Act. In 1989, the United States designated Korea as a “Priority Foreign Country” for its denial of mutually advantageous market opportunities to U.S. companies. During the 1996 review, Korea and the United States concluded a bilateral agreement which clarified a number of Korean commitments under existing bilateral agreements, included value-added services, protection of intellectual property rights, and regulatory transparency. Korea also agreed to consult with the United States on a number of priority issues which are not covered by existing bilateral arrangements. These new priorities include the elimination of foreign ownership restrictions for basic telecommunications services suppliers, access for U.S. satellite services suppliers, enhanced transparency in regulatory and licensing procedures, and government non-interference in procurements by private operators.

After intensive efforts, the United States and Korea did not reach an agreement on either these services-related or other priority issues. Subsequently, on July 26, 1996, USTR designated Korea a “priority foreign country" under Section 1374 of the 1988 Omnibus Trade and Competitiveness Act (see also the section of this chapter entitled "Other Barriers").

In terms of multilateral efforts, in the recently concluded WTO negotiations on basic telecommunications services, Korea made commitments on all basic telecom services and adopted the reference paper on regulatory commitments. Korea retained foreign investment restrictions on facilities, resale, and Korea Telecom.

**Advertising**

The government-affiliated Korean Broadcasting Advertising Corporation (KOBACO) has a monopoly over the allocation of television and radio advertising time. In October 1995, KOBACO eliminated the locked-time allocation system, which effectively blocked U.S. firms from obtaining access to prime-time television advertising slots. KOBACO's system of allocating air time only in 3-12 month packages makes it harder for advertisers to enter the market on a short-term basis or to specifically orchestrate a campaign around a product introduction. In late 1996, KOBACO proposed rule changes creating longer ad slots and allowing commercial breaks during programs. If implemented, these changes would substantially improve the ability of foreign firms to gain consumer acceptance in the Korean market.

Ministry of Health and Welfare (MOHW) restrictions on advertising also create special difficulties for foreign companies. Korea's MOHW requires that cosmetics advertising copy be pre-approved by the local manufacturers association, which gives domestic firms advance notification of foreign firms' new products and future marketing activities. Demonstrations of product effectiveness are not permitted for cosmetics and pharmaceuticals, and comparative advertising is effectively discouraged.

**Audiovisual (see also "Other Barriers")**

*Screen Quota*: By requiring that domestic films be shown in each cinema a minimum number of days per year, Korea effectively imposes a screen quota on imported motion pictures. The quota acts as a deterrent to cinema construction, which is needed to expand theatrical distribution in Korea.

*Foreign Content Quota for Free TV*: Korea restricts foreign activities in the audiovisual sector by limiting the percentage of weekly broadcasting time that may be devoted to imported programs, not to exceed 20 percent.

*Foreign Content Quota for Cable TV*: Cable channels may devote only 50 percent of air time to foreign sports, science and documentary programs. All other types of foreign programming, including movies, are subject to an even stricter quota of 30 percent. These quotas are applied on a per-channel basis. There are only two movie channels (one basic and one premium) and a strict content quota. These restrictions severely limit the market for foreign products. Additionally, cable TV programming must be translated into Korean, which effectively prevents satellite transmission by Korean cable TV companies.

The United States will consult with Korea in light of its commitments under the WTO General Agreement on Trade in Services (GATS). Estimated losses due to services barriers alone are at $5 million annually.

## Korea

### Financial Services

*Insurance*: Korea is the second largest insurance market in Asia -- after Japan -- and the sixth largest in the world, with $38 billion in premiums paid in 1995. The environment for foreign insurance companies has improved considerably since Korea first opened its market in 1986. Most recently, Korea announced a multi-year financial sector plan prior to its joining the OECD in December 1996. If Korea implements its OECD obligations fully, foreign access to the financial services market should be further improved. Life insurance is already fully liberalized. By April 1997, the Korean Government will remove present restrictions on foreign participation in joint venture life insurance companies, as well as in surety insurance services and life/non-life reinsurance; and, the establishment of independent branch offices. By April 1998, the Korean Government will liberalize insurance appraisal and activities ancillary to the management of insurance and pension funds. Insurance brokerage will be allowed for domestic firms by April 1997; foreigners will be allowed to enter the sector by April 1998. Guidelines effective since 1992 have permitted the issuance of non-par products and the acquisition of real estate by foreign firms, but only under highly restrictive conditions.

Despite Korean plans to deregulate premium rates by 1999, it is unclear at this time whether this will give firms full freedom to determine rates. Although Korea has simplified the approval process for insurance products already available in the Korean market, U.S. life insurers are still not permitted to sell personal accident insurance. U.S. firms continue to experience delays in receiving permission to introduce new-to-market products. Despite the many improvements, the state of liberalization in this sector remains far below what might be expected for a country at Korea's stage of economic development. The U.S. industry continues to cite a variety of major problems, including restrictive rate and form regulations, limitations on investment, and a lack of transparency and due process.

*Banking*: Foreign and local banks must operate amid numerous constraints in Korea. Among the most problematic constraints are the various limits based on branch versus global capital, which are related to *inter alia* limits placed on credits to an individual customer and foreign exchange trading, as well as their use in the calculation of capital adequacy and liquidity requirements. These limits can represent significant constraints on the ability of some foreign banks to do business in Korea. The foreign exchange market is heavily regulated, including tight controls on the introduction of new instruments, a niche where U.S. banks would be exceptionally competitive. Capital inflows remain restricted, yet special foreign bank provisions on funding swaps are being reduced and are expected to be eliminated altogether. Additionally, the interbank money market is underdeveloped and is not a stable source of funding for foreign bank asset activities. Foreign bank loan market shares are half what they were in the late 1980s, due both to the evolution of a more competitive local banking sector and to the many local regulatory constraints foreign banks face. All banks -- foreign and domestic alike -- are disadvantaged by a relatively non-transparent regulatory system and must seek approval before introducing new products and services, where foreign banks can be most competitive.

Foreign-based non-financial businesses that are active in Korea are subject to high-cost procedures and restrictions on their financial activities which are more reminiscent of an emerging economy than of one at Korea's level of development. For instance, virtually all intercompany transfers are subject to a foreign exchange bank's certification and the requirement to settle via documentary trade finance methods. This process is cumbersome, costly and unnecessary, particularly for transactions between subsidiaries. Excessive regulation also prevents companies from insuring effectively against exchange rate and interest rate risk. From a company's point of view and despite its claims otherwise, the Korean Government has actually accomplished comparatively little deregulation of practical importance in its controls over transactions involving foreign exchange, imports and exports. These controls create high costs and excessive risks for multinationals operating in Korea. Useful innovations would include *inter alia* allowing settlement of imports via open account; multilateral netting of payables and receivables without requiring prior approval from, or notification to, the government; and intercompany loans between operations based in Korea and those offshore, regardless of the sectors involved. Foreign banks will not be permitted to establish subsidiaries until December 1998.

*Securities*: Foreign securities firms also face serious market access barriers in Korea. The present 50 percent ceiling on foreign equity in a securities firm will not be lifted until December 1998, when the establishment of subsidiaries will also be liberalized. The establishment of branches has been allowed on an extremely limit basis since May 1995.

Foreign ownership of listed shares is currently restricted to a ceiling of 5 percent per individual foreign investor and 20 percent in the aggregate. These ceilings are scheduled for increases to 10 percent in 2000 and 29 percent in 1999, respectively. Foreign firms are now prohibited from participating in the domestic securities "over the counter" (OTC) market, and brokering is limited to listed stocks. Representative Offices of Securities Investment Trust Enterprises (SITES) are allowed in Korea, and foreign equity in existing domestic SITES is limited to 50 percent. Similar restrictions apply to foreign equity in domestic investment advisory firms.

Korea's tightly controlled financial sector and the high cost of domestic credit in Korea both have a direct and immediate impact on U.S. firms operating in other sectors. The U.S. Government continues to pursue these issues through the ongoing U.S./Korea Financial Policy discussions held between the U.S. Treasury Department and the Korean Ministry of Finance and Economy. The discussions leading up to Korea's December 1996 accession to the OECD also covered these issues.

**INVESTMENT BARRIERS**

As of January 1, 1997, the Korean Government determined that 97 percent of the sectors in its standard industrial classification system were open to foreign equity investment in principle (including 99 percent of all manufacturing sectors and 93 percent of all service sectors). Yet, foreign investors' effective access to the Korean market continues to be highly conditioned by law and regulation, as well as by inexplicit administrative guidance and bureaucratic fiat, which are often opaque and subject to variable interpretation.

Following a 1989 bilateral agreement on investment, Korea has revised or eliminated many of the discriminatory practices that once affected the establishment and treatment of foreign investors. As of February 1997, foreign investors are only required to notify the government of their intentions; applications per se have been eliminated. Under present law, the government can only reject a foreign investor's notification if the activity appears on an explicit "negative list" or is somehow related to national security, the maintenance of public order or the protection of public health, morality, or safety. The Korean

Government is obligated to reject the notification within 60 days of its filing, or the investment can be presumed to be legal. Effectively, foreign investors regularly proceed with investments that are not on the negative list after ample notification. Although the government has reduced the documentation required, the notification process remains burdensome and can require submission of proprietary information, including contracts.

Under a bilateral agreement signed in 1989, the Korean Government agreed to (1) eliminate all local equity participation requirements imposed by "individual laws" (apart from requirements imposed for reasons of land acquisition, exploitation of land or other resources, or for national security); and (2) refrain from imposing any "performance" requirements (e.g., technology transfer, local content or local manufacture). U.S. firms -- particularly telecommunications companies -- report, however, that the Korean Government and its public entities regularly impose a de facto "buy local" policy on their purchases and actively encourage private concerns to follow suit.

In 1994, the Korean Government revised its Alien Land Acquisition Act to permit foreign-invested firms to purchase land for business purposes, including staff housing. In 1997, the regulations were further eased to allow provision of rent-free or reduced-rent industrial premises to foreign investors willing to locate at two specific sites outside Seoul. The U.S. Government remains concerned, however, that other laws create disincentives to unfettered foreign investment by placing overly strict limits on the purchase, use and sale of land by foreigners. In the past, stringent Korean land-use laws have resulted in the assessment of substantial taxes on unused land and the forced sale of land at below-market prices if legal requirements are not met within a specified period.

The Korean Government has a "going public" policy that requires firms established for three or more years and identified by the Korean Securities and Exchange Commission to sell at least 30 percent of their stock to the public. Investments with less than 50 percent foreign ownership which are filed after January 1, 1989, are subject to the policy, while investments with more than 50 percent foreign ownership are not. The U.S. Government continues to urge Korea to abolish its "going public" policy with reference to foreign firms, many of which are privately held.

In light of these and many other less dramatic but no less significant factors, U.S. companies continue to experience difficulties in establishing investments in Korea. Korea’s investment regime is more restrictive than those of many of its Asian neighbors and falls well below the standard among OECD countries. Continuing initiatives taken by the Korean Government over the coming years -- some committed to during its accession to the OECD -- may reduce this disparity.

Korea has notified the WTO that it maintains no trade-related investment measures (TRIMs) that are prohibited under WTO rules.

## ANTICOMPETITIVE PRACTICES

The Korea Free Trade Commission (KFTC) is responsible for enforcing and improving competition in the Korean Economy. In February 1996, the Chairman of the KFTC was raised to ministerial rank, and the staff was increased. In December 1996, the assembly passed a revision to the Fair Trade Act effective April

1, 1997. This revision will expand the application of the Fair Trade Act to the financial and insurance sectors, and give the KFTC more authority to demand the revision of anticompetitive elements in both draft and existing laws and regulations. Nevertheless, a major enforcement effort will be required to deter and eliminate chronic anticompetitive practices in the Korean market. Major efforts are also required to ensure that the KFTC applies the same standards and level of oversight to all firms and does not penalize foreign companies importing goods into Korea for practices ignored or tolerated in Korean firms, a problem that was also noted in the cosmetics sector in 1996.

Industry associations are delegated substantial regulatory authority in Korea through both formal and informal means. In a number of instances, industry associations have abused their powers by discriminating against non-members and potential competitors, including American firms. In 1994, the KFTC investigated 68 industry associations and ordered 48 of them to revise 73 anticompetitive by-laws or articles. In 1995, the KFTC investigated 218 industry associations, and ordered them to revise 369 anticompetitive or unfair measures or practices. In 1996, the KFTC decided also to regulate not only collusion between rival firms, but also trade associations that induce their members to engage in anticompetitive practices. However, other associations that are likely engaged in similar kinds of competitive practices have not yet been reviewed. Of particular concern to the United States is the anticompetitive behavior of the Korean insurance and cosmetic industry associations.

The government-affiliated KOBACO has a monopoly over the allocation of television and radio advertising time. Although changes have improved the situation for U.S. firms and products, KOBACO rules continue to prevent market forces from operating normally in this area.

## OTHER BARRIERS

### Protection of the Telecommunications Sector

As explained in relevant sections of this report, U.S. equipment and services companies encounter a significant number and range of impediments in the Korean telecommunications sector. The Korean Government has targeted the telecom sector for industrial promotion, which explains the chronic nature of U.S. market access problems in this sector. While the Korean Government has allowed limited foreign penetration of the services market, U.S. interests are not accorded treatment reciprocal to that extended to Korean interests in the United States. Only a few U.S. firms operate in the Korean telecom service market as minority investors, and although Korea Telecom (KT) is no longer the monopoly service provider, the government maintains an unwritten “buy local” requirement for equipment procurement by service providers. The government’s intervention in private sector procurement and other concerns raised by U.S. telecommunications products and service providers are not covered by the existing agreements with Korea.

Despite intensive efforts in 1996 to achieve an understanding with Korea to address the range of barriers which deny U.S. companies mutually advantageous market opportunities in Korea, the Korean Government has refused to cooperate in a meaningful manner. Therefore, on July 26, 1996, USTR designated Korea a “priority foreign country” under Section 1374 of the 1988 Omnibus Trade and Competitiveness Act.

Under the statute, the United States has a maximum one-year negotiating period in which to resolve the dispute, after which trade action may be taken.

### General Anti-Import Bias

Austerity campaigns ostensibly directed at individual consumption, but effectively targeting imported goods, are another barrier that U.S. firms face in Korea. In 1996, as Korea's trade deficit rose, newspapers and government officials regularly pointed out the negative current account impact of rising imports of cars, furs, golf equipment, cosmetics, food and agricultural products, whisky, clothing, furniture, travel and education among others. In addition, there has been traffic police harassment of drivers of foreign autos and tax audits have been threatened for person leasing foreign autos or otherwise indulging in "conspicuous consumption." Also, U.S. industry has experienced suddenly occurring import clearance complications in the form of arbitrary product standards, labeling or documentation and testing requirements, and customs reclassifications into trade restricted categories. Coinciding with these activities have been a series of media stories on high-priced imported products and their supposed high profit margins. While the Korean Government denies at times any involvement in these frugality campaigns or that these efforts are aimed at imports, the media reports are often followed by actions that protect domestic manufacturers or erect non-tariff barriers to imports.

### Motor Vehicles

Korea's auto industry moved from being the ninth largest motor vehicle manufacturer in the world in 1991 to fifth place in 1995. Korea is the world's third largest auto exporter after Japan and the European Union. In 1996, Korean vehicle exports of 1.4 million units accounted for 46 percent of total Korean motor vehicle manufacturing. Korea's home market is also the fastest growing market in Asia, with domestic sales rising six percent to 1.6 million units in 1996. Yet no other major auto-producing country imports fewer cars than Korea. In 1996, total import sales accounted for about one percent of the market.

Korea has maintained a severely closed "sanctuary" market with an array of trade barriers, including an import ban on Japanese cars. Of major concern to U.S. companies is the prohibitively high, "cascading" system of taxes, which are calculated on top of an eight percent tariff. This tariff is unbound in the WTO and more than three times that of the United States. In the past, pervasive anti-import sentiments have limited marketing opportunities and intimidated potential customers. While the government has recently made attempts to mitigate this sentiment, in December 1996, the tax office engaged in broad action directed at all leasers of imported autos, thus raising the anti-import bias once again. Restrictions on wholesale and dealer financing also adversely affect foreign automakers.

In September 1995, as a result of bilateral consultations held under Super 301, Korea and the United States signed the Memorandum of Understanding (MOU) to Increase Market Access for Foreign Passenger Vehicles in Korea. This MOU reduced the overall tax burden on cars with larger engines, liberalized many Korean standards and certification procedures, lifted some restrictions on advertising and retail financing, and obtained the Korean Government's assurances that it would no longer promote an anti-import bias among consumers.

To date, Korea has implemented most of the commitments it made in the MOU. However, recent actions taken by the Korean Government call into question Korea's commitment to open the domestic passenger car market to foreign competition and threatens to nullify some of the progress achieved under the MOU. Specifically, these actions include tacit government approval of renewed anti-import efforts and an increase in the annual tax on sport-utility vehicles. By the end of 1996, the number of foreign vehicles sold in the Korean market still represented less than 1.5 percent of the total market -- the lowest market penetration of any major auto producing nation. The United States views the 1995 MOU as a first step in liberalizing one of the most protected auto markets in the world and will continue to monitor the implementation of the agreement and seek further market opening measures from Korea in 1997.

**Audiovisual (see also "Services Barriers")**

*Cable TV Law*: Korea's Cable TV law went into effect in 1992, and Korea's first cable systems became operational in 1995. The restrictive nature of the regulations creates a cable system different from that found in virtually every other country. The regulations effectively eliminate retransmission of regional satellite channels, which is how U.S. companies often distribute programming for pay TV services. Market access is further restricted by the inadequate supply of local programming. The estimated cost to the U.S. industry of these barriers is $10 million.

*Disincentives to Trade and Investment*: U.S. firms continue to report that Korea remains one of the most difficult markets in the world in which to trade and invest. A number of factors are cited to support this conclusion. Excessive government regulation, broad administrative discretion and lack of transparency on the part of government officials results in costly additional bureaucratic processes and arbitrary treatment of individual firms, both foreign and domestic. Also of concern is Korean harassment of U.S. companies which seek U.S. Government assistance in addressing even normal "doing business" issues.

Some U.S. companies reported that one ministry in particular advised them against raising concerns with the U.S. Government. A state-owned enterprise also reportedly requested a U.S. company to include a provision in its contract that would have effectively precluded such contact with U.S. officials. Agents for U.S. companies in government procurement tenders have reported threats by the Korean Government procurement agency that their business would be negatively effected if they sought U.S. Government assistance on a particular contract which was being awarded in a non-transparent manner. Even experienced U.S. exporters report that they do not want their company name or products mentioned in U.S. Government representations to Korean officials for fear of retribution by Korean functionaries or negative, "scare" reports by some in the Korean media.

**Steel**

In July 1995, pursuant to a Section 301 petition filed by the Committee on Pipe and Tube Imports (CPTI) which was thereafter withdrawn, the United States and Korea entered into a Steel Consultative Mechanism in which the Korean government commits, among other things, to a policy of non-interference with hot-rolled steel producers' pricing decisions and agrees to provide information regarding any intent to introduce formal or informal government measures affecting the steel sector. This agreement is due to expire in July of this year.

## Korea

The two governments have consulted regularly under this consultation mechanism. The United States has continually expressed concern that a major Korean hot-rolled steel producer follows a flat pricing policy for domestic sales which does not appear to be driven primarily by commercial considerations. More recently, U.S. producers have also raised concerns that the Korean Government may be providing subsidies, inconsistent with its obligations under the WTO and under the bilateral agreement, to a hot-rolled steel producer in Korea which recently declared bankruptcy. These issues continue to be under discussion between the two governments.

# MALAYSIA

In 1996, the U.S. trade deficit with Malaysia was $9.3 billion, an increase of $637 million from the U.S. trade deficit of $8.6 billion in 1995. U.S. merchandise exports to Malaysia were $8.5 billion, a decrease of $297 million (3.4 percent) from the level of U.S. exports to Malaysia in 1995. Malaysia was the United States' seventeenth largest export market in 1996. U.S. imports from Malaysia were $17.8 billion in 1996, an increase of $341 million (2.0 percent) from the level of imports in 1995.

The stock of U.S. foreign direct investment (FDI) in Malaysia in 1995 was $3.6 billion, an increase of 55.9 percent from the level of U.S. FDI in 1994. U.S. FDI in Malaysia is concentrated largely in the manufacturing, petroleum, and finance sectors.

## IMPORT POLICIES

In general, Malaysia has reduced tariffs on a range of goods, but retains relatively high rates in certain sectors to regulate imports. Duties on a trade-weighted basis average less than 10 percent, but the rates for tariff lines where there is significant local production are often higher. Malaysia's 1997 budget, announced on October 25, 1996, increased duty rates by 5 to 20 percentage points on selected heavy equipment, manufacturing inputs, and hotel supplies to promote domestic sourcing and to address domestic concerns about Malaysia's chronic current account deficit. The 1997 budget also reduced or eliminated some tariffs, mostly on consumer products not manufactured in Malaysia. The following policies have been identified as significant barriers to U.S. exports.

### Construction Machinery Tariffs

In October 1996, Malaysia raised tariffs on a number of construction equipment items (tractors, excavators, backhoe loaders, etc.) from zero to between 5 and 20 percent ad valorem. Malaysia's stated reason for the tariff increases was to encourage reconditioning and repair of existing equipment, thereby reducing demand for imports.

### Import Restrictions on Motor Vehicles

Malaysia maintains several measures to protect its local automobile industry. Tariffs for most vehicles range from 35 to 50 percent for completely knocked down units and 50 to 200 percent for those completely built up. Tariff rates on major components range from 5 to 42 percent.

In addition to these high customs duties, importers are also subject to a lengthy and uncertain import licensing process that further restricts market access. Road taxes, based on engine displacement, are an additional burden on imports which tend to have larger engines. The government uses administrative measures to enforce local content requirements of 45 to 60 percent on assemblers of passenger vehicles, and 45 percent on assemblers of commercial vehicles. Assemblers who fail to comply with the local content policy are subject to penalties. The Government of Malaysia has announced that local content restrictions will be phased out by the year 2000 to comply with World trade Organization (WTO) commitments.

Malaysia also maintains a 60 percent duty on motorcycle imports. As it does with automobiles, the government uses administrative measures to enforce local content requirements of 60 percent on assemblers of motorcycles.

**Import Restrictions on Tobacco and Cigarettes**

To encourage greater use of local tobacco in cigarettes and to maintain high domestic leaf prices, Malaysia levies import duties of 50 Malaysian Ringgit (RM) per kilogram (approximately U.S. $20), plus five percent ad valorem on unprocessed tobacco. The quantities of flue-cured tobacco which may be imported are subject to government approval.

**Plastic Resins**

In December 1993, tariffs for plastic resins were increased for a five-year period from 2 to 30 percent for non-ASEAN countries and from 1 to 15 percent for ASEAN countries.

**Film and Paper Product Tariffs**

Malaysia applies a 25 percent tariff on imported U.S. instant print film. U.S. industry estimates that this market access restriction has resulted in an annual trade loss of $10- $25 million.

In April 1994, the Malaysian Government raised tariffs on several categories of imported kraft linerboard (used in making corrugated cardboard boxes) to between 20 and 30 percent, depending on the category. These tariff increases are to be phased out over a maximum of five years and are subject to review every two years.

**Tariff-Rate Quota for Chicken Parts**

Chicken imports are regulated by a tariff-rate quota. In-quota tariff rates are 50 to 70 percent, depending on the specific product. The volume of in-quota imports are also restricted through licensing and sanitary controls.

**Agriculture and Food Products**

The sole authorized importer is a government corporation (Bernas) with the responsibility of ensuring purchase of the domestic crop and wide power to determine imports. Duties for processed and high-value products, such as canned fruit, snack foods, and many other processed foods, range between 0 and 30 percent.

**GOVERNMENT PROCUREMENT**

Incentives exist for local procurement. Many smaller civil construction projects (RM50 million or less) are restricted to local firms, and all contracts less than RM5 million ($2 million) are reserved for Malaysian contractors. Foreign firms are often required to bid on large infrastructure projects in joint ventures with local partners. Joint-venture bids must have at least 30-percent bumiputra (indigenous Malay) participation.

## LACK OF INTELLECTUAL PROPERTY PROTECTION

Malaysia has made significant progress in recent years in strengthening legislation and improving enforcement to protect intellectual property rights (IPR), and piracy rates have generally declined as a result. However, overall losses to software piracy climbed during the past year. Industry estimates indicate that software piracy losses climbed $40 million from $66 million in 1995 to $106 million in 1996.

Malaysia provides copyright protection to all works (including video tapes, audio material, and computer software) published in Berne Convention member countries, regardless of when the works were first published in Malaysia. Government authorities are responsive to requests from U.S. firms for investigation and prosecution of copyright infringement cases. The government is committed to further improvements in IPR enforcement. Trademark infringement and patent protection have not been serious problem areas in Malaysia for U.S. companies.

## SERVICES BARRIERS

### Insurance

Recent legislation will require local incorporation of all insurance companies by June 30, 1998. Moreover, no new insurance companies are being licensed except for reinsurers. Foreign equity in new insurance companies is normally limited to a minority stake (usually 30 percent), although the Central Bank sometimes grants exceptions. Those companies with more than 30 percent foreign equity face government calls to divest themselves of that equity over time. Several existing insurance companies are 100 percent foreign-owned, and additional firms have foreign equity in excess of 50 percent. The government will allow these firms to retain up to 49 percent foreign-held equity if they restructure ownership prior to June 30, 1998. Insurance for ships, aircraft, and property must be placed with Malaysian registered insurers.

### Banking

Foreign banks are required to operate as locally-controlled subsidiaries and the Central Bank is currently issuing no new licenses to either local or foreign banks. Foreign and domestic banks in the second-tier of the banking system (because of their lower capitalization) are subject to more discretionary control by regulators than those in the first tier. Existing foreign banks are currently prohibited from opening additional branch offices. A Central Bank regulation that considers automated teller machines (ATMs) to be bank branches has made it impossible for foreign banks to set up ATMs separate from their existing branches. Foreign banks are also prohibited from joining local ATM networks. Measures requiring foreign-controlled companies to obtain 60 percent of their local credit from Malaysian banks put foreign banks at a competitive disadvantage.

## Malaysia

### Securities

Foreigners may only hold up to 49 percent of the equity in a stockbroking firm. Currently there are 11 stockbroking firms which have foreign ownership and 20 representative offices of foreign brokerage firms. Fund management companies may be 100 percent foreign-owned if they provide services only to foreign investors, but are limited to 70 percent foreign-ownership if they provide services to both foreign and local investors.

### Legal Services

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. Foreign lawyers may not practice Malaysian law or operate as foreign legal consultants. They cannot affiliate with local firms or use their international firm's name.

### Advertising

Foreign film footage in television advertising is restricted to 20 percent per commercial, and only Malaysian actors may be used. The Government of Malaysia has an informal and vague guideline that television commercials cannot “promote a foreign lifestyle.” Advertising of alcoholic beverages on television and radio is banned. Advertising of all types of hard liquor and wines will be prohibited in the print media and billboards under a new regulation. Tobacco advertising is also restricted; however, cigarette manufacturers manage to work around the regulations by advertising such things as clothing, travel agencies, and restaurants which use the brand names of their popular selling cigarettes.

### Architecture and Engineering

Foreign architecture firms must operate through affiliation with Malaysian companies. Foreign architectural credentials are not always accepted. Foreign engineering companies must establish joint ventures with Malaysian firms and receive “temporary licensing.” The license is granted on a project-by-project basis, subject to an economic needs test and to criteria imposed by the licensing board.

### Television and Radio Broadcasts

The Malaysian Government maintains broadcast quotas on both radio and television programming. Sixty percent of television programming is required to originate from local production companies owned by ethnic Malays. This share is scheduled to be increased to 80 percent by the year 2000. Sixty percent of radio programming must be of local origin.

### Basic Telecommunications

In the recently concluded WTO negotiations on basic telecommunications services, Malaysia made commitments on most basic telecom services and adopted the reference paper on regulatory commitments. Malaysia guaranteed market access and national treatment for these services only through acquisition of up to 30 percent of the shares of existing licensed public telecom operators. It did not guarantee the ability to provide resale service.

## INVESTMENT BARRIERS

Malaysia maintains a widespread program of screening for foreign and domestic investments, applying such criteria as consistency with Malaysia's industrial master plan, compatibility with social policy, size of the investment, amount of local equity participation, type of required financing, ability of planned and existing infrastructure to support the investment, and the existence of a market for the project's output. Local and foreign investors who receive fiscal incentives often are subject to performance requirements, usually in the form of export targets, local content requirements, and technology transfer. The government promotes the holding of economic assets by indigenous Malays (bumiputra) and usually requires foreign and domestic firms to take on bumiputra partners and to have company workforces that reflect Malaysia's ethnic composition. General policy limits foreign equity to 30 percent, although 100 percent foreign ownership in export industries is generally permitted. Since in late 1995, the government has pressed foreign firms participating in retail and direct sales businesses to divest to minority ownership. An exception to these equity limits is in the autos sector, where greater foreign ownership has been allowed in certain circumstances where 50 percent of production is exported or technology is transferred.

# MEXICO

In 1996, the U.S. trade deficit with Mexico was $16.2 billion, an increase of $809 million from the U.S. trade deficit of $15.4 billion in 1995. U.S. merchandise exports to Mexico were $56.8 billion, an increase of $10.4 billion (22.6 percent) from the level of U.S. exports to Mexico in 1995. Mexico was the United States' third largest export market in 1996. U.S. imports from Mexico were $73.0 billion in 1996, an increase of $11.3 billion (18.2 percent) from the level of imports in 1995.

The stock of U.S. foreign direct investment (FDI) in Mexico in 1995 was $14.0 billion, a decrease of 10.7 percent from the level of U.S. FDI in 1994. U.S. FDI in Mexico is concentrated largely in the manufacturing and finance sectors.

**North American Free Trade Agreement**

The United States, Canada, and Mexico implemented the North American Free Trade Agreement (NAFTA) on January 1, 1994. The NAFTA is a region-wide trade agreement that progressively eliminates tariffs and non-tariff barriers to trade in goods; improves access for services trade; establishes rules for investment; strengthens protection of intellectual property rights; and creates an effective dispute settlement mechanism. The NAFTA also contains supplemental agreements which provide for cooperation on labor standards and environmental issues.

## IMPORT POLICIES

**Tariffs**

Under the terms of the NAFTA, Mexico will eliminate tariffs on all industrial and most agricultural products imported from the United States within 10 years, with remaining tariffs and non-tariff restrictions on certain agricultural items phased out over 15 years (to be phased out entirely on January 1, 2008.)

The fourth annual tariff reductions were implemented by the NAFTA parties on January 1, 1997. This reduced Mexico's average duty on NAFTA-qualifying U.S. goods from 10 percent prior to the NAFTA to an estimated 2.9 percent.[3] The NAFTA's tariff provisions have also protected U.S. exporters from Mexico's decision in 1995 to raise tariffs from 20 to 35 percent and apply quotas on textile, apparel, and footwear articles imported from countries with which Mexico does not have a free trade agreement.

**Safeguard Action**

On August 1, 1996, the U.S. International Trade Commission (USITC) determined that, pursuant to Section 202 of the Trade Act, broom corn brooms were being imported into the United States in such increased quantities as to be a substantial cause of serious injury to the U.S. broom corn broom industry

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[3] Based on the estimated trade distribution in *Potential Impact on the U.S. Economy and Selected Industries of the NAFTA*, U.S. International Trade Commission, Publication No. 2596, January 1993.

and that, pursuant to Section 311 of the NAFTA Implementation Act, imports of broom corn brooms produced in Mexico accounted for a substantial share of total imports of such brooms and contributed importantly to the serious injury caused by such imports. The USITC recommended relief in the form of higher tariffs in its report to the President in August 1996. On November 28, 1996, the President proclaimed tariff relief for three years on imports of two categories of broom corn brooms. On December 12, Mexico instituted increases in preferential import duties on eight U.S. products (fructose, wine, wine coolers, brandy, Tennessee whiskey, notebooks, flat glass, and wooden furniture) in compensation for the U.S. safeguard action on broom corn brooms. The United States believes that Mexico’s response has been excessive, that is, its action penalizes U.S. exports to a greater extent than U.S. action affected Mexican broom exports. The United States has requested consultations under the dispute settlement provision of the NAFTA concerning Mexico’s retaliatory actions. Mexico has already requested the establishment of a NAFTA Chapter 20 dispute panel to review the U.S. safeguard action.

**Administrative Procedures and Customs**

The Mexican Congress passed a Customs Reform Law, effective April 1, 1996. Modifications to the new law were instituted in late 1996. The new law increases the transparency of the system, provides greater clarity regarding importer responsibilities, and permits greater flexibility for duty payments. The new customs law also gives Mexican customs authorities the right to act in cases of suspected violations of intellectual property rights.

U.S. exporters continue to register complaints about certain aspects of Mexican customs administration, including the lack of prior notification of procedural changes and the differing interpretation that customs officials at various border posts give to regulatory requirements for imports. This has occasionally resulted in the application of harsh penalties for technical customs law violations committed as a result of simple mistakes rather than an attempt to evade Mexican customs requirements.

Other customs-related problems include requirements to list serial numbers on invoices, laborious inspections at the border, the use of "reference prices," difficulty in clearing low value shipments to importers not on the importer registry, re-registration requirements enacted with little prior notification, lack of standard procedures to address complaints, and unavailability of prompt and reliable information on Mexican regulations. These policies have primarily affected U.S. exporters of certain products, including footwear, textiles, beer, and consumer electronics. In February 1997, Mexico enlarged its list of “sensitive” products to include meat and meat products.

The United States and Mexico each maintain their own duty exemption limits for tourists returning from a NAFTA country. For the United States, the limit is $200 per crossing, with one $400 entry allowed each 30-day period. Mexico’s per-crossing limit is $50 for land crossings or $300 for air/sea crossings. Mexico partially harmonized its personal duty exemptions for returning residents in late 1995, raising its monthly limit from $350 to the U.S. level of $400 and permitting pooling by family members (e.g., a family of four can bring back $1,600 in goods duty-free). While NAFTA obligations do not cover these provisions, the United States remains interested in greater harmonization of these provisions by the three NAFTA countries, including broader product coverage for Mexico's duty exemptions.

## STANDARDS, TESTING, LABELING, AND CERTIFICATION

### Standards

Mexican phytosanitary standards have also created barriers to exports of certain U.S. agricultural goods, including grains, citrus, Christmas trees, potatoes, and apples. However, recent progress has been made in resolving sanitary and phytosanitary (SPS) issues surrounding cling peaches, apricots, and nectarines. In addition to product-specific rules, the Mexican process for establishing "emergency" phytosanitary standards has disrupted trade, since such "emergencies" do not follow the normal rule-making and notification process, which includes public comment periods. While Mexico is using "emergency" rules less often, it has not totally abandoned their use for ordinary rule-making. The United States remains concerned about the far-reaching extent of some sanitary and phytosanitary import regulations, such as those for grain, and maintains an ongoing dialogue with Mexico on these issues in the NAFTA Sanitary and Phytosanitary Measures Committee. Procedural requirements regarding SPS verification often slow down agricultural exports to Mexico.

On February 20, the U.S. Department of Agriculture announced that Mexico will allow the importation of U.S. cherries from Washington, Oregon, and California, estimated to be worth $8 million dollars to U.S. cherry growers. The United States will begin exporting sweet cherries in mid-April from California and at the end of May from Washington and Oregon.

### Certification

Mexico’s Law on Metrology and Standardization mandates that products subject to technical regulations (“normas oficiales Mexicanas,” or “NOMs”) be certified by Mexico’s Direccion General de Normas (DGN) or an authorized independent certification body. DGN uses a national accreditation program (SINALP) to evaluate the competency of laboratories to perform the testing to specific NOMs; test data from those laboratories is the basis upon which certification is granted or denied. Under current Mexican procedures, only facilities based in Mexico can apply for recognition as competent to perform conformity assessment. The requirement to perform testing in Mexican-based laboratories has added cost and uncertainties for U.S. suppliers. It has proven particularly difficult in sectors where technical capability is non-existent or insufficient to meet the demand, or resides solely in the laboratories of competing manufacturers. As a result of the NAFTA (Chapter 9 on Standards-Related Measures), however, Mexico will be required to accredit or otherwise recognize testing and certification performed by U.S. or Canadian bodies by 1998.

U.S. exporters have encountered other difficulties arising from Mexico’s implementation of its certification requirements. Because all imports are subject to inspection at the border, enforcement of compliance with NOM certification appears to be more stringent for imports, resulting in delays and costs not incurred by domestic producers. Domestic goods are subject only to spot inspections in the market. In addition, under current policy, certifications of a particular model cannot be shared among different firms or between foreign suppliers and various customers. Instead, each importer must obtain its own product certification regardless of whether a certification has already been obtained by another importer. The inability to obtain direct certification causes numerous problems and costs for U.S. exporters who deal with multiple importers and for exporters who wish to change their importers or distributors. To avoid this problem, some U.S. companies have set up trading companies in Mexico to act as their importer of record, but such an option is generally not feasible for small U.S. retailers and manufacturers. On January 3, 1997, the Mexican Government published for public comment proposed revisions to its certification procedures. It appears that the proposal will eliminate the lack of transferability of product certification by establishing a registry of certified products.

### Labeling Requirements

Changes in Mexico's mandatory labeling requirements have been the subject of ongoing discussion. In particular, implementation of NOM-050 and NOM-051 on labeling of consumer products and processed foods and non-alcoholic beverages, respectively, will affect a broad range of industries and will be closely monitored by the U.S. Government. The NAFTA Committee on Standards-Related Measures provides an ongoing forum for discussion of these and other issues related to standards, technical regulations and conformity assessment procedures.

## GOVERNMENT PROCUREMENT

The NAFTA and Mexico's Federal Procurement Law, both implemented in 1994, gave U.S. suppliers growing access to the procurement market of the Mexican Government, including the state-owned oil company, PEMEX, and federal power utility, CFE, the two largest purchasing entities in the Mexican Government. In 1995, one U.S. company received orders from PEMEX for $15 million and for $5 million. In early 1996, PEMEX awarded a U.S. company a contract for an "actual time" measurement control system to automate PEMEX gas pipeline systems. The system should be operational by the end of 1998.

In an October 1996 trilateral government procurement meeting, Mexico for the first time gave provisional approval to raise from $50,000 to $100,000 the size of contracts which may be set aside for national-only bidding. When the change has been implemented, all three NAFTA governments will be able to allocate somewhat larger procurements to help minority-run or smaller-sized companies.

Under the NAFTA, Mexico was required to complete its list of services excluded from NAFTA coverage by July 1, 1995. Mexico did not submit its proposal until September 1995. This list includes a range of services that broaden Mexico's current exclusions. This issue is under active discussion by the NAFTA Working Group on Government Procurement.

## LACK OF INTELLECTUAL PROPERTY PROTECTION

As a member of the NAFTA and the WTO, Mexico has committed itself to implement and enforce a very high level of intellectual property rights (IPR) protection. Notable achievements have been Mexico's signing (but not yet ratifying) the International Convention for the Protection of New Varieties of Plants (UPOV) and the Patent Cooperation Treaty, and reactivating its Interministerial Commission for the protection of IPR. The latter is a high-ranking interagency body that met for the first time in more than two years in March 1996. In addition, the number of search and seizure actions undertaken by the PGR (federal Attorney General's office) in recent years has increased, but nevertheless remains uneven. Mexico and the

United States have created a bilateral working group on IPR to discuss enforcement and other matters. The group met three times in 1996, and expects to meet on a regular basis throughout 1997.

**Copyright Enforcement**

In spite of this activity, piracy remains a major problem in Mexico, with U.S. industry loss estimates continuing to increase in 1996. The U.S. recording industry reports that 386 raids were conducted in 1996, leading to the seizure of five million pirated cassettes and 13,000 illegitimate compact disks. However, there were no convictions or sentences issued in 1995 or 1996 against sound recording pirates. Raids to combat video piracy declined in 1996. Eighteen indictments have issued, but all are still pending. Piracy of cable television signals and video games also continues to be a major problem.

Piracy of business software is also a continuing concern. Approximately 22 criminal copyright cases have been filed since 1992. However, only one indictment has issued in these cases (some have been settled). No trials have taken place or verdicts or sentences issued by the courts. In January 1997, the Mexican Government seized substantial amounts of pirated software from a Mexican regional airline.

**Copyright Legislation**

The Government of Mexico passed a new copyright law on December 24, 1996, which addresses a number of inadequacies in the former law. The new law substantially increases protection for computer programs, textile designs, and several other types of copyrighted material. Criminal penalties in several areas have been increased, and administrative procedures have been introduced as well. Major outstanding questions remain as to the consistency of the new law with Mexico's obligations under NAFTA and the WTO Agreement on Trade-Related Aspects of Intellectual Property Rights (TRIPs), particularly regarding the lack of criminal penalties for sound recording piracy, the absence of civil remedies, and the possible decriminalization of end-user piracy. It is unclear at this point whether the Mexican Government will address these problems, which would likely require further legislative action.

**Patents and Trademarks**

Patents and trademarks are under the jurisdiction of the Mexican Institute of Industrial Property (IMPI), a free-standing body (formally the Patent and Trademark Office of the Trade Ministry, SECOFI). An increasing number of raids have been conducted in recent years, and administrative remedies have become more useful to U.S. trademark owners.

**Plant Varieties**

In 1996, the Mexican Government approved the Plant Varieties Protection Act, as required by the NAFTA. Mexico now has legal authority in line with the substantive provisions of UPOV. The NAFTA also required Mexico to begin accepting, on January 1, 1994, applications from plant breeders for varieties in all plant genera, and to promptly grant protection. From 1991 through mid-1994, Mexico accepted approximately 200 plant patent applications from U.S. plant breeders, but has not yet acted on these applications.

## Mexico

### Border Enforcement

NAFTA Article 1718 required Mexico to adopt by December 1995 procedures to allow U.S. rights holders to request that Mexican customs authorities suspend release of goods with counterfeit trademarks or pirated copyright goods. In December 1995, Mexico's law on customs administration was amended to grant its Customs Service authority to detain infringing products. Several U.S. companies have complained that the procedure for obtaining protection via customs is complicated, for a variety of reasons, including the fact that Mexican law does not recognize its Customs Service as an authority competent to decide infringement issues. Intellectual property owners seeking to use customs resources to prevent importation of infringing goods must obtain from a competent authority an order which directs customs officials to detain the merchandise. Thus far, few companies have requested this type of action, but those which have report positive outcomes. The United States is working closely with Mexico to assure that Mexico is providing effective border enforcement of intellectual property rights, as required by the NAFTA.

In December 1992, Mexico promulgated legislation for the film industry containing a troublesome provision against film dubbing. Although Mexican trade officials gave oral indications that, in order to make the law consistent with NAFTA requirements, U.S. films would be exempted from this provision when Mexico promulgates the implementing regulations to the law, Mexico has taken no corrective action yet. U.S. industry is pursuing remedies available to it under Mexican law.

### SERVICES BARRIERS

### Land Transportation Services

U.S. small package delivery firms are experiencing significant difficulties in receiving the national treatment that Mexico is obligated to provide them under NAFTA. Despite numerous promises and an offer of U.S. reciprocity, contingent on Mexico's granting national treatment, Mexico has not yet granted full operating authority to U.S. firms in this sector. (U.S. firms are operating with temporary limited authority.) This issue has been the subject of ongoing bilateral consultations between the U.S. and Mexican Governments, including formal consultations at both the staff and ministerial level, pursuant to the Dispute Resolution Procedures of Chapter 20 of the NAFTA.

NAFTA will eventually remove most operating and investment restrictions on land transportation services, thus facilitating the freer flow of goods and services across the border. Under the terms of the agreement, U.S. and Mexican companies could begin applying on December 18, 1995, for approval to provide cross border truck services into U.S. and Mexican border states. However, on that date the United States announced it would accept applications from Mexican motor carriers to operate international services between Mexico and the states of California, Arizona, New Mexico, and Texas, but that final processing of applications would be postponed until continuing concerns about commercial vehicle safety and security were addressed.

The NAFTA also calls for both parties to lift restrictions on the provision of regular route, cross-border scheduled bus service on January 1, 1997. Implementation of these provisions has been delayed temporarily. The U.S. and Mexican Governments are continuing in their efforts to resolve the situation.

**Telecommunications**

Prior to NAFTA, Mexico had taken steps to reform its telecommunications sector: privatizing Telephones de Mexico (TELMEX), the national telephone company; liberalizing foreign investment rules in most telecommunications services; introducing competition in some telecommunications service sectors; and restructuring the sector's regulatory entities. Mexico implemented a new telecommunications law codifying many of these changes in June 1995.

Mexico ended TELMEX's monopoly on the provision of commercial long-distance telecommunications services on August 10, 1996, and allowed long-distance competitors to interconnect to the public switched network on January 1, 1997. A number of U.S. firms, in partnership with Mexican firms, are competing for Mexican residential and commercial long-distance subscribers. Mexico allows up to 49 percent foreign investment in telecommunications networks and services, including basic telecommunications. An exception is provided in Mexico's new telecommunications law that allows consideration of a higher limit for foreign investment in cellular services.

During the Administration's section 1377 review of telecommunications trade agreements in 1996, Mexico was cited for not complying with its NAFTA telecommunications standards obligations under Chapter 13 of the North American Free Trade Agreement, which requires that Mexico have in place by January 1995 procedures to accept telecom test data. Mexico did so for test data relating to terminal attachment standards, but has yet to establish standards for the certification of terminal attachment equipment in accordance with NAFTA criteria -- protection against network and user harm. Without both sets of accreditation procedures in place for both sets of data, U.S. suppliers cannot export telecom equipment to Mexico. This issue has been the subject of ongoing bilateral consultations between the U.S. and Mexican Governments, resulting in an agreement to a NAFTA-consistent set of terminal attachment standards in the February 12, 1997, meeting of the NAFTA Telecommunications Standards Subcommittee (TSSC).

NAFTA eliminated all investment and cross-border service restrictions in enhanced or value-added telecommunications services and private communications networks, most of them as of January 1, 1994, with the remainder, limited to enhanced packet switching services and videotext, eliminated on July 1, 1995. The principal remaining restriction in the telecommunications sector is the 49 percent equity limit for foreign investment in basic telecommunications services (basic telecommunications are excluded from most obligations in the NAFTA). However, the NAFTA contains language that would allow the United States, Canada, and Mexico to negotiate an agreement on basic services in the future.

In the recently concluded WTO negotiations on basic telecommunications services, Mexico made commitments on all basic telecom services. It adopted the reference paper on regulatory commitments. Mexico required the use of Mexican infrastructure for provision of domestic satellite service until 2002, and guarantees only up to 49 percent foreign ownership for all services other than cellular.

## INVESTMENT BARRIERS

**Ownership Reservations**

## Mexico

Mexico maintains state monopolies in a variety of sectors -- including oil and gas exploration and development and basic petrochemicals -- thereby preventing U.S. private investment. In May 1995, the Mexican Government legalized the privatization of the national railroad system. This will allow up to 100 percent foreign control of 50-year concessions to operate portions of the railroad system, with a second 50-year period also available. The Northeast Railway concession has since been awarded, and bids on the North Pacific Railway are due by mid-year 1997. Similarly, the airport law passed in December 1995 provides for airport concessions of 50 years to private investors, with foreign ownership limited to 49 percent in most cases (waivers are available in specific circumstances), with a second 50-year period also available. Regulations governing the concessions are currently being drafted and the first airport concessions are not likely to be granted before the end of 1997.

While Mexico is actively seeking and approving foreign investment in natural gas transportation, distribution and storage systems (for example, concessions in Mexicali, Hermosillo, and Chihuahua), Mexico continues to exclude U.S. investors from owning assets in other important sectors open to its own citizens, including oil and gasoline distribution and retailing, selected educational services, newspapers and agricultural land.

# NEW ZEALAND

In 1996, the U.S. trade surplus with New Zealand was $263 million, an increase of $22 million from the U.S. trade surplus of $241 million in 1995. U.S. merchandise exports to New Zealand were over $1.7 billion, an increase of $34 million (2.0 percent) from the level of U.S. exports to New Zealand in 1995. New Zealand was the United States' forty-fourth largest export market in 1996. U.S. imports from New Zealand were nearly $1.5 billion in 1996, an increase of $13 million (0.9 percent) from the level of imports in 1995.

The stock of U.S. foreign direct investment (FDI) in New Zealand in 1995 was $4.5 billion, an increase of 25.1 percent from the level of U.S. FDI in 1994. U.S. FDI in New Zealand is concentrated largely in the manufacturing and petroleum sectors.

### Overview

In the 1996 World Trade Organization (WTO) trade policy review of New Zealand, the WTO Secretariat noted that "New Zealand has transformed its economy from among the most heavily protected and regulated to one of the most market-oriented and open in the world." New Zealand's open trade and investment policy continues to be a bellwether for regional and global trade and investment liberalization.

The future of this policy will partially depend on actions of the new Coalition Government formed by the National and New Zealand First Parties on December 10, 1996 -- New Zealand's first government under its new mixed member proportional voting system. Most of New Zealand's free market policies and economic reforms of the past 12 years remain largely unaltered by the two parties' coalition agreement. However, the agreement suggests new limits on, and criteria for, approval of foreign direct investment. There are also indications that deregulated natural monopolies like telecommunications could be subject to some government oversight in the future, which could potentially provide greater market access for domestic and foreign competitors. What effect, if any, these and other suggested policies could have on U.S. interests will only become clear with implementation or alteration of the terms of the coalition agreement over the coming year.

## STANDARDS, TESTING, LABELING, AND CERTIFICATION

### Sanitary and Phytosanitary Controls

U.S. exporters do not believe that New Zealand's current ban on imports of fresh, chilled, and frozen salmon is warranted by existing international standards or known health risks. The Ministry of Agriculture's Chief Veterinary Officer has advised that he expects a draft international health standard for salmon from the United States to be implemented by the end of December 1997, following completion of a Ministry risk assessment (expected in July) and a mandatory public consultation period.

# New Zealand

## ANTICOMPETITIVE PRACTICES

### Pharmaceutical Management Agency

In New Zealand, the Pharmaceutical Management Agency (PHARMAC) is a limited liability company owned jointly by the four Regional Health Authorities (RHAs). The RHAs are responsible for purchasing health services and supplies for the population within their geographical areas of responsibility. PHARMAC administers the national pharmaceutical schedule on behalf of the RHAs.

PHARMAC controls a pharmaceutical schedule on which all Government of New Zealand-subsidized pharmaceuticals are listed. Private medical insurance companies will not cover unsubsidized medicines. Thus, PHARMAC effectively controls which prescription medicines will be sold in New Zealand and, to a large extent, the price at which they will be sold. Both foreign and domestic companies have filed five separate legal actions questioning the legality of PHARMAC's practices under New Zealand's Commerce Act. U.S. industry argues that PHARMAC prevents patent holders from obtaining a "fair" return on their costs because PHARMAC will not provide realistic subsidies for new and improved products in existing categories.

U.S. industry estimates that U.S. companies serve 30 percent of New Zealand's $500 million market. Industry advises that it is not possible at the current time to provide a reliable estimate of the increase in sales that would accrue to the research-based companies in New Zealand were the government to change its policies regarding reimbursement of medicines.

## OTHER BARRIERS

### State Trading Enterprises

U.S. agricultural interests have made state trading enterprises (STEs) a focus for criticism of other agricultural exporting countries, such as Canada, Australia, and New Zealand. They argue that exporting monopolies have market power that enables them to undercut the prices of competing U.S. products, and that STEs use profits from protected domestic markets to subsidize into export markets. The issues surrounding STEs are being addressed in the WTO's STE Committee. The information gathered in this committee, as well as in the WTO's Committee on Agriculture and from other sources, will be used as a basis for strengthening disciplines on STEs in the next round of multilateral negotiations which, for agriculture, commence in 1999. The Administration has made transparency in STE operations and discipline of STEs a priority in future work in the WTO.

### The New Zealand Dairy Board

The New Zealand Dairy Board (NZDB) is one example of an exporting agricultural STE. The New Zealand Government does not directly intervene in dairy production or prices. However, all export of dairy products manufactured in New Zealand is carried out by the NZDB, a statutory cooperative established under the Dairy Board Act of 1961. Two government appointees sit on the 13 member Board. The NZDB cannot be dissolved except by act of parliament.

Reform legislation was passed under the Dairy Board Amendment Act in August 1996, which clarified ownership and equity issues. The main change is to have the Board's assets (brands, plants, etc.) held by a company formed by statute. The NZDB will remain a cooperative but will be owned by the industry's 15,000 dairy farmers. The shares of the company are owned by private sector interests, whose share holdings are based on their respective milk production in the previous season. The shares are nontransferable, nontradeable, and nonvoting.

As required under the new legislation, on November 5, 1996, the NZDB adopted a written constitution which covers issues pertaining to shares, meetings, voting at meetings, dissolution of the Board, and dispute resolution. To change the constitution requires 75 percent shareholder approval (through recent mergers, the top two dairy companies have very nearly reached this threshold). The NZDB's role in the acquisition and marketing of products for export remain unchanged. The NZDB can and does license individual companies to export products, but not on a large scale (the products are usually "niche" type products).

**Other Producer Boards**

Besides the Dairy Board, there are other producer boards in New Zealand. Legislation addressing these boards remains unchanged at present. Changes are being considered to alter powers in the meat and wool structures in the areas of ownership, accountability, and acquisition. Such changes may come this year.

# NEWLY INDEPENDENT STATES OF THE FORMER SOVIET UNION

In 1996, the U.S. trade surplus with all of the Newly Independent States (NIS), except Russia, was $505 million, an increase of $502 million from the U.S. trade surplus of $3 million in 1995. U.S. merchandise exports to the NIS were $1.4 billion, an increase of $714 million (101.6 percent) from the level of U.S. exports to the NIS in 1995. U.S. imports from the NIS were $912 million in 1996, an increase of $212 million (30.3 percent) from the level of imports in 1995.

**Overview**

The countries reviewed in this section are: Armenia, Azerbaijan, Belarus, Georgia, Kazakstan, Kyrgyzstan, Moldova, Tajikistan, Turkmenistan, Ukraine, and Uzbekistan. In 1996, they continued their efforts to create stable political and economic structures. These countries are in transition to market economies, although the pace of economic transformation varies greatly from country to country. Most economic reforms were aimed at stabilization, liberalization, privatization, and improvement of the investment climate, including issues such as banking and bankruptcy.

A primary objective of U.S. trade policy has been to create a legal framework for productive trade, investment, and protection of intellectual property between the U.S. and the NIS; this policy encompasses trade agreements, including most-favored-nation status (MFN) and intellectual property provisions, and bilateral investment treaties (BITs). The United States has bilateral trade agreements with all the countries of the NIS. As of February 1997, the United States had BITs in force with six of the NIS -- Armenia, Georgia, Moldova, Kazakstan, Kyrgyzstan, and Ukraine. Belarus and Uzbekistan have also signed BITs with the United States. The BIT with Belarus is awaiting an exchange of the instrument of ratification; the Uzbekistan BIT has been ratified by the Uzbek Parliament and awaits approval by the U.S. Senate.

Armenia, Belarus, Georgia, Kazakstan, Kyrgyzstan, Moldova, Ukraine, and Uzbekistan have applied to join to the World Trade Organization. Turkmenistan and Tajikistan are exploring the option of applying.

Trade with the NIS has been growing from a small base, but is restricted due to the limited infrastructure, income and foreign exchange resources in these countries. In addition to changing legal structures and banking systems, the NIS are struggling with currency convertibility problems, inflation, and unemployment. Many of these countries also lack adequate road systems, power supplies, and communication structures. However, despite difficult commercial environments, U.S. companies are pursuing business opportunities.

Russia, Belarus, and Kazakstan formed a customs union in January 1995. In most cases, the non-Russian members of the customs union are raising their tariffs and value-added tax (VAT) to match the Russian levels. Most of the countries of the NIS that apply value-added or excise taxes on imports do not assess those taxes on imports from other NIS countries, with the understanding that the other NIS country will assess its own VAT and excise taxes on its exports within the NIS. However, in the past two years Russia and Ukraine began to collect taxes on each other’s exports. Kazakstan, Kyrgyzstan, and Uzbekistan have formed a Central Asian Customs Union.

## Newly Independent States

### ARMENIA

*Import Policies:* Armenia's import tariff consists of two rates, zero or 10 percent. The 10-percent duty is levied mainly on consumer goods or luxury items. Armenia also charges an ad valorem custom processing fee of 0.3 percent. Armenia charges a higher excise tax on imported alcoholic beverages and automobiles than it does on domestic products.

*Standards, Testing, Labeling, and Certification:* Armenia inherited the Soviet standards system and is now working to develop its own norms. It joined the International Standards Association in 1994 and is planning to join the IEC. Beginning in 1997, Armenia now is requiring quality/safety certification for a range of products. Armenia has and indicated that U.S. certification for food products is acceptable, while for other products, manufacturer certification is acceptable. Imports of pharmaceuticals require registration by the Drug and Medical Technology Agency.

*Lack of Intellectual Property Protection:* In 1991, Armenia joined the Paris Convention, the Madrid Agreement, and the Patent Cooperation Treaty. Armenia implemented a law on patents in 1993 and a law on trademarks is currently under consideration in the Armenian Parliament. However, pirated copies of U.S. video, audio, software, and books are widely available.

*Other Barriers:* General instability and tensions in the region stemming from the long-lasting dispute between Armenia and Azerbaijan over the Armenian-populated enclave of Nagorno-Karabakh have resulted in the imposition of Azeri and Turkish embargoes of Armenia's most important land transportation routes. The resulting transportation difficulties and high costs are additional factors that avert many potential investors from the region in general and Armenia in particular.

### AZERBAIJAN

*Import Policies:* In Azerbaijan, a presidential decree on foreign trade issued in January 1997 allows the Ministry of Foreign Economic Relations to set minimum and maximum price levels for imported goods. Azerbaijan imposes different excise tax rates for goods imported from NIS vs. non-NIS countries. In accordance with IMF guidance, import tariffs were equalized to 15 percent, irrespective of the country of origin, as of January 1, 1997.

*Standards, Testing, Labeling, and Certification:* The State Veterinary Committee of Azerbaijan has agreed to accept temporarily U.S. Department of Agriculture (USDA) export certification for meat and poultry products pending official discussions with USDA Food Safety Inspection Service officials.

*Export Subsidies:* In January 1997, the Government of Azerbaijan published a decree eliminating export taxes for all exported goods. At the same time, the government reduced excise rates for certain kinds of locally manufactured alcoholic products, to make them compatible with those of Russia, the principal destination of Azeri alcohol exports.

*Lack of Intellectual Property Protection:* In late 1996, the Parliament of Azerbaijan approved a new law to protect patents and copyrights, although no effective enforcement mechanisms are in place. Azerbaijan is a signatory of the Paris Convention, as well as the Berne and Universal Copyright Conventions, and is a member of the World Intellectual Property Organization (WIPO).

*Investment Barriers:* More than 60 U.S. companies are resident in Azerbaijan. Two U.S. companies together hold a 55.5 percent stake in a $2 billion oil production sharing agreement signed with the Government of Azerbaijan in December 1996.

**BELARUS**

*Import Policies:* In 1995, tariffs in Belarus were raised 5 to 10 percentage points to between 20 and 40 percent. In addition, a VAT of 20 percent was instituted on imports to bring Belarusian import policies in line with Russia's (although Belarus has not fully conformed its tariff schedule to Russia's). U.S. firms report that Belarus customs authorities have on occasion arbitrarily changed tariff classifications on imported items. Bureaucracy, lack of infrastructure, and a variety of complexities arising from the customs union often result in burdensome customs procedures.

*Government Procurement:* Belarusian law requires open tenders for government procurement, but permits preferential treatment for Belarusian suppliers, which may be awarded a contract if their bid is within 20 percent of foreign competition.

*Lack of Intellectual Property Protection:* Belarus is a member of WIPO, and in May 1996 passed a law on intellectual property. However, pirated products are widely available and enforcement efforts have been limited.

*Investment Barriers:* Significant informal barriers to investment exist, notably an unstable, unpredictable business climate. Some U.S. firms report serious and increasing difficulties in converting Belarusian rubles into hard currency. The constitution adopted following a 1996 referendum concentrates power in the executive branch, leaving investors few legislative or judicial options for securing favorable investment conditions or resolving any problems that might occur. One U.S. company has filed a claim with the Overseas Private Investment Corporation (OPIC) alleging expropriation of its munitions recycling project in Belarus. U.S. investment in Belarus is limited. Foreign financial firms may hold no more than 49 percent of the shares of a Belarusian bank or other financial firm.

**GEORGIA**

*Import Policies:* Georgia has an open trade regime with a relatively low average tariff. An inadequate legal framework has been an impediment to doing business in Georgia, although a new civil code and a new civil procedures code are being prepared.

*Standards, Testing, Labeling, and Certification:* Georgia does not recognize U.S. phytosanitary standards on agricultural produces, including seed.

*Lack of Intellectual Property Protection:* Georgia has a body of law to protect intellectual property and is a member of the Paris Convention and WIPO. However, enforcement actions against IPR infringements are virtually non-existent.

*Investment Barriers:* In Georgia, the law on foreign investments identifies certain sectors in which foreign investment needs prior approval. These include banking, pharmaceuticals, insurance, and natural resources. The law also gives the president the authority to identify sectors in which foreign investments may be limited. Another serious barrier has been the slow pace of land privatization. Nonetheless, U.S. business interest in Georgia has increased, in part due to Georgia's successful macroecomic stabilization program.

**KAZAKSTAN**

*Export Subsidies:* In an effort to stimulate exports, in the summer of 1996 the Kazakstani Government removed all export tariffs.

*Lack of Intellectual Property Protection:* In 1992, Kazakstan acceded to the Geneva and Paris Conventions and joined WIPO. In June 1996, a law on copyrights and related rights was approved. The new law includes sanctions for copyright infringement.

*Investment Barriers:* Over 80 American firms have established offices in Almaty, Kazakstan. In December 1996, the $2 billion Caspian Pipeline Consortium Agreement was signed. The construction of this pipeline (completion of which is expected in 1999) will allow Kazakstan to significantly increase production at the huge Tengiz oil field and pump 67 million tons of crude annually to world markets by the year 2000. In December 1996, the U.S.-Kazakstan Avoidance of Double Taxation Treaty entered into force.

**KYRGYZSTAN**

*Import Policies:* In 1996 Kyrgyzstan signed but did not ratify a customs union agreement with Russia, Belarus, and Kazakstan. Kyrgyzstan has not increased its tariffs or VAT to Russian levels. The Agreement on Deepening Economic Integration with the customs union countries was ratified in December 1996.

*Lack of Intellectual Property Protection:* The Kyrgyz regulatory agencies responsible for intellectual property matters have promulgated a number of transitional intellectual property regulations, including the Temporary Provisions on Industrial Property. It is the policy of the Government of Kyrgyzstan to put into place a system of intellectual property protection modeled on the systems found in developed market economy countries, and a draft copyright law is currently before the Parliament. Kyrgyzstan is a member of WIPO, the Paris Convention, and the Madrid Agreement.

**MOLDOVA**

*Lack of Intellectual Property Protection:* More than 39 U.S. companies established local representatives in Moldova in 1996. Most U.S. firms have limited their presence to exporting through local representatives, although a few firms have invested in Moldova. Moldova passed a copyright law in 1995, and trademark and patent laws in 1996. Moldova is a member of WIPO, the Paris Convention, and the Madrid Agreement.

**TAJIKISTAN**

*Import Policies:* In preparation for joining the customs union formed by Russia, Belarus, and Kazakstan, in 1996 Tajikistan adopted a new customs code that raised tariff rates to match the union members' level. A 20 percent VAT, 3 percent "special tax," and excise taxes were also imposed on imported goods in 1996. There are no quantitative restrictions on imports, but there is a list of commodities which can only be imported after the Ministry of Economy and Foreign Economic Relations has examined the contract. There is also a list of commodities which require government permission to be imported.

*Government Procurement:* The Government of Tajikistan took some measures aimed at abolishing a system of compulsory state orders in 1996, and establishing a system of purchasing based on competition for contracts. There were also decrees to liberalize prices of cotton and grain, although the practical effect of these decrees has been small so far.

*Lack of Intellectual Property Protection:* Tajikistan has adhered to the Paris Convention and the Universal Copyright Convention and is a member of WIPO. Draft copyright and patent laws have been submitted to Parliament. Enforcement efforts are limited.

**TURKMENISTAN**

*Import Policies:* In Turkmenistan, all foreign trade transactions (except those involving crude oil, natural gas and electricity) valued at more the 3.5 million manats must be registered with the Commodity and Raw Materials Exchange (CRME). The CRME charges a service fee of 0.2 percent of the value of contracts it registers. The Government of Turkmenistan maintains separate lists of goods that may not be exported and goods that may not be imported without special permission from the President or the Cabinet of Ministers. Consumer goods imported into Turkmenistan must be certified by the State Standards Committee, which issues a release document. This procedure can be time-consuming and, as a result, importation of perishable goods is considered risky.

*Lack of Intellectual Property Protection:* Turkmenistan is a member of WIPO, and in December 1991 joined the Paris Convention in 1994. The Government of Turkmenistan has adopted a copyright law and a patent law.

**UKRAINE**

*Import Policies:* Most MFN tariffs in Ukraine range from zero to 30 percent, although tariffs on some items are 40-50 percent. Alcoholic beverages must pay a high unit tariff. In November 1996, Ukraine raised its tariffs on a number of agricultural products. Imports are also assessed a 20 percent VAT and, in some instances, an excise tax.

*Lack of Intellectual Property Protection:* Ukraine is a member of WIPO and has acceded to the Paris Convention for the Protection of Industrial Property, the Universal Copyright Convention, the Berne Convention, and the Convention for the Protection of New Varieties of Plants, and is a signatory to the Trademark Law Treaty. With the help of appropriate international bodies and comment from U.S. officials, Ukraine has implemented over the last two years a set of intellectual property laws, including laws covering patents, industrial designs, trademarks, plant varieties, and copyrights. Enforcement remains sporadic and inadequate, however.

*Investment Barriers:* Ukraine passed a law on foreign investment in 1996 which provides certain protections, including general guarantees against expropriations, unhindered transfer of profits and post-tax revenues, and a ten-year guarantee against changes in legislation that affect companies operating in Ukraine. As of December 1996, there were more than 300 U.S. companies in Ukraine.

**UZBEKISTAN**

*Import Policies:* U.S. exports to Uzbekistan more than doubled from 1995 to 1996. However, in October 1996, Uzbekistan sharply curtailed convertibility of local currency into foreign exchange, making it very difficult for many U.S. companies to receive payment for exports or pay local expenses denominated in dollars. A number of firms that had supplied products to Uzbekistan have not been paid, and other firms have reduced or ceased importing because they can not be certain they will obtain foreign exchange to honor their obligations. The IMF suspended its program with Uzbekistan in late 1996.

*Lack of Intellectual Property Protection:* Uzbekistan has adopted a trademarks law, a patent law covering inventions and industrial designs, a law covering protection of computer software and data bases, and a copyright law. Uzbekistan is a signatory to the Paris Convention, Patent Co-operation Treaty, and the Madrid Agreement, as well as a member of WIPO, and is in the process of acceding to the Berne and Geneva Conventions. Piracy of Western copyrighted materials remains common on a small scale.

# NICARAGUA

In 1996, the U.S. trade deficit with Nicaragua was $88 million, a shift of $100 million from the U.S. trade surplus of $12 million in 1995. U.S. merchandise exports to Nicaragua were $262 million, an increase of $12 million (4.8 percent) from the level of U.S. exports to Nicaragua in 1995. Nicaragua was the United States' eightieth largest export market in 1996. U.S. imports from Nicaragua were $350 million in 1996, an increase of $112 million (47.1 percent) from the level of imports in 1995.

## IMPORT POLICIES

### Tariffs

Nicaragua is a member of the Central American Common Market (CACM), which also includes Costa Rica, Guatemala, El Salvador, and Honduras. CACM members are working toward the full implementation of a common external tariff (CET) ranging between 5 and 20 percent for most products. In 1995 the members of the CACM agreed to reduce the CET to between 0 and 15 percent, but allowed each member country to determine the timing of the changes. With the exception of certain items, there are no duties for products traded among CACM members.

Nicaragua also imposes a variety of import fees, including a temporary protection tariff (ATF) of 5 to 10 percent on about 900 items, a specific consumption tax (DAJ) of approximately 15 percent on 750 items, a 5 percent stamp tax (ITF), and a 15 percent value-added tax (VAT). As a result of a tax reform law passed in 1995, effective January 1, 1996, the combined total import fee percentage of the ATP, DAJ, and ITF taxes should not exceed 32 percent. Tariffs are subject to a WTO scheduled reduction, except on certain so-called "fiscal goods" such as alcoholic beverages, tobacco, and soft drinks.

### Agricultural Price Bands

In 1992, Nicaragua implemented a price band mechanism for yellow corn, sorghum, rice, and soybeans. Similar to the price band practices of other countries in the region, the Nicaraguan price bands are calculated from a time series based on international prices for the prior 60 months on a given product. The 15 highest and lowest prices are eliminated, with the remaining highs and lows establishing the price band. Imports entering with values within defined bands are assessed a 20 percent tariff. Based on an established schedule, imports entering with prices above the band are assessed lower duties, while imports priced below the band are assessed a higher duty. Additionally, the basic tariff minus the discount should not be lower than 5 percent of the international c.i.f. price. In September 1996, Nicaragua allowed the duty free import of rough rice, although mill rice imports are still subject to the price band.

## GOVERNMENT PROCUREMENT

The 1981 Law of Administrative Contracting by the State, Decentralized/Autonomous Agencies, and Municipalities sets out clear guidelines for government procurement. However, in practice, many government agencies and parastatals engage in direct purchasing outside of the legal framework.

# Nicaragua

## LACK OF INTELLECTUAL PROPERTY PROTECTION

Nicaragua made substantial progress in 1996 toward concluding a bilateral intellectual property rights agreement with the United States that would go beyond the protection levels afforded under the WTO Agreement on Trade-Related Aspects of Intellectual Property Rights (TRIPs). However, at the beginning of 1997 negotiations had not been concluded.

### Copyrights

Piracy of video recordings, unauthorized video and sound recordings, broadcast theft, and piracy of U.S. satellite signals by the local cable television operators are widespread. The current law, which dates from 1904, does not explicitly protect computer software, which contributes to endemic piracy of these products. A draft copyright law languished in the previous National Assembly. A report prepared by the International Intellectual Property Alliance estimated that losses in Nicaragua due to copyright infringements cost U.S. firms $5.4 million annually.

### Patents

The current patent law, which dates to 1899, fails to meet international standards for term of protection and for subject matter subject to patentability. A new draft patent law was prepared by the executive branch in the previous government and submitted to the National Assembly, but was not actively considered. In July 1995, Nicaragua acceded to the Paris Convention for the Protection of Industrial Property. The Nicaraguan Government is currently implementing article two of the Paris Convention (including national treatment), although implementation of other Paris Convention norms is awaiting new Nicaraguan legislation.

### Trademarks

Nicaragua's trademark law currently provides inadequate protection for trademarks, especially well-known marks. However, in November 1994, the Central American Convention for the Protection of Industrial Property, of which Nicaragua is a signatory, was revised. The Convention has been signed by the Nicaraguan executive branch, but has not yet been ratified by the National Assembly. The Convention is intended to ensure compatibility with the Paris Convention and Uruguay Round TRIPs provisions. The Convention will not take effect until all Central American countries become signatories. Two Central American countries have not decided whether to sign the Convention.

## INVESTMENT BARRIERS

Sandinista-era cases of expropriation of U.S. citizen-owned investments or properties are a continuing problem. Although the Chamorro government said that resolution of these cases was a priority, resolution of cases has been slow. The United States continues to press Nicaragua to provide prompt, adequate and effective relief to affected U.S. owners and investors.

In order to receive the benefit of the 1991 Foreign Investment Law -- which provides guaranteed repatriation of profits and repatriation of original capital three years after the initial investment -- investments must be approved by an interagency foreign investment committee. These approvals can be time-consuming and contain criteria -- e.g., approval by the government's environmental agency -- which lack clear definition. Investments may be made without foreign investment committee approval, but such investments do not enjoy repatriation guarantees.

The 1980 Law of Agents, Representatives, and Distributors of Foreign Products provides for considerable protection of the interests of local agents and distributors. In contrast, for investors, the resolution of commercial and investment disputes is unpredictable. The legal system is cumbersome, and the enforcement of judicial rulings is uncertain and sometimes subject to non-judicial considerations.

In July 1995, the Governments of Nicaragua and the United States concluded the U.S.-Nicaragua Bilateral Investment Treaty (BIT) which was designed to improved the investment climate by recognizing intellectual property rights, and by guaranteeing the repatriation of capital and compensation for damages. Nicaragua's National Assembly ratified the BIT in June 1996. The treaty has not yet been submitted to the U.S. Senate for ratification. Submission of the BIT to the Senate for ratification has been linked to Nicaraguan progress in resolving U.S. citizen property claims and in improving protection of intellectual property rights.

# Nicaragua

# NIGERIA

In 1996, the U.S. trade deficit with Nigeria was $5.0 billion, a increase of $861 million from the U.S. trade deficit of $4.2 billion in 1995. U.S. merchandise exports to were $816 million, an increase of $214 million (35.6 percent) from the level of U.S. exports to Nigeria in 1995. Nigeria was the United States' fifty-seventh largest export market in 1996. U.S. imports from Nigeria were $5.8 billion in 1996, an increase of $1.1 billion (22.5 percent) from the level of imports in 1995.

The stock of U.S. foreign direct investment (FDI) in Nigeria in 1995 was $595 million, an increase of 84.8 percent from the level of U.S. FDI in 1994. U.S. FDI in Nigeria is concentrated largely in the manufacturing sector.

## IMPORT POLICIES

Nigeria abolished all import licensing requirements and cut its list of banned imports in 1986. However, as of January 1997, the importation of some 15 different items (principally agricultural) is still banned. These bans were initially implemented to restore Nigeria's agricultural sector and to conserve foreign exchange. Although the bans are compromised by widespread smuggling, the reduced availability of grains has raised prices for both banned commodities and locally produced substitutes.

In April 1996, in an effort to reduce congestion and corruption in Nigerian ports and following a reported shortfall in customs duties, the Nigerian Government changed the procedures by which goods enter or leave the country. The new regulations require a pre-shipment inspection for all unaccompanied imports and exports, certifying the price, quantity, and quality before shipment; further, imports require documentation in the form of an Import Duty Report (IDR). Goods arriving without an IDR will be confiscated by the Nigerian Government. In addition, all goods are assessed a 1 percent surcharge to cover the cost of inspection by the port authorities.

In 1995, Nigeria announced a new tariff structure to be operated until 200l. The revision was aimed at narrowing the ranges of many custom duties and increasing rate coverage in line with WTO provisions, with fewer import prohibitions. The following commodities are subject to duty rates: rice, 50 percent; day-old chicks and parent stock, 5 percent; sparkling wines, wine coolers, and champagne, 100 percent plus a 40 percent excise tax; fruits and fruit juices, 75 percent; jute bags, 45 percent; cigarettes, 200 percent; cotton, 60 percent; wheat, 10 percent; and passenger vehicles, from 30 to 100 percent. However, a 25 percent general reduction in import tariffs became effective in January 1997, and is now being implemented, thus temporarily reducing the above-listed duty rates. This action followed complaints of importers that customs duty was calculated on the basis of 80 naira to the dollar, rather than the official rate of 22 naira to the dollar used in 1994. Also, in October 1995, the Nigerian Ports Authority reduced port charges by 60 percent in Lagos and 70 percent at the other delta ports.

Other import restrictions apply to aircraft and ocean-going vessels. Guidelines mandate that all imported aircraft and ocean-going vessels be inspected by a government-authorized inspection agent. In addition, performance bonds and off-shore guarantees must be arranged before either down payments or subsequent payments are authorized by the Ministry of Finance.

## Nigeria

### GOVERNMENT PROCUREMENT

Nigeria, a member of the World Trade Organization (WTO), generally uses an open tender system for awarding government contracts, and foreign companies incorporated in Nigeria receive national treatment. Approximately five percent of all government procurement contracts are awarded to U.S. companies. Nonetheless, competing for government contracts continues to be made more difficult for foreign firms by the patronage system commonly used and the need to provide "incentive" payments to government officials.

### EXPORT SUBSIDIES

In 1976, the Government of Nigeria established the Nigerian Export Promotion Council (NEPC) to encourage development of non-oil exports. The NEPC administers various incentive programs, including a duty drawback program, the export development fund, tax relief and capital assets depreciation allowances, and a foreign currency retention program. The duty drawback or manufacturing in-bond program is designed to allow the duty-free importation of raw materials to produce goods for export, contingent on the issuance of a bank-guaranteed bond. The performance bond is discharged upon evidence of exportation and repatriation of foreign exchange. Though meant to promote industry and exportation, these schemes have been burdened by inefficient administration, confusion, and corruption, causing great difficulty and, in some cases, losses to those manufacturers and exporters who opted to use them.

The NEPC also administers the Export Expansion Grant Program, a fund that provides grants to exporters of manufactured and semimanufactured products. Grants are awarded on the basis of the value of goods exported, provided the export proceeds be repatriated to Nigeria. Though the grant amounts are small, ranging from 2 to 5 percent of total export value, they appear to be subsidies as designated by WTO.

### LACK OF INTELLECTUAL PROPERTY PROTECTION

As is a signatory to the Universal Copyright Convention (UCC), the Berne Convention, and the Paris Convention (Lisbon text), as well as a member of the World Intellectual Property Organization (WIPO), Nigeria is a party to most of the major international agreements on intellectual property rights (IPR). Cases involving infringement of non-Nigerian copyrights have been prosecuted successfully in Nigeria, but enforcement of existing laws remains weak, particularly in the patent and trademark areas. Despite active participation in international conventions and the apparent interest of the central government in intellectual property rights issues, little has been done to stop the widespread production and sale of pirated tapes, videos, computer software, and books in Nigeria.

The Patents and Design Decree of 1970 governs the registration of patents, and the Nigerian Standard Organization is responsible for issuing patents, trademarks, and copyrights. Once conferred, a patent gives the patentee the exclusive right to make, import, sell, or use the products or apply a patented process. The Trademarks Act of 1965 governs the registration of trademarks. Registering a trademark gives its holder the exclusive right to use the registered mark for a particular good or class of goods.

Nigeria's television market, once reserved for official channels, was deregulated over a year ago, resulting in the formation of 8 private television stations, over 20 satellite redistribution companies, and a number of pirate television and cable stations. Recent statutes include the Copyright Act of 1988 (amended in 1992); the National Film and Video Censors Board Act of 1993 (which reinforces the enforcement measures of the Copyright Act); and the Nigerian Film Policy Law of 1993 (which encourages development of the Nigerian film industry). Nonetheless, Nigeria's anti-piracy legislation is inadequate. Recent legislative activity seems designed to attract foreign investment and protect the local industry, which produces over 100 films annually. These laws would provide for police raids, civil and criminal enforcement actions, modest fines, and up to two years of imprisonment for recidivists.

IPR problems in Nigeria became significant with the government's 1981 nationalization of the film industry (including distribution), although this policy has been officially abandoned. Motion Picture Association (MPA) member companies have not been paid contractual compensation promised by the Nigerian Government, and they have been unable to repatriate assets held locally at the time of nationalization. As a result of these adverse trading conditions, in recent years no trade has been possible between MPA member companies and Nigeria. Estimated accumulated losses to MPA member companies exceed $25 million.

Nigerian companies, including film makers, formed the Proteus Entertainment Agency to protect copyright laws in the music, video, and other copyright industries. The Copyright Decree of 1988, based on WIPO standards and U.S. copyright law, currently makes counterfeiting, exporting, importing, reproducing, exhibiting, performing, or selling any work without the permission of the copyright owner a criminal offense. Progress on enforcing the 1988 law has been slow. The expense and length of time necessary to pursue a copyright infringement case to its conclusion are detriments to the prosecution of such cases.

In the past, few companies have bothered to secure trademark or patent protection in Nigeria because it is generally considered ineffective. As a result, Nigeria is Africa's largest market for pirated products from third countries. Losses from poor IPR protection are substantial, although the exact cost is difficult to estimate. Most of the sound recordings sold in Nigeria are pirated copies and the entire video industry is based on the sale and rental of pirated tapes. Satellite signal piracy is also common. Violation of patents on pharmaceuticals is also a problem.

## INVESTMENT BARRIERS

Nigeria, Africa's most populous nation with l00 million people, offers investors a low-cost labor pool, abundant natural resources, and the largest domestic market in sub-Saharan Africa. However, Nigeria also suffers from an autocratic military government, inadequate and poorly maintained infrastructure, confusing and inconsistent regulations, and endemic corruption. Therefore, considerably more time, money, and managerial effort than may be customary in other developing countries must be expended in Nigeria to begin operating and earning a profit.

In 1996, Nigeria continued the liberalizing of the foreign exchange mechanism instituted in 1995. Under the Foreign Exchange Decree of 1995, the autonomous foreign exchange market (AFEM) was reestablished, allowing private companies to source foreign exchange at the parallel market rate (about 80 naira to the dollar in January 1997). The official exchange rate of 22 naira to the dollar has been retained for some official government transactions. Companies can now hold domiciliary accounts in private banks, with account holders having "unfettered" use of the funds. Foreign investors may bring capital into the country without prior Finance Ministry approval, may service foreign loans, and remit dividends. Bureaus de Change are functioning, albeit with a limitation of $2,500 per transaction. The Central Bank has continued to intervene in the AFEM at regular intervals, going from monthly interventions in 1995 to weekly interventions in 1996. The Nigerian Finance Minister pledged to end the dual rates in the near future, but the 1997 budget did not include a provision for this.

In 1995, Nigeria promulgated the Nigerian Investment Promotion Commission (NIPC) Decree to replace the Enterprises Promotion Act. This decree liberalized the foreign investment regime, allowing 100 percent foreign ownership of firms outside the petroleum sector (which is still limited to the existing joint-venture agreement or production-sharing contracts with the Nigerian Government, though there has been discussion of the Nigerian Government selling off some or all of its part of the joint ventures). A foreign enterprise may now buy shares of any Nigerian firm except those on the "negative list" (firms producing firearms, ammunition, narcotics, and military and paramilitary apparel). The investment decree provides for the creation of the Nigerian Investment Promotion Commission that will register companies for foreigners after incorporation under the Companies and Allied Matters Decree of 1990. The decree also abolishes the expatriate quota system (except in the oil sector) and prohibits any nationalization or expropriation of a foreign enterprise by the Nigerian Government except for such cases determined to be in the national interest.

Nigeria has begun to implement the 1995 Money Laundering Decree, which introduced procedures designed to inhibit this practice, as well as a decree against advance-fee fraud, called 419 fraud after the section of the Nigerian criminal code that deals with it. The scope of 419 business fraud has brought international notoriety to Nigeria and constitutes a serious disincentive to exporters because any international transaction must be thoroughly vetted and confirmed.

As stated in the December 1989 circular, "Industrial Policy of Nigeria," the Nigerian Government maintains a system of incentives to foster the development of particular industries, to encourage firms to locate in economically disadvantaged areas, to promote research and development in Nigeria, and to favor the use of domestic labor and raw materials. The Industrial Development (Income Tax Relief) Act of 1971 provides incentives to "pioneer" industries, that is, industries deemed beneficial to Nigeria's economic development. Companies given "pioneer" status may enjoy a nonrenewable tax holiday of 5 years, or 7 years if the pioneer industry is located in an economically disadvantaged area.

In an effort to attract foreign investment, the Nigerian Government is developing an export processing zone near the city of Calabar in eastern Nigeria. When completed, it will allow investors duty free importation of raw materials and semi-finished products for manufacture and export. As in other parts of the country, however, insufficient infrastructure and overabundant bureaucracy have seriously hampered the zone's development. The zone has room for 88 factories. As of January 1997, only eight applications have been approved to manufacture at the zone. The government hopes to complete the zone in 1997.

**Parastatals**

In 1996, several federal parastatals were under investigation by special antifraud panels, and reports of widespread corruption continue to surface. Before the release of the 1997 budget there was much discussion of the privatization/commercialization of many of the parastatals. Public announcements of Nigeria's intent to sell off portions of its telecommunications, electric power authority, airports authority, postal company, railway corporation, coal corporation, and even the petroleum sector were common. However, the new budget did not provide for immediate action to privatize specific parastatals. Head of State Abacha announced that any privatization moves would be taken only after careful review.

# Nigeria

# NORWAY

In 1996, the U.S. trade deficit with Norway was $2.3 billion, an increase of $514 million from the U.S. trade deficit of $1.8 billion in 1995. U.S. merchandise exports to Norway were $1.6 billion, an increase of $265 million (20.5 percent) from the level of U.S. exports to Norway in 1995. Norway was the United States' forty-seventh largest export market in 1996. U.S. imports from Norway were $3.9 billion in 1996, an increase of $778 million (25.2 percent) from the level of imports in 1995.

The stock of U.S. foreign direct investment (FDI) in Norway in 1995 was $4.9 billion, an increase of 14.5 percent from the level of U.S. FDI in 1994. U.S. FDI in Norway is concentrated largely in the petroleum, manufacturing, and wholesale sectors.

**Overview**

Although Norwegian voters rejected European Union (EU) membership in 1994, Norway retains membership in the European Economic Area (EEA) which consists of the EU member countries together with Norway, Iceland, and Liechtenstein. As an EEA member, Norway has assumed most of the rights and obligations of the EU single market. However, Norway has very little ability to influence EU decisions.

Norway has its own tariff system but by virtue of EEA obligations or Norwegian Government policies, U.S. exports face most of the same trade and investment barriers which can limit U.S. access to the EU. Preferential tariff rates are granted to the EU and other EEA members. The most significant EEA non-tariff barriers which affect U.S. commercial interests in Norway concern labeling, acceptance of agricultural goods (related to genetically modified organisms and growth hormones), and preferential treatment of EEA-based firms in publicly tendered major projects.

Norway's trade and investment regime is in a state of transition, with continuing implementation of Uruguay Round and EEA commitments. Additional liberalization steps may be possible based on the successful conclusion of ongoing World Trade Organization (WTO) negotiations in specific areas.

## IMPORT POLICIES

### Agricultural Tariffs

In July 1995, Norway accelerated its WTO implementation commitments for tariff reduction on agricultural commodities by immediately adopting the year 2000 bound tariff rate targets. Tariffication of agricultural non-tariff barriers under the Uruguay Round had led to the replacement of quotas with higher product tariffs. Agricultural shortages or price surges have been countered by temporary tariff reductions. But lack of sufficient advance notification and predictability have made imports from the United States of fruit, vegetables, and other perishable horticultural products substantially more difficult than under the previously existing import regime and favor nearby European suppliers.

## Norway

### Tariff-Rate Quota Administration

The Norwegian Ministry of Agriculture has established an auction for the rights to import under the tariff-rate quotas established for meats, butter, eggs, and cabbage. If the proceeds of the auction to the Norwegian Government, plus the applicable tariff, exceed the bound rate, then Norway may be in violation of Article II of WTO 1994. This issue is now before the Committee on Agriculture.

### STANDARDS, TESTING, LABELING, AND CERTIFICATION

### Agricultural Product Standards

In 1996, the Norwegian Government banned the import of growth hormone-treated meat, including growth hormones approved in the United States for beef. In practice, the ban had minimal impact on U.S. beef imports into Norway since meat distributors had previously refused to buy hormone-treated beef based on concern that Norwegian consumers would reject it.

As of January 1997, the Norwegian Government's position on genetically modified organisms (GMOs) and related labeling remained unclear. As a member of the EEA, it is highly likely that Norway will accept the EU's position. However, there is strong opposition to GMO food products among Norwegian consumer and retail groups, with the focus currently on genetically modified soy beans and derivative products. Even if the Norwegian Government allows such products to enter Norway, market prospects appear to be very limited if alternative non-GMO products are available.

### Application of Safety Certification Standards

In 1996, the Norwegian Maritime Directorate (NMD) instructed the Norwegian maritime community to discontinue use of emergency survival suits produced by a leading U.S. manufacturer, after the suits failed to pass a testing procedure which was not in conformance with tests and standards set by the International Maritime Organization. The equipment tested had been approved by the U.S. Coast Guard and had met uniform certification standards throughout the world. As of March 1997, the NMD has failed to respond adequately to U.S. Government requests to address this issue.

Norway is changing its rules regarding entry and operation for foreign financial service providers. Implementation of the EEA accord removed many such barriers for EU and EFTA member countries and recent deregulation of financial markets appears to have eliminated many of the barriers facing U.S. financial institutions seeking to operate in Norway. Norway has also adopted the EU's Second Banking Directive which, among other provisions, has allowed financial institutions established in the EEA to open branches in Norway. Since July 1, 1996, branch banking from the United States and other non-EEA countries has been permitted.

### INVESTMENT BARRIERS

Norway has been an active participant in the Organization for Economic Cooperation and Development (OECD) Multilateral Agreement on Investment (see MAI in the EU chapter) and has made a proposal for significant liberalization. In 1995, in accordance with EEA national treatment directives, the Norwegian Government changed the rules governing foreign investment in industrial companies. Under the new system, foreign investors no longer need to obtain a government concession before buying limited shares of Norwegian corporations. However, both foreign and Norwegian investors are still required to notify the government when their ownership in a company exceeds certain levels (e.g. 33 percent, 50 percent, 67 percent). The Norwegian Government then can take action if the purchase is considered contrary to national interests, which could include objectives such as maintaining high employment and providing some market protection to existing businesses against new market entrants.

At present, foreign and domestic investors must have permission of the Norwegian Government to purchase more than 10 percent of the equity of an existing financial institution, and foreign investors may not own more than 33 percent of the equity of any financial institution without a government concession. There are no formal, standardized performance requirements imposed on foreign investors. In the offshore petroleum sector, Norwegian authorities encourage the use of Norwegian goods and services. The Norwegian share of the total supply of goods and services to the offshore petroleum sector has been about 50 to 60 percent over the last decade. In the past, the Norwegian Government has shown a strong preference to the three Norwegian oil companies in awarding the most promising oil and gas blocks.

## OTHER BARRIERS

### Telecommunications Equipment

Despite ongoing reform of its telecommunications market, Norway still maintains some restrictions which limit market access for U.S. telecommunications equipment. The state owned corporation, Telenor, will maintain its effective monopoly on fixed-line voice services, infrastructure, and telex services until January 1, 1998, at which time Norway has committed in the WTO negotiations on basic telecom services to open its services market fully to competition.

Equipment which has not been tested and certified under the European economic area’s common technical regulations must be type approved by the Norwegian telecommunications authority. American companies report that this type approval process is slow and costly for companies offering new products.

### Monopoly for Alcoholic Beverages

In accordance with EEA directives, Norway lifted its national monopoly for the importation and wholesale distribution of alcoholic beverages. Similar to some other countries, Norway retains for political and social reasons its high taxes and retail distribution monopoly for alcoholic beverages. There is an exception for beer.

### Shipbuilding

Norway supported and has ratified the OECD shipbuilding accord which curtails such subsidies. Since the accord has not entered into force because some key participants have not yet ratified, Norway has extended shipbuilding subsidies until July 1, 1997, or until the OECD shipbuilding subsidy pact comes into force.

## Norway

In compliance with the EEA rules, new vessels costing $12.5 million or more will receive a subsidy equivalent to 9 percent of the amount while vessels costing less will receive a 4.5 percent subsidy. The Norwegian Government has earmarked $75 million for ship subsidies for the first half of 1997. Additional subsidies will be budgeted if the OECD pact is not implemented.

# PAKISTAN

In 1996, the U.S. trade surplus with Pakistan was $11 million, a shift of $274 million from the U.S. trade deficit of $263 million in 1995. U.S. merchandise exports to Pakistan were $1.3 billion, an increase of $343 million (36.7 percent) from the level of U.S. exports to Pakistan in 1995. Pakistan was the United States' fiftieth largest export market in 1996. U.S. imports from Pakistan were $1.3 billion in 1996, an increase of $69 million (5.8 percent) from the level of imports in 1995.

After years of inward looking trade policy that restricted participation in world markets, Pakistan since the late 1980's generally has been reducing levels of tariff and non-tariff protection and state intervention in trade as part of a comprehensive macroeconomic and structural reform program. Implementation has been uneven, however, and government protection continues to restrict U.S. exports to Pakistan and the country's fuller integration into the world economy.

## IMPORT POLICIES

In recent years, Pakistan has significantly reformed its restrictive import regime by reducing tariffs on many products and lifting some bans and quantitative restrictions. In 1993-94 the government began a three-year program to reduce maximum tariffs from over 90 percent to 35 percent. However, due in part to the central government's fiscal dependence upon customs revenue, Pakistan has been unable to meet this schedule and also achieve the goal of reducing its overall fiscal deficit.

In the 1995-96 fiscal year that began July 1, 1995, maximum tariffs were set at 65 percent, well above the original target of 45 percent, and have remained at that level in the 1996-97 Pakistani fiscal year. Under the 65 percent ceiling, the October 1995 "temporary" duty on most imports of 5 to 10 percent also remains in place. The average tariff rate, exclusive of the "temporary" duty, is about 45 percent. If the new government, elected on February 3, 1997, enters into a comprehensive macroeconomic adjustment program with the International Monetary Fund (IMF) later this year, additional commitments to reduce the maximum tariff level likely will be a part of the reform package.

In July 1993, Pakistan ceased requiring import licenses for all "freely importable" goods, (i.e., all items not on the negative list of items banned for religious, health, or security reasons, or justified according to provisions of international agreements). As Pakistan has liberalized its trade regime both on its own and as part of various trade agreements, Pakistan has reduced its negative list of banned import items from 215 categories of products in 1990 to 68 in 1996.

Despite the reforms of recent years, Pakistan's applied tariffs and various import surcharges and taxes continue to significantly restrict U.S. exports to Pakistan. For example, Pakistan imposes a 12 percent applied tariff on soda ash, the principal raw material for making glass. Pakistan's additional import fees, surcharges, and taxes, however, result in an effective import duty of over 50 percent, one of the world's highest soda ash import duties. Due to those restrictive duties, U.S. soda ash exporters are effectively excluded from the Pakistani market, resulting in an estimated loss of $25-50 million in annual exports according to U.S. industry representatives.

## Pakistan

Another example of a significant import restriction which Pakistan has maintained, and even made more onerous despite its general policy of trade liberalization, has been the treatment of certain pharmaceutical raw material imports. Pakistan typically grants special tariff and tax exemptions for pharmaceuticals not available domestically. However, the special exemptions end once firms commence domestic manufacturing of competing pharmaceutical products. Pakistan periodically has increased the import surcharges known as "regulatory duties" on those imports which remain competitive despite the end of the special tariff exemptions. In addition, Pakistan has raised the sales taxes repeatedly on many imported pharmaceutical packaging and raw materials while prohibiting firms from passing the sales tax increases on to end-product customers. With effective tariff rates reaching 95 percent on some pharmaceutical raw materials and with strict price controls in place, many foreign pharmaceutical firms reportedly are considering withdrawing altogether from the Pakistani market. The United States will continue working to ensure that Pakistan provides adequate market access to U.S. pharmaceutical exports and investment.

There was at least one noticeable improvement during 1996 in the otherwise extensive barriers to U.S. film and entertainment exports. In July 1996, the Pakistani Central Board of Revenue reversed its earlier policy and stopped collecting an import duty on foreign film royalties. Despite that improvement, U.S. film and entertainment exports still face a range of restrictive barriers in Pakistan. The provincial governments, for example, impose an entertainment tax of 55 to 75 percent on all imported motion pictures. The federal government, meanwhile, enforces strict licensing requirements and quotas on theaters eligible to screen foreign films. Those government-imposed costs, together with admission price controls, serve as very strong disincentives for distributors and theater owners wishing to legally import and screen U.S. films. It is estimated that U.S. exports would increase by $5-10 million annually if the barriers were eliminated.

The Pakistani tariff regime also is characterized by complexity, broad bureaucratic discretionary powers, and very limited transparency. Administrative decisions frequently grant exemptions and concessions from general rules under the system of special regulatory orders (SRO) that amount to temporary duty suspension decrees. As a result, different rates are frequently applied to the same product and average applied rates are sometimes lower than statutory duties. The December 1996 IMF "standby" program aims to simplify the tariff structure through elimination of some tariff exemptions and concessions. While this program, if fully implemented, should help simplify the system and make it more transparent, it could result in higher applied tariffs on certain U.S. exports. If applied equitably and consistently, however, simplifying Pakistan's tariff regime would greatly benefit U.S. exporters.

Complaints by traders and investors about customs procedures are common. For example, as with the pharmaceutical issue noted above, preferential tariff rates are usually granted only if the goods in question are not also domestically manufactured. Disputes sometimes arise over this provision, with firms arguing that local output does not meet their quality specifications. Foreign firms also cite arbitrary and inconsistent customs valuations with frequent and unexplained changes in rates. Allegations that customs officers demand bribes are also common.

U.S. exporters have complained of particular problems with implementation of Pakistan's preshipment inspection (PSI) system, run by the Swiss firms SGS and Cotechna. U.S. companies contend that the PSI procedures often result in significant overvaluation of U.S. exports to Pakistan. In addition, U.S. businesses report that the PSI firms, which represent the Government of Pakistan, frequently cause significant delays to U.S. exports with little or no explanation and in apparent violation of the WTO Agreement on Preshipment Inspection. The PSI barriers have had a significant impact on a wide variety of U.S. exports. Responding to foreign and domestic private sector complaints, Pakistan's interim government served a contract cancellation notice on December 12, 1996, to both PSI firms, whose contracts expired on March 11, 1997. The Pakistani Government intends to replace the PSI system with an import trade price (ITP) system run by the Pakistani Customs Agency. The U.S. Embassy estimates that elimination of the PSI barriers will increase U.S. exports by $25-100 million annually.

The Pakistani Government offers investment incentives, such as tax holidays, in various sectors. These incentives sometimes include barriers to imported products. In the pharmaceutical sector, as discussed above, locally produced pharmaceutical raw materials often are taxed at lower rates than the sales taxes imposed on competing imported products. The U.S. Embassy estimates that these practices result in the loss of $5-10 million of annual U.S. exports.

**GOVERNMENT PROCUREMENT**

The government, along with its numerous state-run corporations, is Pakistan's largest importer. Work performed for government agencies, including purchase of imported equipment and services, is usually awarded through tenders that are publicly announced and/or issued to registered suppliers. The Government of Pakistan subscribes to principles of international competitive bidding, but political influence on procurement decisions is common, and these decisions are not always made on the basis of price and technical quality alone. Charges of official corruption and long delays in bureaucratic decision-making are common. Pakistan is not a member of the WTO Government Procurement Code. The U.S. Embassy estimates that if these barriers were eliminated, U.S. exports would increase by $10-25 million.

**EXPORT SUBSIDIES**

Pakistan actively promotes the export of Pakistani goods with measures such as government financing and tariff concessions on imported inputs, and income and sales tax concessions. Pakistan has established one export processing zone (EPZ) in Karachi. EPZ benefits include tax holidays, indefinite carry forward of losses, exemption of imports from taxes and duties, and exemption from labor laws and various other regulatory regimes.

While Pakistan has not reported any export subsidies to the WTO, the government-run Rice Export Corporation of Pakistan (RECP) continued to sell rice to selected exporters for well below market prices in 1996. However, the RECP is in the process of being merged with the Trading Corporation of Pakistan and is not expected to play a significant role in the export of rice in the future.

**LACK OF INTELLECTUAL PROPERTY PROTECTION**

As a WTO member, Pakistan is subject to the terms of the WTO Agreement on Trade-Related Aspects of Intellectual Property Rights (TRIPs). The United States has taken various steps to ensure that Pakistan complies with its TRIPs commitments, particularly with respect to fulfilling its obligation to establish a "mailbox" for agricultural chemical and pharmaceutical product patent applications. After repeated bilateral consultations and a U.S. request for establishment of a WTO Dispute Settlement Panel, the Pakistani President issued an executive ordinance on February 4, 1997, establishing a mailbox system and granting exclusive marketing rights to patent applicants under certain conditions. U.S. and Pakistani officials notified the WTO on February 28 that this matter has been settled, based on a common understanding of the appropriate implementing regulations necessary for Pakistan to meet its TRIPs obligation.

Intellectual property piracy in Pakistan remains widespread. Pakistani authorities have taken some steps to strengthen enforcement, including raids on hundreds of pirated-video rental shops. The government has pledged to continue such efforts. However, the fines applied to violators have been too small to provide a credible deterrent.

The U.S.-Pakistan Treaty of Friendship, Commerce and Navigation guarantees national and most-favored-nation (MFN) treatment for patents, trademarks, and industrial property rights. Pakistan is a member of the Berne Convention, the Universal Copyright Convention, and the World Intellectual Property Organization, but not a member of the Paris Convention for the Protection of Industrial Property.

### Patents

Current law protects only process patents for a duration of sixteen years, although the government is committed to eventually offering product patents in accordance with its WTO obligations. U.S. industry representatives have complained that the right of the patentee is not adequately protected by law, permitting infringers to continue freely manufacturing illegal products. In addition, only the patent-owner, not licensees, can file a suit against an infringer. There also is always the threat of revocation of the patent and/or compulsory licensing.

### Trademarks

There have been occasional instances of trademark infringement, involving a range of products such as toys, playing cards, and industrial machinery. In August 1994, the Pakistani Government issued new drug labeling rules requiring the generic name of substances to be printed “with at least equal prominence as that of the brand name.” This rule serves to dilute in the minds of consumers existing differences in quality, efficacy, and safety, and incorrectly implies total interchangeability and equality among different products. The U.S. Embassy estimates a loss of $5-10 million in U.S. exports for patent and trademark violations.

### Copyrights

Violations of intellectual property rights in Pakistan are most common in the area of copyrights, where the piracy levels are exceptionally high. The market for imported computer software has remained nearly 100 percent pirated, while U.S. industry representatives estimate that the piracy rate for videos has declined to around 80 percent. As a result of strengthened law enforcement (277 raids reported in 1996), some video outlets are taking steps to offer legitimate products. Piracy of copyrighted textile designs and reprint piracy of books (especially computer books, business titles, and medical texts) continue to be significant problems. At least some counterfeit products made in Pakistan reportedly are exported to other markets.

Even though there have been some improvements in enforcement, there is much more to be done to reduce piracy levels. In particular, the judicial system seems ill-prepared to deal with a more concerted enforcement strategy. Sustained, stronger law enforcement is insufficient without action by the courts to prosecute and sentence violators. In addition, Pakistan's copyright law, which was improved by amendments in 1992, remains incompatible with international standards established by the Berne Convention and the TRIPs Agreement.

In the area of copyright infringement alone in Pakistan, the International Intellectual Property Alliance estimates that piracy of films, sound recordings, computer programs, and books resulted in trade losses of $45 million in 1996.

**SERVICES BARRIERS**

Several sectors, including banking, insurance, transportation, and telecommunications, are affected by services barriers. Portions of major service industries are nationalized and run by the government.

Foreign banks are generally restricted to no more than four branches, are subject to higher withholding taxes than domestic banks, and face restrictions on doing business with state-owned corporations. Foreign brokers can join one of the country's three stock exchanges only as part of a joint venture with a Pakistani firm.

New foreign entrants to the general insurance market are virtually barred. Foreign firms wishing to compete in the life insurance market, while not barred, also face severe obstacles. Those few foreign insurance companies operating in Pakistan face various tax problems, long delays in remitting profits, and problems associated with operating within the insurance cartel.

Basic telephony remains the monopoly of the majority state-owned Pakistan Telecommunications Corporation, but competition among private providers is now allowed in cellular telephony.

In the recently concluded WTO negotiations on basic telecommunications services, Pakistan made commitments on basic telecom services, with phase-in of some obligations. For instance, Pakistan will provide national treatment for voice services, private leased circuit services, and telegraph services by 2004. Pakistan also agreed to permit foreign ownership or control of all telecommunications services and facilities by 2004. As part of the agreement, Pakistan also adopted certain pro-competitive regulatory principles. Pakistan took a MFN exemption on accounting rates.

If all services barriers were eliminated, the U.S. Embassy estimates an increase in U.S. exports of $25-100 million.

**INVESTMENT BARRIERS**

Foreigners may invest without prior government approval, up to 100 percent ownership, in all but the following industries: arms and ammunition, security printing (currency and mint), radioactive substances, and non-industrial alcohol. With these exceptions, statutory provision of national treatment exists for foreign investors in industrial sectors, though it does not in non-industrial sectors.

Foreign investors cannot own land for agriculture, forestry, irrigation, or real estate. However, with the approval of the relevant provincial government, foreign investors can obtain long-term leases on land for commercial and industrial purposes. Foreign ownership of land in joint venture with Pakistani citizens may be allowed. Where investment is allowed, repatriation of profits (excluding insurance companies), dividends, and capital (excluding banks) is freely allowed.

Local content requirements can occur in the automobile, electronics, electrical products, and engineering industries under Pakistan's "deletion program." The program is ostensibly not compulsory. However, at least one telecom equipment producer has reported that telecom licensees must adhere to the import deletion program. Investors who "voluntarily" undertake to increase the local content of their output enjoy lower tariffs on imported inputs but are subject to fines for non-compliance with an agreed-upon import deletion schedule. In the auto sector, U.S. industry representatives report that the Pakistani Government “expects” new motor vehicle assembly plants to achieve a local content level of at least 40 percent within five years of starting production. U.S. industry representatives report further that 40 percent local content level is a firm requirement after seven years of starting production of motor vehicles in Pakistan. Local content requirements such as these will have to be phased out in order for Pakistan to comply with the WTO Agreement on Trade Related Investment Measures (TRIMs).

In order to comply with conditionalities under the 1995 “standby” agreement with the IMF in January 1996, the Pakistani Government withdrew the investment incentives that applied to rural areas, "less developed areas,” and those designated as special industrial zones. Fiscal incentives such as tax holidays, duty-free importation of machinery and duty and sales tax exemptions on the importation of raw materials also were eliminated. However, the federal government continues to offer incentives for foreign investment in specific industrial sectors, including oil and gas exploration and development, as well as in state-owned energy utilities, banks, and the phone company all slated for privatization.

**OTHER BARRIERS**

Lack of transparency is a recurrent problem in many areas, including government procurement and customs valuation. Two federal government bodies take an interest in this problem, in addition to various government departments that might investigate allegations of corruption under their purview. The Monopolies Control Authority is credited with being reasonably effective at combating the practices covered by the law it is charged with enforcing, although the law is somewhat narrow in scope. The federal Anti-Corruption Commission is considered a somewhat politicized, and therefore less effective, body.

# PANAMA

In 1996, the U.S. trade surplus with Panama was $1.0 billion, a decrease of $52 million from the U.S. trade surplus of $1.1 billion in 1995. U.S. merchandise exports to Panama were $1.4 billion, a decrease of $13 million (0.9 percent) from the level of U.S. exports to Panama in 1995. Panama was the United States' forty-ninth largest export market in 1996. U.S. imports from Panama were $346 million in 1996, an increase of $39 million (12.7 percent) from the level of imports in 1995.

The stock of U.S. foreign direct investment (FDI) in Panama in 1995 was $15.9 billion, an increase of 17.5 percent from the level of U.S. FDI in 1994. U.S. FDI in Panama is concentrated largely in the finance, petroleum, and wholesale sectors.

## IMPORT POLICIES

Late in 1995, the government reduced tariffs on almost 2,000 products used as industrial inputs. (There is no local producer for the vast majority of these imports.) Tariffs on agricultural products are also declining as a result of agreements with international financial institutions. Panama's October 1996 accession to the World Trade Organization (WTO), when completed, will result in an applied effective rate of protection of 30 percent on non-agricultural products. In December 1996, the government issued a decree reducing tariffs on some items, converting other tariffs to ad valorem, and eliminating all non-tariff barriers.

In general, Panama's agricultural sector is still heavily protected by non-tariff barriers. Rice, corn, beef, dairy products, soybeans, and wheat are controlled by the Ministry of Agriculture and/or the Agricultural Marketing Institute (IMA). Permits are required from the Ministry of Agriculture for imports of animal products, animal by-products, and seeds. The Ministry strictly enforces the prior approval requirement (Decree 15 of May 18, 1967) for all imports of meat products, and imposes stringent phytosanitary requirements. These requirements were erected to protect domestic production of beef and pork. IMA maintains a list of 39 agricultural products under import quota, and 19 products under import permit. Elimination of these controls is included in Panama's WTO accession legislation.

Panama is not a member of the Central American Common Market or any other subregional economic group. It is, however, in the process of negotiating bilateral free trade agreements with Mexico and Chile, and has expressed interest in NAFTA membership or a bilateral agreement with the United States.

## STANDARDS, TESTING, LABELING, AND CERTIFICATION

Panama requires certification of U.S. processing plants by Panamanian officials as a condition for the importation of poultry, pork, and beef products. The United States is seeking Panamanian acceptance of U.S. Department of Agriculture (USDA) certification of these plants. The United States would then accept Panamanian certification of its processing plants when the Government of Panama demonstrates that its inspection system is equivalent to that of the United States. Importers of non-agricultural products must now register their products before distributing them or offering them for sale in Panama.

## Panama

As part of Panama's WTO legislative package, Panama's Legislative Assembly will consider in early 1997 a law bringing Panama's standards regime into compliance with WTO requirements.

### GOVERNMENT PROCUREMENT

Panama's government procurement regime is governed by Law 56 and managed by the Ministry of Finance and Treasury. The law provides for a transparent bidding process for government contracts. However, several recent cases call into question the Panamanian Government's commitment to an open process with consistently applied rules. In mid-1996, the government solicited sealed bids for the operation of the Ports of Balboa and Cristobal, which the government had decided to privatize. When the sealed bids were opened, the government discarded the result and called for another round of bidding. During a third round of bidding, the government changed bid specifications in a manner which favored one company. The contract subsequently negotiated between the winning bidder and the Government of Panama contained two provisions favoring the firm which were not part of the original bid specifications.

Also in mid-1996, the government held a public bid for a hydroelectric dam. The government threw out the result and ordered the whole process restarted, for reasons that have not been made clear. This project has been bid four times in the past three years. A fifth bid is scheduled for early 1997.

In the fall of 1996, a similar situation occurred in the bidding to modernize the computer systems of the Social Security Administration (SSA). SSA waited several weeks before announcing the bid winner, then decided to call for a second round of bidding. Several months later the contract is still pending.

### EXPORT SUBSIDIES

The Universalization Law allows any company to import raw materials or semiprocessed goods at a duty of three percent for domestic consumption or production, or duty free for export production. In addition, companies not already receiving benefits under the Special Incentives Law of 1986 are allowed a tax deduction of up to 10 percent of their profits from export operations through 2002.

Because of its WTO obligations, Panama has revised its export subsidies policies. The Tax Credit Certificate (CAT), which used to be given to firms producing non-traditional exports when the exports' national content and value added both met minimum established levels, will be gradually phased out. The new policy allows exporters to receive CATs equal to 20 percent of the exports' national value added until 1997. From 1997 until 2000, the CATs will decrease to 15 percent, and after 2000 will be eliminated entirely. The certificates are transferable and may be used to pay tax obligations to the government, or can be sold in secondary markets at a discount. The government has become stricter in defining national value added, attempting to reduce the amount claimed by exporters.

A number of industries which produce exclusively for export are exempted from paying certain types of taxes and import duties. The Government of Panama uses this policy to attract foreign investment. Companies which profit from these exemptions are not eligible to receive CATs for their exports.

Law 25 of 1996 provides for the development of "export processing zones" (EPZ's) as part of an effort to broaden the Panamanian manufacturing sector while promoting investment in former U.S. military bases reverting to Panamanian control. Companies operating in these zones may import inputs duty-free if products assembled in the zones are to be exported. The government also provides other tax incentives to EPZ companies. Thus far three small EPZ's have opened in the vicinity of Panama City, and a group of Taiwan investors in partnership with the Interoceanic Regional Authority (ALI) is developing an ambitious EPZ on the site of former Fort Davis. Industries expected to locate in the Zone include textiles and apparel, food processing, plastic manufacturing, and auto parts and engine rebuilding. Export destinations are primarily the United States and South America. While initially only Taiwan and Panamanian companies are allowed to operate in the zone, after one year it will be opened to all investors.

## LACK OF INTELLECTUAL PROPERTY PROTECTION

Panama became a member of the Geneva Convention in 1974 and the Berne Convention in 1996 and is a member of WIPO. Recent legislation has strengthened Panama's IPR regime, but inadequate enforcement continues to be a major problem.

Law 15 of 1994 (the Copyright Law) and Law 35 of 1996 (the Industrial Property Law) provide the framework for protection of intellectual property in Panama. Panama’s accession to the WTO in 1996 required it to implement the WTO Agreement on the Trade-Related Aspects of Intellectual Property Rights (TRIPs) upon the date of accession, with no transition. Panama has been deficient in meeting this obligation.

### Copyrights

The Copyright Law, which took effect in October 1995, strengthens copyright protection, facilitates prosecution of copyright violators, and makes copyright infringement a felony punishable by fines and incarceration. The bill also protects computer software as a literary work. However, in July 1996, the Supreme Court ruled that the Copyright Office does not have the authority to seize counterfeit videos. In November 1996, the administration submitted to the Legislative Assembly a series of amendments to the law to correct this problem, while at the same time increasing maximum fines for copyright violation from $20,000 to $50,000. The Legislative Assembly is expected to consider these amendments in the spring of 1997. In December 1996 and January 1997, the Technical Judicial Police, acting on private industry complaints, conducted a series of raids against video stores and seized large quantities of pirated videos. Industry spokesmen, however, expressed frustration over authorities' unwillingness to arrest violators and pointed out that raided stores reopened and operated as usual within days of the official action.

U.S. copyright industries estimate losses in Panama due to copyright infringements in 1996 cost U.S. firms $29.1 million annually

### Patents

Law 35 of 1996 (the Industrial Property Law) provides 20 years of patent protection from the date of filing in place of the former period of 5 to 15 years for foreigners and 5 to 20 years for Panamanians.

Pharmaceutical patents are granted for only 15 years, but can be renewed for an additional 10 years if the patent owner licenses a national company (minimum of 30 percent Panamanian ownership) to exploit the patent.

The Government of Panama has been ineffective at enforcing intellectual property rights in the Colon Free Zone. Although commitments were made to increase enforcement in the CFZ on a number of occasions prior to and during its WTO accession negotiations, Panama has not fulfilled these commitments. The U.S. Government continues to receive complaints from U.S. companies, especially footwear and apparel, regarding the failure of the Government of Panama to seize illegal products in the CFZ.

**Trademarks**

Law 35 also provides trademark protection, simplifying the process of registering trademarks and making them renewable for ten-year periods. The law entered into force in November 1996, but the implementing regulations are still being developed. The law's most important feature is the granting of ex-officio authority to government agencies to conduct investigations and to seize materials suspected of being counterfeited. It also gives administrators in the CFZ, where copyright and trademark infringement has been the heaviest, greater authority to discipline IPR offenders. Implementing regulations that permit the exercise of that authority are pending.

Trade secrets have, up to now, enjoyed little formal protection in Panama. The new Industrial Property Law provides specific protection for trade secrets. It is too early to assess the impact of this law.

Law 29 of February 1996 (the Anti-Monopoly Law) provides for the establishment of special courts to deal with antitrust and IPR cases. Funding to set up these courts is included in the government's 1997 budget, and they are expected to begin to function by the end of this year. Technical and judicial expertise are sorely lacking.

In November 1996, as part of the implementation of Law 35, the Panamanian Government created an Anti-Piracy Task Force to coordinate IPR enforcement. Representatives of six government agencies with IPR responsibilities participate in the task force.

U.S. firms continue to complain about the lack of effective IPR protection. Nintendo of America filed a petition to withdraw Panama's GSP benefits for failure to protect IPR. In 1996, Panama merited other “observation status” on the Special 301 List. Piracy of video, sound recordings, and software is rampant, and material pirated in Panama is distributed throughout Latin America. Transshipment through the CFZ to date has received little government attention. Trademark violations in the CFZ remain a major problem. Losses to U.S. industry resulting from inadequate trademark protection are large, though difficult to quantify with any accuracy.

**INVESTMENT BARRIERS**

The government's economic reform program of export-led growth is dependent on foreign investment. Accordingly, Panama has an open investment regime and actively seeks foreign investment and promotes its long-standing reputation as an international trading, banking, and services center. A limitation in Panamanian law on foreign government ownership of land affects a few U.S. Government insurance programs, but places no legal limitations on foreign private investment or ownership. There are no performance requirements such as minimum export percentages or significant local procurement rules. Panama does not have an investment screening mechanism.

In accordance with the terms of the U.S.-Panama Bilateral Investment Treaty (BIT), Panama places no restrictions on the nationality of senior management. Panama does restrict foreign nationals to 10 percent of the blue-collar work force, however, and specialized or technical foreign workers may number no more than 15 percent of all employees in a business. A recent revision of the labor code now makes it less difficult than previously for companies to dismiss employees.

## OTHER BARRIERS

Rumors of corruption are fueled by public bids which lack transparency, such as those described above. The Customs Director fired over 50 officials in 1996 for corruption, which remains a continuing problem since customs employees are poorly paid. The incidence of corruption, or the perception of corruption, can be a deterrent for U.S. companies in deciding whether to invest in Panama, and is clearly of deep concern to representatives of U.S. firms already located in Panama.

# PARAGUAY

In 1996, the U.S. trade surplus with Paraguay was $855 million, a decrease of $83 million from the U.S. trade surplus of $938 million in 1995. U.S. merchandise exports to Paraguay were $897 million, a decrease of $96 million (9.7 percent) from the level of U.S. exports to Paraguay in 1995. Paraguay was the United States' fifty-fifth largest export market in 1996. U.S. imports from Paraguay were $42 million in 1996, a decrease of $13 million (23.6 percent) from the level of imports in 1995.

## IMPORT POLICIES

Paraguay has a relatively open trade regime. As a member of the Southern Common Market, MERCOSUR, it applies a common external tariff (CET) on imports ranging between 0 and 20 percent. A WTO review of the consistency of MERCOSUR's polices with WTO rules is currently underway.

Paraguay has established almost 400 exceptions to the CET through 2006. These exceptions are applied to both capital inputs and consumer items which are mostly re-exported to neighboring countries. Items to be re-exported are subject to a flat 7 percent duty upon entry into the country.

On July 31, 1996, the Paraguayan Ministry of Finance introduced Resolution 171 establishing new pre-shipment inspection procedures for all goods imported into Paraguay effective August 1996. Two companies, SGS and Bureau Veritas, are now charged with the customs verification procedure at the point of origin. As of November 12, 1996, (Ministry of Finance Resolution 1350), goods imported without a pre-shipment inspection report must be returned to the country of origin for inspection. Otherwise, customs authorities may open an investigation to determine the reason the inspection was not performed. There is no time limit to the investigation process, during which time the goods may be held in the customs warehouses (and charged to corresponding warehouse fee). If the investigation concludes there is no justification for the lack of pre-shipment report, the goods may be subject to seizure, and not allowed to enter the country. A local SGS inspector cannot inspect the goods in Paraguay.

## GOVERNMENT PROCUREMENT

Paraguayan law requires bids for all purchases of goods and services in excess of $60,000. U.S. companies that have participated in bids for contracts for goods and services worth several million U.S. dollars have questioned the transparency of the procurement process.

## LACK OF INTELLECTUAL PROPERTY PROTECTION

Paraguay is a regional distribution and assembly center for counterfeit merchandise. The large re-export trade to Brazil, catering to consumer demand for electronics, audio tapes/compact disks, and designer clothing/footwear, among other items, is a contributing factor.

After placement on USTR's Special 301 “watch list” in April 1996, the government formed an inter-agency National Intellectual Property Council, increased raids in cooperation with affected industries, and submitted new patent, trademark and copyright legislation to the Congress. A subsequent out-of-cycle review (OCR) left Paraguay on the watch list, and reiterated the need for improved enforcement efforts both in-country and on the borders. There has also been a petition filed by Nintendo of America and associated software producers to remove GSP privileges from Paraguay for its failure to protect intellectual property rights. The Government of Paraguay has indicated that it is currently designing a national strategy which will reportedly increase enforcement at the border.

### Patents

Paraguay's outdated patent law (dating from 1925) established an Office of Patents and Inventions and the requirements and procedures for obtaining patents. A new patent law, opposed by the local pharmaceutical industry, was submitted to Congress in October 1996. The Draft Law on Inventions conforms with the organization and content of most modern laws. Patent protection is provided for pharmaceutical products, but will be subject to at least a one year phase-in period. Pipeline provisions are also included in the law. Nevertheless, the law has a number of significant problems, including inadequate term of protection, failure to protect against parallel imports and no express provisions for "mailbox" and exclusive rights as required by Article 70 of the WTO Agreement on Trade-Related Aspects of Intellectual Property Rights (TRIPs). In addition, although there is no explicit "working" requirement, patentees may be subject to compulsory licenses if they do not satisfy the local market, which constitutes an indirect working requirement. A compulsory license may be issued to the owner of a dependent patent. There is no express provision limiting the issuance of compulsory licenses for certain semiconductor inventions as required by TRIPs.

### Trademarks

Infringement of well-known trademarks presents a serious problem, despite Paraguay's obligations under the Paris Convention and the TRIPs Agreement. The Executive has been willing to protect famous trademarks, but existing laws greatly limit the extent of its actions. The only alternative, judicial proceedings, is cumbersome (often taking 10-15 years to resolve). A new pending trademark law is needed to give the Executive greater authority to combat infringement and seize counterfeit merchandise at the border.

### Copyrights

In 1991, Paraguay became a signatory to the Berne Convention for the Protection of Literary and Artistic Works. Although the government has taken measures to fight piracy, widespread production and trade in pirated recordings, compact disks, computer software and video cassettes remains a serious problem. The principal problem is export of pirated merchandise to neighboring countries. A new copyright law has been introduced into Congress.

A report prepared by the International Intellectual Property Alliance, estimated that losses due to copyright piracy are $117 million a year. Continued raids along the Argentine and Brazilian borders have uncovered and closed sizable factories for audio tapes and video games (both hardware and software), confirming the regional implications of piracy in Paraguay.

### Other Intellectual Property Areas

To date, the U.S. Government has no indication that the Government of Paraguay provides protection for industrial designs, the layout-designs of integrated circuits, or undisclosed information (trade secrets) as required by TRIPs. Furthermore, as plant varieties are excluded from patent protection, Paraguay is required by TRIPs to enact *sui generis* protection for plant varieties.

## SERVICES BARRIERS

All telephone, telegraph, telex, and radio communication services are provided by a monopoly service provider, ANTELCO.

## OTHER BARRIERS

Paraguay's law protecting agents and distributors virtually locks exporters into a relationship with an agent or distributor. This law features severe penalties, such as a percentage (determined by a judge) of gross sales since the inception of the contract, that often lead to expensive out-of-court settlements. Several U.S. companies have singled out this law as a cause for concern.

# Paraguay

# PERU

In 1996, the U.S. trade surplus with Peru was $505 million, a decrease of $235 million from the U.S. trade surplus of $740 million in 1995. U.S. merchandise exports to Peru were nearly $1.8 billion, a decrease of $8 million (0.5 percent) from the level of U.S. exports to Peru in 1995. Peru was the United States' forty-second largest export market in 1996. U.S. imports from Peru were nearly $1.3 billion in 1996, an increase of $226 million (21.8 percent) from the level of imports in 1995.

The stock of U.S. foreign direct investment (FDI) in Peru in 1995 was more than $1.2 billion, an increase of 48.1 percent from the level of U.S. FDI in 1994. U.S. FDI in Peru is concentrated largely in the petroleum and manufacturing sectors.

## IMPORT POLICIES

### Tariffs

Peru has a two-tier tariff structure with a duty of 15 percent on the vast majority of imports and 25 percent on the rest. The weighted-average applied tariff is less than 16 percent, down from 80 percent when President Fujimori took office in 1990. At the end of January 1997, the government was reportedly considering moving to a scaled tariff structure, with lower duties on primary goods and higher duties on manufactured goods.

Since March 21, 1991, Peru has applied "temporary" surcharges on eighteen categories of agricultural products, covering five basic commodities: wheat, rice, corn, sugar, and milk products. These surcharges are in addition to the 15 percent ad valorem tariff. The surcharges are calculated on a weekly basis, according to prevailing international prices for each commodity, rather than the actual price of the commodities entering Peru. As a condition for disbursement of an Inter-American Development Bank trade sector loan, the Government of Peru agreed to study phasing out the surcharges over a three-year period ending in 1997. The government began reducing the surcharges in increments in April 1994. Because of high prevailing international prices, surcharges were practically non-existent during 1996.

Peru is a member of the Andean Pact but does not fully participate in the Pact's free trade arrangements or abide by the Pact's common external tariff (CET). The Andean Pact free trade zone does not include Peru, which instead maintains bilateral tariff-reduction accords with each of the other Andean Pact countries. As of January 1, 1995, products from other Andean Pact countries that fall under the 5 and 10 percent categories of the Pact's CET enter Peru duty-free. As a result, about 80 percent of goods from other Andean Pact countries enter Peru duty-free. In November 1996, the Andean Pact's executive body petitioned the Andean Pact Tribunal to force Peru to reintegrate into the Pact's CET and free trade zone. Peru has been disinclined to rejoin these Pact structures because of what it regards as trade-distorting practices by its partners, and has maintained instead its own tariff and its bilateral trade accords. Peru is facing an Andean Pact deadline of March 15 to propose how it intends to reintegrate into the Andean Pact's common external tariff and free trade area. The Andean Pact Ministers will review that proposal and then make a decision regarding Peru's status.

## Peru

Peru has partial free trade agreements which grant tariff preferences to most Latin American countries under the Latin American Integration Association (ALADI). Peru is negotiating a free trade agreement with Chile and has initiated similar talks with Mexico. Peru is also involved as a member of the Andean Pact in negotiations with MERCOSUR on a free trade area.

### Non-Tariff Measures

Almost all non-tariff barriers, including subsidies, import licensing requirements, import prohibitions, and quantitative restrictions, have been eliminated. Peru applies a value-added tax (VAT) rate of 18 percent to most products, and special consumption taxes, ranging from 10 to 50 percent, on certain items. Peru's methodology of applying a "consolidated rate" to assess special consumption and sales taxes on imported goods is burdensome, since the taxes are applied consecutively.

Peru continues to impose certain quantitative restrictions that appear to be incompatible with its WTO obligations. Some used goods are prohibited from importation, while others (such as used cars) face restriction which are not imposed on similar domestic products.

Under a 1992 customs reform, most imported cargo must be pre-inspected by contracted supervising firms to check for possible under-invoicing. The cost of these inspections -- as much as one percent of the f.o.b. value of the goods -- is paid by the importer. Some U.S. exporters have complained of excessive delays caused by the pre-inspection system. In particular, the Peruvian requirement that shipments be inspected by the Government of Peru-authorized inspection agencies offers U.S. exporters no guarantee that certified pricing and details of the inspection will be accepted by Peruvian customs authorities. Such practices make U.S. exporters less competitive than local suppliers. The United States has urged Peru to adopt predictable customs inspection procedures and to meet its obligations under the WTO Agreement on Pre-Shipment Inspection.

Peru applies software valuation guidelines that cause difficulties because of the multiple tiers and different valuation standards for “types of software deliveries” not tied to a tariff classification. This often leads to discriminatory and arbitrary treatment at the border and the lack of ability by the exporter to know what tariff treatment will be assessed on each shipment. The Peruvian customs system retains a price model with set “floor pricing valuation” that is not updated. The actual transaction between the exporter and importer is discarded and arbitrary valuation is assigned based on out-of-date or non-transactional data. The United States has urged Peru to adopt software valuation practices based on the WTO Agreement on Customs Valuation.

### GOVERNMENT PROCUREMENT

Government procurement is normally handled by public international tender. Contracts above a specified minimum value -- currently about $100,000 for purchases of goods and services and $250,000 for public works -- must be adjudicated by competitive bid. There is no statutory requirement to buy Peruvian goods or services. Interested companies must purchase bid documents, however, and bidders must have a local office or representative to qualify. Peru is not a signatory to the WTO Government Procurement Agreement.

## EXPORT SUBSIDIES

Peru does not provide any direct payment upon export. Exporters can receive rebates of the tariffs and value-added taxes paid on their inputs. In June 1995, the government approved a simplified drawback scheme which allows small exporters to claim a flat 5 percent rebate, subject to certain restrictions. The government announced plans in November 1996 to increase the duty drawback to 8 percent and expand its application to fuels, but has not yet promulgated the legislation to implement these plans.

## LACK OF INTELLECTUAL PROPERTY PROTECTION

Peru does not yet provide adequate and effective protection of intellectual property rights (IPR). While two decrees, enacted in April 1996, on industrial property and copyrights clarify Peru’s intellectual property regime, they contain several deficiencies and provisions which appear to violate Peru’s current “standstill” and most-favored-nation (MFN) commitments under the WTO Agreement on Trade-Related Aspects of Intellectual Property Rights (TRIPs). In addition, while enforcement has been stepped up, piracy remains widespread. Peru has been on the “Watch List” under the “Special 301" provision of the 1988 Trade Act since 1992. Peru has ratified, but not yet fully implemented, the provisions of the TRIPs Agreement. The United States and Peru have held talks on U.S. concerns related to Peru's new intellectual property regime.

### Patents and Trademarks

Peru’s April 1996 Industrial Property Decree provides an effective term of protection for patents, prohibits devices that decode encrypted satellite signals, and contains other improvements, such as increasing the term of protection for industrial designs. However, the decree excludes from patent protection several areas previously covered by Peru’s IPR regime: processes for making or using already known products, patented pharmaceutical products on the World Health Organization (WHO) Model List of Essential Medicines, elements existing in nature (where isolated and purified), and inventions involving computer programs.

The decree also contains working requirements such that a patent owner must “make use” of the patented invention in Peru, but also provides that use in any Andean Pact country satisfies this requirement. This differential treatment between Andean Pact countries and other WTO countries appears to violate the MFN provisions in Article 4 of the TRIPs Agreement. The decree also contains reciprocity clauses in the areas of patents and trademarks which appear to violate Peru’s MFN obligations. Other deficiencies in the Industrial Property Decree include overly broad compulsory licensing requirements, the lack of transitional (“pipeline”) protection, and the lack of protection against parallel imports.

Counterfeiting of trademarks in Peru is prevalent. Enforcement has improved in recent years at the administrative level, but at times the local courts have failed to back efforts to clear up injustices committed under the past regime. Some U.S. companies have spent years in fruitless litigation attempting to secure protection for their trademarks in Peru.

### Copyrights

## Peru

Peru's 1996 Copyright Decree is generally consistent with TRIPs; however, it also contains provisions covering reciprocity, which appear to violate the MFN provisions in Article 4 of the TRIPs Agreement.

Copyright owners have yet to employ fully new enforcement options available to them, allowing copyrights to remain widely disregarded. Textbooks and books on technical subjects are rampantly copied, and illegal copies of audio cassettes are widely available. Pirated copies of motion picture videos constitute the inventories of many video rental outlets, although the arrival in 1996 of a U.S.-based video store chain has increased the market for legitimate videos. Pirated computer software accounts for more than 80 percent of the market.

The National Institute for the Defense of Competition and Protection of Intellectual Property (INDECOPI), established at the end of 1992, has conducted numerous raids over the last few years on large-scale software users, as well as on distributors of pirated software, books, videos, and sound recordings. Merchandise has been seized, administrative fines imposed, and cases referred to the judiciary for prosecution. The police have supported those copyrights owners willing to pursue piracy and INDECOPI maintains that the level of piracy has been reduced as a result of these efforts. INDECOPI has made an admirable effort; however, it lacks the resources to deal with the scale of the piracy problem in Peru.

Losses to U.S. copyright owners and pharmaceutical companies in Peru are extensive, although IPR enforcement is improving under the new law and enforcement institutions. In addition, U.S. companies have become more active in defending their interests in Peru by retaining local representation, conducting investigations, and preparing complaints to be filed with INDECOPI.

### SERVICES BARRIERS

#### Basic Telecommunications Services

In the recently concluded WTO negotiations on basic telecommunications services, Peru made commitments on all basic telecom services, with phase-in of some commitments. It will provide market access and national treatment for all telecom services as of June 1999. Peru adopted the reference paper on regulatory commitments.

### INVESTMENT BARRIERS

Peru has greatly liberalized its investment regime since 1990. National treatment for foreign investors is guaranteed in the 1993 constitution. Foreign investment does not require prior approval, except in banking and defense-related industries. “Juridical stability agreements” are available to foreign investors in the mining and petroleum sectors, guaranteeing tax, foreign exchange, and regulatory stability for a period of ten years. There are no restrictions on remittances of profits, dividends, royalties, or capital.

Arbitration is a constitutionally guaranteed alternative to the courts. The September 1993 establishment of the Lima Chamber of Commerce's International Arbitration Center has helped to institutionalize this option. Peru also is a signatory to the New York Agreement on the Enforcement of International Arbitral Awards.

Rules regarding hiring foreign personnel have been liberalized, although foreign employees still may not make up more than 20 percent of the workforce of a company established in Peru -- whether owned by foreign or national interest -- and their combined salaries may not account for more than 30 percent of the total payroll. Services companies, including banks, and free trade zones are exempted from these hiring limitations. In addition, a company may apply for exemption from the limitations for foreign managerial or technical personnel.

# PHILIPPINES

In 1996, the U.S. trade deficit with the Philippines was $2.0 billion, an increase of $326 million from the U.S. trade deficit of $1.7 billion in 1995. U.S. merchandise exports to the Philippines were $6.1 billion, an increase of $831 million (15.7 percent) from the level of U.S. exports to the Philippines in 1995. The Philippines was the United States' twenty-first largest export market in 1996. U.S. imports from the Philippines were $8.2 billion in 1996, an increase of $1.2 billion (16.5 percent) from the level of imports in 1995.

The stock U.S. foreign direct investment (FDI) in the Philippines in 1995 was $2.6 billion, an increase of 13.9 percent from the level of U.S. FDI in 1994. U.S. FDI in the Philippines is concentrated largely in the manufacturing and banking sectors.

## IMPORT POLICIES

### Tariffs and Import Charges

Under the Philippine Government's Comprehensive Tariff Reform Program, Executive Order (E.O.) 264 and E.O. 288 generally lowered tariffs for virtually all product lines in the Tariff Code effective January 1996. This phase-down of tariffs is generally in line with the government's stated goal of moving to a uniform tariff rate of 5 percent by the year 2004. New tariff rates for sensitive agricultural products, including grains, livestock and meat products, sugar, certain vegetables, and coffee, were established under E.O. 313, which took effect in May 1996. These tariff rates reflected tariff bindings resulting from the conversion from non-tariff to tariff protection (i.e., tariffication) under the Uruguay Round Agreement on Agriculture and/or relating to the implementation of current or minimum access commitments.

Republic Act (R.A.) No. 8178 established tariff-rate quotas for those products subject to current or minimum access commitments, including live animals, fresh and chilled beef, fresh, chilled and frozen pork, poultry, and goat meat, potatoes, coffee, corn, and sugar. E.O. 313 established in-quota and out-of-quota tariff rates for these and other products. Out-of-quota rates, which range from 40 to 100 percent, will be lowered in July 1997 and again in July 1999 to a range of 35 to 65 percent.

E.O. 313 significantly raised applied tariff rates on frozen beef and meat products, which had previously been imported without other restrictions. Beef is now subject to a tariff-rate quota, with the out-of-quota rate currently set at 60 percent. These out-of-quota rates are scheduled to be lowered to 40 and 45 percent in July 1999. The tariff rates on most processed meat products, on which no minimum access volume (MAV) or in-quota volumes were established, were raised to 100 percent under E.O. 313, to be phased down to 60 percent by July 1999.

### Agriculture Tariff-Rate Quotas and Import Licensing

The Philippines is the only WTO member which has not implemented its Uruguay Round market access obligations for pork and poultry. The Phillippines delayed enacting the necessary legislation to implement its agricultural commitments by July 1, 1995, as required and agreed to under the Uruguay Round

Agreements. In July 1996, as a result of strong pressure from the United States and other WTO members, the Philippines promulgated regulations necessary to issue import licenses. After three more months of administrative delay, licenses were finally issued in mid-October 1996. The licensees, therefore, had little more than two months in which to import the 1995 and 1996 quota volumes. In addition to the late date of issuance of the licenses, the Philippines issued more than 80 percent of the pork import licenses to domestic pork producers with have little incentive to import U.S. pork, which competes with domestic production. Similarly, over 98 percent of the import licenses for poultry were issued to domestic poultry producers, with less than 2 percent of licenses given to processors/importers. The specific minimum access commitments for pork and poultry in 1995 and 1996 were 49,985 tons for pork and 22,252 tons for poultry. Actual imports of pork and poultry were less than 10 percent of the total 1995/1996 commitment.

**Expanded Value-Added Tax**

Effective January 1, 1997, amendments to the Philippines expanded value-added tax (EVAT) law formally removed the discriminatory provision against imported meat. Prior to this amendment, the discriminatory treatment was corrected by a February 1996 administrative order instructing the Bureau of Customs to release imported meat without imposing the tax by virtue of an indirect provision in the EVAT law exempting transactions stipulated in international agreements, such as the Uruguay Round.

**Excise Tax on Distilled Spirits**

U.S. producers of distilled spirits complain that current laws have the effect of subjecting imported distilled spirits to a much higher excise tax than that applied to domestic spirits. Distilled spirits produced from indigenously available materials (such as coconut palm, cane, and certain root crops) are subject to a specific tax of eight pesos (30 cents) per proof liter; however, distilled spirits produced from other raw materials (which would apply to most imports) are levied a specific tax ranging from 75 pesos ($2.85) to 300 pesos ($11.40) per proof liter (depending on net retail price per 750 ml bottle).

**Quantitative Restrictions**

The Philippines implemented its Uruguay Round commitments to replace quantitative and other non-tariff restrictions on agricultural products (except rice) with tariff-only protection effective in May 1996. Under Executive Order 313, effective May 1996, import quota restrictions were lifted and new tariff rates for sensitive agricultural products, including grains, livestock, meat products, sugar, coffee, and certain vegetables, were established. The Philippines retained quantitative restrictions on rice. The rice quota is 65,079 metric tons for 1997 and 68,645 metric tons for 1998, although the country is expected to import considerably more. Rice continues to be imported solely by the National Food Authority.

**Customs Barriers**

In 1996, the Philippine Government enacted legislation (R.A. 8181) abolishing the use of the Philippines' previous customs valuation practice based on "home consumption value" (HCV), adopting the interim use of "export value" and authorizing a shift to the use of "transaction value" (TV) before the year 2000. While this was welcomed as removing a valuation system previously identified as an unwarranted market access barrier, exporters report continuing problems with how price verification is conducted during the preshipment inspection process, along with practices of the Philippines Customs Bureau under the newly enacted so-called “Brussels Definition of Value,” which are not transparent and may conflict with the WTO Agreement on Customs Valuation. The Customs Bureau continues to require a preshipment inspection report (“clean report of findings”) issued by the government’s contracted customs inspectors for all imports valued at over $500.

## STANDARDS, TESTING, LABELING, AND CERTIFICATION

### Industrial Goods

Local inspection for standards compliance is required for imports of 30 specific products, including lighting fixtures, electrical wires and cables, cement, pneumatic tires, sanitary wares, and household appliances. For other goods, U.S. manufacturers’ self-certification of conformance is accepted. Labeling is mandatory for textile fabrics, ready-made garments, household and institutional linens, and garment accessories. Mislabeling, misrepresentation, or misbranding may subject the entire shipment to seizure and disposal. The Philippines is a signatory of the GATT Standards Code.

### Agricultural Goods

Imports of fresh fruit and vegetables, seeds, and other planting material are subject to phytosanitary restrictions. Specific country-of-origin phytosanitary prohibitions for fresh fruit are sometimes arbitrary.

## GOVERNMENT PROCUREMENT

The Philippine Government generally does not discriminate against foreign bidders. Competition for contracts in areas of significant interest to U.S. suppliers which are not affected by substantial restrictions include power generation equipment, communications equipment, and computer hardware. However, the Philippine Government does favor domestic firms in public procurement in several sectors and for some specific products. These include rice, corn, pharmaceuticals, and steel materials for infrastructure projects. In addition, petroleum for government agencies must be procured from PETRON, which is government-owned.

## EXPORT SUBSIDIES

Enterprises (including exporters) engaged in government-preferred activities may register with the Board of Investment (BOI) to qualify for incentives under the Philippine Omnibus Investment Code. The incentives include income tax holidays, preferential duties for imported capital equipment, tax credits for domestically purchased machinery, and income tax deductions for incremental labor expense. A number of benefits (such as tax credits for imports of raw material and exemption from taxes and duties on imported spare parts) apply specifically to BOI-registered export companies. Export firms in government-designated zones and industrial estates registered with the Philippine Economic Zone Authority (PEZA) enjoy basically the same incentives as BOI-registered firms.

## Philippines

Firms that export at least 50 percent of production and are registered with the BOI, PEZA, or other government agencies may register under the Export Development Act of 1994 (EDA) for additional incentives available under that law, including: duty-free imports of capital equipment (until 1997); for exporters of nontraditional products, partial tax credit for locally purchased raw materials, equipment, and spare parts (until 1997); tax credit for imported inputs and raw materials not readily available locally (until 1999); and tax credit on incremental annual export revenue. The EDA also provides for the establishment of an Eximbank which will offer preferential and simplified credit schemes to exporters.

In December 1994, the Bangko Sentral launched an Export Development Fund (EDF) facility (the foreign exchange counterpart of its peso rediscounting window).The EDF rates are based on the London Interbank Bid Rate (LIBID) and adjusted periodically. The Bangko Sentral imposes a ceiling on the spread at which financial institutions can re-lend the funds (currently one percent, after applicable taxes).

### LACK OF INTELLECTUAL PROPERTY PROTECTION

While some progress has been made in recent years, the Philippines still fails to protect intellectual property rights (IPR) in a consistent and effective manner. Significant problems have included inadequate laws and regulations and insufficient resources for enforcement. In April 1993, a major step forward was taken when the Philippines and the United States signed an agreement to strengthen protection of intellectual property rights in the Philippines. As a consequence, the Philippines was moved from the Special 301 “priority watch list” to the “watch list.” However, recent developments concerning proposed copyright legislation have been a source of concern for the United States and Philippine copyright industry, particularly the software sector. In December 1996, the Philippine Senate passed a version of proposed copyright legislation which includes a provision allowing the decompilation of software programs. Foreign and Philippine software firms are concerned that this allowance is unnecessary and may result in increased piracy of computer programs. The United States is encouraged that the Ramos administration opposes the inclusion of a decompilation provision in the copyright legislation. The United States supports passage of the IPR legislation without the provision for decompilation as soon as possible.

The Philippine Government is a party to the Paris Convention for the Protection of Industrial Property and the Patent Cooperation Treaty; it is also a member of the World Intellectual Property Organization and the World Trade Organization. In February 1993, President Ramos created the Interagency Committee on Intellectual Property Rights and charged it with recommending and coordinating enforcement oversight and program implementation. Due to budget constraints, insufficient funding hampers the effective operation of agencies tasked with IPR enforcement. Joint government-private sector efforts have improved administrative enforcement. However, in the past, when IPR owners used the courts to protect their property, enforcement had been slow and uncertain. Moreover, Philippine courts have generally been unwilling to impose deterrent penalties on offenders. Recently, the Philippines moved to name special IPR courts. The Philippine Supreme Court, with Administrative Order No. 113-95, designated 48 courts to handle IPR violations, in an effort to speed adjudication of such cases. The order instructs all judges to terminate “as far as practicable” the trial of IPR cases within 60 days and to render judgment in another 30 days. While a positive step, it remains to be seen if the new courts will, in practice, resolve past problems in providing judicial protection for IPR.

### Patents

The present Philippine patent law requires that a compulsory license be issued two years after registration with the Patent, Trademark and Technology Transfer Board if a potential item is not being used in the Philippines on a commercial scale or if domestic demand for the item is not being met to an "adequate extent and on reasonable terms." The requirement could impose a significant burden on patent holders. Other concerns include exceptions for experimental use of patented inventions, government use provisions, "intervening rights" for reissuance of patents, and treatment of plant varieties within the definition of unpatentable inventions.

### Trademarks

Although declining, trademark counterfeiting remains widespread in the Philippines. Many well-known international trademarks are copied in many product sectors, including denim jeans, designer shirts, and personal beauty and health care products. Under the terms of the U.S.-Philippine Agreement on the Protection and Enforcement of Intellectual Property Rights, the Philippine Government has sought amendments to the Philippine trademark law to provide protection for internationally well-known marks, but like the other IPR legislation, those amendments have not been passed by the Philippine legislature. Current practice provides that internationally well-known marks should not be denied protection because of non-registration or lack of use in the Philippines.

### Copyrights

Piracy of computer software remains a serious problem, leading software owners to organize to protect their rights more effectively. The Philippine Government itself is still a large user of pirated software, though some steps were taken in 1995 to increase purchases of legitimate software by government agencies. Another issue is a presidential decree that permits educational authorities to authorize the reprint of textbooks and other reference material certified by school registrars as required by the curriculum without the permission of the foreign copyright holder if the cost of the material exceeds 250 pesos. Both issues were addressed in the bilateral IPR agreement and should be resolved by the Philippine Government's planned accession to the Berne Convention (Paris Act).

While video piracy is also a problem, the U.S. motion picture industry reports that continuing cooperation with the government's Videogram Regulatory Board (VRB) has had a positive impact. Many copyright infringement complaints have been levied recently against cable television stations that retransmit copyrighted works without authorization from or payment to the copyright owners. To date, Philippine courts have been unwilling to impose penalties which serve as a deterrent for infringement. Often, penalties consist only of the seizure and confiscation of the video cassettes used in the unauthorized cable broadcast.

Copyright protection for sound recordings, currently 30 years, is shorter than the internationally accepted norm of 50 years. This problem should be resolved through Philippine implementation of the WTO Agreement on Trade-Related Aspects of Intellectual Property Rights (TRIPs), which provides for a minimum of 50 years copyright protection. In addition, Philippine law is overly broad in allowing the reproduction and adaption of translated published works without the authorization of the copyright owner.

# Philippines

## SERVICES BARRIERS

### Basic Telecommunications

In the recently concluded WTO negotiations on basic telecommunications services, the Philippines made commitments on most basic telecom services and adopted some pro-competitive regulatory principles. The Philippines retained a 40 percent foreign ownership limit on telecom services, and did not provide market access or national treatment for satellite services. In addition, the Philippines made no commitment regarding resale or leased circuits/closed user groups.

### Insurance

The insurance sector has remained open to majority foreign ownership following the deletion of foreign investment "Negative List C" (i.e. "adequately served" sectors) from the Philippines' Foreign Investment Act in 1996. Therefore, foreign entry is no longer a barrier.

After being closed for nearly 30 years, the insurance sector was opened to new, 100 percent foreign-owned companies starting October 1994. As a general rule, only the Government Service Insurance System may provide insurance coverage for government-funded projects. To the further detriment of private insurance firms (whether domestic or foreign), a 1994 administrative order extended this requirement to build-operate-transfer (BOT) projects.

### Banking

A law signed in May 1994 relaxed banking restrictions in place since 1948. A foreign investor can now enter either on a wholly owned branch basis, or own up to 60 percent (up from 30 percent) of an existing or new locally incorporated banking subsidiary. There is no legal limit on the number of entrants by the latter two modes. However, the new law allows only ten new foreign banks entry on a full service, branch basis (in addition to the four foreign branch banks established before 1948). The new foreign banks are also limited to putting up six branches each. Ten foreign banks were selected in late 1994 out of approximately 25 applications for the 100 percent branch basis license. These banks have already entered the market. A number of banks also have already entered the market by putting up majority foreign-owned, locally incorporated subsidiaries.

### Securities and Other Financial Services

Membership in the Philippine Stock Exchange is open to any company (foreign or domestic) incorporated in the Philippines, while foreign equity in mutual fund and trust management firms is limited to 40 percent. The revised banking law now allows a foreign branch bank to obtain a "universal banking" license (which was previously limited to Philippine-controlled commercial banks). This will allow a foreign branch bank to engage in the activities of an investment house (primarily securities underwriting for the domestic market), in addition to regular commercial banking functions. The current law governing investment houses continues to impose limitations on foreign equity in securities underwriting companies (i.e., less than 50 percent). A foreign-owned securities underwriting firm may underwrite Philippine issues for foreign markets, but not for the domestic market. Current laws also limit foreign ownership of financing companies to 40 percent. Although there are no foreign ownership restrictions governing shares of mutual funds, current law restricts membership in the board of directors to citizens of the Philippines.

**Advertising**

The Philippine constitution limits foreign ownership of advertising agencies to 30 percent. All executive and managing officers of advertising agencies must be Philippine citizens.

**Public Utilities**

The Philippine constitution specifically limits the operation of public utilities to firms with at least 60 percent ownership by Philippine citizens. All executive and managing officers of such enterprises should be Philippine citizens.

**Practice of Professions**

As a general rule, the Philippine constitution reserves the practice of licensed professions (i.e., law, medicine, nursing, accountancy, engineering, etc.) for Philippine citizens.

## INVESTMENT BARRIERS

The Philippine Government has taken important steps in recent years to welcome foreign investment. These include foreign exchange liberalization and more liberal foreign ownership regulations for enterprises not seeking investment incentives. Effective January 1997, the Bangko Sentral lifted previous restrictions on peso borrowing applied to enterprises more than 40 percent foreign owned (which used to be subject to requirements that certain debt-to-equity ceilings be maintained over the term of the debt). Land ownership, however, remains limited to entities that are at least 60 percent Filipino.

The 1991 Foreign Investment Act (FIA) is more liberal than its predecessors. It allows foreign equity in Filipino enterprises to exceed 40 percent, provided no investment incentives are sought and provided the company does not engage in an activity that appears on the two-part “negative” list. This list has two parts. The “A” list restricts foreign investment in certain areas because of either legal and constitutional constraints. Included are mass media, advertising, public utilities, most licensed professional services (accounting, for example) and retail trade. The “B” list is composed of activities regulated for reasons of security, defense, health, and moral concerns, and to protect small and medium-scale enterprises. The FIA requires a minimum paid-up capital of $200,000 for an enterprise to be more than 40 percent foreign-owned. The FIA’s "C" list (activities deemed "adequately served" by existing enterprises) was abolished following March 1996 amendments to the FIA.

Enterprises engaged in preferred activities listed in the BOI annual investment priorities plan must register with the BOI to qualify for tax and non-tax incentives. An enterprise seeking incentives must be no more than 40 percent foreign-owned, unless the proposed activity is classified as “pioneer,” or at least 70 percent of production is for export, or the enterprise locates in areas classified by the government as less developed.

# Philippines

The enterprise must agree to divest to a maximum of 40 percent foreign ownership within 30 years from registration with the BOI, unless the enterprise exports 100 percent of production. Currently, the BOI strictly specifies industry-wide local content requirements under the government's progressive manufacturing program for automobiles. Current guidelines also specify that participants in this program generate, via exports, a certain ratio of the foreign exchange needed for import requirements. The government has issued guidelines to phase out these trade-related investment measures by the year 2000.

As a general policy, the Department of Labor allows the employment of foreigners provided there are no qualified Philippine nationals for the position. However, the employer must train Filipino understudies and report on such training periodically. Employees of foreign-owned firms registered with the BOI may retain the positions of president, treasurer, and general manager or their equivalents.

The Philippines has taken significant steps since 1992 to deregulate its foreign exchange system, leading to the full convertibility of current account transactions. Except for some remaining restrictions on foreign investment and foreign debt, the government has also lifted most restrictions on capital account transactions. Current regulations allow the full and immediate repatriation of capital and remittance of profits without the Bangko Sentral's prior approval (including investments made under the government's debt-to-equity swap program).The Philippine government continues to impose a ceiling on the amount of foreign exchange which can be purchased from the banking system for investment abroad. In September 1995, the Bangko Sentral announced that the country had officially joined the ranks of “Article VIII” International Monetary Fund (IMF) member countries, indicating its commitment to an open and liberal foreign exchange and payments regime.

**OTHER BARRIERS**

Through its Technology Transfer Board, the Philippines reserves the right to require that licensing agreements involving the use of foreign patent or trademarks include technology or economic benefits for the Philippines. Such technology benefits may include establishing local research and development facilities. Economic benefits are defined, inter alia, as a significant contribution to the national export promotion program and the generation of foreign exchange earnings or savings and employment. Implementation of the guidelines is discretionary but can result in the imposition of performance requirements. Technology transfer limitations on royalties and exports apply to unpatented technology protected as trade secrets as well as to patented technology.

# POLAND

In 1996, the U.S. trade surplus with Poland was $341 million, an increase of $228 million from the U.S. trade surplus of $113 million in 1995. U.S. merchandise exports to Poland were $968 million, an increase of $192 million (24.7 percent) from the level of U.S. exports to Poland in 1995. Poland was the United States' fifty-third largest export market in 1996. U.S. imports from Poland were $627 million in 1996, a decrease of $37 million (5.6 percent) from the level of imports in 1995.

## IMPORT POLICIES

### Tariff Barriers

In 1990 and early 1991, Poland took bold steps to stimulate its private trading sector through an open trade regime with low or suspended tariffs. Poland then reversed course by raising a large number of its general tariffs prior to granting duty reductions for certain European Community (now European Union (EU)) goods under the European Community-Poland Association Agreement on March 1, 1992.

As a result of agreements concluded with the World Trade Organization (WTO), the EU, and the members of the Central European Free Trade Agreement (CEFTA), the overall tariff level has decreased steadily since 1992, from an average duty level of 14 percent to 5.8 percent in 1997, with average rates of 4.8 percent for industrial goods and 14.1 percent for agricultural products. A temporary surcharge of 5 percent imposed by Poland on all imports in 1993 was lowered to 3 percent in January 1996 and eliminated in January 1997.

Poland's association agreement with the EU has made U.S. exports relatively more expensive vis-a-vis similar European products. This has disadvantaged U.S. high-growth sectors such as computer-related products, capital goods and equipment such as machinery, refinery and gas pipeline equipment, products such as certain processed food, spirits, wine, citrus fruit, fruit juices, rice, sugar-containing products, and dried fruit, as well as industrial commodities such as soda ash. While overall U.S. exports to Poland have continued to rise, it is difficult to estimate the loss in potential exports caused by such preferential arrangements, particularly for agricultural products. The 1992 agreement granted EU products a 10 percent reduction in most-favored-nation (MFN) tariffs. In 1995, Poland cut customs rates on most goods from EU and EFTA countries by 20 percent and granted additional tariff preferences to the EU for sugar-containing products and wine. In 1996, Poland reduced duties on EU and EFTA industrial goods by an additional 20 percent and on agricultural products by 10 percent. In January 1997, customs rates on most industrial goods from the EU once again decreased by 20 percent; industrial duties on CEFTA-originated products dropped to zero.

In late 1994, in light of Poland's Generalized System of Preferences (GSP) status, USTR launched a review of Poland's reverse tariff preferences to the EU, as mandated by a statement of administrative action attached to the Uruguay Round Agreements Act. The review did not establish enough evidence to determine that Poland's preferential treatment of EU imports has had an adverse effect on U.S. commerce.

## Poland

In July 1995, Poland implemented its Uruguay Round agricultural commitments for about 20 percent of imported products, including those previously subject to variable levies and quantitative limitations, by establishing tariff rate quotas with out of-quota rates at or below WTO ceiling bindings. Products subject to tariff rate quotas include beef, pork, poultry meat and live poultry, milk and cream, sugar, eggs, honey, strawberries, apples, pears, juices and extracts, cucumbers, processed or fresh tomatoes, spices, rapeseed and mustard oil, wheat and rye flour, sugar beet seeds, malt extract, gelatin, sauces, hops, wine, cut flowers, and certain tobacco products. Complaints from Polish importers suggest that administration of the quotas may not be equitable.

Poland has imposed a number of restrictions on imports of U.S. bovine genetic material but has few other import requirements. It eliminated all quantitative restrictions on imports in 1990. Any firm or individual registered as a business may participate in foreign trade. Some U.S. exporters have experienced problems with the Polish customs administration due to overworked officials, an outdated system, and slow communications between Warsaw and the borders. The Polish Parliament is now considering comprehensive reform of the customs law and service.

### STANDARDS, TESTING, LABELING, AND CERTIFICATION

Poland has its own extensive system of certification and approvals of products which is not harmonized with international standards. U.S. companies have complained about the length of time for product certification, the need to leave the product at a Polish lab for the entire process, the need to have spare parts tested, the necessity of having the products tested in Poland, inappropriate standards for new products, vague information on costly testing fees, and a non-transparent appeals system.

The most-often cited Polish regulation adversely affecting U.S. exports is a requirement that many products obtain a safety (or "B") certification from the Center for Testing and Certification (PCBC) or one of the fifteen institutes supervised by the PCBC. Because of the need to gain separate certification, U.S. exports meeting international standards might not receive Polish approval, pending appeals on technical grounds.

In consultation with the EU and the United States, Poland is currently reforming its product certification system, which does not automatically recognize international product standards and does not accept manufacturer self-certification. New product liability and safety laws should be implemented in early 1998, allowing for acceptance of producer declarations and third party issuances of the "CE" mark. As a result of these difficulties, Poland has agreed to suspend final implementation of the "B" system, which includes the levying of fines up to 100 percent of the value of the goods sold in instances when product fails to receive "B" certification, through January 1, 1998.

#### Phytosanitary Standards

Poland maintains a list of quarantined weeds which are not allowed to be in imported grain and other plant products. Among the weed seeds on the list are several varieties of a common weed known as ambrosia or ragweed. The current regulations are not consistent with the requirements of other grain trading countries throughout Europe and the rest of the world. Although a bilateral protocol between the U.S. Department of Agriculture (USDA) and the Polish Plant Quarantine Service has allowed trade to continue, Polish grain importers face restrictions in the distribution of U.S. grain once it enters Poland and are sometimes required to undertake costly cleaning measures. Strict application of regulations would result in the loss of what is, in some years, a substantial market for U.S. grains. Amending the regulations to reflect EU phytosanitary standards would, in most cases, resolve a great deal of the problem.

The Plant Quarantine Inspection Service issues a mandatory phytosanitary import permit for all imports of live plants, fresh fruits, and vegetables. The Veterinary Department issues mandatory import permits for live animals and meat.

**GOVERNMENT PROCUREMENT**

Poland's new government procurement law came into effect in January 1995 at the national level and January 1996 at the regional (Gmina) level. It is modeled on the UN Model Procurement Code and is based on competition, transparency, and public announcement. It does not, however, cover purchases by state-owned enterprises. The only single source exceptions to the stated preference of unlimited tender are for reasons of state security or national emergency. The law established a Central Policy Office of Public Procurement listing all tenders over 20,000 ECU. The bulletin is available in English on the World-Wide Web: http://www.urm.gov.pl//uzp/ indexuzp.htm/. Poland has indicated its intention to join the WTO's Government Procurement Agreement (GPA) in 1997.

There are two elements of domestic preference in the procurement law. First, there is a 50 percent domestic content requirement for all goods and services provided; for construction, it is 50 percent of both raw materials and labor. In addition, domestic bidders are given a 20 percent price preference. According to implementing regulations, companies with foreign participation organized under the Joint Ventures Act of June 14, 1991, may qualify for "domestic" status under procurement laws. There is also a protest/appeals process for tenders viewed as unfairly awarded.

**EXPORT SUBSIDIES**

With its accession to the WTO, Poland ratified the Uruguay Round Subsidies Agreement. Poland also plans to join the OECD Shipbuilding Agreement but is negotiating a five year restructuring transition period. Poland has eliminated past practices of tax incentives for exporters, but it permits drawback of levies on raw material imports from EU and EFTA countries which are processed and reexported in finished products within thirty days. A recent law restructuring the sugar refining industry essentially creates export subsidies for sugar financed out of high domestic prices. Most Polish coal, whether sold domestically or abroad, is sold below mining cost. A number of politically powerful state-owned enterprises continue to enjoy special tax breaks--the largest source of subsidies left for Polish industry.

**LACK OF INTELLECTUAL PROPERTY PROTECTION**

The Polish Government has made major strides in improving protection of international property rights. The United States and Poland signed a bilateral Business and Economic Relations Treaty in 1990 which contains provisions on the protection of U.S. intellectual property. It came into force in 1994, when Poland passed a new copyright law containing significant improvements over its former law.

## Poland

Poland adheres to the Berne Convention (Paris Text, 1971) and the Rome Convention but has refuse to join the Geneva Convention. As a WTO member, Poland must also implement the Agreement on Trade-Related Aspects of Intellectual Property Rights (TRIPs), but has indicated that it may take until 2000 to do so. Poland's 1993 patent law, in all other ways adequate, did not provide the 20 years of pipeline protection favored by the pharmaceutical industry.

Piracy of U.S. copyrighted works in Poland has decreased significantly in recent years. Most of the pirated or faked items currently available in Poland are imported from abroad rather than being manufactured in Poland. Industry associations estimate that 1996 levels of piracy in Poland were 20 percent in sound recordings, 10 percent in books and video, and 80 percent in computer software.

While enforcement has improved noticeably, remaining difficulties, particularly in the prosecution of intellectual property rights (IPR) cases, allow for continuing, if reduced, levels of piracy and trademark infringement. Due to a lack of manpower and resources, Polish authorities often rely on rights holders to provide preliminary evidence of violations. In one important 1996 case, a large U.S.-based firm successfully defended several trademarks by employing local counsel, working closely with police and prosecutors, and pursuing the case under the unfair competition clause in Poland's criminal code (Article 24) rather than under the trademark provisions of the civil code (Article 57).

### SERVICES BARRIERS

In the recently concluded WTO negotiations on basic telecommunications services, Poland made commitments on all basic telecom services, with phase-in of some commitments. It will provide market access and national treatment for all services by 2003. It adopted the reference paper on regulatory commitments. Poland retained a 49 percent foreign investment limit for international and domestic long-distance services, including cellular.

While Poland permits foreign banks to establish subsidiaries in Poland, either wholly-owned or as joint ventures, the National Bank of Poland (NBP) has indicated foreign banks must bail out an ailing Polish bank in order to receive their own banking licenses. Under its OECD accession agreement, Poland agreed to allow unlimited bank and insurance branches as of January 1, 1999. It has not issued any such branch bank licenses since it granted two in 1991; all insurance firms, foreign and domestic, currently must be established as joint-stock companies.

Article 44 of Poland's 1994 association agreement with the EU provides for national treatment and full rights of establishment for subsidiaries, branches, and agencies, with a five year phase-in period (until February 1, 1999), along with a "no new restrictions" clause. Poland pledged to the OECD that all such liberalization measures would also be extended to all OECD members.

### INVESTMENT BARRIERS

Polish accession to the OECD in 1996 accelerated changes facilitating foreign investment, including national treatment, easing capital flow restrictions, and allowing foreigners to purchase small parcels of land without need for governmental approval (up to 400 square meters of urban land or one hectare of rural land). Polish law permits foreign ownership of up to 100 percent for most corporations (partnerships and sole proprietorships are not allowed; the legal form requirement will remain through January 1, 1999).

The Polish Government sometimes retains a significant minority interest in enterprises being privatized. On occasion, the Polish Government has used its equity interest in a company to influence managerial decisions. In the case of a U.S. company's investment in a joint venture with the Polish Telephone Company (TPSA), TPSA used its equity position (51 percent) in a manner that induced the U.S. company to sell its investment to the other joint venture partners.

Certain controls remain on foreign investment. Broadcasting legislation restricts foreign ownership to 33 percent stake; this forced a U.S. cable company to abandon its plans for a broadcasting operation in Poland in favor of transmitting by satellite programming produced in Hungary. The management of seaports and airports requires a special permit from the Minister of Privatization, and foreign stakes in air and maritime transport, as well as fisheries, are capped at 49 percent. The government has proposed auto assembly/manufacturing regulation changes which would encourage operators to increase employment and move towards full manufacturing operations.

## ANTICOMPETITIVE PRACTICES

On October 1, 1996, an Office for Competition and Consumer Protection was established out of the former Antimonopoly Office and State Trade Inspection Office (PIH). This office is empowered to fine state-owned monopolies that unduly prevent competition. A 1995 amendment to the Antimonopoly Office Act removed ambiguities regarding its authority, thereby strengthening its ability to act.

U.S. and other foreign telecommunications companies have complained of strong-arm tactics on the part of the state telecommunications monopoly, TPSA, in regard to telephone interconnection agreements. As a result of this and other anti-competitive actions by TPSA, the Antimonopoly Office has levied fines against TPSA, disallowed planned TPSA rate increases, ruled that the new GSM licensees could not be barred from using other telephone networks (e.g., the railway telephone system), and announced its intention to continue close scrutiny of the telecommunications sector.

# RUSSIA

In 1996, the U.S. trade deficit with Russia was $221 million, a decrease of $987 million from the U.S. trade deficit of $1.2 billion in 1995. U.S. merchandise exports to Russia were more than $3.3 billion, an increase of $514 million (18.2 percent) from the level of U.S. exports to Russia in 1995. Russia was the United States' thirty-first largest export market in 1996. U.S. imports from Russia were nearly $3.6 billion in 1996, a decrease of $474 million (11.8 percent) from the level of imports in 1995.

Trade relations between the United States and Russia are governed by the U.S.-Russia trade agreement, signed in June 1990 with the USSR and approved by the U.S. Congress in November 1991. The USSR ceased to exist before ratification of the agreement, but the United States offered the agreement (with minor technical changes) to each of the emerging states of the former Soviet Union. The Russian Parliament approved the agreement, making it possible for the United States to extend most-favored-nation status to Russia on June 17, 1992. Russia is in the process of acceding to the World Trade Organization (WTO).

## IMPORT POLICIES

The combination of high import duties, a 20 percent value-added tax charged on most imported goods (selected food products are assessed at 10 percent), and excise taxes assessed on certain imported goods (automobiles, cigarettes, alcoholic beverages, gasoline) depresses demand for imports. Frequent changes in customs regulations without warning have created problems for foreign and domestic traders and investors. The government has raised import duties several times since 1992. In mid-1995, on the advice of the International Monetary Fund (IMF), the government rationalized its duties, establishing rates of 5 to 30 percent on most goods. In 1996, the government raised tariffs on alcoholic drinks, chicken, and some other food products, resulting in an average weighted tariff of 14 percent, as calculated by the IMF.

In February 1996, the Russian Ministry of Agriculture announced that its veterinary service would deny import certification for many U.S. poultry processing facilities, effectively barring all U.S. poultry imports from the United States' largest poultry export market, valued at approximately $700 million in 1995. In March 1996, the United States reached an agreement with Russia whereby Russia recognized that the U.S. inspection system is acceptable for the Russian market. Furthermore, following negotiations with the United States, the Government of Russia withdrew a reference price system that practically doubled the actual customs value of poultry imports. U.S. poultry exports to Russia increased in 1996 over 1995 levels.

In August 1996, Russia announced that in January 1997 it intended to impose safeguard quotas on U.S. vodka and ethyl alcohol exports and requested consultations under the safeguard provisions of the bilateral trade agreement. In the course of the consultation, the United States determined that Russia did not have a credible case for a safeguard action, and requested Russia to withdraw the proposed quotas. On December 30, 1996, the Russian Government withdrew the decree imposing the quotas. Russia maintains high tariffs and excise taxes on imported spirits. In early 1997, it instituted an import licensing system for vodka and ethyl alcohol.

In early 1997, the Ministry of Communications circulated a draft regulation entitled "Order No. 8," which limits Russian purchases of foreign-made switchgear. Although it is uncertain how broadly the language of Order No. 8 will be interpreted, it is sufficiently ambiguous to pose the potential for significant protectionist restriction of access to the Russian market for this equipment.

Importers from the United States have experienced delays and unexpected costs due to individual interpretation of Russian customs codes by each port of entry.

## STANDARDS, TESTING, LABELING, AND CERTIFICATION

Russia's July 1993 Consumer Protection Law requires official certification (by Gosstandart) of imported products for conformity to Russian technical, safety, and quality standards. Certification is based on a combination of international (notably EU) and Russian standards. All food items imported into Russia are subject to food quality and safety standards and require a certificate for each shipment. Manufactured items can receive certificates allowing import of a good over a three-year period. Import licenses are required on the normal range of dangerous and harmful materials and goods. U.S. companies have complained of costly procedures and arbitrary certification requirements. Due to the many difficulties experienced by U.S. companies in this area, the American Chamber of Commerce in Moscow recently named standards and certification as one of four main obstacles to increased U.S. trade and investment in Russia.

Russia is establishing reciprocal standardization with the United States and other countries, and acceptance of foreign certification by accredited institutions. A joint Russia-U.S. communique of December 1993 pledges cooperation on improving and simplifying certification, testing, and quality assurance of U.S. and Russian products in each other’s markets. A February 1994 Memorandum of Understanding between the U.S. Food and Drug Administration and the Russian Ministry of Health and Medical Industry established a framework for cooperation and exchange of information on drugs and biological products to speed their importation.

Attempts to agree on a testing procedure for fresh U.S. pork acceptable to U.S. pork producers and the Russian Veterinary Department so far have been unsuccessful. No fresh U.S. pork officially enters Russia, although the United States does export frozen pork to Russia.

## GOVERNMENT PROCUREMENT

The Russian Government has virtually eliminated the Soviet practice of centralized imports through state-owned foreign trading companies, but an organized system of government procurement with standardized regulations and procedures does not yet exist. Some large-scale trade deals (such as oil-for-sugar barter deals between Russia and Cuba) still take place. Typically, however, the government awards the right to implement such deals on its behalf to private or quasi-private trading houses.

Russian ministries and government agencies frequently purchase equipment, goods, and services for their own needs or for the needs of various domestic organizations or groups (i.e., the military, regional health organizations, or population centers located in remote areas). However, these purchases are done on an ad hoc as-needed basis, are not subject to uniform procedures or supervision, and are usually accomplished through direct negotiations with selected potential suppliers rather than through publicly announced competitive tenders. While domestic suppliers are not accorded any official advantages or privileges in competing for such procurement, the Russian Government's strong political bias toward supporting domestic industries probably works in favor of Russian suppliers.

**EXPORT SUBSIDIES**

The Russian Government's industry policy guidelines appear to emphasize export promotion and import substitution. It is unclear to what extent the guidelines have been implemented. Discussion to date indicates that they will have very limited budgetary funding and be aimed at stimulating exports of manufactured goods. Russia has no explicit export subsidies on agricultural products.

**LACK OF INTELLECTUAL PROPERTY PROTECTION**

The Russian Government has made considerable progress in establishing the legal framework to bring the country up to world standards in the area of intellectual property protection. Strengthened criminal penalties for infringement on intellectual property rights (IPR) went into effect January 1, 1997. The U.S.-Russia bilateral trade agreement also requires Russia to provide protection for intellectual property. Since 1992, Russia has enacted generally acceptable laws on trademarks and appellations of origins, patents, protection of semiconductor chips and computer software, and copyrights. A major deficiency in Russia's IPR regime is that is does not provide retroactive copyright protection for U.S. works, including sound recordings. Russia is a member of the Paris Convention, the Universal Copyright Convention, and other major multilateral intellectual property conventions. In 1995 Russia acceded to the Berne and Geneva Conventions.

Even though Russia has passed laws that generally meet world standards, enforcement of those laws to date has been limited. There is currently extensive piracy of U.S. video cassettes, films, music, recordings, books, and computer software in Russia. Some U.S. companies have had difficulty registering well-known marks. Administrative and judicial review bodies are only beginning to become active in IPR protection. The United States will continue to monitor IPR enforcement carefully and will provide assistance to help the Russian Federation improve enforcement. In March 1996 the U.S.-Russia working group on IPR was revived, and met again in December 1996. The U.S.-Russia bilateral trade agreement calls for a side letter on mutually acceptable provisions on compulsory licensing. The text of a letter was agreed in September 1994, but the Russian Government has not signed the side letter.

**SERVICES BARRIERS**

Discriminatory measures against foreign providers of non-financial services are not so much the result of federal policy as sub-national regulations or practices that may even violate national law. For example, foreign providers of services have sometimes noted discrimination in obtaining licenses from local authorities, often having to pay several times the fees paid by domestic companies.

## Russia

### INVESTMENT BARRIERS

The United States and Russia signed the U.S.-Russia Bilateral Investment Treaty (BIT) in June 1992. The BIT was approved by the U.S. Senate in October of the same year, but has not entered into force because it has not been approved by the Russian Duma.

According to a survey by the Russian/EU Center for Economic Performance conducted between February and May 1995, foreign investors in Russia indicated strong concern over the legal system. They were particularly concerned about shareholders' rights and weak contract law. As foreign investors must seek approval for their projects on the federal, regional, and local level, the vagueness of existing laws can lead to differing interpretations and conflicting requirements on the different levels. Much of the legal system is being rewritten, an inherently slow process. Ownership of real property, particularly land, is highly controversial. The land code, having passed the third and final reading in the Duma, failed in the Upper House and is currently under consideration by a reconciliation commission. The Duma's version did not grant the right to trade in farm land, but there are other bills on the Duma's agenda to establish the right of ownership for land and property for small gardening and construction plots.

Economic disincentives were also ranked high by foreign investors, with particular concern about the incoherence of the tax system. The government has made significant progress on inflation through greater fiscal and monetary discipline in 1996, with the yearly average rate falling to 21.8 percent from 131 percent in 1995. The government's target inflation rate for 1997 is 11.8 percent. The tax system, however, remains a major disincentive to investors. Crime and corruption in commercial transactions are also an inhibiting factor; in both 1995 and 1996 the government undertook highly publicized efforts to reduce corruption in the police force. The primary political concern of foreign investors surveyed in late spring of 1995 was Russia’s commitment to reform. Recent government decisions affecting foreign investment have been mixed. In February 1994, the government began to allow foreigners to purchase up to 10 percent of each month's issue of government securities, a market previously off limits to foreigners. This market was further liberalized in 1996, and the Central Bank has announced its intention to fully liberalize this market in 1977. The commercial banking law passed in December 1995 allowed the moratorium on foreign and joint-venture banks to expire on January 1, 1996. Foreign banks entering as branches may open only one branch, and the capital of all foreign banks cannot exceed 12 percent of the capital of the entire banking sector. The law on production sharing agreements (PSA) for the oil, gas, and minerals sector was signed by President Yeltsin in 1996, but it fell short of what most foreign investors were seeking. Discussion is underway about its possible amendment. Enabling legislation is also need to bring existing tax and regulatory laws into conformity with the PSA law. As of February 1997, the Duma had not acted on legislation needed to identify PSA-eligible energy and mineral deposits.

Regarding purely financial disincentives, most foreign investors list concerns about profit repatriation. Since Russia has assumed obligations under the IMF's Article VIII, there are no longer any legal barriers to profit repatriation. At present dividends must be paid into special accounts, before being converted into hard currency and repatriated. This has given rise to some perception of vulnerability to possible changes in the currency and banking laws, but the government has promised to do away with this requirement in the course of 1997. Investors have also expressed concern about their inability to get accurate information about potential business partners.

## OTHER BARRIERS

In an effort to curtail capital flight accomplished through export and import operations, the Russian Government instituted a "passport" system for exports and imports. Such additional bureaucratic steps could potentially add time and cost to the process but they have not elicited serious complaints so far.

### Aircraft

Russia raised its tariffs on imported aircraft from 15 to 50 percent in March 1994. Although these tariffs were lowered to 30 percent in 1995, they are still at a prohibitive level. There are also concerns about non-tariff barriers protecting the Russian domestic market while Russia supports its domestic aircraft industry.

On January 30, 1996, Vice President Gore and Russian Prime Minister Chernomyrdin concluded the Joint Memorandum of Understanding (MOU) on Market Access for Aircraft that addresses U.S. concerns about barriers to access to the Russian civil aircraft market and the application of international trade rules to the Russian aircraft sector. The MOU states that U.S. aircraft manufacturers will be able to participate in the Russian market and to share in its growth. The MOU also makes clear that the Russian aircraft industry will in time be fully integrated into the international economy. Russia pledged to undertake the same international trade disciplines as have the United States and other aircraft manufacturers.

In the interim before Russia accepts these trade obligations, the MOU commits Russia to provide fair and reasonable access to its market. Russia agreed to take steps, such as the granting of tariff waivers, to enable its airlines to meet their needs for U.S. and other non-Russian aircraft on a non-discriminatory basis. As the Russian economy and the demand for aircraft strengthen, the granting of tariff waivers is to increase and Russian tariffs on aircraft are to be steadily reduced. In early 1997, the United States raised concerns about the implementation of the MOU, and senior Russian officials reaffirmed Russia’s commitment to the MOU.

# SINGAPORE

In 1996, the U.S. trade deficit with Singapore was $3.7 billion, an increase of $409 million from the U.S. trade deficit of $3.2 billion in 1995. U.S. merchandise exports to Singapore were $16.7 billion, an increase of $1.4 billion (8.9 percent) from the level of U.S. exports to Singapore in 1995. Singapore was the United States' eighth largest export market in 1996. U.S. imports from Singapore were $20.3 billion in 1996, an increase of $1.8 billion (9.6 percent) from the level of imports in 1995.

The stock of U.S. foreign direct investment (FDI) in Singapore in 1995 was $12.6 billion, an increase of 21.9 percent from the level of U.S. FDI in 1994. U.S. FDI in Singapore is concentrated largely in the manufacturing, petroleum, and financial sectors.

## IMPORT POLICIES

### Tariffs

Singapore imposes tariffs on only four categories of imported goods; 96 percent of imports enter duty-free. In the Uruguay Round of multilateral trade negotiations, Singapore agreed to bind 70 percent of its tariff lines (up from 1 percent), compared to the United States, which has bound 98 percent of its tariff lines. The Uruguay Round Agreements went into force on January 1, 1995.

Singapore still maintains significant tariffs on four categories of products -- cigarettes, alcoholic beverages, automobiles, and gasoline. Currently Singapore applies an excise tax of 30 Singapore dollars (S$) per liter on distilled spirits whose alcoholic content is less than 46 percent and S$70 on spirits with alcoholic content greater than 46 percent. Table wine is subject to an excise tax of S$9.50 per liter. Imported beer and ale have an import duty of S$0.80 per liter; an excise tax of S$2.80 is applied to both imported and domestically produced beer and ale. Singapore has committed to continue to reduce the import duty and increase the excise tax on beer and ale over time in order to gradually equalize tax treatment for domestic and imported product.

## GOVERNMENT PROCUREMENT

Singapore initiated negotiations to join the WTO Government Procurement Agreement (GPA) in December 1995, and became a full member of the GPA in 1996.

## EXPORT SUBSIDIES

The Government of Singapore offers three export promotion schemes, available to both local and foreign firms, which fit the World Trade Organization (WTO) definition of subsidies: the international trade incentives program, double taxation deduction, and production for export schemes. Singapore has committed to phase out these programs by 2003, and accepted no applications in 1996 for the production for export scheme. There are no complaints from U.S. companies of sales lost due to these schemes; to the contrary, there are occasional inquiries on how to take advantage of them.

## Singapore

### LACK OF INTELLECTUAL PROPERTY PROTECTION

According to software associations, Singapore had the lowest piracy rate in Asia in 1995, although software piracy is still a problem. Singapore continued to take concrete measures to improve its level of overall intellectual property protection and to strengthen enforcement in 1996. Singapore is a member of the World Intellectual Property Organization (WIPO) and a party to the WTO Agreement on Trade-Related Aspects of Intellectual Property Rights (TRIPs), though it did not commit to implementing the TRIPs Agreement by January 1, 1996, the date required of developed countries (Singapore claims developing-country status for WTO implementation). Singapore is not a Party to the Berne Convention or the Universal Copyright Convention.

In 1987, following close consultation with the U.S. Government, Singapore enacted comprehensive copyright legislation which relaxed the burden of proof for copyright owners pressing charges, strengthened civil and criminal penalties, and made unauthorized possession of copyrighted material an offense in certain cases. In January 1991, Singapore similarly strengthened its Trademark Act. Singapore enacted a new Patents Act in 1994, which was amended and strengthened in 1995 to make it consistent with the TRIPs Agreement. The amendments making this law fully TRIPs-consistent came into effect in January 1996.

**Copyrights**

While Singapore's copyright regime is generally of a high quality, it lacks a provision granting rental rights to copyright holders for sound recordings and software, as required by the TRIPs Agreement. Singapore has said it will bring the law into TRIPs compliance according to the developing country phase-in period. An interagency group is drafting changes to the law, but has not announced a date for implementation. U.S. companies have not reported losses in 1996 due to this TRIPs inconsistency. Computer software piracy remains a problem, although the government markedly stepped up enforcement in 1996, and the courts handed down record fines and jail terms for offenders during the year. In July, two counterfeit software resellers were sentenced to jail for terms of 18 and 20 months, respectively, in a case resulting from a raid conducted by the intellectual property rights (IPR) warrant unit of the Singapore police. Fines in several recent cases of infringement have ranged from $10,000 to over $51,000. While commending stepped-up enforcement and deterrent penalties, the software associations say more effort is needed to publicize these actions and that more still can be done by the Government of Singapore on enforcement to combat a recent upswing in pirated software from Malaysia.

Singapore has the lowest software piracy rates in Asia according to recent estimates by industry associations. Industry statistics indicate that Singapore's piracy rate falling from 61 percent in 1994 to 53 percent in 1995. Despite the fall in piracy, losses from counterfeit software rose in 1995 because software retail prices increased. Industry estimates losses at $40.4 million in 1995, a $3.1 million increase over 1994. U.S. firms report continuing economic losses from parallel imports due to Singapore's overly broad application of international patent exhaustion. Estimates of losses during 1996 are not yet available.

## SERVICES BARRIERS

### Basic Telecommunications

In the recently concluded WTO negotiations on basic telecommunications services, Singapore made commitments on all basic telecom services to be phased-in over time. Singapore will provide market access and national treatment for certain services as of January 1, 1998, and will provide these for all services as of April 1, 2000. Singapore adopted the reference paper on regulatory commitments and placed a 74 percent foreign ownership limit on all basic telecom services.

### Legal Services

Foreign law firms may only set up offices in Singapore to advise clients on their domestic or international law. They cannot hire or form partnerships with Singaporean lawyers to practice local law in Singapore.

### Engineering Services

Effective April 1995, Singapore introduced amendments to its law to allow engineering firms to be 100 percent foreign-owned. However, the chairman and two-thirds of the board of directors must be comprised of engineers, architects, or land surveyors registered with local professional bodies.

### Insurance

Singapore has determined that the local insurance market is saturated; as a result, no new licenses for foreign or domestic firms seeking access to Singapore's insurance market had been issued for several years prior to 1996. In 1996 the Government of Singapore admitted one company, Asia Limited, because its introduction of monoline financial guarantee insurance was deemed to bring significant benefits to the industry as a whole. Singapore has stated that acquisition of a domestic company by a foreign company would be permitted only if the domestic company needed additional capital. The reinsurance market in Singapore is open to new entrants and captive insurance licenses are available to subsidiaries of multinationals to underwrite their own risk.

### Banking and Securities

Foreign penetration of the banking system of Singapore is comparatively high. Foreign banks account for almost half of all nonbank deposits from residents, more than half of all nonbank loans to residents, 70 percent of total trade financing business in Singapore, and 60 percent of banking profits. The Government of Singapore does impose some restrictions on foreign banks, however. In addition to a longstanding freeze on the number of full banking licenses granted to foreign as well as domestic banks, those banks that already have full licenses do not enjoy full market access. Foreign banks cannot open new branch offices, freely relocate existing branches, or freely operate off-premises automated teller machines (ATMs). In addition, foreign banks are restricted to an aggregate 40 percent equity share in domestic banks in the full license category. Offshore banking licenses for the Asian dollar market are available to new entrants; Singapore actively encourages foreign participation in the offshore market in which U.S. and other foreign banks have a substantial presence. Singapore continues to liberalize its Singapore dollar market for offshore bank participation; offshore banks can now grant loans of up to S$150 million to residents.

In the securities area, foreign equity ownership of members of the stock exchange of Singapore is limited to a minority stake, although foreign firms can join in the exchange with an international membership with 100 percent foreign equity. However, some restrictions apply to international members with respect to the size of the lots they may trade and when executing certain transactions with residents.

# SOUTH AFRICA

In 1996, the U.S. trade surplus with South Africa was $784 million, an increase of $243 million from the U.S. trade surplus of $541 million in 1995. U.S. merchandise exports to South Africa were $3.1 billion, an increase of $355 million (12.9 percent) from the level of U.S. exports to South Africa in 1995. South Africa was the United States' thirty-fifth largest export market in 1996. U.S. imports from South Africa were $2.3 billion in 1996, an increase of $114 million (5.2 percent) from the level of imports in 1995.

The stock of U.S. foreign direct investment (FDI) in South Africa in 1995 was $1.3 billion, an increase of 25.3 percent from the level of U.S. FDI in 1994. U.S. FDI in South Africa is concentrated largely in the manufacturing and wholesale sectors.

## IMPORT POLICIES

Import permits under South Africa's Import and Export Control Act of 1963 authorize the Minister of Trade and Industry to act in the national interest to prohibit, ration, or otherwise regulate imports. In recent years, the list of restricted goods requiring import permits has been substantially reduced, reflecting the Department of Trade and Industry's (DTI) preference for supply-side measures as a means of stimulating local industry. Among the few products still requiring import permits are foodstuffs, used clothing, refined petroleum products, and chemicals. Import permits must be obtained from the Director of Imports and Exports before the date of shipment. Failure to produce a required permit could result in the imposition of penalties.

The Government of South Africa eliminated import surcharges on all goods effective October 1, 1995, in conformance with its WTO commitments. Several U.S. firms have claimed that import surcharges remain in several industries, but the charges cited appear to be excise taxes that are applied in a nondiscriminatory manner to both domestic and foreign producers. Moreover, South African officials expressed an interest in discussing the issue further with company officials once the source of these perceptions has been clearly identified.

Although the Government of South Africa reduced the tariff on instant print cameras from 6 percent to zero on June 28, 1996, instant print cameras and instant print film continue to be classified as "luxury items" and remain subject to high excise taxes of 37.5 percent and 32.5 percent, respectively. Although these excise taxes are non-discriminatory, U.S. producers claim that there are no domestic producers, and the high taxes induce circumvention by illegal importers. Extensive circumvention of customs collection at South African ports of entry may allow some foreign importers to avoid paying the high tax, giving them an advantage over those importers paying proper excise taxes.

Tariff protection may be sought by any South African producer by petitioning the Board of Tariffs and Trade (BOTT). In practice, approval of such petitions is more likely in cases where the producer has a major share of the domestic market and can show that foreign competition is eroding market dominance. Although public commentary on tariff protection requests is normally open for a 6-week period, the Government of South Africa introduced a 3-week public comment provision for emergency situations. In both cases, however, the government can deliberate for an undefined period before rendering a decision.

## South Africa

In keeping with its WTO commitments, the Government of South Africa has sought to reform a complex tariff structure inherited from apartheid-era governments. In the past two years, the Government of South Africa has simplified and reduced its overall tariff rate from a level in excess of 20 percent to 12 percent. Despite these liberalizing policies, many industries previously protected by nontariff barriers have sought to increase tariffs in their industry to WTO bound levels. DTI and BOTT, however, have refused most of these tariff increase applications in favor of more WTO-consistent supply-side measures. In April 1996, BOTT and DTI turned down a request from the telephone manufacturers of South Africa to increase tariff rates on telephone sets and telephone set components from 0 and 5 percent, respectively, to 20 percent. In recent instances where domestic producers have petitioned the Government of South Africa for tariff increases, the Government of South Africa has accepted U.S. input.

Between 1992 and 1994, increases in South African tariffs on paperboard and paper products, certain steel products, and cosmetics were noted. Although DTI maintains that no tariff increases have resulted from its tariff rationalization process since 1994, several U.S. exporters have complained of increased tariff rates on their products as a result of reclassification or misclassification into a higher tariff category. One such instance involves the misclassification of photographic film in plates into the tariff heading of photographic film in coils, which carries a significantly higher tariff rate.

As a result of a DTI/BOTT evaluation of the textile and clothing industry, South Africa set a 7-year period of tariff reduction for clothing and textiles, rather than the 12-year reduction negotiated under the WTO. In most categories of textiles, tariff rates will decrease between 2 and 7 percent per year until they reach the end rates applicable, which are, in several instances, lower than WTO binding levels. In 1996, a scheduled reduction in textile tariffs set for September 1996 was delayed several months as domestic concerns urged governmental review of the phase-down plan. Nevertheless, the DTI and BOTT adhered to Uruguay Round commitments, and the scheduled tariff reduction was enacted in December 1996 and made retroactive to September.

While increases in certain tariff headings for paper and paperboard occurred in 1992, the Government of South Africa instituted a general phased reduction of tariffs on paper and paperboard in 1995 that will bring most tariffs down to 10 percent ad valorem by 2000 and to 5 percent ad valorem by 2005. Both DTI and BOTT have introduced rebate provisions for many categories of paper and paperboard, authorizing full duty rebates on imports of uncoated and coated kraft paper and paperboard, coated paper and paperboard, and tarred, bituminized or asphalted paper and paperboard. Because of the complex nature of the tariff headings and rebate provisions of the paper and paperboard industry, the Government of South Africa requested that numerical tariff headings be provided to facilitate inquiries about these industries.

U.S. officials have received several complaints from U.S. producers regarding the 10 percent tariff applied to soda ash imported into South Africa. Specifically, U.S. exporters are concerned about the amount of soda ash imported into South Africa from Botswana duty free under the Southern African Customs Union (SACU). As SACU was created in 1910, and thus predated the creation of the GATT (1947), notification of the duty-free status of goods from Namibia, Botswana, Swaziland, and Lesotho was “grandfathered.” South Africa is in the process of renegotiating the SACU agreement with its partners, a process which it hopes to conclude by mid-1997. Following this renegotiation, South Africa plans to notify the WTO of the duty-free status accorded to its neighbors under SACU, which will be referred to the Committee on regional Trade Agreements for examination.

In late 1996, South African poultry producers requested that BOTT increase the tariff on poultry product imports from 27 percent to 64 percent. The legally-mandated public commentary period elicited strong letters of opposition from U.S. producers, the U.S. Department of Agriculture, and the French and Canadian missions and continued to be the subject of discussion into 1997.

In early 1997, the Government of South Africa responded positively to U.S. Government requests to remove the tariff on top-loading washing machines, which had been applied because of a new interpretation of "washability specifications" apparently intended to deny major U.S. producers access to the South African market. After considerable bilateral discussions and the intercession of both Vice President Gore and Deputy President Mbeki, top-loading washing machines have been reclassified into a zero-tariff category, with reimbursement of duties collected since April 1994.

As a result of market access commitments made in the Uruguay Round and DTI's attempts to reform its tariff structure, South Africa:

- has rationalized 9,580 tariff lines down to 7,182;
- will bind 98 percent of its tariff lines to WTO binding levels by 2000, up from the 55 percent currently bound;
- will replace all remaining quantitative controls with ad valorem duties and make formula duties WTO-consistent; and
- will cut back tariff lines from the 80 different levels of the past into six levels (0 percent, 5 percent, 10 percent, 15 percent, 20 percent, and 30 percent), with a few exceptions, including clothing and textiles, which will comply with the WTO binding levels over 7 years, ending in 2002, instead of the 12 years negotiated under the WTO. Maximum tariffs in several categories will fall to levels below WTO binding levels. According to the DTI/BOTT plan, South African tariffs in textiles will fall to the following five levels:

| Product | South African Plan (*percent*) | WTO Binding Level (*percent*) |
|---|---:|---:|
| Clothing | 40.0 | 45.0 |
| Made-up textiles | 30.0 | 30.0 |
| Fabrics | 22.0 | 25.0 |
| Yarn | 15.0 | 17.5 |
| Fibers | 7.5 | 10.0 |

Customs valuation, in accordance with the WTO Customs Valuation Agreement, is based on the f.o.b. price in the country of export or the transaction value, i.e., the price actually paid or payable. Where the transaction value cannot be ascertained, the price actually paid for similar goods, or a computed value may be used based on production costs of the imported goods. It can be even more technically complex, where the goods are imported into South Africa for shipment to the members of the SACU, and more susceptible of duty evasion.

Over the past year, several South African importers have complained about illicit imports and import duty evasion. Importers of agricultural products, poultry, and manufactured goods have asserted that a lack of adequate funding, training, and staffing has led to a problem of inefficiency and malfeasance among the port customs inspectors and within the state-owned port and cargo handling company, Portnet, facilitating the evasion of customs duties by “gray market” importers. According to sources, malfeasance within the South African port system is exacerbated by corruption within the ports of entry of South Africa’s SACU partners (Namibia, Botswana, Swaziland, and Lesotho), where imported goods are occasionally repackaged as items made in one of these respective countries and exported to South Africa where they evade customs levies due to the SACU accord. Finally, illegal shipments overland through Mozambique account for a high share of illegal imports and contraband trade. Importers and foreign customs officials have estimated the percentage of intercepted illegal imports into South Africa at less than 10 percent.

The government is aware of the problems with its customs service and is attempting to redress them through cooperation with international organizations and through training programs with U.S., British, and European customs services. Nonetheless, the problem of illegal imports and customs evasion will take many years to overcome, as the Government of South Africa struggles to direct limited funding and inadequate available human resources across a wide area of law enforcement needs.

While the Government of South Africa has discussed the possibility of a pilot pre-shipment inspection project, BOTT officials state that no such program exists at this time. The U.S. Embassy has not received specific complaints concerning pre-shipment inspections, but several importers expressed their opinion that such a project could be corrupted given the climate of malfeasance and inefficiency in the customs system.

**STANDARDS, TESTING, LABELING, AND CERTIFICATION**

The Customs and Excise Administration (CEA) refers to several testing standards to determine the applicability of tariff and customs duties on imported products. Most tests have been described as fair and transparent, and those charges of discriminatory standards that have arisen from time to time have been treated with great concern by the Government of South Africa. In early 1996, U.S. exporters petitioned the Government of South Africa concerning restrictive cold treatment requirements for red meats. Under the Agricultural Committee of the Binational Commission (BNC), the U.S. Department of Agriculture (USDA) and the South African Ministry of Land and Agriculture negotiated an accord to reduce the freezing time of red meats from a minimum of 30 days to 20. Although the protocol awaits final approval by South African officials, it is expected to be enacted in 1997.

Most recently, U.S. exporters of poultry products petitioned the Government of South Africa to rescind its decision to reinstitute the requirement of shipping chicken products in refrigerated containers rather than in bulk. Viewed by many U.S. exporters and South African importers as a discriminatory phytosanitary requirement, this new requirement has elicited considerable opposition from both domestic and international industry sources. The Government of South Africa has agreed to review its decision in early 1997 and has accepted input from consumers, retailers, importers, and exporters.

**GOVERNMENT PROCUREMENT**

The Government of South Africa is in the midst of reforming its government procurement policy. South African officials have indicated that the most notable changes in government procurement will be aimed at redressing the legacy of apartheid-era policies, standardization of procurement policy among national, provincial, and municipal tender boards, and a preference system for black South African enterprises. Preferences for local content which the Government of South Africa describes as akin to the "Buy America Act" have also been considered. Although South African officials have underscored the necessity of using procurement policy to redress the inequities of apartheid-era policies, the new bill will attempt to remain consistent with the WTO Government Procurement Agreement (GPA) although South Africa is not a signatory to the GPA. The procurement policies detailed below are current but subject to reform pending the release of the new bill.

Government purchasing is a significant component of the South African economy. Once highly centralized under a national procurement board, procurement is now conducted by the central tender board for central government departments, the nine provinces, and to a limited extent at the municipal level by local tender boards. Nearly all such purchasing is done through competitive bidding on invitations published in Government Gazette and local newspapers. Although the purchasing procedures of the central government and parastatal institutions tend to favor products of local manufacture, an overseas firm may bid if it has an agent in South Africa to act on its behalf. As a general practice, payment is made to the local agent.

Purchases are by competitive tender for project, supply, and other contracts. Bidders generally need not prequalify, but the ability of bidders to supply goods or render a service is usually examined. Foreign firms can bid through a local agent, who will then be so examined. As part of the government's policy of encouraging local industry, a price preference schedule, based on the percentage of local content in relation to the tendered price is employed to compare tenders. The price preference is computed as follows:

| Local Content (*percent*) | Price Preference | Local Content (*percent*) | Price Preference |
|---|---|---|---|
| 1 to 5 | 1 | 40 to 50 | 6 |
| 5 to 10 | 2 | 50 to 60 | 7 |
| 10 to 20 | 3 | 60 to 70 | 8 |
| 20 to 30 | 4 | 70 to 80 | 9 |
| 30 to 40 | 5 | over 80 | 10 |

Most parastatals, local authorities, and private buyers such as the mining houses employ their own tender boards, but, for the most part, have practices similar to those of the central government. Most parastatal procurement is guided by, and bound to, the schedule of local content preference. Local government purchases, including those of the nine new provincial governments, are increasingly significant and also involve overseas bidding.

### Offsets and Reconstruction and Development Project Concerns

Many South African tenders include an "offset requirement," a compensatory package that partially "offsets" the government purchase with the promise of a development package funded by the recipient company. Successful offset packages have included worker training provisions, infrastructural development, joint ventures with South African companies, and projects that help fulfill the government's reconstruction and developmental objectives.

The practice of vetting large tenders through several government ministries has resulted in contradictory valuations of the relative worth of a tender and its offset package by competing interests. This, in turn, has contributed to charges of a lack of transparency in the tender process. In 1995-96, Boeing Industries, awarded a contract worth over $1 billion to supply 10 airframes, was left in a state of confusion when the tender and offset were reportedly reexamined by the Ministry of Public Enterprises and the DTI. Rumors of South African attempts to gain further offset contributions from Boeing and of post-award lobbying by Airbus Industries, Boeing's competitor for the contract, contributed to perceptions of mishandling.

Of equal concern has been the handling of the aircraft engine tender for these airframes. The engine tender, sought by General Electric, Pratt & Whitney, and Rolls Royce, has been marked by contradictory remarks by various South African officials and a lack of clear instructions regarding the weighting of technical specifications and offset packages. Originally slated for a decision in early 1996, the Government of South Africa delayed its decision until December 1996, forcing Boeing to delay production (and delivery date) of the aircraft. In addition, although the Government of South Africa selected Rolls Royce to provide engines for two of the aircraft, it has yet to make a decision regarding the remaining five aircraft contracted in the Boeing deal. It remains unclear when the Government of South Africa will render its decision regarding these engines.

## EXPORT SUBSIDIES

The primary subsidy regime of the Government of South Africa has been the General Export Incentive Scheme (GEIS), through which South African exporters receive direct nondiscriminatory cash subsidies based on the value of exports, the degree of beneficiation or processing, and the local content of the exported product. The Government of South Africa has shown steadfast commitment to the elimination of export subsidies despite considerable opposition from local manufacturers. The DTI "revised"the GEIS in early 1995, "downsized" it again in early 1996, and is expected to eliminate the program before the end of 1997. Under the most recent revision in June 1996, all export subsidies except for those applied to fully manufactured products were eliminated. An export subsidy of 6 percent of local content remains in effect for certain manufactured goods until March 31, 1997.

Instead of direct subsidies, the Government of South Africa has focused on other means of promoting South African exports. The Export Marketing Assistance (EMA) scheme offers financial assistance for the development of new export markets through financing for trade missions and market research. The new export finance guarantee scheme for small exporters is the government's newest means of promoting small and medium exporters through credit guarantees with participating financial organizations.

For a limited period, existing nondiscriminatory tax allowances in terms of the Income Tax Act for machinery and buildings used in a manufacturing process will be granted on an accelerated basis. Where any new or unused plant or machinery is acquired and brought into use for manufacturing by a taxpayer between July 1, 1996, and September 30, 1999, the cost will be written off over 3 years. A similar allowance is also granted to a lessor of manufacturing plants and machinery. Similarly, a 10-year write-off is available for the erection of any building, or any improvements to a building, used for manufacturing during the period July 1, 1996, to September 30, 1999, and brought into use before March 31, 2000. Finally, the recently enacted tax holiday scheme provides for up to 6 years of tax-free status for incipient or "greenfield" investments which qualify in "specified manufacturing concerns," satisfy a "labor intensity" formula, and promote development in an underdeveloped geographic location. For each component, the qualifying company will receive 2 years of continuous tax-free status. The tax holiday scheme is available to all qualifying investments, foreign or domestic, export or domestic market oriented. Other subsidies include electricity and transport rebates for businesses located in designated development corridors.

## LACK OF INTELLECTUAL PROPERTY PROTECTION

In light of several complaints from well-known U.S. firms regarding lax enforcement of intellectual property rights (IPR), the Government of South Africa has responded with new and pending legislation and new enforcement techniques for IPR violations. The South African legal framework provides comprehensive IPR protection generally on a par with most western industrialized nations. In May 1995, the new Trade Marks Act of 1993 replaced the Trade Marks Act of 1963, improving protection of internationally-known trademarks. The 1996 decision of the South African Supreme Court Appellate Division that McDonald's is the rightful owner of its mark within South Africa indicates South African commitment to protecting well-known trademarks. As of October 1996, USTR announced as part of its Out-of-Cycle Review that South Africa would remain off the Special 301 watch list from which it was provisionally removed in April 1996. These actions supplement earlier South African efforts to provide IPR protection. The Designs Act of 1993 introduced a registration system providing protection for design proprietors for 10 years from the date of registration or issue, whichever is earlier. In addition, the Patent Act of 1978 was amended in 1988 to provide patent protection of inventions and innovations for a period of 20 years from the date of filing, without extension. Other South African IPR laws include the Plant Breeder's Rights Act of 1976 and the Copyright Act of 1978 (amended in 1992).

While progress has been made in trademark protection, U.S. firms are concerned about substantial trade losses due to copyright violations. South Africa's 1978 legislation protecting copyrights is being supplemented by a proposed Counterfeit Goods Act legislation this year that would set up a special anti-piracy unit. In addition, South Africa's courts have imposed fines on persons found to infringe copyrights. Enforcement remains a problem in part because of a lack of availability of enforcement resources. While U.S. businesses acknowledge that trade losses have declined from $96 million in 1995 to $77 million in

1996, U.S. firms note that continuing trade loses are significant, citing substantial software losses, book piracy, and satellite signal piracy. Awareness of the problem has prompted some business organizations to identify violations and take corrective actions.

The Government of South Africa attempted to pass three new IPR laws in 1996 to improve its efforts to reach full international standards for IPR protection, but only managed to push one through during this parliamentary session. The “Intellectual Property Laws Rationalization Act, 1996” integrates existent intellectual property rights in the former Homelands into the South African system and extends South African IPR legislation to the former Homelands. The Government of South Africa has introduced two bills concerning further IPR protection in the 1997 parliamentary session. The first amends the 1995 Trademarks Act in conformity with TRIPs and WIPO requirements, while the second provides for enhanced protection against counterfeit goods.

## SERVICES BARRIERS

In the recently concluded WTO negotiations on basic telecommunications services, South Africa made commitments on most basic telecom services. It adopted the reference paper on regulatory commitments. While South Africa offered to end its monopoly systems in long-distance, data, telex, fax and private leased circuits services as of 2004, it committed only to guarantee one additional operator in these areas at that time. South Africa will make commitments within one year of adoption of legislation on satellite-based services.

## INVESTMENT BARRIERS

Vice President Gore and South African Deputy President Mbecki signed an income tax treaty on February 17, 1997, in Cape Town. The treaty, designed to increase cross-border flows of capital, trade, and technology between the United States and South Africa, should remove certain existing tax disincentives to investment in South Africa. It accomplishes these objectives by reducing tax rates on certain cross-border income flows, and by increasing investor certainty through protection against non-discriminatory taxation and provision for a dispute resolution mechanism. This treaty will enter into force following completion of the ratification process by both countries.

# SWITZERLAND

In 1996, the U.S. trade surplus with Switzerland was $578 million, a shift of more than $1.9 billion from the U.S. trade deficit of nearly $1.4 billion in 1995. U.S. merchandise exports to Switzerland were nearly $8.4 billion, an increase of more than $2.1 billion (34.1 percent) from the level of U.S. exports to Switzerland in 1995. Switzerland was the United States' eighteenth largest export market in 1996. U.S. imports from Switzerland were nearly $7.8 billion in 1996, an increase of $197 million (2.6 percent) from the level of imports in 1995.

The stock of U.S. foreign direct investment (FDI) in Switzerland in 1995 was more than $36.3 billion, an increase of 5.8 percent from the level of U.S. FDI in 1994. U.S. FDI in Switzerland is concentrated largely in the financial, wholesale, and manufacturing sectors.

Since the rejection of the European Economic Area (EEA) Treaty by the Swiss electorate at the end of 1992, the Swiss Government has sought to reduce potential discrimination against Swiss products by European Union (EU) countries through bilateral sectoral negotiations with the EU. These negotiations are continuing in 1997 with signs that an agreement will be reached. The EU insists upon a package agreement involving all seven negotiating groups, although Switzerland has remaining concerns about EU proposals in at least two of the groups. Any eventual deal with the EU is likely to cause collateral damage to U.S. interests in some of the areas under negotiation. This phenomenon has already been seen in cases where Switzerland adopts EU standards and regulations.

## IMPORT POLICIES

According to the Organization for Economic Cooperation and Development (OECD), Swiss farmers are one of the most highly protected producer groups in the world. Switzerland is self-sufficient in pork, dairy, and other agricultural commodities but imports approximately $6 billion in food annually, accounting for 40 percent of total food consumption. The U.S. share of the agricultural import market remains frozen at less than 5 percent. This extremely low share contrasts sharply with U.S. agricultural export performance in similar international markets and with the relatively unfettered access to the U.S. market that Swiss food exporters enjoy. Switzerland has begun to liberalize some of its restrictive import policies in response to obligations it undertook in the Uruguay Round. The full benefits of these reforms have not yet been realized. Switzerland has encountered difficulties in implementing a new import licensing system for wine, and it is unclear at this point whether the methods of implementation chosen for certain other products are fully in conformity with Switzerland's World Trade Organization (WTO) obligations.

U.S. exporters of food products are disadvantaged for a number of reasons. The most important of these are the following.

- *Preferential tariff rates for other countries*: Some agricultural imports from EU countries enter at preferential tariff rates, giving European products a clear advantage over American ones. It is not at all clear that these special tariffs conform to WTO requirements, since numerous agricultural products are excluded from the arrangements.

## Switzerland

- *Lack of effective competition*: Two food retail "giants" control over two-thirds of chain store sales, and they manufacture their own consumer-ready products. They are reluctant to import prepackaged products that compete with their own brands.

- *Restrictive government policies*: The Swiss customs practice of charging tariffs on the gross weight of imports discourages imports (in favor of local processing) by greatly inflating tariffs on prepackaged food products (since the weight of the package is included in the tariff).

### STANDARDS, TESTING, LABELING, AND CERTIFICATION

Swiss technical standards and testing requirements for such key products as automobiles have long been an expensive and difficult hurdle for foreign suppliers. In 1995, Switzerland adopted automobile standards modeled after those of the EU. As a result, cars made in the EU can now enter the Swiss market without additional testing. This development puts U.S. manufacturers at a competitive disadvantage. Initial discussions with the Swiss Government on this problem were positive, and some important barriers to U.S. automobile imports have been removed. Further talks are planned on vans and light trucks, where no relief has been provided yet.

A new problem arose in 1996 regarding genetically modified soybeans and products containing soybean derivatives. The government announced in December that these products could be imported, but at the same time imposed onerous labeling requirements. There are no health or safety reasons for the labeling requirements. Furthermore, Switzerland does not require similar labeling for other genetically modified products, including feedgrains The result is to create barriers to exports of U.S. soybeans and soybean products. Labeling requirements have also been applied recently in ways which appear to discriminate against foreign suppliers.

Swiss implementation of regulations for many agricultural products is leading to some of the same problems in Switzerland that U.S. exporters face in the EU. Switzerland plans to implement proposed pet food regulations on April 1, 1997, which mirror EU regulations. These proposed regulations could cut off U.S. exports of $20 million if an agreement on equivalency cannot be reached.

Restrictions on food additives also discourage prepackaged food imports from the United States. Switzerland prohibits, without any health or safety basis, many food additives which are commonly used both in the United States and the EU. Labeling requirements have also been applied recently in ways which appear to discriminate against foreign suppliers and suppliers of innovative products.

### LACK OF INTELLECTUAL PROPERTY PROTECTION

Switzerland has one of the strongest regimes in the world for the protection of intellectual property rights and has shown a willingness to enforce its laws effectively. A new copyright law entered into force in 1993, providing for stiffer penalties for the illegal copying and distribution of video cassettes. While some illegal importation and copying may still occur, video piracy appears to have been driven entirely underground and does not have a significant market impact. Software piracy was a problem in the early 1990s, but a large and well publicized corporate raid in 1993 appears to have made a significant dent in corporate copying. In the last two years, however, piracy levels seem to have increased again. The Business Software Alliance estimated that software piracy caused losses to its companies of SFR 84 million in 1996. This represents a significant share of the Swiss software market.

A minor problem also remains with cable retransmission. While Swiss copyright law provides for a cable retransmission right, claims by foreign producers can only be made through a local collection society.

Finally, theft of pay-television, premium channels, and other satellite signals using decoding devices has become a widespread problem. The government has recognized this problem and proposed remedial legislation.

**SERVICES BARRIERS**

U.S. airlines are prohibited from providing ground handling services to third-country airlines at Zurich airport, and Swiss authorities have shown no willingness to eliminate this barrier. A new problem in transportation services arose late in 1996 when the Swiss railways signed an exclusive arrangement with a Swiss firm (wholly owned by Swissair) to provide computerized reservation system (CRS) services to the railway. This exclusive arrangement will effectively prevent other firms from active participation in CRS business in Switzerland because travel agents will no longer be able to sell rail tickets using other available CRS services. The United States has approached the Swiss Government on this problem and is awaiting a response.

Telecommunications and information services have been dominated by the Swiss Post, Telephone and Telegram Administration's statutory monopoly over most of the telecommunications market. In December 1996, the lower house of Parliament approved a reform package which is similar to current EU initiatives. If approved in its current form by the upper house, the legislation will end much of the PTT monopoly. It is not clear, however, whether this legislation will be implemented in a way that gives private firms equal access and opportunity in the Swiss telecom market. Subsequently, in the recently concluded WTO negotiations on basic telecommunications services, Switzerland made commitments on all basic telecom services, subject to legislative approval. It adopted the reference paper on regulatory commitments.

**ANTICOMPETITIVE PRACTICES**

Traditionally, there has been a very high degree of cartellization in the Swiss economy. A new law that came into force at the beginning of July 1996, still permits cartels, but requires companies in the cartel to justify their actions under restrictive economic requirements. The existence of cartels has disadvantaged U.S. exports to Switzerland. The Swiss food industry, for example, is controlled by cartels of producers, wholesalers, processors, and retailers. These organizations have succeeded in maintaining non-tariff barriers, such as import calendars, which are designed to favor domestic production.

Switzerland

# TAIWAN

In 1996, the U.S. trade deficit with Taiwan was $11.5 billion, an increase of $1.8 billion from the U.S. trade deficit of $9.7 billion in 1995. U.S. merchandise exports to Taiwan were $18.4 billion, a decrease of $882 million (4.6 percent) from the level of U.S. exports to Taiwan in 1995. Slower Taiwan growth for this year reduced its imports from virtually all major trading partners, but the U.S. decline was one of the smallest. Taiwan was the United States' seventh largest export market in 1996. U.S. imports from Taiwan were $29.9 billion in 1996, an increase of $936 million (3.2 percent) from the level of imports in 1995.

The stock of U.S. foreign direct investment (FDI) in Taiwan in 1995 was $4.4 billion, an increase of 13.2 percent from that in 1994. U.S. FDI in Taiwan is concentrated largely in the manufacturing, banking, and wholesale sectors.

## Overview

Taiwan is the seventh largest overseas market for U.S. goods. As such, trade barriers affect a very large volume of trade. During the past year, USTR has made significant progress with Taiwan in improving market access issues involving medical devices, telecommunication, and the protection of intellectual property.

Major negotiations continue in the context of Taiwan's application for admission the World Trade Organization (WTO). In these WTO-related talks, significant progress is being made to open Taiwan's market for U.S. agricultural products, U.S. services especially construction services, U.S. beer, wine, and spirits, U.S. automobiles, and a wide range of other U.S. products. Nevertheless, significant trade issues remain as described in the following paragraphs.

## IMPORT POLICIES

### Tariffs

Many agricultural tariffs were lowered as part of Taiwan's 1995 unilateral tariff reductions. U.S. exporters nevertheless consider many of the reduced tariffs, as well as other agricultural tariffs, to be high enough to create a significant barrier to exports. Some examples (of many) include: fresh fruits (40-42 percent tariff), processed vegetables, including vegetable juices (35-40 percent), and sunflower seeds and oil (21-24 percent).

In addition, U.S. agricultural exporters have increasingly reported instances in which the customs authorities on Taiwan have reclassified import items to lines with higher tariffs, often after years of trade history. This practice is most prominent in agricultural commodities, such as mixed feed stuffs, tallow and grease, and intermediate ingredients. Such a practice negates some of Taiwan's tariff cuts.

Certain industrial products are also subject to high tariffs. In 1996, Taiwan imported some $550 million worth of automobiles from the United States, accounting for 25 percent of total auto imports. On automotive parts, the average nominal duty is 20 percent. The actual duty rate for passenger cars is presently 30 percent, and 35-42 percent for commercial vehicles. However, the effective rate (duty plus taxes) for passenger cars and trucks is 60-100 percent The tariffs placed on some commodities have made market access difficult according to U.S. industry sources. The products reported as affected are home appliances (4.5-15 percent), camera film (5 percent), and wine ($4.40/liter).

To promote trade liberalization in accordance with the Asia Pacific Economic Cooperation (APEC) Bogor Declaration, in December 1996, Taiwan authorities submitted to its legislature a bill to reduce tariffs on some 1,100 categories. These include many items of concern to the United States such as buses, agricultural products, fruits and vegetables, and camera film.

With substantial tariff reductions, U.S. companies will benefit from increased potential markets. Based on Taiwan's 1996 imports from the United States, some $70-75 million of U.S.-made home appliances and $50-60 million of alcohol products would be affected by removing these trade barriers. Taiwan has indicated, for example, that it will participate in the Information Technology Agreement tariff reductions. The United States is seeking additional tariff cuts in the context of WTO accession negotiations.

**Licensing and Restrictions**

Taiwan has greatly reduced the number of items requiring import licenses. The share of import categories exempt from control was increased from 34 to 85 percent with the introduction of a "negative list" in July 1994 and its expansion in 1995. At present, there are 859 categories that require approval from the relevant authorities in order to clear customs. Another 276 require pro-forma notarization from local banks or import permits from the Board of Foreign Trade (BOFT).

Taiwan restricts the importation of 256 items, which may not be imported without special permission from the Taiwan authorities. Included in this category are agricultural items that can only be imported pending the agricultural authorities' prior approval. This amounts to a *de facto* ban on imports of these products. Quarantine requirements also block imports of certain plant and animal products. Items under unreasonable quarantine restrictions include chicken (fresh and frozen), certain cuts of pork, peanuts, live dairy cattle vaccinated against brucellosis, and adzuki beans. Rice and rice products are considered to be exceptional items requiring approval from Taiwan's Provincial Food Bureau. Imports of animal offal (beef, pork, and poultry), sugar, and selected dairy products are banned. USTR is seeking to remove these barriers through the WTO negotiations.

In addition to these restrictions on agricultural items, the Council of Agriculture also implements what amounts to a *de facto* ban on the importation of fishing boats (including sport fishing boats), which has frustrated the export efforts of several U.S. firms. For some products where licenses are required, the importer may be required first to obtain the authorization of numerous agencies such as Taiwan's Department of Health for medical equipment, the Council of Agriculture for certain fertilizers, and the Department of Environmental Protection for waste and scrap copper, aluminum, lead, and zinc. Often these additional approvals and documentary requirements add to the administrative burdens of importing the products into Taiwan or make importation effectively impossible for small exporters without the appropriate connections with the relevant authorities.

The U.S. pharmaceutical industry has reported that import licenses are not granted for certain products such as generic drugs. The industry notes that Taiwan's Department of Health and Board of Foreign Trade retain the right to cease issuing import licenses for certain pharmaceutical products that require no special manufacturing technology and can be produced locally. These and other barriers are being discussed in the course of Taiwan's WTO accession.

The commodity tax is a domestic excise tax applied to 29 domestic and imported products. On a few important products, most notably automobiles, Taiwan imposes commodity taxes at higher rates for certain types of products not produced locally. For example, cars with engines smaller than 2,000 cc face a 25 percent commodity tax. Those with engine displacements of 2,001 cc to 3,600 cc are taxed at a 35 percent rate, and those above 3,600 cc at 60 percent. The largest locally made car has an engine displacement of 3,600 cc. In addition, all products entering Taiwan are subject to a 0.5 percent *ad valorem* harbor tax.

Taiwan is in the process of revising its commodity tax law. The United States is seeking, in the context of bilateral WTO negotiations, to ensure that these changes are consistent with WTO rules.

**STANDARDS, TESTING, LABELING, AND CERTIFICATION**

Industrial products (such as air-conditioning and refrigeration equipment) are required to undergo testing to verify energy efficiency and capacity before clearing customs. Recent efforts to enforce compliance of some imported products with Taiwan standards have resulted in long delays at customs for some U.S. products entering the market, as testing facilities are inadequate and testing procedures slow and inefficient.

The most prevalent restrictive standards and testing requirements exist for agricultural goods. Taiwan's lack of an internationally accepted set of pesticide tolerance levels for imported fruits and vegetables sometimes impedes trade in these products. Imported agricultural goods are routinely tested while authorities simply check the production methods used domestically. For example, the authorities determine the purity of imported fruit juices using an amino nitrogen test, a purity standard not applied to domestic producers. Similarly, stringent microbiological and chemical residue testing of imported food products such as turkey, pork, and game meat limits imports. Standards on preservatives for soft drinks preclude the import of certain beverages. Registration procedures for imports of pharmaceuticals, medical devices, and cosmetics are both complex and time consuming, and have been the subject of a number of complaints by U.S. firms.

U.S. medical device manufacturers contend that Department of Health (DOH) product registration procedures are particularly onerous because the DOH does not use quality standards such as Good Medical Practice or ISO 9000 to evaluate applications. Foreign manufacturers must also re-register second or third generation versions of previously approved products, and have repeatedly complained that delays in the registration process limit their access to Taiwan's market. U.S. medical device manufactures, like pharmaceutical manufacturers, contend that DOH regulations are not consistently applied, particularly with regard to clinical trial data requirements.

**GOVERNMENT PROCUREMENT**

## Taiwan

Under current Taiwan law, most public enterprises and administrative agencies must procure locally if the goods and services are available locally, or if acceptable domestic substitutes are available. It is not possible to calculate how much more U.S. firms could sell if all public tenders in Taiwan were open to international suppliers. In the telecommunications area, to cite one example, local U.S. industry sources believe that they might be able to sell up to $100 million more per year to the Chunghua Telecom Corporation if the "buy Taiwan" policy were eliminated. U.S. industry has also been hindered in the bidding on major projects by non-transparent procurement procedures, which include the use of invisible ceiling prices on bid tenders and unlimited potential damages and contingent liability requirements which are inconsistent with international practices. Other problems include: expensive bond requirements, short lead times on major tenders, non-transparent and lengthy warranty provisions, unclear payment schedules, and pre-qualification requirements which limit experience to similar projects in Taiwan and disqualify related overseas experience. Additional limitations include a requirement that foreign firms have a local construction license or else establish a local subsidiary in order to bid on public projects. Possible exceptions to current laws involve construction services requiring new technology or cases where foreign firms provide consulting and other services.

Taiwan recently liberalized entry into its construction industry by allowing foreign companies to own more than 49 percent of the equity in a local construction firm. To date, the United States is not aware of any foreign companies which have pursued this option. Taiwan authorities have considered, but have been slow to enact, changes to regulations that would allow foreign companies to use overseas experience to qualify for a "Class A" license (licenses allowing work on construction projects valued at over $1.2 million; to qualify, contractors must have a minimum of four years' experience in Taiwan contracts valued at a total of $5.8 million).

The Taiwan authorities are extending the scope of offset provisions through Industrial Cooperation Programs (ICPs). The ICPs require foreign vendors to propose programs with such benefits as technology transfer, local procurement, or international marketing assistance. A key example is the "Aeronautics and Space Industries Development Program," announced in 1990, which mandates industrial cooperation and aerospace technology transfer for major government procurements. The development program is an acknowledged form of industrial targeting aimed at technology transfer to the Taiwan aerospace sector. The United States is concerned about the current program, and in particular any expansion of the scope of such provisions.

Taiwan has committed to adhere to the WTO Government Procurement Agreement (GPA) as part of its WTO accession. Since April 1995, Taiwan has actively conducted bilateral GPA negotiations, including with the United States. In preparation for GPA membership, Taiwan has begun to reform its procurement policies. In December 1996, a draft Government Procurement Law was submitted to the Legislative Yuan for passage. The Public Construction Commission publishes a daily "Government Procurement Gazette" which covers local tender announcements by 628 of Taiwan's central, provincial, and municipal entities. The Central Trust of China and other agencies procuring on behalf of smaller agencies publish tenders in the Gazette. The Gazette includes tender announcements for consulting services, product contracts, and research contracts with procurement amounts exceeding NTD 4.5 million ($160,000) and construction-related procurement exceeding NTD 50 million ($1.8 million). USTR will continue to press this issue in its WTO negotiations with Taiwan.

## LACK OF INTELLECTUAL PROPERTY PROTECTION

Recent developments in Taiwan with respect to protection for intellectual property rights (IPR) have been encouraging. Enforcement has improved, revisions to the laws have been submitted to the legislature to bring them into conformance with trade-related aspects of intellectual property rights (TRIPs), and Taiwan's IPR education campaigns have continued. These improvements led to the removal of Taiwan from all Special 301 lists during a November 1996 out-of-cycle-review.

Taiwan agreed to an 18-point action plan on strengthening intellectual property rights during an April 1996 meeting with the United States, dealing with regional piracy, general enforcement measures, and simplification of the software and trademark export monitoring systems. In 1996, the Minister of Justice instructed Taiwan's prosecutors to investigate and indict any Taiwan citizen involved in copyright counterfeiting activities in mainland China, in accordance with Article 251 of Taiwan's Criminal Procedure Code. The Minister also informed all prosecutors' offices that IPR cases should receive the highest priority and that strict penalties should be imposed on violators. Prosecutors were told not to "recklessly drop charges" or commute imprisonment to fines in such cases, and to impose heavier penalties in cases involving severe IPR infringement. Reports from industry sources confirm that the sentences actually being meted out are helping to deter violators.

The Ministry of Economic Affairs (MOEA) issued a Public Notice in 1996, requiring all Taiwan CD manufacturers, in accordance with the Commodity Labeling Law, to use a unique identification number on their products during CD production, effective January 1, 1997. This number will assist law enforcement officers in tracking pirated products. The Ministry also established an "IPR service window" under the auspices of MOEA’s anti-counterfeiting committee. This window offers U.S. businesses a one-stop location to register complaints, inquire about protection, seek advice, and so on.

MOEA is in the process of reviewing draft guidelines to simplify Taiwan's Software Export Monitoring System (SEMS) procedures, at the request of the United States. Some simplifications have already been implemented, such as clarifying what is considered controlled software and changing the unit measure of software reported on the export declaration form.

Since Taiwan is not a member of any multilateral intellectual property conventions, such as the Berne or Paris Conventions, accession to the WTO will require Taiwan to revise its laws on copyrights, patents, and trademarks to bring them into conformity with the requirements of the TRIPs Agreement. Some of the most important provisions in the revised Copyright Law include providing protection for works dating from 50 years prior to Taiwan's accession to the WTO; better protection for performers; revision of the provisions on border enforcement; and limit compulsory licensing to the exercise of mechanical reproduction rights. Changes to the Patent and Trademark Laws include explicit protection for well-known foreign marks, provisions for national treatment for patent applications, and more stringent requirements for compulsory licensing of patents.

The United States and Taiwan signed a Memorandum of Understanding (MOU) on April 10, 1996, to provide priority filing rights for patents and trademarks on a reciprocal basis. The United States became the first country to sign such a MOU with Taiwan on trademarks, and the fifth on patents, following Germany, Australia, Japan, and Switzerland.

## SERVICES BARRIERS

There is tremendous potential for U.S. services companies in Taiwan. Opening this sector is a priority for the Administration in the WTO negotiations.

### Insurance

In 1996, Taiwan adopted several liberalization measures. Foreign insurance companies, who formerly were only permitted to own property they occupied themselves, are no longer prohibited from investments in real estate. These investments are still subject to a case-by-case approval requirement. Moreover, Taiwan has begun to reform its fixed tariff schedule system for insurance premiums. Beginning January 1, 1996, the Taiwan authorities began allowing insurance companies to set tariff rates for group insurance policies (50 or more persons) after negotiations with the policy purchasers. For groups with less than 50 persons, the tariff rate may be set according to a range determined by the Ministry of Finance (MOF). For other insurance policies, tariff rates are still set and approved by the MOF.

Although progress has been made in additional areas, some barriers remain. Foreign insurance firms not organized in the form of a limited liability joint stock company have been denied licenses to set up branches in Taiwan. Although in 1996 the time required for approval of standard products has been shortened, on average, from two months to only one or two weeks, the approval process for new insurance products is still relatively time-consuming, discouraging the introduction of such products to the Taiwan market. Taiwan regulations stipulate that no more than 10 percent of an insurance firm's working capital may be deposited in any one bank. This limit complicates accounting procedures for U.S. insurance firms and makes it difficult for them to obtain good service from local banks.

The above-mentioned barriers may cost U.S. insurance firms an estimated $25 million a year in terms of premium revenue.

### Banking

Taiwan has continued to liberalize its banking sector. In July 1996, the Central Bank of China (CBC) permitted banks to set their own foreign exchange (forex) positions, replacing the CBC-set limits of the past on unsettled overnight transactions from banks' foreign exchange trading. However, CBC imposed a new limit, that NTD derivative contracts may not exceed one-third of the forex positions.

Taiwan has substantially relaxed restrictions on forward forex contracts. In January 1996, banks were authorized to set margin requirements for their customers themselves. The scope of risks which forward forex contracts could cover has steadily expanded from trade-related transactions to include all capital and service trade. All restrictions on the duration of these contracts were dropped on July 1, 1996. In December 1996, CBC dropped a "negative list" of financial transactions for which forward forex contracts could not be used to hedge risk.

Taiwan also relaxed limits on capital flows. In January 1996, the annual limit for a corporate entity's remittances into (or out of) Taiwan without prior CBC approval was increased from $10 million to $20 million. Also in January 1996, CBC lifted the $3 billion ceiling on convertible bonds (CB) and global depository receipts (GDR) issued overseas by listed companies for conversion into new Taiwan dollars (NTD) to finance domestic investment. In June 1996, CBC permitted all domestic firms not listed on the Taiwan stock exchange to raise funds overseas by issuing CB and GDR overseas for conversion into NTD. In October 1996, domestic firms were allowed to borrow foreign currency loans from foreign sources for conversion into NTD. Prior to this measure, business firms had been permitted to borrow funds overseas without any limit, as long as the loans were not converted into NTD.

U.S. and other foreign and domestic banks are still subject to foreign exchange liability ceilings. However, these ceilings will be replaced with reserve requirements as soon as a bill to amend the "Central Bank Law" passes the legislative process. Offshore banking units are not permitted to conduct business with residents, including taking deposits and extending loans denominated in NTD, but a bill to amend the "Offshore Banking Law," which has already passed its first reading in the Legislative Yuan, could lead to significant liberalization. Another restriction faced by foreign banks is that they may not open additional branches until their first branch has been open for two years.

These restrictions may cost U.S. banks in Taiwan an estimated $20 million a year in lost business opportunities.

**Securities**

Taiwan's securities market experienced substantial liberalization last year. In March 1996, the MOF abolished the 49-percent foreign ownership limit for securities investment and trust companies (SITC). The rule that applications to open a new SITC could only be submitted during the month of October was also dropped. Along similar lines, in May 1996, Taiwan's Securities and Exchange Commission (TSEC) ended its requirement that applications from foreign securities firms to establish branches in Taiwan could only be filed during June and July. In June 1996, minimum staff requirements for securities firms were eliminated. Numerical limits on branching by securities firms were also removed. Previously, twelve months had to elapse between opening branches. Limits on the maximum number of branches a securities firm could have were also phased out.

In March 1996, the TSEC allowed non-residents to trade in Taiwan securities, subject to the existing limits on foreign ownership in listed companies. Non-residents were also subject to investment limits of $5 million for a foreign individual and $20 million for a foreign corporate entity (other than a qualified foreign institutional investor (QFII)). For QFII, TSEC raised the portfolio investment limit from $400 million to $600 million in December 1996. The limit for a single foreign investor in any single issue rose to 10 percent. The limit for all foreign investors in a single issue was raised to 20 percent in February 1996, and was increased again to 25 percent in November 1996.

In February 1996, TSEC relaxed qualification requirements for QFII. Unit mutual funds and investment trust funds in place for three years and managing over $200 million became eligible for QFII treatment.

Previously, only foreign banks, insurance companies, securities funds, and fund management firms and other investment institutions could be treated as QFII.

In July 1996, domestic securities firms were permitted to facilitate trading in offshore securities listed on foreign stock markets (other than in mainland China). The brokers or their subsidiaries overseas must have seats on the exchanges where the trading takes place. Prior to July 1996, only the Taiwan branches of three foreign securities firms, which had seats on overseas exchanges, had been allowed to broker trading on the New York, London, and Tokyo stock exchanges.

In September 1996, TSEC streamlined the application procedure for futures commission merchants to establish additional branches. The minimum capital requirement for each additional branch was reduced from NTD 15 million to NTD 10 million. Taiwan has continued to open foreign futures exchanges and foreign futures products to investors on the island. However, as of January 1997, Taiwan has not licensed Taiwan's futures commission merchants to offer their customers Taiwan stock index contracts already traded on foreign futures exchanges.

Taiwan's "Securities and Exchange Law" still forbids foreigners to serve as a dealer, trader, broker, or underwriter. They may only work as researchers, analysts, advisors, or accounting personnel. Establishment of Taiwan's own futures exchange is pending enactment of "Futures Trading Law" now being considered by the Legislative Yuan.

The above-mentioned investment limits, foreign ownership limits, and employment restrictions may cost U.S. firms for tens of millions of dollars in business opportunities a year.

**Engineering**

Foreign engineers may participate in Taiwan's engineering examination provided that citizens of Taiwan are permitted to engage in engineering work in the foreign engineer's country. A foreign engineer who has passed the examination and received a license cannot establish a practice in Taiwan, but may be employed by a certified local consulting firm or a foreign-invested engineering firm.

**Telecommunications**

New telecommunications legislation enacted in January 1996 represents a major step towards liberalization of the telecommunications sector and offers significant opportunities for U.S. business. The legislation (actually three related laws) stripped the Directorate General of Telecommunications (DGT), the previous monopoly provider of services, of operating responsibilities, and established in July 1996 a state-run operating company called the Chung Hwa Telecommunications Company Limited.

The laws also allow for the first time foreign investment in Taiwan's $5.3 billion telecommunications market. Foreign investment shares in Type One services -- those involving the installation and operating of facilities which provide telecommunications services, e.g., cellular, paying, trunking rate, and wireless data services -- are limited to no more than 20 percent. The new legislation allows 100 percent U.S.-owned and other foreign-owned firms to provide Type Two, or basic, value-added network services (VANS), i.e., voice services, information storage and retrieval, information processing, remote transactions, and electronic data interchange. The legislation prohibits a provider of Type One services to use profits from such services to subsidize its VANS, which had been a major concern of U.S. companies. The legislation does, however, allow cross-subsidization of Type One services open to competition with revenues from monopoly Type One services such as local, long distance, and international long distance telephones.

In May 1996, Taiwan's Ministry of Transportation and Communications (MOTC) announced a lifting of investment bans on mobile phone, paging, mobile data, and trunk radio services. After a review of all applications by an autonomous committee, eight licences for mobile telephone systems were announced in January 1997. Consortia including U.S. companies won four of the eight licences. A separate review committee is examining applications for paging, trunking radio, and mobile data communication licences.

MOTC estimates that by the year 2000, the cellular telephone market will reach 6 million, a 25 percent penetration rate, and the paging market will double from 2.5 million to 5 million. The market for switching equipment and handsets for that period is estimated at $2.5 billion for cellular and $569 million for paging.

**Intermodal Transportation Services**

In September 1989, Taiwan agreed to amend Article 35 of the Highway Law so that U.S. ocean carriers would be able to own and operate trucking for land transportation of containers as part of the intermodal movement of cargo. Legislation to this effect has not yet been enacted. The United States has been urging Taiwan to take action as part of its Schedule of Services Commitments under GATS.

**Air Express Service**

U.S. courier and air express service providers report that the recent Taiwan decisions to provide facilities at the Chiang Kai-shek International Airport in Taipei satisfy their requirements for the provision of efficient services to their customers worldwide.

**Motion Pictures**

Taiwan increased in June 1996 the number of movie prints per title which can be imported from 28 to 31. The number of cinemas which may show the same foreign film remained the same, 11 for Taipei and Kaoshiung and 6 for Taiwan's other cities.

**Legal Services**

Foreign law firms that wish to operate in Taiwan must either set up as a consulting firm or work with local law firms. Qualified foreign attorneys can act as consultants to Taiwan law firms and may provide legal advice to their employers only.

## Taiwan

### INVESTMENT BARRIERS

In July 1996, Taiwan relaxed restrictions on foreign investment. The telecommunications and real estate industries were opened to foreign investors, subject to ownership limits and approval requirements. Taiwan lifted all restrictions on investments by foreigners in petroleum refining, coal coking, and manufacture of digital switching office systems. Taiwan has also removed many other barriers to foreign investment, abolishing export performance and local content requirements (except in areas such as the automobile and motorcycle industries), and liberalizing repatriation of earnings and capital remittances. Investment in electricity generation has been open to foreigners since 1994.

Foreign ownership limits for insurance, securities, banks, offshore futures brokering, foreign exchange brokerage, and securities investment trust companies have been removed over the past three years. Foreign ownership limits for shipping companies and foreign forwarders were raised from one-third to one-half in November 1996. Other industries with foreign ownership limits include leasing (90 percent), mining (50 percent), trust companies (40 percent), cement (50 percent), and air transport (33.3 percent).

Industries still effectively closed to foreign investment include agricultural production, trucking, cigarette and liquor manufacture, and defense-related industries. In early 1995, Taiwan reinstated a five-year tax holiday -- which had been abolished in early 1991 -- for new investment in Taiwan by foreign or domestic entities. The coverage of tax incentives for major investment projects was expanded from the industrial sector to include some agricultural industries and the services sector.

The U.S. pharmaceutical industry has complained about discriminatory treatment of foreign-invested pharmaceutical companies in Taiwan. When using a third-party manufacturer, a foreign-invested company must submit a complex plant master file to the Department of Health (DOH). In addition, plant master files must be submitted to the DOH for all imported pharmaceutical products. Plant master files must be re-submitted if production is shifted to other plants that do not file with the DOH. Industry sources report that even though these third-party manufacturers are recognized by the OECD, this tedious and expensive procedure must be undertaken. Also, unlike local manufacturers, foreign invested companies with local manufacturing operations also cannot manufacture generic drugs in Taiwan.

### OTHER BARRIERS

The Taiwan Tobacco and Wine Monopoly Bureau (TTWMB) controls the production and distribution of alcoholic beverages and tobacco produced in Taiwan. Under the 1986 Bilateral Agreement on Beer, Wine and Cigarettes, U.S. exporters of those products won the right to deal directly with commercial importers and retail outlets. Further market opening measures were introduced in early 1991, when, under threat of a Section 301 action by U.S. producers, the Taiwan authorities unilaterally opened their markets to imports of distilled spirits, except in bulk. The U.S. is pressing Taiwan for further market opening in this sector in the WTO discussions.

Despite piecemeal efforts to satisfy the concerns of the United States and other trading partners, U.S. alcohol and tobacco producers find the Taiwan import system to be cumbersome and costly. Repackaging of bulk alcohol imports is banned.

In December 1996, Taiwan authorities submitted alcohol and tobacco tax and administrative bills, which will replace the TTWMB system. The draft Tax Law on Tobacco and Alcoholic Beverages would replace the monopoly system with taxes on tobacco products and alcoholic beverages. The draft Administrative Law would establish a new framework to regulate production, importation, and marketing of alcoholic beverages and tobacco products. It would also drop the ban on establishment of private brewers and distillers. These two bills were submitted to the Legislative Yuan for review in mid-December.

# Taiwan

# THAILAND

In 1996, the U.S. trade deficit with Thailand was $4.1 billion, a decrease of $824 million from the U.S. trade deficit of $4.9 billion in 1995. U.S. merchandise exports to Thailand were $7.2 billion, an increase of $809 million (12.6 percent) from the level of U.S. exports to Thailand in 1995. Thailand was the United States' twentieth largest export market in 1996. U.S. imports from Thailand were $11.3 billion in 1996, a decrease of $15 million (0.1 percent) from the level of imports in 1995.

The stock of U.S. foreign direct investment (FDI) in Thailand in 1995 was $4.6 billion, an increase of 22.9 percent from the level of U.S. FDI in 1994. U.S. FDI in Thailand is concentrated largely in the manufacturing and petroleum sectors.

## IMPORT POLICIES

### Tariffs

In the 1996 Thai fiscal year (TFY) from October 1995 to September 1996, the average Thai tariff was 6.7 percent, calculated as a ratio of import duties collected to total imports arriving in Thailand (including imports of goods on which tariffs were waived as part of the Thai Government's program of investment incentives). This compares with a figure of 7.8 percent in TFY 1995. The difference between those figures reflects the continuation of Thailand's tariff reduction policies, designed to bring the country into line with its Association of Southeast Asian Nations (ASEAN) Free Trade Area (AFTA) and World Trade Organization (WTO) obligations. The average trade weighted tariff for dutiable items was 17.01 percent in 1996, down from 21.26 percent in 1995-96. Tariffs accounted for 14.9 percent of government revenue in TFY 1996, a decrease of 2.9 percent from 1995. This continues a downward trend that began in 1990 as a result of high growth rates and increased revenues from other sources. Thailand's obligations as a member of international trading organizations are expected to accelerate the trend.

The Thai Government is currently completing a reform of tariff schedules begun at the end of 1994. The total number of tariff rate categories has been reduced from 39 to 6 categories, with the following rates: 0 percent for certain goods such as medical equipment and fertilizer; 1 percent for raw materials, electronic components, and vehicles for international transport; 5 percent for primary and capital goods, such as machinery, tools, and computers; 10 percent for intermediate goods; 20 percent for finished products; and 30 percent for goods "needing special protection," to include such items as fabrics, clothing, refrigerators, and air conditioners. Altogether, as of the first of 1997, tariff rates on almost 4,000 items are being reduced. Overall, duties that have ranged between 30 to 60 percent are being cut to between 1 and 45 percent. The exceptions are some petrochemical products, for which the Industry Ministry has obtained a grace period of six months from the outgoing government. Therefore, petrochemicals will not conform to the assigned AFTA-agreed lower tariff rates until July 1997.

There are other anomalies in the Thai tariff schedules. In some cases, import duties on unfinished materials have been higher than on finished products. Most of these problems are to be resolved through the adoption of the World Customs Organization's harmonized commodity description and coding system, a move now under consideration by the Thai Government. Certain items, notably some agricultural products, autos and auto parts, alcoholic beverages, and other sensitive products are not included in the roster of tariff reform. The current duty on wine is 58.2 percent ad valorem, or 19.4 Baht per liter, whichever is higher. Thereafter an excise tax formula is applied and both value-added and municipal taxes added, which translates into a 208 percent duty by the time the bottle of wine reaches the consumer. Duties on other alcoholic beverages range between 58.2 and 67 percent, with similar add-ons. The automobile tariff stands at 42 or 60 percent, depending upon horsepower, and the rate for auto parts remains at 42 percent. The excise tax has been raised on certain luxury items, such as yachts and wool carpets, to 50 percent.

**Agriculture and Food Products**

Thailand's tariff rate quota for a selected number of agricultural products was adjusted in 1996. Despite the importance of farm products in a still heavily agricultural economy, the Thai Government is lowering tariffs beyond its WTO commitments for certain agricultural product and food products. As of October 1996 the quota for soybeans was eliminated and that for soybean meal was reduced, provided specific domestic purchase requirements are met. These steps are not required by Thailand's WTO commitments. Likewise, the quota and import duty for corn were eliminated. However, the Thai Government continues to require that imports arrive between February and June, and to subject the liberalized tariff-rate quota to domestic wholesale corn prices, which limits the effect of this measure. Rice will be subject to "safeguards" on importation and price levels, but these will be set to meet WTO standards.

Import duties on most high-value fresh and processed foods remain the main constraint to U.S. exports of these products. With the exceptions of wine and spirits, there will no longer be specific duties for most agricultural and food products and ad valorem rates are slated to decline between 35 and 50 percent under WTO rules. Nevertheless, import duties are currently high and will continue to be so following the implementation period. A notable exception was made in 1996 for raw shelled or unshelled tree nuts, when the import duty was reduced to 10 percent. Duties on many high-value fresh and processed food products will remain high even after the reductions of between 33 and 50 percent from current rates under the WTO rules. Since most pre-WTO rates are approximately 60 percent, many items will remain in the 30 to 40 percent range by the year 2004, which is rather high in comparison with Malaysia, Singapore, and Indonesia.

**Quantitative Restrictions and Import Licensing**

Thailand is beginning to bring its import license procedures into accord with WTO obligations. Progress has not been as fast as hoped and import licenses are still required for 42 categories of items, 23 of which are agricultural. Only new motorcycles were removed from the list during 1995-1996. Licenses are required for many raw materials, petroleum, industrial, textile, and agricultural items. All items of food for human consumption require licenses. Import licenses can sometimes be used to protect unproductive local industries and to encourage greater domestic production. Ten categories of items which do not require licenses must nevertheless comply with the regulations of concerned agencies, which require extra fees or certificates of origin.

**Customs Barriers**

Thailand's customs valuation procedures continue to be a barrier to U.S. exports. The Thai Customs Department enjoys an unusual degree of autonomy, and some of its practices appear to be arbitrary and irregular. The Department may use the highest previously invoiced price of any product imported from any given country as a check price, disregarding actual invoiced values in favor of this check price to arrive at an assessment of value. This practice fails to take into account differences in quality as well as seasonal fluctuations in prices of agricultural goods, and often results in over-valuation.

Many importers, both Thai and foreign, charge that Customs Department procedures are a barrier to trade because of demands for unrecorded cash at each of the many steps in the clearance procedure. Failure to produce this money can result in damaging delays. The regulations are not made clear to Thai or foreign importers, and are reported to be unevenly applied.

Foreign air couriers in Thailand must conform to restrictive regulations that require an on-board courier for express cargo clearance, but prohibit the use of on-board couriers on all-cargo aircraft. This significantly raises the cost of delivering any single shipment and has precluded certain air carriers from transporting express cargo shipments on their own aircraft. In November 1996, the Thai Customs Department undertook to examine this situation, but has not yet taken steps to correct it.

**STANDARDS, TESTING, LABELING, AND CERTIFICATION**

The Thai Food and Drug Administration (TFDA) requires standards, testing, labeling, and certification permits for the importation of all food and pharmaceutical products. This process can be a barrier due to the cost, the length of the process, and occasional demands for proprietary information.

Food licenses cost about $600 and must be renewed every three years. Food licenses for sample food products imported in bulk usually cost between $40 to $120 per item, while sealed, packaged foods can cost about $200 per item. Pharmaceutical import licenses cost about $480 and must be renewed every year. In addition, pharmaceuticals must be registered for a fee of about $80, and must be inspected and analyzed for another fee of about $40 per item. The process can take more than three months to complete.

Some TFDA procedures have been streamlined, but individual cases can still take up to a year to process. This can be a meaningful delay, but more serious are the occasional demands for proprietary information. All processed foods must be accompanied by a detailed list of ingredients and a manufacturing process description. American manufacturers are reluctant to disclose trade secrets, and some American products have not reached the Thai market for this reason.

Phytosanitary standards that prohibited entry of U.S. citrus were recently removed for the products of Florida and California. Efforts are currently underway to remove the standards barring entry for Texas and Arizona citrus as well.

**GOVERNMENT PROCUREMENT**

In 1995, the Thai Government approved a policy requiring countertrade on government procurement contracts valued at up to 500 million Baht ($20 million), with exceptions evaluated on a case-by-case basis.

This threshold was increased to a one billion Baht (about $40 million) in April 1996. As part of a countertrade arrangement, the Thai Government can specify markets into which commodities may not be sold (generally markets in which Thai commodities already enjoy significant access). The countertrade requirement is a disadvantage to U.S. suppliers, and the provision for a case by case approach creates a lack of transparency. Additionally, a government-promulgated software license agreement is under consideration that would severely disadvantage U.S. software companies in the Thai marketplace.

## EXPORT SUBSIDIES

Thailand maintains several programs that benefit manufactured products or processed agricultural products and may constitute export subsidies. These include subsidized credit on some government-to-government sales of Thai rice (on a case-by-case basis), preferential financing for exporters in the form of packing credits, tax certificates for rebates of packing credits, and rebates of taxes and import duties for products intended for re-export. In September 1993, Thailand established an export-import bank which has taken over administration of some of these programs, particularly that of packing credits. The export-import bank offers a rate of 10 percent, about three points below that of other banks.

## LACK OF INTELLECTUAL PROPERTY PROTECTION

Despite the passage of significant legislation protecting the rights of copyright, patent, and trademark holders in Thailand, enforcement of intellectual property rights (IPR) continues to be one of the leading trade issues between the United States and Thailand. After the Thai government enhanced protection of pharmaceutical products and passed a revised copyright law in 1994, Thailand was moved from the U.S. Special 301 "priority watch list" to the "watch list" in November 1994. After the new copyright law became effective in March 1995, the United States in July 1995 restored benefits to Thailand for 11 of the 16 GSP items previously suspended.

Since then, the Thai Government has cooperated with private industry in staging raids against IPR pirates. In September 1996, the Thai legislature passed a long-awaited law establishing an intellectual property and international trade court that legal experts and private industry believe will facilitate and expedite the prosecution of pirates. The new court should begin operations in 1997.

Problems remain, however, with aspects of the copyright law and the enforcement of existing legislation on copyrights, trademarks, and patents. The police seldom initiate action against pirates, and alleged irregularities have undermined private industry's confidence in the reliability of local police forces. To date, no one has ever served time in prison for copyright piracy or trademark counterfeiting, and fines are too low to deter offenders. Vast quantities of illicit goods continue to be sold at the retail level. Although the government sponsored major campaigns to sweep pirates from Bangkok's streets in 1993-1994, the number of arrests and seizures of illicit materials plummeted in 1995 and 1996. Seizures in 1996, for example, ran at just 12 percent of 1994 levels, according to Ministry of Commerce statistics.

### Patents

In September 1992, Thai legislation extended protection to pharmaceuticals and agricultural chemicals and increased patent protection to 20 years. In 1993, following complaints from private industry about inadequacies in the law, the Thai Government established administrative measures to provide a degree of market exclusivity for pharmaceutical products not eligible for protection under the 1992 law ("pipeline protection"), narrowed the scope of compulsory licensing provisions, and restricted the authority of the Patent Review Board. These measures, however, are not fully consistent with the growing international consensus on protecting pharmaceutical products.

Thailand is still in the process of amending its patent law to comply with the WTO Agreement on Trade-Related Aspects of Intellectual Property Rights (TRIPs). The Thai legislature is expected in 1997 to consider a bill abolishing the Pharmaceutical Review Board. This measure would advance objectives of American manufacturers. Industry representatives report that in 1994, approximately $70 million in sales was lost due to deficiencies in patent protection in Thailand. Estimates of losses during 1995 and 1996 due to inadequate patent protection in Thailand are not available.

**Copyrights**

Thailand's new copyright law, which became effective in March 1995, brought Thailand into closer conformity with international standards under the TRIPs Agreement and the Berne Convention (Paris Act). The legislation also increased fines and lengths of sentences for offenders. With active support from U.S. industry associations, the Thai police have conducted raids on pirates in recent years. As a result, the incidence of pirated materials in the marketplace has fallen and sales of legitimate audiocassettes, videocassettes, and software have grown. Nonetheless, the vagueness of certain provisions, particularly regarding decompilation and government use of software, remain of concern. The law does not clearly define activities which constitute software infringement. Moreover, judicial proceedings are slow and actual fines imposed have not served to deter offenders. The sharp decline in police arrests and seizures in recent years has resulted in a resurgence of piracy in certain areas, such as CD-ROMs containing application software. Industry representatives report that software piracy in Thailand cost U.S. companies about $290 million in lost sales in 1996.

**Trademarks**

Amendments to the Trademark Law, enacted in 1992, provide higher penalties for infringement and extend protection to services, certification, and collective marks. While these amendments seem to have created a viable legal framework and led to some improvement in enforcement, trademark infringement remains a serious problem. U.S. companies with an established presence in Thailand and a record of sustained cooperation with Thai law enforcement officials have had some success in defending trademarks, but the process remains time-consuming and expensive. Problems are particularly acute with respect to the Trademark Appeals Board whose actions often lack transparency and consistency.

## Thailand

### SERVICES BARRIERS

#### Basic Telecommunications

In the recently concluded WTO negotiations on basic telecommunications services, Thailand made commitments on all basic telecom services, and will provide market access and national treatment as of 2006. Thailand agreed to adopt pro-competitive regulatory principles in the future, and retained a 20 percent foreign investment limit on telecom services.

Currently, telecommunications services in Thailand are state-controlled, although the Thai Government has allowed increased private sector participation since 1989. Liberalization of the telecommunications market is part of the government's telecommunications master plan, which is slated to allow private sector participation in telecommunications services in all sections of the country within three to five years.

#### Professional Services

Under a 1979 Thai law, aliens are prohibited from providing brokerage services. Foreign ownership of Thai finance and credit firms is limited to 25 percent for companies formed after the law was passed, and 40 percent for those established previous to its enactment.

#### Banking

In order to conform with its WTO obligations, Thailand is undertaking a liberalization of banking regulations. In November 1996, thirty seven foreign banks were granted permission to establish Provincial International Banking Facilities (PIFB), which allows them to conduct Baht transactions. The total of foreign banking assets in Thailand recently exceeded 7.5 percent of the national total. Foreign banks are still disadvantaged in a number of ways, however, especially in the prohibition of branching. While foreign banks may operate an on-site ATM and take part in a local ATM network, they may not participate in the nation-wide ATM network without the approval of domestic Thai banks.

Foreign banks must maintain minimum capital funds of $5 million invested in low yield government securities, or directly deposited in the Bank of Thailand. The number of expatriate management personnel is limited to six in branches and two in Bangkok International Banking Facilities (BIBF). Foreigners are limited to an aggregate maximum of 25 percent share holding in any Thai bank, but there are indications that this level may be raised, perhaps to as high as 40 percent. In December 1996, the Thai Government issued seven new BIBF licenses to replace the seven banks that were graduated in October 1996 from BIBF status to that of full service banks. However, the newly graduated banks are restricted in that they may not open additional branches and must raise their registered capital to two billion Baht, about twice the amount required of a BIBF. The Thai Government announced in January 1997 that it may raise the ceiling for foreign ownership of Thai finance companies and commercial banks from 25 percent to about 40 percent.

**Insurance**

Thailand has attempted to clarify ambiguities in its law by enacting legislation which would explicitly permit the continued operation of existing foreign insurance providers in the domestic services sector. Thai law and regulations currently limit foreign equity in new local insurance firms to 25 percent or less. In June 1996, the cabinet approved a plan to raise the limit to 49 percent. This has yet to be written into law, but the new government is expected to implement the reform plan. The United States continues to work with the Thai Government on this issue.

## INVESTMENT BARRIERS

A new tax treaty between the United States and Thailand was signed in November 1996. The treaty will enter into force in 1997, after approval by the U.S. Senate and exchange of instruments of ratification. Smaller American firms, in particular, were disadvantaged by the lack of a reciprocal tax agreement between the two countries. The new treaty will provide for the elimination of double taxation and give American firms tax treatment equivalent to that enjoyed by Thailand's other tax treaty partners.

In 1997, the Thai Cabinet plans to consider the draft of a new Alien Business Law which, if enacted, would replace the current which has been in effect since 1972. The current law restricts aliens from holding a range of occupations in Thailand. The proposed legislation is expected to reduce these restrictions and to create two categories of restricted occupations. The first includes those occupations which exploit Thai natural resources or are concerned with national security. The second, which is more likely to constitute a barrier to business and investment, includes occupations in which the Thai feel that they cannot compete with foreigners and which they wish to protect, including farming, handicrafts, transportation, and construction. Foreigners are expected to be permitted to file for exceptions to these rules.

# TURKEY

In 1996, the U.S. trade surplus with Turkey was $1.1 billion, an increase of $182 million from the U.S. trade surplus of $927 million in 1995. U.S. merchandise exports to Turkey were $2.9 billion, an increase of $159 million (5.8 percent) from the level of U.S. exports to Turkey in 1995. Turkey was the United States' thirty-sixth largest export market in 1996. U.S. imports from Turkey were $1.8 billion in 1996, a decrease of $23 million (1.3 percent) from the level of imports in 1995.

The stock of U.S. foreign direct investment (FDI) in Turkey in 1995 was $1.2 billion, an increase of 8.2 percent from the level of U.S. FDI in 1994. U.S. FDI in Turkey is concentrated largely in the manufacturing, banking, and wholesale sectors.

## IMPORT POLICIES

### Tariffs and Other Charges

The introduction of Turkey's customs union with the European Union (EU) in 1996 resulted in substantial revisions to Turkey's tariff regime. Turkey now applies the EU's common external customs tariff for third country (including U.S.) imports, and imposes no duty on non-agricultural items from EU and European Free Trade Association (EFTA) countries. Turkey eliminated its mass housing fund surcharge on almost all imports except for agricultural products and used construction machinery. The weighted rate of protection for industrial products from the U.S. and other third countries dropped from 11 to 6 percent with the introduction of the customs union. Higher transitional protection for imports of sensitive goods from third countries are being phased out starting in 1997. By 2000, the average weight is set to fall to 4 percent.

Although EU/EFTA countries have received preferential tariff treatment on industrial products for several years, initial data indicate that the introduction of the customs union led to a shift in Turkey's import pattern. During the first four months of 1996 the EU's share of total Turkish imports rose to 52 percent from 44 percent during the same period in 1995, while the share of U.S. goods fell from 12 percent to 8 percent.

Consistent with its WTO commitments, Turkey maintains high border protection on many agricultural goods and food products. Turkey also maintains certain surcharges on agricultural products which are inconsistent with its WTO commitments. In late 1996, Turkey imposed a temporary ban on cattle and beef imports.

### Import Licenses

Turkey requires import licenses for some agricultural commodities, which are issued based on domestic supplies. The government also requires certification that quality standards are met for importation of human and veterinary drugs and certain foodstuffs. Import certificates are necessary for most products requiring after-sales service, including telecommunications and electronic equipment and vehicles. Importers are also required to establish repair facilities in all seven regions of Turkey. Some telecommunications equipment related to radio frequencies require type approvals.

## Turkey

### STANDARDS, TESTING, LABELING, AND CERTIFICATION

The Turkish Government's strict application of phytosanitary standards in late 1996 led to a temporary halt of U.S. grain exports to Turkey. Following extensive bilateral discussions, the government agreed to temporarily suspend its "zero tolerance" standard for certain grains, although the issue remains under discussion.

### GOVERNMENT PROCUREMENT

Turkey normally follows competitive bid procedures for domestic, international, and multilateral development bank-assigned tenders. U.S. firms sometimes become frustrated over lengthy and complicated bidding/negotiating processes. Military procurements generally require an offset provision in tender specifications when the estimated tender value exceeds one million dollars.

In the absence of a bilateral tax treaty, U.S. bidders for Turkish Government service contracts are subject to a 20 percent withholding tax. This can significantly add to the cost of U.S. bids vis-a-vis those from countries which have a tax treaty reducing the rate of withholding for professional services. In March 1996, the United States and Turkey signed a tax treaty which will eliminate this withholding tax, although neither side has yet ratified the treaty.

### EXPORT SUBSIDIES

In 1995, Turkey significantly reduced its export subsidy programs in order to meet commitments to the EU and WTO. The government still provides cash subsidies to a limited number of agricultural exporters. Domestic producers and exporters can take advantage of a number of state programs designed to support production for domestic and export markets, including cash and credit assistance for R&D projects, environmental projects, participation in trade fairs, market research, and establishment of branch offices overseas. From June 1995 to December 1996, the Government of Turkey spent only $6 million under these programs. Exporters also benefit from export credit schemes and guarantees provided by the Turkish Export-Import Bank.

### LACK OF INTELLECTUAL PROPERTY PROTECTION

Turkey's intellectual property regime improved considerably in 1995. After years of complaints from Western businesses and governments about weak intellectual property laws and lax enforcement, the Turkish Parliament approved a number of new laws in mid-1995 as part of Turkey's harmonization with the EU in advance of the customs union. The new patent, trademark, copyright and other laws, as well as Turkish acceptance of a number of multilateral intellectual property conventions, have given Turkey a comprehensive legal framework for protecting intellectual property rights. Enforcement of the new laws, however, was uneven in 1996. Efforts are underway to educate businesses, consumers, judges, prosecutors and others regarding the implications of the new laws. The Turkish judicial system, however, remains overburdened and it will likely be some time before the necessary elements for a smoothly functioning system are in place.

### Copyrights

In June 1995, the Turkish Parliament passed a bill amending Turkey's 1951 copyright law. The bill (1) extends the term of copyrights from 20 to 70 years; (2) extends coverage to computer software; (3) increases fines for violators; and (4) removes many previous exemptions to full copyright protection.

Turkey also acceded to a number of international copyright conventions during 1995, including the Paris Act (1971) of the Berne Convention and the 1961 Rome Convention. The amended copyright law, however, fails to address all of the deficiencies in Turkey's copyright regime or to bring Turkey fully into compliance with Uruguay Round standards for intellectual property protection. The government has acknowledged the need for further amendments and is committed to passing new legislation early in 1997.

### Patents

A new patent law came into effect in June 1995, replacing Turkey's 19th century patent law. The new law was subsequently amended in August and November of 1995. Turkish officials insist the law is fully compatible with the WTO Agreement on Trade-Related Aspects of Intellectual Property Rights (TRIPs), although U.S. officials have questioned a number of provisions, including the law's broad compulsory licensing provisions.

The new law is clearly deficient in one significant respect: coverage for pharmaceutical products and processes will not begin until 1999. This date is in accordance with Turkey's commitments to the EU for the customs union. The legislation also does not contain "pipeline" protection for pharmaceutical products. The Turkish Patent Institute is now accepting applications for pharmaceutical patents in accordance with the TRIPs Agreement's "mailbox" provisions. U.S. industry has also indicated that Turkey fails to protect test data submitted to the regulatory authorities to support applications for marketing approval of pharmaceutical and agricultural chemical products, as required by Article 39.3 of the TRIPs Agreement.

### Trademarks

Along with the patent law, Turkey replaced its trademark law in 1995. Here, too, it remains to be seen how effective the Turkish bureaucracy and legal system will be in controlling the spread of counterfeiting of foreign trademarked products.

Turkey acceded to a number of international patent and trademark conventions in 1995, including: (1) the Stockholm Act (1979) of the Paris Convention for Protection of Industrial Property, (2) the Patent Cooperation Treaty (1984), (3) the Strasbourg Agreement on International Patent Classifications, (4) the Geneva Act (1979) of the Nice Agreement on International Classification of Goods and Services, and (5) the Vienna Agreement Establishing an International Classification of Figurative Elements of Marks.

## SERVICES BARRIERS

Businesses in certain sectors, particularly finance and banking, must obtain special government permission before commencing operations in Turkey. While foreign films are not subject to quotas, Turkish law currently permits localities to assess a higher rate of taxation on receipts generated by foreign films than for domestic films. Despite bilateral consultations between the United States and Turkey in 1996, the Turkish Government has failed to fulfill its agreement to institute measures equalizing these tax rates.

### Basic Telecommunication Services

In the recently concluded WTO negotiations on basic telecommunications services, Turkey made commitments on all such services, and will provide market access and national treatment for them as of 2006. It adopted some pro-competitive regulatory principles. Turkey set a 49 percent foreign investment limit on telecom services.

## INVESTMENT BARRIERS

Turkey has a liberal investment regime in which foreign investments receive national treatment. The Treasury Undersecretariat screens foreign investment proposals, but this appears to be a routine and non-discriminatory process which does not impede investment or limit competition. Almost all areas open to the Turkish private sector are also fully open to foreign participation. Establishments in the financial and petroleum sectors require special permissions. The equity participation ratio of foreign shareholders is restricted to 20 percent in broadcasting and 49 percent in aviation and maritime transportation; in other sectors, 100 percent foreign ownership is permitted.

## ANTICOMPETITIVE PRACTICES

As part of its customs union agreement with the EU, Turkey has pledged to adopt EU standards concerning competition and consumer protection. However, the Turkish Government has not yet appointed the "competition board" mandated in a 1994 law, effectively preventing the law’s implementation. Government monopolies in a number of areas, particularly alcohol, tobacco, and telecommunications services, have been somewhat scaled back in recent years, but remain a barrier to certain U.S. products and services. In 1997, the Turkish telecommunications sector is to be partially privatized and licenses are to be issued for many value-added services. In the tobacco sector, two U.S. tobacco companies have factories in Turkey, although the dominant position of the state monopoly continues to limit their operations.

# VENEZUELA

In 1996, the U.S. trade deficit with Venezuela was nearly $8.2 billion, an increase of slightly less than $3.1 billion from the U.S. trade deficit of about $5.1 billion in 1995. U.S. merchandise exports to Venezuela were more than $4.7 billion, an increase of $100 million (2.2 percent) from the level of U.S. exports to Venezuela in 1995. Venezuela was the United States' twenty-fourth largest export market in 1996. U.S. imports from Venezuela were about $12.9 billion in 1996, an increase of nearly $3.2 billion (32.9 percent) from the level of imports in 1995.

The stock of U.S. foreign direct investment (FDI) in Venezuela in 1995 was nearly $3.4 billion, an increase of 12.7 percent from the level of U.S. FDI in 1994. U.S. FDI in Venezuela is concentrated largely in the manufacturing and wholesale sectors.

Venezuela's economic climate improved dramatically in 1996 as the government abandoned the foreign exchange and price controls it had enacted in 1994 to cope with a financial crisis in the banking sector. Under the banner "Agenda Venezuela," the Government of Venezuela introduced in April 1996 a series of reforms designed to put the Venezuelan economy back on a free-market footing. The government significantly reduced the long-standing subsidy on gasoline -- resulting in an immediate five-fold increase in pump prices -- and re-started its stalled privatization program.

## IMPORT POLICIES

### Tariffs

As a result of the Uruguay Round, Venezuela bound most of its rates at 35 to 40 percent. Venezuela's average applied tariff rate is approximately 10 percent.

Venezuela, along with Colombia and Ecuador, implemented an Andean Pact common external tariff (CET), which took effect on February 1, 1995. The CET has a four-tier structure, with levels of 5, 10, 15, and 20 percent for most products. In accordance with the Andean Pact CET, Venezuela is harmonizing its national tariff schedule with those of Colombia and Ecuador, with some exceptions taken by each country. (Bolivia retains its two-tier tariff structure of 5 and 10 percent, and Peru maintains a two-tier tariff structure of 15 and 25 percent.)

Venezuela also adopted a harmonized automotive policy with Colombia and Ecuador -- which entered into effect on January 1, 1995 -- establishing CET rates of 35 percent for passenger vehicles, 15 percent for mass transit and cargo vehicles, and 3 percent for kits. The policy includes regional content requirements.

Venezuela has continued its efforts to conclude trade arrangements with other countries in Latin America and the Caribbean. Venezuela extends preferential tariffs on a limited variety of products to member states of the Latin American Integration Association (ALADI). Venezuela already has a partial free trade agreement with Chile. It has concluded a free trade agreement with Mexico and Colombia (the "G-3" Agreement), which entered into force January 1, 1995, under which most tariffs are to be reduced to zero by the year 2007. Venezuela also has a preferential agreement with the Caribbean Common Market

(CARICOM), under which CARICOM will start reducing tariffs on Venezuelan goods in 1998. Venezuela, jointly with Colombia, in 1994 signed a framework agreement on free trade with several Central American countries, but has not yet negotiated schedules on tariff reduction and trade liberalization. In conjunction with other Andean Pact members, Venezuela is in the initial stages of negotiating a free trade accord with the Southern Common Market (MERCOSUR).

Venezuela maintains tariffs of 20 percent ad valorem on imports of beer, wines, and all distilled spirits. In addition to the tariffs and a 1 percent customs service fee, a 10 percent luxury tax and a 16.5 percent "wholesale" tax are levied on all imports of alcoholic beverages, while a 15 percent duty is imposed on imports of compound preparations and undenatured ethyl alcohol used in the production of spirits. Wines from Argentina, Chile, and Mexico are subject to the same set of taxes, but to lower duties of 4.0, 0, and 7.2 percent respectively, due to the existence of partial free trade agreements. Eliminating these barriers could increase U.S. exports by $1-5 million.

Venezuela also maintains 20 percent ad valorem duties on canned soups, mixed vegetable juice, biscuits, and cookies; a reduction in the tariff would result in a potential increase of $1-5 million in U.S. exports. The reduction of the 20 percent tariff on film and cameras would result in a potential increase in U.S. exports of $5-10 million in each category.

According to U.S. industry, Venezuela modified its application of its import duties on computer software such that the 15 percent import duty on pre-packaged software is assessed over the entire value of the software package, resulting in a marked increase in the cost of commercializing software in Venezuela.

**Non-Tariff Measures**

The Government of Venezuela applies a "wholesale" tax on most goods and services, at both the wholesale and import level. The wholesale tax is adjusted annually within a range of 5 to 20 percent, with the current rate set at 16.5 percent. A special consumption tax on “luxury items” varies by product within a range of 10 to 20 percent.

Venezuela prohibits the importation of used cars, used clothing, and used tires. There are virtually no other quantitative import restrictions for industrial products.

Venezuela has applied the Andean Pact's price band system for agricultural products since April 1, 1995. Under the system, the ad valorem CET rates for yellow corn, feed grains, oilseeds, oilseed products, sugar, rice, wheat, milk, pork and poultry meat, and derivative products are adjusted according to the relationship between “marker” commodity reference prices and established floor and ceiling prices. These variable duties can drive up effective tariff rates and impede the expansion of trade and investment in Venezuela. The Government of Venezuela also halts the issuance of phytosanitary permits for grain imports to protect domestic producers during the domestic sorghum harvest.

## STANDARDS, TESTING, LABELING, AND CERTIFICATION

Venezuela's denial of certain sanitary and phytosanitary certificates lacks a scientific basis and is discriminatory. Venezuela refuses to issue certificates for imports of U.S. poultry, poultry products, hogs, and pork products on the basis that there is a history of avian influenza and porcine respiratory and reproductive syndrome in the United States. Venezuelan agricultural authorities, however, have failed to establish that these diseases do not already exist in Venezuela. The result has the effect of banning importation of these products. If the ban was lifted, U.S. exports of poultry, poultry products, pork and pork products could amount to $5-20 million a year. According to the U.S. cosmetic industry, Venezuela maintains qualitative restrictions which, if lifted, would increase U.S. exports by less than $5 million a year.

In 1993, the Venezuelan Commission for Industrial Standards (COVENIN) began to apply obligatory domestic standards for commodities to certain imports; by the end of 1995, there were nearly 300 standards. Some Venezuelan importers of U.S. products have alleged that the Government of Venezuela applies these standards more strictly to imports than to domestic products. The certification process is at times expensive, increasing the cost of U.S. exports vis-a-vis domestic products. COVENIN requires certification from independent laboratories -- which is often impossible in the United States.

## GOVERNMENT PROCUREMENT

The 1990 Law of Tenders, its associated regulations, and its modifying decree of 1991, together establish three classifications for government procurement based principally on the value of the goods and services being procured: general tenders (more than $21,200), selective tenders ($2,120 to $21,120), and direct purchases (less than $2,120). For general and selective tenders, the law states that for offers that are within a "reasonable" range of each other for similar conditions, preference will be given according to various criteria, including national content, labor impact, national value added, local participation, and technology transfer. For the purchase of goods, the government also applies a policy, not stated in the Law of Tenders, that local goods should be purchased, unless the price of such products is 25 percent more than the landed cost of competing foreign products.

In the petroleum industry, the national oil company, PDVSA, is required to purchase national materials and supplies. However, PDVSA is permitted to make foreign purchases if domestic firms cannot meet quantity, quality, or delivery requirements. In addition, imported materials supplied by local representatives of foreign manufacturers are classified as "domestic purchases." Firms that supply PDVSA must register with PDVSA's "Unified Suppliers Register" or with the "Unified Contractors Registry." Venezuela is not a signatory to the WTO Agreement on Government Procurement.

## EXPORT SUBSIDIES

Venezuela has reduced the number of export subsidies it provides, but retains a duty drawback system established in June 1994. Exporters can also get a rebate of the 16.5 percent wholesale tax paid on imported inputs. Foreign as well as domestic companies are eligible for these drawback privileges, but U.S. firms located in Venezuela complain of long delays in receiving rebates. Exporters of selected agricultural products -- coffee, cocoa, some fruits, and certain seafood products -- receive a tax credit equal to 10 percent of the export's f.o.b. value.

## LACK OF INTELLECTUAL PROPERTY PROTECTION

Despite significant improvements in the area of intellectual property rights (IPR), Venezuela does not yet provide adequate and effective protection. Enforcement of copyright law has improved over the past year with the creation of a special anti-piracy police unit, but overall, IPR enforcement remains inadequate. There is still widespread piracy of well-known trademarks, videos, satellite signals, and other protected works. Moreover, the Venezuelan court system has proven to be an unreliable means for pursuing IPR claims. As a result of its laws and practices, Venezuela has been on the "Watch List" under the Special 301 provision of the 1988 Trade Act since 1989. Venezuela has ratified, but not yet fully implemented, the provisions of the WTO Agreement on Trade-Related Aspects of Intellectual Property Rights (TRIPS).

Venezuela is a member of the Paris Convention for the Protection of Industrial Property and the Berne Convention for the Protection of Literary and Artistic Works.

### Patents and Trademarks

Two Andean Pact decisions on the protection of patents and trademarks and of plant varieties have been in effect in Venezuela since January 1, 1994, and October 29, 1993, respectively. The decisions are comprehensive and offer a significant improvement over previous standards of intellectual property protection provided by the Andean Pact countries. For example, they provide a 20-year term of protection for patents and reversal of the burden of proof in cases of alleged patent infringement. The provisions of the decisions covering protection of trade secrets and new plant varieties are generally consistent with world class standards for protecting intellectual rights. However, these decisions remain deficient with respect to patents and trademarks. The deficiencies include overly broad compulsory licensing provisions, working requirements, restrictions on biotechnology inventions, denial of pharmaceutical patent protection for patented products listed on the World Health Organization's Model List of Essential Drugs, lack of transitional ("pipeline") protection, and lack of protection against parallel imports.

### Copyrights

Venezuela’s 1993 copyright law substantially improved protection of copyright products and enhanced penalties for copyright infringement. An Andean Pact decision on copyright protection, which complements Venezuela's domestic copyright law, has been in effect since 1994 and established a generally effective and Berne-consistent system.

A National Copyright Office was established in October 1995 and is responsible for controlling, overseeing, and ensuring compliance with the rights of authors and other copyright holders. It can issue opinions, serve as an arbitrator, and impose fines for copyright infringements. In July 1996, the government formed a special anti-piracy unit (COMANPI) to act as an enforcement arm of the copyright office. The eight-officer police unit has the power to seize goods, make arrests, or close establishments for violations of the law. However, it can only act based on a complaint by a copyright holder; it cannot carry out an arrest or seizure on its own initiative. COMANPI works closely with private sector representatives of the U.S. copyright industry, who provide the unit with intelligence information, financial backing, and training.

Since it began operations in August 1996, COMANPI has made 28 raids and seized 96,400 pirated videotapes and thousands of pirated audio cassettes. It also has seized 318 video-taping machines and dozens of other devices that had been used in underground laboratories to make pirated copies of copyrighted material. Inadequate border controls against the import of pirated material, however, are hampering efforts to improve copyright protection still further. A customs bill to strength border enforcement is pending before the Venezuelan Congress.

Protection of encrypted satellite signals remains practically nonexistent. Venezuela is within the footprint of U.S. satellite television transmission and unauthorized reception and distribution of U.S. signals is widespread. Similarly, there is a high rate of cable television piracy. The regional cable operators association (TEPAL) has estimated that half of the pay television subscribers in Venezuela receive unauthorized transmission of U.S. satellite signals. COMANPI, in cooperation with local representatives of the U.S. copyright industry, plans to focus on this problem in 1997.

## SERVICES BARRIERS

Venezuela maintains barriers in a number of service sectors. For example, all professions subject to national licensing legislation (e.g., engineers, architects, economists, business consultants, accountants, lawyers, doctors, veterinarians, and journalists) are reserved for those who meet Venezuelan certification requirements. Imports receiving government-approved tariff reductions or government financing, or those which are government-owned, must be insured by local insurers.

### Basic Telecommunications Services

In the recently concluded WTO negotiations on basic telecommunications services, Venezuela made commitments on all basic telecom services. It will provide market access and national treatment for these services as of November 27, 2000. Venezuela adopted parts of the reference paper on regulatory commitments.

## INVESTMENT BARRIERS

The state continues to control key sectors of the economy, including oil, gas, iron ore, and much of the coal and petrochemical industries; parastatals dominate others, like steel and aluminum. The government, however, plans to privatize several major state enterprises during the first half of 1997, including a four-company aluminum complex, an iron and steel company, and a ferrosilicon plant. Foreign investment continues to be restricted in the petroleum sector. The exploration, exploitation, refining, transportation, storage and foreign and domestic sales of hydrocarbons are reserved to the Venezuelan government or to its entities under Article V of the Hydrocarbons Law. However, the government may enter into agreements with private companies as long as the agreements guarantee state control of the operation, are of limited duration, and have the prior authorization of the legislature meeting in joint session.

## Venezuela

Over the past four years, the oil sector has been opened to increasing amounts of foreign investment through joint ventures and equity associations. In 1996, the government awarded foreign investors equity participation in eight concessions for the exploration and production of light and medium crude. Several equity associations between PDVSA and private companies involving natural gas and heavy crudes also have been approved by the congress. In addition, some 15 "marginal" oil fields have been opened to national and foreign investors under service contracts, with another 20 fields slated for bidding in 1997. As part of PDVSA's plans to double its oil production over the next 10 years, PDVSA expects a total of $65 billion to be invested in the oil sector over the next 10 years, with at least $12 billion coming from U.S. firms participating in joint ventures and equity associations.

Venezuela also limits foreign equity participation to 19.9 percent in enterprises engaged in television, radio, Spanish language press, and professional services subject to national licensing legislation. The level of foreign investment is unrestricted in other sectors of the economy. However, the Government of Venezuela retains wide discretionary power to declare a sector "basic," and to impose a 49-percent ceiling on foreign investment in such designated sectors. Foreign investors in the mining sector are subject to Venezuela's 1944 Mining Law and a complex set of executive decrees which require them to secure a concession from the government. Finally, in any enterprise with more than ten 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.

Venezuela also maintains several other investment-distorting measures. Preferential tax credits and credit access are accorded to export-oriented firms; other investment tax credits are directed to producers and purchasers of locally-produced capital goods. Under the Andean Pact Common Automotive Policy, Venezuela, Ecuador, and Colombia impose strict regional content requirements in the automotive assembly industry. The local content requirement for passenger cars was 30 percent in 1996 and is scheduled to rise to 33 percent in 1998. Some foreign exchange requirements remain in place.

# ZIMBABWE

In 1996, the U.S. trade deficit with Zimbabwe was $42 million, a shift of $66 million from the U.S. trade surplus of $24 million in 1995. U.S. merchandise exports to Zimbabwe were $91 million, a decrease of $31 million (25.4 percent) from the level of U.S. exports to Zimbabwe in 1995. Zimbabwe was the United States' one hundred and ninth largest export market in 1996. U.S. imports from Zimbabwe were $133 million in 1996, an increase of $35 million (35.7 percent) from the level of imports in 1995.

## IMPORT POLICIES

Zimbabwe's economy, including its tariff regime, is in transition from a highly-controlled, statist model to an open, market-based economic system. During the first phase of its structural adjustment program that ended in 1995, Zimbabwe abolished quantitative restrictions in favor of a tariff-based trading system. In early 1996, Zimbabwe undertook a comprehensive review and rationalization of its tariff policies and rates with substantial World Bank input and the cooperation of the Confederation of Zimbabwe Industries (CZI). A new tariff regime, effective March 1, 1997, will lower duties on raw materials and other inputs, thereby removing the anomaly of higher duties on raw materials than on finished products. Although the new tariff rates have not yet been made public, they are expected to range from 5 to 50 percent.

Tariff rates applied to processed agricultural imports are high, ranging from 20 to 45 percent. As of early 1996, the tariff on ready-to-eat cereals was 25 percent, plus an import tax of 15 percent, and a 10 percent surcharge on production cost, insurance, and freight (c.i.f.) basis. The effect of such high tariffs has been to preclude U.S. firms from pricing specific processed agricultural goods within reach of the average consumer, thereby curtailing growth of the domestic market. High tariffs on imported tobacco products have also been reinstated. The high rates on agro-processing products reflect the power of the commercial farmer lobby in Zimbabwe. On the other hand, free access to foreign exchange, abolition of import licensing, and establishment of the Zimbabwe Investment Centre (ZIC) have greatly increased U.S. firms' access to the Zimbabwe market. Export processing zones (EPZ) and certain related tax concessions should boost foreign investment, but a trade performance requirement compels eligible companies to export at least 80 percent of output. The EPZ authority, operational since early 1996, approved 19 projects by the end of the year.

## LACK OF INTELLECTUAL PROPERTY PROTECTION

Since independence, Zimbabwe has joined several international patent and trademark conventions. It is a member of the World Intellectual Property Organization, the Paris Convention for the Protection of Industrial Property (Stockholm Text), and the Berne Convention for the Protection of Literary and Artistic Works (Rome Text). In addition, while Zimbabwe seeks to honor intellectual property ownership and rights, some enforcement problems exist. Audio and videocassette piracy is the most widespread IPR issue in Zimbabwe, but the volumes involved are relatively small. While software bootlegging undoubtedly occurs by users, pirated software is rarely sold commercially.

## Zimbabwe

### INVESTMENT BARRIERS

The Government of Zimbabwe has sought radical improvement in its investment climate by eliminating its most onerous restrictions on foreign investment. It now permits pre-independence investors to remit 100 percent of declared dividends and no longer imposes restrictions on local borrowing. In September 1995, the Reserve Bank of Zimbabwe (RBZ) took additional steps to liberalize blocked accounts, removing most restrictions on repatriation of blocked profits and dividends accrued on pre-1993 investments and allowing repatriation over a three-year period of blocked corporate funds in Government of Zimbabwe external bonds and blocked accounts with authorized dealers. The RBZ also permits Zimbabweans to take up to $500 in cash or its equivalent in other foreign currencies and to use credit cards when they travel abroad.

Zimbabwe has signed investment agreements with the Overseas Private Investment Corporation (OPIC) and the World Bank. Notwithstanding such commitments to investment liberalization, Zimbabwe has yet to embrace the concept of national treatment or discontinue its sizable “reserved list” of sectors that are closed to all but domestic investors and foreign investors in joint ventures with local partners. Furthermore, remittances for royalties, technical services, and management fees are still subject to RBZ approval.

Other problem areas remain. U.S. firms and various national governments, including those of the United States, Great Britain, France, Belgium, and Italy, have voiced serious complaints about the lack of transparency and fairness in the Government of Zimbabwe’s tender process. In one example, the government not only disregarded established tender procedures in the proposed privatization of the Hwange power generation facility but also dismissed the responsible board for criticism of its unilateral decision and lack of transparency. Similar criticism about the lack of fairness in dealing with other energy and telecommunications tenders highlights the potentially adverse impact these procurement procedures can have on foreign investment. In one instance, however, when the U.S. and German Embassies protested lack of transparency in a cellular tender award, the Government of Zimbabwe canceled the decision and reissued the tender, which was then won by the German company and its U.S. subcontractor.

An RBZ ruling on the amount and rate of disinvestment is blocking free access by U.S. petroleum companies to their share of almost $3 million in funds paid by the Government of Zimbabwe for use of storage facilities at a refinery owned but closed down by the investors. While the RBZ has approved release of the funds to the refinery owners over 20 years at 4 percent interest, it steadfastly refused to authorize, as requested in this case, the “currency switch deal” option preferred by the investors. This authorization would have allowed the investors to swap currency in the account with that of investor outside the refinery deal who have sought access to Zimbabwean dollars. The RBZ discontinued currency switch deals in December 1994 after reported abuse.

Another roadblock to foreign investment is the delay and lack of transparency by the Government of Zimbabwe in processing work permits for representatives of U.S. firms. In one example, a senior executive in a major U.S. corporation was denied renewal of his work permit purportedly on the basis of his age (63). The case is ongoing. Delay and lack of transparency is also often found in RBZ approval of investments in existing operations. In a new and potentially very negative development, U.S. firms have also complained of official attempts to dictate their choice of local partners (a local partner is required in certain reserved sectors) under the guise of indigenization enforcement.

## OTHER BARRIERS

The Government of Zimbabwe does not have a well-defined privatization program, but is in the process of canvasing both the public and private sectors for input into developing a comprehensive program that will liquidate some parastatals, commercialize others, and wholly or partially privatize the rest. A key goal set by the Government of Zimbabwe is to use a privatization/indigenization program to increase black ownership of economic assets. Specifically, there is interest in using proceeds from the sale of state assets to set up a national investment trust to fuel indigenization efforts and to retire massive government debt. A draft indigenization policy is expected to be released in early 1997.

Responsibility for decision-making and implementation of the privatization policy is unclear. The pace of privatization slowed after President Robert Mugabe criticized a late 1995 sale of government shares in the Delta Corporation (a large conglomerate) on the Zimbabwe stock market because revenue generated from the sale did not support the government's indigenization efforts. In December 1996, the government sold a portion of its Delta holdings on the open market to a foreign concern. While some again asserted that the sale undermined the government's indigenization plans, President Mugabe was not among them.

Zimbabwe has commercialized all of its agricultural marketing boards and intends ultimately to privatize several of them. It has committed itself to selling off its stake in a sizable number of publicly traded firms. The majority government-owned Cotton Company of Zimbabwe (CCZ), formerly the Cotton Marketing Board (CMB), and the Dairy Company of Zimbabwe (DCZ), formerly the Dairy Marketing Board (DMB), now work as private commercial enterprises. As promised, the government ended a cotton subsidy that had violated the terms of the World Bank's financing. All parastatals, including the CCZ, must now pay taxes and declare dividends. In January 1997, the government announced that it wishes to sell a majority holding in the long-troubled Zimbabwe Iron and Steel Company (ZISCO), although some economists warned that only foreigners could undertake such an investment, an outcome that would run counter to the government's indigenization objective.

# Zimbabwe

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# APPENDIX
## US Data for Given Trade Partners in Rank Order of US Exports
**(Values in Millions of Dollars)**

| Country | Trade Balance 1995 | Trade Balance 1996 | Change 1995-96 | Exports* 1996 | Change 95/96 Value | Change 95/96 Percent | Rank | Imports** 1996 | Change 95/96 Value | Change 95/96 Percent | FDI*** 1995 | % Change 1994-95 | FDI Area |
|---|---|---|---|---|---|---|---|---|---|---|---|---|---|
| World | (183,881) | (194,180) | (10,299) | 714,672 | 45,333 | 6.77 | | 908,848 | 55,625 | 6.52 | 711,621 | 14.58 | Manuf., Finan., Wholesale |
| Canada | (18,157) | (23,922) | (5,765) | 132,584 | 5,622 | 4.43 | 1 | 156,506 | 11,387 | 7.85 | 81,387 | 8.53 | Manuf., Finan., Petrol. |
| Japan | (59,280) | (47,683) | 11,597 | 67,536 | 3,238 | 5.04 | 2 | 115,218 | (8,359) | -6.76 | 39,198 | 6.87 | Manuf., Wholesale, Finan. |
| Mexico | (15,393) | (16,202) | (809) | 56,761 | 10,449 | 22.56 | 3 | 72,963 | 11,258 | 18.24 | 14,037 | -10.67 | Manuf., Finan., Other Ind. |
| United Kingdom | 1,936 | 2,024 | 88 | 30,916 | 2,089 | 7.25 | 4 | 28,892 | 2,001 | 7.44 | 119,938 | 7.80 | Finan., Manuf., Petrol. |
| Republic of Korea | 1,230 | 3,916 | 2,686 | 26,583 | 1,170 | 4.60 | 5 | 22,667 | (1,517) | -6.27 | 5,322 | 30.41 | Banking, Manuf., Wholesale |
| Germany | (14,470) | (15,469) | (999) | 23,474 | 1,098 | 4.91 | 6 | 38,943 | 2,096 | 5.69 | 43,001 | 8.53 | Manuf., Finan., Wholesale |
| Taiwan | (9,680) | (11,498) | (1,818) | 18,413 | (882) | -4.57 | 7 | 29,911 | 936 | 3.23 | 4,391 | 13.23 | Manuf., Banking, Wholesale |
| Singapore | (3,246) | (3,655) | (409) | 16,685 | 1,367 | 8.92 | 8 | 20,340 | 1,776 | 9.57 | 12,570 | 21.92 | Manuf., Petrol., Finan. |
| France | (2,937) | (4,202) | (1,265) | 14,428 | 187 | 1.31 | 10 | 18,630 | 1,453 | 8.46 | 32,645 | 17.18 | Manuf., Finan., Wholesale |
| Hong Kong | 3,926 | 4,088 | 162 | 13,956 | (264) | -1.86 | 11 | 9,867 | (427) | -4.15 | 13,780 | 5.85 | Wholesale, Finan., Manuf. |
| Brazil | 2,628 | 3,938 | 1,310 | 12,699 | 1,255 | 10.97 | 12 | 8,762 | (53) | -0.60 | 23,590 | 25.49 | Manuf., Finan., Banking |
| Australia | 7,470 | 8,137 | 667 | 11,992 | 1,203 | 11.15 | 14 | 3,854 | 535 | 16.12 | 24,713 | 24.19 | Manuf., Other Ind., Petrol. |
| People's Republic of China | (33,807) | (39,517) | (5,710) | 11,978 | 230 | 1.96 | 15 | 51,495 | 5,940 | 13.04 | 1,997 | 20.59 | Manuf., Petrol., Other Ind. |
| Italy | (7,635) | (9,437) | (1,802) | 8,785 | (77) | -0.87 | 16 | 18,222 | 1,724 | 10.45 | 16,718 | 14.68 | Manuf., Wholesale, Finan. |
| Malaysia | (8,666) | (9,303) | (637) | 8,521 | (297) | -3.37 | 17 | 17,825 | 341 | 1.95 | 3,653 | 55.91 | Manuf., Petrol., Finan. |
| Switzerland | (1,355) | 578 | 1,933 | 8,370 | 2,129 | 34.11 | 18 | 7,793 | 197 | 2.59 | 36,342 | 5.80 | Finan., Wholesale, Manuf. |
| Saudi Arabia | (2,148) | (1,486) | 662 | 7,295 | 1,210 | 19.88 | 19 | 8,781 | 548 | 6.66 | 3,371 | 18.07 | Manuf., Petrol., Services |
| Thailand | (4,949) | (4,125) | 824 | 7,211 | 809 | 12.64 | 20 | 11,336 | (15) | -0.13 | 4,596 | 22.85 | Manuf., Petrol., Other Ind. |
| Philippines | (1,712) | (2,038) | (326) | 6,125 | 831 | 15.70 | 21 | 8,162 | 1,156 | 16.50 | 2,648 | 13.94 | Manuf., Banking, Other Ind. |
| Israel | (130) | (417) | (287) | 6,009 | 416 | 7.44 | 22 | 6,426 | 703 | 12.28 | 1,574 | 15.99 | Manuf., Services, Other Ind. |
| Spain | 1,653 | 1,205 | (448) | 5,486 | (43) | -0.78 | 23 | 4,281 | 405 | 10.45 | 9,689 | 16.51 | Manuf., Banking, Wholesale |
| Venezuela | (5,070) | (8,162) | (3,092) | 4,741 | 100 | 2.15 | 24 | 12,903 | 3,192 | 32.87 | 3,372 | 12.74 | Manuf., Other Ind., Wholesale |
| Colombia | 873 | 435 | (438) | 4,709 | 81 | 1.75 | 25 | 4,273 | 518 | 13.79 | 3,414 | 4.02 | Petrol., Manuf., Finan. |
| Argentina | 2,430 | 2,237 | (193) | 4,516 | 326 | 7.78 | 26 | 2,278 | 518 | 29.43 | 7,962 | 33.93 | Manuf., Wholesale, Petrol. |
| Chile | 1,682 | 1,876 | 194 | 4,132 | 519 | 14.36 | 27 | 2,256 | 325 | 16.83 | 5,510 | 25.68 | Other Ind., Finan., Manuf. |
| Indonesia | (4,081) | (4,248) | (167) | 3,965 | 609 | 18.15 | 28 | 8,213 | 776 | 10.43 | 7,050 | 44.32 | Petrol., Other Ind., Manuf. |
| Sweden | (3,169) | (3,730) | (561) | 3,429 | 352 | 11.44 | 30 | 7,158 | 912 | 14.60 | 12,226 | 357.05 | Manuf., Finan., Services |
| Russia | (1,208) | (221) | 987 | 3,340 | 514 | 18.19 | 31 | 3,561 | (474) | -11.75 | | | |
| India | (2,440) | (2,851) | (411) | 3,318 | 22 | 0.67 | 32 | 6,169 | 433 | 7.55 | 836 | 6.77 | Banking, Manuf., Services |
| Dominican Republic | (381) | (392) | (11) | 3,183 | 166 | 5.50 | 33 | 3,575 | 178 | 5.24 | 1,274 | 6.97 | Manuf., Finan. |

* US Total Exports (f.a.s.); ** US General Imports (customs value); *** US Foreign Direct Investment Abroad.

# APPENDIX

## US Data for Given Trade Partners in Rank Order of US Exports

**(Values in Millions of Dollars)**

| Country | Trade Balance 1995 | Trade Balance 1996 | Change 1995-96 | Exports* 1996 | Change 95/96 Value | Change 95/96 Percent | Rank | Imports** 1996 | Change 95/96 Value | Change 95/96 Percent | FDI*** 1995 | % Change 1994-95 | FDI Area |
|---|---|---|---|---|---|---|---|---|---|---|---|---|---|
| Egypt | 2,379 | 2,481 | 102 | 3,146 | 161 | 5.39 | 34 | 665 | 59 | 9.74 | 1,409 | -0.21 | Petrol., Banking, Manuf. |
| Republic of South Africa | 541 | 784 | 243 | 3,106 | 355 | 12.90 | 35 | 2,323 | 114 | 5.16 | 1,269 | 25.27 | Manuf., Other Ind., Wholesale |
| Turkey | 927 | 1,109 | 182 | 2,886 | 159 | 5.83 | 36 | 1,777 | (23) | -1.28 | 1,167 | 8.16 | Manuf., Banking, Wholesale |
| United Arab Emirates | 1,540 | 2,031 | 491 | 2,527 | 533 | 26.73 | 37 | 496 | 42 | 9.25 | 675 | 27.12 | Wholesale, Other Ind., Services |
| Finland | (1,021) | 93 | 1,114 | 2,438 | 1,190 | 95.35 | 38 | 2,345 | 76 | 3.35 | 830 | 33.66 | Wholesale, Manuf., Services |
| Kuwait | 82 | 340 | 258 | 1,979 | 563 | 39.76 | 40 | 1,640 | 305 | 22.85 | | | |
| Costa Rica | (106) | (160) | (54) | 1,814 | 75 | 4.31 | 41 | 1,974 | 129 | 6.99 | 790 | 39.58 | Manuf., Other Ind. |
| Peru | 740 | 505 | (235) | 1,767 | (8) | -0.45 | 42 | 1,261 | 226 | 21.84 | 1,213 | 48.11 | Other Ind., Petrol., Manuf. |
| New Zealand | 241 | 263 | 22 | 1,727 | 34 | 2.01 | 44 | 1,464 | 13 | 0.90 | 4,530 | 25.07 | Manuf., Other Ind., Petrol. |
| Honduras | (161) | (155) | 6 | 1,641 | 360 | 28.10 | 45 | 1,796 | 354 | 24.55 | 236 | 26.88 | Manuf., Finan., Wholesale |
| Guatemala | 119 | (109) | (228) | 1,564 | (82) | -4.98 | 46 | 1,673 | 146 | 9.56 | 155 | 15.67 | Manuf., Petrol., Finan. |
| Norway | (1,798) | (2,312) | (514) | 1,558 | 265 | 20.49 | 47 | 3,869 | 778 | 25.17 | 4,904 | 14.53 | Petrol., Manuf., Wholesale |
| Panama | 1,084 | 1,032 | (52) | 1,378 | (13) | -0.93 | 49 | 346 | 39 | 12.70 | 15,908 | 17.51 | Finan., Petrol., Wholesale |
| Pakistan | (263) | 11 | 274 | 1,277 | 343 | 36.72 | 50 | 1,266 | 69 | 5.76 | | | |
| Ecuador | (392) | (659) | (267) | 1,257 | (281) | -18.27 | 51 | 1,916 | (14) | -0.73 | 830 | 12.77 | Petrol., Manuf., Wholesale |
| El Salvador | 298 | (2) | (300) | 1,072 | (39) | -3.51 | 52 | 1,074 | 261 | 32.10 | | | |
| Poland | 113 | 341 | 228 | 968 | 192 | 24.74 | 53 | 627 | (37) | -5.57 | | | |
| Portugal | (157) | (56) | 101 | 960 | 61 | 6.79 | 54 | 1,016 | (39) | -3.70 | 1,712 | 16.86 | Manuf., Wholesale, Services |
| Paraguay | 938 | 855 | (83) | 897 | (96) | -9.67 | 55 | 42 | (13) | -23.64 | | | |
| Greece | 1,121 | 324 | (797) | 820 | (699) | -46.02 | 56 | 496 | 98 | 24.62 | 437 | -2.24 | Manuf., Wholesale, Finan. |
| Nigeria | (4,172) | (5,033) | (861) | 816 | 214 | 35.55 | 57 | 5,849 | 1,074 | 22.49 | 595 | 84.78 | Manuf. |
| Algeria | (893) | (1,471) | (578) | 632 | (143) | -18.45 | 60 | 2,103 | 435 | 26.08 | | | |
| Lebanon | 554 | 586 | 32 | 627 | 38 | 6.45 | 61 | 41 | 6 | 17.14 | | | |
| Morocco | 286 | 224 | (62) | 476 | (45) | -8.64 | 66 | 252 | 18 | 7.69 | | | |
| Ukraine | (186) | (113) | 73 | 394 | 171 | 76.68 | 69 | 507 | 98 | 23.96 | | | |
| Uzbekistan | 45 | 194 | 149 | 352 | 289 | 458.73 | 71 | 157 | 138 | 726.32 | | | |
| Jordan | 306 | 320 | 14 | 345 | 10 | 2.99 | 72 | 25 | (4) | -13.79 | | | |
| Hungary | (252) | (346) | (94) | 331 | 36 | 12.20 | 73 | 677 | 130 | 23.77 | | | |
| Ghana | (29) | 124 | 153 | 295 | 128 | 76.65 | 75 | 171 | (25) | -12.76 | | | |
| Angola | (1,977) | (2,419) | (442) | 268 | 8 | 3.08 | 78 | 2,687 | 451 | 20.17 | | | |
| Nicaragua | 12 | (88) | (100) | 262 | 12 | 4.80 | 80 | 350 | 112 | 47.06 | | | |
| Yemen (Sana) | 144 | 228 | 84 | 256 | 71 | 38.38 | 83 | 27 | (15) | -35.71 | | | |

* US Total Exports (f.a.s.); ** US General Imports (customs value); *** US Foreign Direct Investment Abroad.

# APPENDIX

## US Data for Given Trade Partners in Rank Order of US Exports

**(Values in Millions of Dollars)**

| | Trade Balance | | Change | Exports* | Change 95/96 | | Rank | Imports** | Change 95/96 | | FDI*** | % Change | |
|---|---|---|---|---|---|---|---|---|---|---|---|---|---|
| **Country** | **1995** | **1996** | **1995-96** | **1996** | **Value** | **Percent** | | **1996** | **Value** | **Percent** | **1995** | **1994-95** | **FDI Area** |
| Bahrain | 119 | 129 | 10 | 244 | (9) | -3.56 | 84 | 115 | (19) | -14.18 | | | |
| Syria | 168 | 211 | 43 | 226 | 3 | 1.35 | 86 | 15 | (41) | -73.21 | | | |
| Oman | (75) | (195) | (120) | 215 | (5) | -2.27 | 90 | 411 | 116 | 39.32 | | | |
| Qatar | 132 | 50 | (82) | 207 | (16) | -7.17 | 94 | 157 | 66 | 72.53 | | | |
| Turkmenistan | 33 | 200 | 167 | 201 | 167 | 491.18 | 95 | 0 | (1) | -100.00 | | | |
| Tunisia | 145 | 113 | (32) | 189 | (26) | -12.09 | 96 | 76 | 6 | 8.57 | | | |
| Ethiopia | 115 | 113 | (2) | 148 | 0 | 0.00 | 98 | 35 | 2 | 6.06 | | | |
| Kazakhstan | (44) | 24 | 68 | 138 | 57 | 70.37 | 100 | 114 | (11) | -8.80 | | | |
| Bulgaria | (51) | 11 | 62 | 137 | 5 | 3.79 | 102 | 126 | (57) | -31.15 | | | |
| Kenya | 12 | (2) | (14) | 104 | (10) | -8.77 | 107 | 107 | 5 | 4.90 | | | |
| Zimbabwe (Rhodesia) | 24 | (42) | (66) | 91 | (31) | -25.41 | 109 | 133 | 35 | 35.71 | | | |
| Georgia | 85 | 75 | (10) | 82 | (13) | -13.68 | 115 | 8 | (3) | -27.27 | | | |
| Armenia | 54 | 56 | 2 | 57 | (13) | -18.57 | 125 | 1 | (15) | -93.75 | | | |
| Azerbaijan | 35 | 49 | 14 | 54 | 18 | 50.00 | 129 | 5 | 4 | 400.00 | | | |
| Belarus | 3 | 1 | (2) | 53 | 5 | 10.42 | 130 | 52 | 7 | 15.56 | | | |
| Sudan | 21 | 32 | 11 | 50 | 7 | 16.28 | 132 | 19 | (4) | -17.39 | | | |
| Kyrgyzstan | 16 | 42 | 26 | 47 | 22 | 88.00 | 134 | 5 | (3) | -37.50 | | | |
| Moldova | (15) | (8) | 7 | 22 | 12 | 120.00 | 159 | 30 | 5 | 20.00 | | | |
| Tajikistan | (23) | (16) | 7 | 17 | (1) | -5.56 | 164 | 33 | (8) | -19.51 | | | |
| Mauritania | 38 | 10 | (28) | 15 | (28) | -65.12 | 168 | 5 | (1) | -16.67 | | | |
| Somalia | 8 | 4 | (4) | 4 | (4) | -50.00 | 190 | 0 | 0 | 0.00 | | | |
| European Union - 15 | (8,311) | (15,208) | (6,897) | 127,511 | 3,912 | 3.17 | | 142,718 | 10,808 | 8.19 | 315,378 | 18.56 | Manuf., Finan., Wholesale |
| Gulf Cooperation Council | (350) | 868 | 1,218 | 12,467 | 2,276 | 22.33 | | 11,599 | 1,058 | 10.04 | | | |
| Newly Independent States (excluding Russia) | 3 | 505 | 502 | 1,417 | 714 | 101.56 | | 912 | 212 | 30.29 | | | |

* US Total Exports (f.a.s.); ** US General Imports (customs value); *** US Foreign Direct Investment Abroad.