Excerpts related to Legal Services from the

2007 National Trade Estimate Report on Foreign Trade Barriers

available at


Prepared 4-20-07 by Prof. Laurel Terry (LTerry@psu.edu)
2007 National Trade Estimate Report on Foreign Trade Barriers

The 2007 National Trade Estimate Report on Foreign Trade Barriers (NTE) is the twenty-first in an annual series that surveys significant foreign barriers to U.S. exports. 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 taken to eliminate barriers.

April 2, 2007 USTR Press Release

Table of Contents

Acknowledgements

List of Acronyms

Foreward

Appendix

Full Report (2.6 mb)

Compilation of Countries

• Angola
• Arab League
• Argentina
• Australia
• Bahrain
• Bolivia
• Brazil
• Cambodia
• Cameroon
• Canada
• Chile
• China
• Colombia
• Costa Rica
• Cote d’Ivoire
- Dominican Republic
- Ecuador
- Egypt
- El Salvador
- Ethiopia
- European Union
- Ghana
- Guatemala
- Honduras
- Hong Kong
- India
- Indonesia
- Israel
- Japan
- Jordan
- Kazakhstan
- Kenya
- Korea
- Kuwait
- Laos
- Malaysia
- Mexico
- Morocco
- New Zealand
- Nicaragua
- Nigeria
- Norway
- Oman
- Pakistan
- Panama
- Paraguay
- Peru
- Philippines
- Qatar
- Russia
- Saudi Arabia
- Singapore
- Southern African Customs Union
- Sri Lanka
- Switzerland
- Taiwan
- Thailand
- Turkey
- Ukraine
- United Arab Emirates
• Uzbekistan
• Venezuela
• Vietnam
ACKNOWLEDGEMENTS

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

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

Assistant U.S. Trade Representative for Policy Coordination:
Carmen Suro-Bredie

Project Director:
Donald W. Eiss

Technical Assistant:
Laura S. Newport

Project Advisors:
Joshua Gold
Benjamin Taylor
Shay H. Wester

Production Assistant:
Gloria Blue

*Excepts related to legal services follow*
# Table of Contents

FOREWORD .................................................................................................................. 1
ANGOLA ..................................................................................................................... 7
ARAB LEAGUE .......................................................................................................... 15
ARGENTINA ............................................................................................................... 19
AUSTRALIA ............................................................................................................... 27
BAHRAIN .................................................................................................................. 33
BOLIVIA ..................................................................................................................... 37
BRAZIL ......................................................................................................................... 41
CAMBODIA ............................................................................................................... 49
CAMEROON ............................................................................................................... 57
CANADA .................................................................................................................... 61
CHILE ......................................................................................................................... 71
CHINA ........................................................................................................................ 79
COLOMBIA .............................................................................................................. 149
COSTA RICA ............................................................................................................ 157
COTE D’IVOIRE ....................................................................................................... 163
DOMINICAN REPUBLIC ............................................................................................ 167
ECUADOR .................................................................................................................. 173
EGYPT ......................................................................................................................... 181
EL SALVADOR .......................................................................................................... 193
ETHIOPIA ................................................................................................................... 199
EUROPEAN UNION .................................................................................................... 203
GHANA ....................................................................................................................... 251
GUATEMALA ............................................................................................................. 257
HONDURAS ............................................................................................................... 261
HONG KONG ............................................................................................................ 267
INDIA ......................................................................................................................... 271
<table>
<thead>
<tr>
<th>Country</th>
<th>Page</th>
</tr>
</thead>
<tbody>
<tr>
<td>TAIWAN</td>
<td>565</td>
</tr>
<tr>
<td>THAILAND</td>
<td>575</td>
</tr>
<tr>
<td>TURKEY</td>
<td>589</td>
</tr>
<tr>
<td>UNITED ARAB EMIRATES</td>
<td>595</td>
</tr>
<tr>
<td>UKRAINE</td>
<td>601</td>
</tr>
<tr>
<td>UZBEKISTAN</td>
<td>613</td>
</tr>
<tr>
<td>VENEZUELA</td>
<td>621</td>
</tr>
<tr>
<td>VIETNAM</td>
<td>631</td>
</tr>
</tbody>
</table>
# LIST OF FREQUENTLY USED ACRONYMS

<table>
<thead>
<tr>
<th>Acronym</th>
<th>Description</th>
</tr>
</thead>
<tbody>
<tr>
<td>AD</td>
<td>Antidumping</td>
</tr>
<tr>
<td>AGOA</td>
<td>African Growth and Opportunity Act</td>
</tr>
<tr>
<td>APEC</td>
<td>Asia Pacific Economic Cooperation</td>
</tr>
<tr>
<td>ASEAN</td>
<td>Association of Southeast Asian Nations</td>
</tr>
<tr>
<td>ATC</td>
<td>Agreement on Textiles and Clothing</td>
</tr>
<tr>
<td>ATPA</td>
<td>Andean Trade Preferences Act</td>
</tr>
<tr>
<td>ATPDEA</td>
<td>Andean Trade Promotion &amp; Drug Eradication Act</td>
</tr>
<tr>
<td>BIA</td>
<td>Built-In Agenda</td>
</tr>
<tr>
<td>BIT</td>
<td>Bilateral Investment Treaty</td>
</tr>
<tr>
<td>BOP</td>
<td>Balance of Payments</td>
</tr>
<tr>
<td>CACM</td>
<td>Central American Common Market</td>
</tr>
<tr>
<td>CAFTA</td>
<td>Central American Free Trade Area</td>
</tr>
<tr>
<td>CARICOM</td>
<td>Caribbean Common Market</td>
</tr>
<tr>
<td>CBERA</td>
<td>Caribbean Basin Economic Recovery Act</td>
</tr>
<tr>
<td>CBI</td>
<td>Caribbean Basin Initiative</td>
</tr>
<tr>
<td>CFTA</td>
<td>Canada Free Trade Agreement</td>
</tr>
<tr>
<td>CITES</td>
<td>Telecommunications division of the OAS</td>
</tr>
<tr>
<td>COMESA</td>
<td>Common Market for Eastern &amp; Southern Africa</td>
</tr>
<tr>
<td>CTE</td>
<td>Committee on Trade and the Environment</td>
</tr>
<tr>
<td>CTG</td>
<td>Council for Trade in Goods</td>
</tr>
<tr>
<td>CVD</td>
<td>Countervailing Duty</td>
</tr>
<tr>
<td>DDA</td>
<td>Doha Development Agenda</td>
</tr>
<tr>
<td>DSB</td>
<td>Dispute Settlement Body</td>
</tr>
<tr>
<td>EAI</td>
<td>Enterprise for ASEAN Initiative</td>
</tr>
<tr>
<td>DSU</td>
<td>Dispute Settlement Understanding</td>
</tr>
<tr>
<td>EU</td>
<td>European Union</td>
</tr>
<tr>
<td>EFTA</td>
<td>European Free Trade Association</td>
</tr>
<tr>
<td>FTAA</td>
<td>Free Trade Area of the Americas</td>
</tr>
<tr>
<td>FOIA</td>
<td>Freedom of Information Act</td>
</tr>
<tr>
<td>GATT</td>
<td>General Agreement on Tariffs and Trade</td>
</tr>
<tr>
<td>GATS</td>
<td>General Agreements on Trade in Services</td>
</tr>
<tr>
<td>GDP</td>
<td>Gross Domestic Product</td>
</tr>
<tr>
<td>GEC</td>
<td>Global Electronic Commerce</td>
</tr>
<tr>
<td>GSP</td>
<td>Generalized System of Preferences</td>
</tr>
<tr>
<td>GPA</td>
<td>Government Procurement Agreement</td>
</tr>
<tr>
<td>IFI</td>
<td>International Financial Institution</td>
</tr>
<tr>
<td>IPR</td>
<td>Intellectual Property Rights</td>
</tr>
<tr>
<td>ITA</td>
<td>Information Technology Agreement</td>
</tr>
<tr>
<td>LDBDC</td>
<td>Least Developed Beneficiary Developing Country</td>
</tr>
<tr>
<td>MAI</td>
<td>Multilateral Agreement on Investment</td>
</tr>
<tr>
<td>MEFTA</td>
<td>Middle East Free Trade Area</td>
</tr>
<tr>
<td>MERCOSUR/MERCOSUR</td>
<td>Southern Common Market</td>
</tr>
<tr>
<td>MFA</td>
<td>Multifiber Arrangement</td>
</tr>
<tr>
<td>MFN</td>
<td>Most Favored Nation</td>
</tr>
<tr>
<td>Abbreviation</td>
<td>Full Form</td>
</tr>
<tr>
<td>--------------</td>
<td>-----------</td>
</tr>
<tr>
<td>MOSS</td>
<td>Market-Oriented, Sector-Selective</td>
</tr>
<tr>
<td>MOU</td>
<td>Memorandum of Understanding</td>
</tr>
<tr>
<td>MRA</td>
<td>Mutual Recognition Agreement</td>
</tr>
<tr>
<td>NAFTA</td>
<td>North American Free Trade Agreement</td>
</tr>
<tr>
<td>NEC</td>
<td>National Economic Council</td>
</tr>
<tr>
<td>NIS</td>
<td>Newly Independent States</td>
</tr>
<tr>
<td>NSC</td>
<td>National Security Council</td>
</tr>
<tr>
<td>NTR</td>
<td>Normal Trade Relations</td>
</tr>
<tr>
<td>OAS</td>
<td>Organization of American States</td>
</tr>
<tr>
<td>OECD</td>
<td>Organization for Economic Cooperation and Development</td>
</tr>
<tr>
<td>OPIC</td>
<td>Overseas Private Investment Corporation</td>
</tr>
<tr>
<td>PNTR</td>
<td>Permanent Normal Trade Relations</td>
</tr>
<tr>
<td>ROU</td>
<td>Record of Understanding</td>
</tr>
<tr>
<td>SACU</td>
<td>Southern African Customs Union</td>
</tr>
<tr>
<td>SADC</td>
<td>Southern African Development Community</td>
</tr>
<tr>
<td>SPS</td>
<td>Sanitary and Phytosanitary Measures</td>
</tr>
<tr>
<td>SRM</td>
<td>Specified Risk Material</td>
</tr>
<tr>
<td>TAA</td>
<td>Trade Adjustment Assistance</td>
</tr>
<tr>
<td>TABD</td>
<td>Trans-Atlantic Business Dialogue</td>
</tr>
<tr>
<td>TACD</td>
<td>Trans-Atlantic Consumer Dialogue</td>
</tr>
<tr>
<td>TAEVD</td>
<td>Trans-Atlantic Environment Dialogue</td>
</tr>
<tr>
<td>TALD</td>
<td>Trans-Atlantic Labor Dialogue</td>
</tr>
<tr>
<td>TBT</td>
<td>Technical Barriers to Trade</td>
</tr>
<tr>
<td>TEP</td>
<td>Transatlantic Economic Partnership</td>
</tr>
<tr>
<td>TIFA</td>
<td>Trade &amp; Investment Framework Agreement</td>
</tr>
<tr>
<td>TPRG</td>
<td>Trade Policy Review Group</td>
</tr>
<tr>
<td>TPSC</td>
<td>Trade Policy Staff Committee</td>
</tr>
<tr>
<td>TRIMS</td>
<td>Trade Related Investment Measures</td>
</tr>
<tr>
<td>TRIPS</td>
<td>Trade Related Intellectual Property Rights</td>
</tr>
<tr>
<td>UAE</td>
<td>United Arab Emirates</td>
</tr>
<tr>
<td>UNCTAD</td>
<td>United Nations Conference on Trade &amp; Development</td>
</tr>
<tr>
<td>URAA</td>
<td>Uruguay Round Agreements Act</td>
</tr>
<tr>
<td>USDA</td>
<td>U.S. Department of Agriculture</td>
</tr>
<tr>
<td>USITC</td>
<td>U.S. International Trade Commission</td>
</tr>
<tr>
<td>USTR</td>
<td>United States Trade Representative</td>
</tr>
<tr>
<td>VRA</td>
<td>Voluntary Restraint Agreement</td>
</tr>
<tr>
<td>WAEMU</td>
<td>West African Economic &amp; Monetary Union</td>
</tr>
<tr>
<td>WTO</td>
<td>World Trade Organization</td>
</tr>
</tbody>
</table>
FOREWORD

The 2007 National Trade Estimate Report on Foreign Trade Barriers (NTE) is the twenty-second in an annual series that surveys significant foreign barriers to U.S. exports.

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

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

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

SCOPE AND COVERAGE

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

- Import policies (e.g., tariffs and other import charges, quantitative restrictions, import licensing, customs barriers);
- Standards, testing, labeling and certification (including unnecessarily restrictive application of sanitary and phytosanitary standards and environmental measures, and refusal to accept U.S. manufacturers' self-certification of conformance to foreign product standards);
- Government procurement (e.g., buy national policies and closed bidding);

FOREIGN TRADE BARRIERS

-1-
• Export subsidies (e.g., export financing on preferential terms and agricultural export subsidies that displace U.S. exports in third country markets);

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

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

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

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

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

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

The NTE covers significant barriers, whether they are consistent or inconsistent with international trading rules. Many barriers to U.S. exports are consistent with existing international trade agreements. Tariffs, for example, are an accepted method of protection under the General Agreement on Tariffs and Trade (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: 58 nations, the European Union, Taiwan, Hong Kong, the Southern African Customs Union and one regional body. Some countries were excluded from this report due primarily to the relatively small size of their markets or the absence of major trade complaints from representatives of U.S. goods and services sectors. However, the omission of particular countries and barriers does not imply that they are not of concern to the United States. Based on an assessment of the evolving nature of U.S. trade and investment relationships in the various regions of the world, Ethiopia and Jordan have been added to the report. Ethiopia was added because it is one of sub-Saharan Africa's largest and fastest growing markets for U.S. goods and services. U.S.-Jordan economic cooperation, including the U.S.-Jordan Free Trade Agreement, has fostered a steady expansion of bilateral trade and investment. Jordan's addition to the National Trade Estimate Report is intended to assist U.S. firms in understanding the conditions of access to this increasingly important market. Also, on January 1, 2007, Bulgaria and Romania joined the European Union (EU). Therefore, beginning with the 2007 NTE, we have deleted separate sections on each of those countries and have incorporated each into the EU section of the report.

The merchandise trade data contained in the NTE report are based on total U.S. exports, free alongside (f.a.s.) value, and general U.S. imports, customs value, as reported by the Bureau of the Census,
Department of Commerce. (NOTE: These data are ranked according to size of export market in the Appendix). The services data are from the October 2006 issue of the Survey of Current Business (collected from the Bureau of Economic Analysis, Department of Commerce). The direct investment data are from the September 2006 issue of the Survey of Current Business (collected from the Bureau of Economic Analysis, Department of Commerce).

TRADE IMPACT ESTIMATES AND FOREIGN BARRIERS

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

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

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

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

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

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

FOREIGN TRADE BARRIERS

-3-
The same limitations that affect the ability to estimate the impact of foreign barriers upon U.S. goods exports apply to U.S. services exports. Furthermore, the trade data on services exports are extremely limited in detail. For these reasons, estimates of the impact of foreign barriers on trade in services also are difficult to compute.

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

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

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

March 2007

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 the National Treatment Study. Prepared in collaboration with the Secretary of State, the Office of the Comptroller of the Currency, the Federal Reserve Board, the Federal Deposit Insurance Corporation, the Securities and Exchange Commission, and the Department of Commerce, the Study analyzes in detail treatment of U.S. commercial banks and securities firms in foreign markets. It is intended as an authoritative reference for assessing financial services regimes abroad.

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

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

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

FOREIGN TRADE BARRIERS

-4-
fight bribery and corruption. Bribery and corruption are now being addressed in a number of fora. Some of these initiatives are now yielding positive results.

The United States Government led efforts to launch the Organization for Economic Cooperation and Development (OECD) Convention on Combating Bribery of Foreign Public Officials in International Business Transactions (Antibribery Convention). In November 1997, the United States and 33 other nations adopted the Antibribery Convention, which currently is in force for 36 countries, including the United States. The Antibribery Convention obligates its parties to criminalize the bribery of foreign public officials in the conduct of international business. It is aimed at proscribing the activities of those who offer, promise, or pay a bribe. (For additional information, see www.export.gov/tce and www.oecd.org).

The United States played a critical role in the successful conclusion of negotiations that produced the United Nations Convention Against Corruption, the first global anti-corruption instrument. The Convention was opened for signature in December 2003, and is pending entry into force. The Convention requires countries to adopt such measures as may be necessary to criminalize fundamental anticorruption offenses, including bribery of domestic as well as foreign public officials. As of early March 2006, one hundred forty-one countries, including the United States, have signed the Convention and forty-nine have ratified it.

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

The United States Government continues to push its anti-corruption agenda forward. Consistent with the Bipartisan Trade Promotion Authority Act of 2002 (TPA), the United States Government is seeking and obtaining binding commitments in free trade agreements (FTAs) that promote transparency and that specifically address corruption of public officials. Also consistent with TPA, the United States Government is seeking to secure a meaningful agreement on trade facilitation in the World Trade Organization and has been pressing for concrete commitments on customs operations and transparency of government procurement regimes of our FTA partners. The United States Government is also playing a leadership role on these issues in the G-8 Forum, the Asia Pacific Economic Cooperation (APEC) Forum, the Southeastern Europe Stability Pact and other fora.

3. Free alongside (f.a.s.): Under this term, the seller quotes a price, including delivery of the goods alongside and within the reach of the loading tackle (hoist) of the vessel bound overseas.
April 1999. The National Assembly adopted the law and it entered into force in January 2003. The law provides for the filing, registration, and protection of patents, utility model certificates and industrial designs. The MIME has also issued a sub-decree on granting patents and registering industrial designs.

Cambodia has not yet made significant progress in legislating commitments undertaken in its bilateral agreement with the United States on Trade Relations and Intellectual Property Rights Protection in the areas of encrypted satellite signals, semiconductor layout designs, and trade secrets. The United States will continue to work with Cambodia to implement these commitments.

Copyrights

Cambodia enacted a copyright law in January 2003. Responsibility for copyrights is shared between the Ministry of Culture, which handles phonograms, compact discs (CDs), and other recordings; and the Ministry of Information, which deals with printed materials. Although Cambodia is not a major center for the production or export of pirated CDs, videos, and other copyrighted materials, these products are widely available in Cambodian markets. Pirated computer programs, digital video discs (DVDs), and music CDs are widely used throughout the country.

SERVICES BARRIERS

Foreign participation in the services sector is generally not restricted. Cambodia’s legislation regarding the services sector has generally complied with the principles and provisions of the General Agreement on Trade in Services (GATS). Cambodia provides market access or national treatment for the cross-border supply, consumption abroad, and commercial presence of almost all services.

Accounting, Consulting and Tax Services

Cambodia provides market access and national treatment to foreign firms providing accounting, auditing and taxation services. Major international accounting and consulting firms operate in Cambodia.

Legal Services

According to the Cambodian Law on the Bar adopted in 1995, foreign lawyers can only practice domestic law in commercial association with Cambodian law firms and cannot directly represent clients in court, conduct activities to attract clients, or publish commercial advertisements.

Telecommunications Services

Private participation in mobile services, e-mail, electronic data interchange and code and protocol conversion are allowed and national treatment is accorded. In addition, Cambodia is committed to permitting licensed suppliers of mobile communications services to choose which technology to use for such services.

Cross-border supply for fixed-line voice telephone services, circuit-switched data transmission and private leased circuit services is provided exclusively by Telecom Cambodia. This restriction will be eliminated by January 2009 at which time foreign participation of up to 49 percent equity will be allowed. Cambodia is taking steps to create an independent regulatory body.
accession agreement, China committed to the substantial opening of a broad range of service sectors through the elimination of many existing limitations on market access at all levels of government, particularly in sectors of importance to the United States, such as banking, insurance, distribution, telecommunications and professional services. These commitments are far-reaching, particularly when compared to the services commitments of many other WTO Members.

China also made certain “horizontal” commitments, which apply to all sectors listed in its Services Schedule. The two most important of these cross-cutting commitments involve acquired rights and the licensing process. Under the acquired rights commitment, China agreed that the conditions of ownership, operation and scope of activities for a foreign company, as set out in the respective contractual or shareholder agreement or in a license establishing or authorizing the operation or supply of services by an existing foreign service supplier, will not be made more restrictive than they were on the date of China’s accession to the WTO. In other words, if a foreign company had pre-WTO accession rights that went beyond the commitments made by China in its Services Schedule that company could continue to operate with those rights.

In the licensing area, prior to China’s WTO accession, foreign companies in many sectors did not have an unqualified right to apply for a license to operate in China. They could only apply for a license if they first received an invitation from the relevant Chinese regulatory authorities, and even then the decision-making process lacked transparency and was subject to inordinate delay and discretion. In its accession agreement, China committed to licensing procedures that were streamlined, transparent and more predictable.

At present, many challenges remain in securing the benefits of China’s services commitments. While China continued to keep pace nominally with the openings required by its WTO accession agreement, it also continued to maintain or erect terms of entry in some sectors that were so high or cumbersome as to prevent or discourage foreign suppliers from gaining market access. For example, excessive and often discriminatory capital requirements continued to restrict market entry for foreign suppliers in many sectors, such as insurance, banking, motor vehicle financing, securities, asset management, telecommunications, construction and freight forwarding, among others. In addition, in sectors such as insurance, banking and legal services, branching and related restrictions have been put into effect that raise concerns. In other sectors, such as construction services, problematic measures appear to be taking away previously acquired market access rights.

Meanwhile, the Administrative Licensing Law, which took effect in July 2004, has increased transparency in the licensing process, while reducing procedural obstacles and strengthening the legal environment for domestic and foreign enterprises. As a result, the licensing process in many sectors continued to proceed in a workman-like fashion in 2006, although concerns about unfair discrimination remained, particularly in the banking and insurance sectors. In addition, in some sectors, such as direct selling and telecommunications, the licensing process was characterized by inordinate delays.

**Insurance Services**

In its WTO accession agreement, China agreed to phase in expanded ownership rights for foreign companies, for the most part during the first three years of China’s WTO membership. Upon China’s accession to the WTO, foreign life insurers were to be permitted to hold 50 percent equity share in a joint venture; within two years of accession, foreign property, casualty and other non-life insurers were to be permitted to establish as a branch, joint venture or a wholly foreign-owned subsidiary; and, within three years of accession, or by December 11, 2004, foreign insurers handling large scale commercial risks, marine, aviation and transport insurance, and reinsurance were to be permitted 51 percent foreign equity.
market, wholly foreign-owned enterprises and Chinese-foreign joint ventures continue to be restricted in selling outbound airline tickets. In addition, China requires all travel agents, airlines and other booking entities to use or connect into China’s nationally owned and operated computer reservation system when booking airline tickets. Meanwhile, holders of official Chinese passports are required to use China’s state-owned airlines or their code-share partners. Nearly 23,000 holders of official Chinese passports were issued U.S. visas (in 2004), and most of them were employees of state-owned enterprises, who would not be considered government employees in most countries. This represents a significant loss of business for U.S. airlines.

At the same time, the United States has increased its visa options to Chinese nationals visiting the United States. Beginning in January 2005, eligible Chinese nationals wishing to visit the United States temporarily for business (B-1) or tourism (B-2) could be issued visas that were valid for 12 months and multiple entries. The previous maximum length of visas issued for these purposes was six months and multiple entries. Additionally, since November 2006, U.S.-bound tour parties from seven Chinese travel agencies have been allowed to apply for group visas as opposed to previously required business visas.

**Education and Training Services**

China faces a shortage of qualified teachers and clearly needs educators in inland regions. However, the Ministry of Education (MOE) continues to restrict participation by foreign educators and trainers. China permits only non-profit educational activities that do not compete with the MOE-supervised nine years of compulsory education, thereby inhibiting much-needed foreign investment in the education sector. In April 2000, MOE also banned foreign companies and organizations from offering educational services via satellite networks.

In June 2004, the Ministry of Education issued the Implementing Rules for China-foreign Cooperative Education Projects. Although formulated to implement the Regulations on China-foreign Cooperation in Running Schools, issued in September 2003, the rules allow foreign educators to participate only in certain activities, including education offering academic certificates, supplementary education and preschool education. These activities cannot take the form of activities at actual educational institutions.

Foreign universities may set up non-profit operations. However, they must have a Chinese university host and partner to ensure that programs bar subversive content and localize imported information.

Meanwhile, China’s training market is unregulated, which discourages potential investors from entering the market.

**Legal Services**

Prior to its WTO accession, China maintained various restrictions in the area of legal services. It prohibited representative offices of foreign law firms from practicing Chinese law or engaging in profit-making activities with regard to non-Chinese law. It also imposed restrictions on foreign law firms’ formal affiliation with Chinese law firms, limited foreign law firms to one representative office and maintained geographic restrictions. Chinese law firms, on the other hand, have been able to open offices freely throughout China since 1996.

As part of its WTO accession, China agreed to lift quantitative and geographical restrictions on the establishment of representative offices by foreign law firms within one year after accession. In addition, foreign representative offices are to be able to engage in profit-making business, to advise clients on foreign legal matters and to provide information on the impact of the Chinese legal environment, among
other things. They also are to be able to maintain long-term “entrustment” relationships with Chinese law firms and to instruct lawyers in the Chinese law firm as agreed between the two law firms.

The State Council issued the Regulations on the Administration of Foreign Law Firm Representative Offices in December 2001, and the Ministry of Justice issued implementing rules in July 2002. While these measures removed some market access barriers, they also generated concern among foreign law firms doing business in China. In many areas, these measures were ambiguous. For example, it appeared that these measures created an economic needs test for foreign law firms that want to establish offices in China, which would raise concerns regarding China’s compliance with its GATS commitments. The measures also seemed to take an overly restrictive view of the types of legal services that foreign law firms may provide. In addition, the procedures for establishing a new office or an additional office were unnecessarily time-consuming. For example, a foreign law firm may not establish an additional representative office until its most recently established representative office has been in practice for three consecutive years. Foreign attorneys also may not take China’s bar examination, and they may not hire registered members of the Chinese bar as attorneys.

Although a number of U.S. and other foreign law firms have been able to open a second office in China, little progress has been made on the other problematic aspects of these measures, particularly the economic needs test, the unreasonable restrictions on the types of legal services that can be provided and the unnecessary delays that must be endured when seeking to establish new offices. These obstacles continue to prevent foreign law firms from participating fully in China’s legal market.

**Accounting and Management Consultancy Services**

Prior to China’s accession to the WTO, foreign accounting firms could not choose their own Chinese joint venture partners freely or enter into contractual agreements that could fully integrate these joint ventures. Upon its accession to the WTO, China agreed to allow foreign accounting firms to partner with any Chinese entity of their choice. China also agreed to abandon the prohibition on foreign accounting firms’ representative offices engaging in profit-making activities. In addition, China agreed that foreign accounting firms could engage in taxation and management consulting services, without having to satisfy the more restrictive requirements on form of establishment applicable to new entities seeking to provide those services separately.

The Chinese Institute of Certified Public Accountants, a government body under MOF, has made progress in modernizing accounting in China. Since China’s WTO accession, MOF has released four newly revised auditing statements covering inter-bank confirmation, capital verification, accounting estimates and the audit of commercial bank financial statements. Furthermore, MOF has been active in standardizing accounting procedures across a wide range of topics including investments, inventories, cash flow statements and fixed assets. CSRC, meanwhile, requires a listed company to appoint a certified international CPA firm to conduct audits on prospectuses and annual reports in accordance with international standards.

Despite these positive changes, pervasive problems remain. Differing accounting regulations limit the comparability of data, and the accounting practices followed by many domestic firms do not meet international conventions.

**Advertising Services**

Prior to China’s accession to the WTO, foreign advertising firms had been restricted to representative offices or minority ownership of joint ventures. In its WTO accession agreement, however, China agreed
Rules governing the handling of imported toxic waste were apparently ignored in the September 2006 incident involving the illegal dumping of several hundred tons of toxic waste unloaded by an Ivorian company from a foreign vessel in the environs of the capital city Abidjan, which, according to official figures, left ten dead and thousands ill.

STANDARDS, TESTING, LABELING AND CERTIFICATION

All items imported into Cote d'Ivoire must have a certificate of compliance to clear customs. Two European companies, BIVAC (affiliated to the French group Bureau Veritas) and the Swiss firm Cotecna, are contracted to carry out all qualitative and quantitative verifications of goods imported into Cote d'Ivoire with a value exceeding CFA 1.5 million (approximately $3,000). All merchandise packaging must be clearly labeled as to its origin. Manufactured food products must be labeled in French and have an expiration date. Standards generally follow French or European norms.

GOVERNMENT PROCUREMENT

The government of Cote d'Ivoire publishes tender notices in the local press and sometimes publishes tenders in international magazines and newspapers. On occasion, there is a charge for the bidding documents. Cote d'Ivoire has a generally decentralized government procurement system, with most ministries implementing their own procurements. The Bureau National d'Études Techniques et de Développement (BNETD), the government's technical and investment planning agency and think tank, sometimes serves as an executing agency representing ministries for major projects to be financed by international institutions.

In 2005, the Ministry of Finance introduced institutional changes in the government procurement system such as: decentralizing operations, increasing transparency, creating commissions to review irregular procurements, imposing stricter internal management controls and establishing an appeals process.

The government has created the “Direction des Marches Publics” (DMP), a centralized office of public bids in the Ministry of Finance to help ensure compliance with international bidding practices. While theoretically the office is functioning and the procurement process is open, some well-entrenched foreign companies, through their relations with government officials, may retain a preferred position in securing bid awards. Many firms continue to see corruption as an obstacle that affects procurement decisions. Cote d'Ivoire is not a signatory to the WTO Agreement on Government Procurement.

SERVICES BARRIERS

Banks and insurance companies are subject to licensing requirements, but there are no restrictions on foreign ownership or establishment of subsidiaries. Foreign participation is widespread in computer services, education, and training. Prior approval is required for foreign investment in the health sector, travel agencies, and law and accounting firms; majority foreign ownership of companies in these sectors is not permitted, though foreign companies currently operate in all these sectors in partnership with local firms and with government permission. While one U.S. bank, Citibank, is currently operating in Cote d'Ivoire, American insurance and reinsurance companies are not present in the Ivorian market.

Cote d'Ivoire does not formally require majority Ivorian ownership in most sectors other than those noted above. There are professional associations, such as legal and accountancy associations that serve to regulate professional services, which require Ivorian nationality. For example, there are restrictions on the registration of foreign nationals by the accountants’ association, unless they have already been practicing in Cote d'Ivoire for several years under the license of an Ivorian practitioner. In the case of

FOREIGN TRADE BARRIERS
legal services, Cote d'Ivoire distinguishes between providing legal advice and practicing law in court. The former is liberalized, but in order to be admitted to the Ivorian bar and practice in a courtroom, lawyers must be accredited by the Ivorian lawyers' association, which requires Ivorian nationality.

INVESTMENT BARRIERS

The government encourages foreign investment, but in recent years political instability has substantially undermined investor confidence. The negative effects of the 1999 coup d'etat, the ensuing 10-month military rule, and the upheavals surrounding the elections in October 2000 had not dissipated when an attempted coup d'etat that turned into a civil war occurred in September 2002. In November 2004, many (particularly foreign-owned) businesses were destroyed and looted, further dampening near-term investment prospects. Ongoing efforts at national reconciliation have made limited progress, but there has been no resolution of the crisis. There has been no progress on privatization since 2002.

The Ivorian investment code provides tax incentives for investments larger than $1 million, as well as land concessions for projects. Concessionary agreements that exempt investors from tax regulations require the additional approval of the Ministry of Finance and Economy and the Ministry of Industry, making the clearance procedure for planned investments, if tax breaks are sought, time-consuming and confusing. The Center for the Promotion of Investment in Cote d'Ivoire (CEPICI) was established to act as a one-stop shop for investment to help alleviate this problem. Even when companies have complied fully with the requirements, tax exemptions are sometimes denied with little explanation, giving rise to accusations of favoritism and corruption.

In August 2006, the government instituted new rules governing the rebate of VAT for companies that export more than 70 percent of their production, such as multinational cocoa purchasing-and-export companies. Qualifying companies will now be subject to initial VAT collections on all their purchases, local and imported, rather than solely on imported goods as previously was the case. VAT rebates will be delayed 12 months to 36 months. The result is that qualifying companies will see a three- or four-fold increase in their VAT payments and a significant slowdown in already slow reimbursements.

INTELLECTUAL PROPERTY RIGHTS (IPR) PROTECTION


Effective February 2002, changes were made to the Bangui Agreement in an effort to bring it into conformity with the TRIPS Agreement. Under OAPI, rights registered in one member country are valid for other member states. Patents are valid for ten years, with the possibility of two five-year extensions. Trademarks are valid for ten years and are renewable indefinitely. Copyrights are valid for 50 years.

In 2001, Ivorian experts drafted a new law in an effort to bring Cote d'Ivoire into conformity with the TRIPS Agreement. The new law adds specific protection for computer programs, databases, and authors' rights with regard to rented films and videos. However, the National Assembly has not yet approved this legislation and likely will not take action until political ambiguities concerning the Assembly's term of office are clarified. The Assembly's mandate expired at the end of 2005 and new legislative elections are effectively on hold until the political reconciliation process progresses.

FOREIGN TRADE BARRIERS

-165-
With the adoption of the Postal Services Directive, the European Union in 1997 took a first step to get national postal monopolies to gradually open up to competition. A second Directive in 2002 succeeded in opening up a number of postal services -- including all outgoing cross-border mail -- but stopped short of liberalizing the market for the delivery of letters weighing less than 50 grams. On October 18, 2006, the European Commission adopted a proposal to open up postal markets to full, unrestricted competition by 2009. The proposal is subject to approval by the Member States and the European Parliament and is expected to go into effect in summer 2007.

Belgium: While the Belgian Post has taken measures in recent years to liberalize, industry competitors continue to express concerns about market access and a postal monopoly operating in Belgium. January 2006 legislation introduced a licensing regime for universal postal services as well as a compensation fund for universal service. The licensing regime would provide revenue to the Belgian Post if liberalization proved unprofitable due to its universal service obligation. Under the current legal framework, express companies appear to be exempt from the licensing regime as well as from the obligation to provide for a compensation fund for universal service on the condition that these services are clearly distinct from the universal postal service by virtue of their value-added characteristics.

Germany: In February 2005, the Federal Regulatory Agency (Bundesnetzagentur) took action against Deutsche Post AG (DPAG), in response to complaints from competitors. Its ruling forbids DPAG from hindering or discriminating against rival small- and medium-sized providers of mail preparation services, especially those collecting and presorting letters and feeding mail items weighing less than 100 grams into DPAG’s sorting centers. This ruling follows an October 2004 move by the European Commission to initiate a treaty infringement procedure against Germany for failing to mandate that DPAG offer unbundled access to competitors. Some U.S. companies have indicated they might be interested in providing services such as sorting.

Ireland: Currently, postal services “reserved” to An Post, the national postal agency and Ireland’s designated Universal Service Provider, are confined to items of domestic correspondence and incoming cross-border correspondence weighing 50g or less. All mail falling outside this category is open to competition and can be handled by any mail/package company operating in the Irish market. From January 2009, the postal market will be fully open to competition and other operators will be free to handle any mail now reserved to An Post.

Professional Services

In the area of professional services, there are significant variations among EU Member State requirements for foreign lawyers and accountants intending to practice in the European Union. While many of these are not outright barriers, disparities among Member State requirements can complicate access to the European market for U.S. lawyers and accountants.

Legal Services:

Austria: U.S. citizens can only provide legal advice on U.S. law and public international law (excluding EU law) on a temporary basis. Only an Austrian or other EU national can join the Bar Association. U.S. nationals cannot represent clients before Austrian courts and authorities, and cannot establish a commercial presence in Austria. However, informal cooperation with Austrian partners is possible.

Czech Republic: The Czech Republic requires that all attorneys be members of the Czech bar. U.S. educated lawyers may register with the Czech Bar and take an equivalency exam, but are limited to practicing home state (U.S.) law and international law. To represent clients in Czech courts, U.S. lawyers
must first undergo a three-year legal traineeship and pass the Czech bar exam. U.S. firms are allowed to cooperate with local firms and lend them their name; as a result, firms that operate in the country do so as independent Czech branches. They may have U.S. attorneys that are attached to the staffs as “advisors.”

**Finland:** Foreigners from non-EU countries cannot become members of the Finnish Bar Association and receive the higher law profession title of Asianajaja (Attorney at Law). Persons holding the title of Asianajaja are subject to Asianajaja Law as well as bar regulations. While the title gives added prestige and helps solicit clients, it is not essential to practice domestic or international law or to represent a client in court.

**France:** Non-EU firms are not permitted to establish branch offices in France under their own names. Also, non-EU lawyers and firms are not permitted to form partnerships with or hire French lawyers.

**Germany:** U.S. lawyers that have joined the German Bar Association under their home title may practice international law (but not EU law) and the law of their home country. To be admitted to the bar to practice German law, individuals generally have to complete five years of study, then successfully complete the first of two state exams. After successfully completing the first exam they undertake two years of practical training. Individuals then take the second state exam, and upon passing, are admitted to the bar.

**Hungary:** Foreign non-EU lawyers may provide legal advice on legislation of their own country and international law. Lawyers registered in the EU may be admitted to the bar. Foreign lawyers from non-EU countries may establish a partnership with a Hungarian legal firm and provide legal services under a “cooperation agreement.”

**Ireland:** In general, lawyers with non-Irish qualifications who wish to practice Irish law and appear before Irish courts must either pass transfer examinations or retrain as lawyers under the direction of the Law Society of Ireland. Only lawyers who have either been admitted to the Bar of England, Wales, or Northern Ireland, practiced as an attorney in New York, California, Pennsylvania (with five years experience required in Pennsylvania), or New Zealand, or have been admitted as lawyers in either an EU or EFTA Member State are entitled to take the transfer examination.

**Italy:** In 2001, Italy passed a law implementing EU Directive 98/5 on EU lawyers’ freedom to establish themselves EU-wide and enabling Italian lawyers to practice jointly, including with EU lawyers, through a limited liability partnership or through the Italian branch of a partnership formed in another EU Member State, as long as the limited liability partnership is composed exclusively of Italian and EU lawyers. The status of non-EU lawyers is not explicitly addressed by the law. This omission leaves the status of international law firms with offices in Italy uncertain, insofar as they have Italian and non-EU lawyers as partners. Despite this ambiguity, several major U.S. law firms have a presence in Italy.

**Lithuania:** Only EU citizens may join the Lithuanian bar and establish law firms that provide the full range of legal services. Lithuanian law permits U.S. attorneys to establish law offices that provide paralegal services. These firms differ from traditional law firms, however, in that they cannot compel Lithuanian institutions to provide information, nor can they protect legally the lawyer-client privilege. U.S. firms can, however, easily partner with a local law firm to provide a full range of legal services.

**Slovakia:** In August 2006, the Slovak Antimonopoly Office overturned Act No. 586/2003 (the Advocacy Act) which was designed to force non-EU-based law firms to change their legal status from a branch partnership to a limited liability company (LLC). Under the Advocacy Act, an LLC had to be owned by an EU advocate registered in Slovakia or a Slovak national, and non-EU law firms could not market

**FOREIGN TRADE BARRIERS**

-239-
the fixed and mobile network interconnection fee by June 30, 2008. In 2006, Hong Kong’s Office of the Telecommunications Authority (OFTA) published a public consultation paper that detailed specific proposals for canceling the fee. While mobile phone operators welcomed the consultation, fixed line phone operators questioned the move because it would mean the loss of approximately HK$600 million (approximately US$77 million) in fees paid by wireless providers to fixed line operators each year. The HKG also has preliminary plans to force the city’s fixed-line operators to lease their networks to providers of voice over Internet protocol (VOIP) services. This move was prompted by complaints that fixed-line operators were blocking such sales to protect market share.

As of November 2004, U.S. banks licensed in Hong Kong have been able to provide renminbi (RMB) services. In November 2005, banks in Hong Kong were permitted modest increases in the scope of RMB business they can offer to clients, including providing services related to deposit taking, exchange, remittances, and credit cards. Making loans in Hong Kong in RMB, however, is still not permitted for any bank.

The October 2002 U.S.-Hong Kong Civil Aviation Agreement significantly expanded opportunities for U.S. carriers. The agreement allows cooperative marketing arrangements between U.S., Hong Kong and third-country carriers (code sharing) and also increases the ability of U.S. carriers to operate cargo and passenger services between Hong Kong and third countries. However, restrictions on frequencies and routes for these services remain. In 2005, the U.S. and Hong Kong governments convened a round of negotiations to expand the Air Services Agreement. The talks were inconclusive and no further negotiations have been scheduled.

Foreign law firms that practice foreign law in Hong Kong are barred from practicing Hong Kong law and from employing or joining into partnership with Hong Kong solicitors. Foreign law firms that wish to provide both foreign and Hong Kong legal services may do so only by establishing a Hong Kong legal practice in which all partners are Hong Kong-qualified solicitors and the number of registered foreign lawyers employed does not exceed the number of Hong Kong solicitors. Such firms may be associated with, or even be branches of, overseas law firms if they meet certain criteria (e.g., at least one partner of the Hong Kong firm must also be a partner in the overseas firm).

**Pharmaceuticals**

U.S. industry has expressed concerns about lengthy approval procedures for new pharmaceuticals which shorten the effective patent life of new products by six months. In addition, U.S. industry is concerned about the lack of transparency in the Hong Kong Hospital Authority’s approval process for new drugs. These cumbersome procedures also inhibit the patent owners’ ability to market their products on a timely basis.

U.S. pharmaceutical companies are concerned that the Hong Kong Department of Health continues to issue marketing authorizations for patent-infringing pharmaceutical products. In addition, the industry has concerns about sales of counterfeit pharmaceuticals—which threaten consumer safety and brand reputation—and it seeks more vigorous enforcement and tougher penalties to deter this kind of illicit trade. According to industry, counterfeit pharmaceuticals from other countries (particularly within the Asia-Pacific region) are being imported in increasing quantities into Hong Kong. Counterfeit pharmaceuticals are then re-packaged to appear similar to legitimate pharmaceuticals registered in Hong Kong. The U.S. Government continues to urge the Hong Kong government to address both the marketing approval/patent protection linkage issue and the counterfeiting issue as they pertain to pharmaceutical products.

**FOREIGN TRADE BARRIERS**

-270-
The government of India FDI of up to 49 percent in Indian cable networks and companies that uplink from India. Total foreign investment in “direct-to-home” (DTH) broadcasting has been restricted to 49 percent, with an FDI ceiling of 20 percent on investments by broadcasting companies and cable companies. At present, news channels are permitted to have up to 26 percent foreign equity investment. They must also ensure that a dominant Indian partner holds at least 51 percent equity. Operational control of the editorial content must be in Indian hands. The Indian government has also announced restrictive minimum capitalization requirements. In addition, all pay television content providers are required to make their content available to all cable and satellite television system operators; and content providers must give 30 day public notification before terminating their signals to non-paying system operators.

In November 2005, the Ministry of Information and Broadcasting announced its "Policy Guidelines for Downlinking of Television Channels" – ostensibly to guard against harmful content – that include major new restrictions on foreign pay-television channels doing business in India. These channels are received through cable television systems that reach 62 million Indian households, mainly in urban areas, and also through direct-to-home satellite services now coming online. These regulations, if left unchanged, will deter future investment by non-Indian broadcasters by imposing new, onerous bureaucratic processes, fees, and litigation expenses; extracting new taxation; threatening revenues from, and protection of, purchased rights for broadcasting programs; and restricting India-directed content, news, and advertising.

**Accounting**

Only graduates of an Indian university can qualify as professional accountants in India. Foreign accounting firms can practice in India if their home country provides reciprocity to Indian firms. Internationally recognized firm names may not be used, unless they are comprised of the names of proprietors or partners or a name already in use in India. This limitation applies to all but the two U.S. accounting firms that were established prior to the imposition of this rule. The Institute of Chartered Accountants of India (ICAI) continues to ban the use of logos of accounting firms. Only firms established as a partnership may provide financial auditing services. Foreign accountants may not be equity partners in an Indian accounting firm.

**Construction, Architecture and Engineering**

Many construction projects are offered only on a non-convertible rupee payment basis. Only government projects financed by international development agencies permit payments in foreign currency. Foreign construction firms are not awarded government contracts unless local firms are unable to perform the work. Foreign firms may only participate through joint ventures with Indian firms.

**Legal Services**

India requires that anyone wishing to practice law must enroll as a member of the Bar Council, and if that person happens to be a foreign national, then he must belong to a country that allows Indian nationals reciprocal rights to practice in their country. FDI is not permitted in this sector, and international law firms are also not authorized to open offices in India. Foreign services providers may be engaged as employees or consultants in local law firms, but they cannot sign legal documents, represent clients, or be appointed as partners. India has not made any offers for opening up the legal services sector at the WTO. In 2006, the U.S. Government and the Indian government announced the formation, under the Trade Policy Forum, of a bilateral Legal Services Working Group to promote greater cooperation between U.S. and Indian lawyers and to address market access issues.
registrations in Indonesia is through the courts, an often-burdensome undertaking that must be initiated within five years from the date of the disputed registration. Faster processing (within 180 days) of trademark cases by the Commercial Courts has provided relief to some trademark holders. However, industry representatives are seeking additional injunctions by the courts, especially in cases where a lower court eventually invalidates a false trademark registration.

SERVICES BARRIERS

Despite relaxation of some restrictions, trade barriers to services continue to exist in many sectors.

Legal Services

A few local law firms currently dominate the legal market, and foreign law firms cannot operate directly in Indonesia. A foreign law firm seeking to enter the market must establish a relationship with a local firm. Only Indonesian citizens with a degree from an Indonesian legal facility or other recognized institution may practice as lawyers. Foreign lawyers can only work in Indonesia as "legal consultants" and must first obtain the approval of the Ministry of Justice and Human Rights.

Distribution

In 1998-99, Indonesia liberalized portions of the distribution services sector under the terms of its agreements with the IMF. The Indonesian government eliminated restrictive marketing arrangements for cement, paper, plywood, cloves and other spices. Indonesia allows up to 100 percent foreign equity in the distribution and retail sectors, with the condition that the investor enter into a "partnership agreement" with a small-scale Indonesian enterprise. This partnership agreement need not involve an equity stake in the project.

In the energy sector, Indonesia passed an Oil and Gas Law in November 2001 to deregulate the downstream oil and gas sectors, which includes refining, distribution, storage and retail activities. Under the law, the state oil and gas company Pertamina was converted into a limited liability company (Regulation No. 31/2003) and ended its public service obligation (PSO) two years after passage of the law. The law also stipulates the formation of a new Oil and Gas Downstream Business Regulating Board (Badan Pengatur Kegiatan Usaha Hilir Migas, or BPH Migas) that effectively took control of Pertamina’s former regulatory function over the downstream industry. Although the day-to-day activities of the board must still be defined through implementing regulations, BPH Migas is an independent government institution that reports directly to the President. Its primary functions include regulating the supply and distribution of oil fuel, allocating sufficient fuel oil to meet national fuel oil reserves, stipulating conditions on fuel oil transportation and storage, setting tariffs for natural gas pipeline use, setting the price of natural gas for households and small consumers, and regulating the transmission and distribution of natural gas. The downstream sector is further regulated with President Regulation No. 46/2004 on Oil and Gas Downstream Activities, issued October 14, 2004, which outlines the general procedures, activities and licenses for downstream activities.

In October 2005, Shell was the first private investor to open a non-Pertamina retail fuel station in Indonesia. About 25 local and international investors, including Malaysia’s national oil and gas company Petronas, are reported to have obtained initial licenses for downstream operation.

FOREIGN TRADE BARRIERS

-292-
Japan amended its Securities and Exchange Law in June 2006 to allow companies making tender offers to withdraw or adjust such offers in response to stock splits, stock allocations and other poison pill defensive measures. The increasing number of high profile tender offers in Japan demonstrates the importance of improved corporate governance aimed at protecting shareholder, rather than entrenched management, interests. The United States continues to press Japan to further strengthen corporate governance mechanisms, including by facilitating and encouraging active proxy voting by institutional investors such as pension and mutual funds, requiring authorization of anti-takeover measures by a company committee composed of a majority of outside directors, and encouraging the major Japanese stock exchanges to adopt listing rules or guidelines that encourage best corporate governance practices in the protection of shareholder interests.

Article 821 of the new Company Law continues to create great uncertainty among foreign corporations that conduct their primary business in Japan through their Japanese branch offices. As written, Article 821 appears to prohibit such branches from engaging in transactions in Japan on a continuous basis. An internal notification (itsuatsu) was issued by Japan’s Ministry of Justice in 2006 clarifying the interpretation of that Article to ensure that it does not adversely affect the operation of foreign companies operating in Japan in a lawful manner; the House of Councillors also adopted a supplementary resolution reaffirming that interpretation. The United States, however, continues to request that Japan amend Article 821 to ensure that it does not apply to U.S. companies operating or desiring to operate in Japan through branch offices that are duly registered and that comply with applicable regulatory and tax laws.

**Legal System Reform**

Continued reform of the Japanese legal system to foster the efficient provision of international legal services and to promote alternative dispute resolution mechanisms is essential to the establishment of an environment in Japan that is conducive to international business and investment and that supports deregulation and structural reform. After more than 15 years of urging by the United States and the foreign legal community, Japan enacted legislation in 2003 that substantially eliminates restrictions on the freedom of association between foreign and Japanese lawyers, effectively permitting partnership and employment relationships between them.

The United States continues to recommend that Japan further liberalize the legal services market by allowing foreign lawyers to form professional corporations and establish multiple branch offices in Japan and by counting all of the time foreign lawyers spend practicing law in Japan toward the three-year experience requirement for licensure as a foreign legal consultant. In addition, the United States has requested Japan to confirm that Japanese lawyers may become members of international partnerships with lawyers outside Japan without restriction.

The United States is also urging Japan to promote arbitration and other alternative dispute resolution (ADR) procedures, including by allowing foreign lawyers and non-lawyers to act as neutrals in any international ADR proceedings taking place in Japan and to make clear that foreign lawyers may represent parties in any such international ADR proceedings.

**Distribution and Customs Clearance**

The efficiency of Japan's distribution system is hampered by high airport user fees, relatively inefficient and costly customs procedures, low credit card acceptance at traditional merchants and Automated Teller Machines (ATMs), and excessive rules on the activities of private express delivery companies. The government of Japan has streamlined the registration of fleet vehicles that was cited as an issue in the 2006 NTE report, although implementation is expected to take another two to five years. The United

**FOREIGN TRADE BARRIERS**

-315-
Professional Services

U.S. and other foreign firms and individuals are hampered in providing professional services in Japan by a complex network of legal, regulatory, and commercial practice barriers. U.S. professional services providers are highly competitive. Their services also help facilitate access for U.S. exporters of other services and goods, and contribute valuable expertise to the economies they serve. The availability of such services can be a key factor in U.S. firms’ decisions whether to invest, and thus is central to improving the environment for foreign direct investment in Japan.

Accounting and Auditing Services: U.S. providers of accounting and auditing services face regulatory and market access barriers in Japan that impede their ability to serve this important market. Only Certified Public Accountants (CPAs) or Audit Corporations (made up of five or more Japanese CPAs) can offer accounting services. Foreigners must pass a national examination to qualify, and this examination is offered annually. The United States will continue to urge Japan to remove restrictions on accounting services.

Legal Services: As noted above in the Legal System Reform portion of the Regulatory Reform Initiative section, 2003 and 2004 brought sweeping reform in the area of association between Japanese and foreign lawyers, and the new system of Joint Law Firms (kyodo jigyo) was implemented on April 1, 2005.

Medical Services: Restrictive regulation limits foreign access to the medical services market. In the U.S.-Japan Investment Initiative, the United States has advocated allowing commercial entities to provide for-profit medical services and allowing more outsourcing of certain medical services, such as diagnostic and chronic care services (advanced imaging, maintenance dialysis, rehabilitation, etc.) to open this sector to foreign capital-affiliated providers.

Educational Services: Excessive regulation has discouraged foreign universities from operating branch campuses in Japan, presenting obstacles in the form of both administrative requirements and restrictions on pedagogical choices. The U.S.-Japan Investment Initiative has taken up these issues, and the Japanese government has established a new category of “Foreign University - Japan Campus” for accredited institutions of higher education whose home campus is in the United States or elsewhere. Four U.S. institutions have been granted this status as of September 2006. This designation has provided these campuses with a number of important benefits (such as student rail passes and the authority to issue student visas) similar to those accorded Japanese educational institutions. However, the new status for foreign universities does not yet grant the tax benefits enjoyed by Japanese institutions and their students. The United States continues to urge Japan’s Ministry of Education, Culture, Sports, Science and Technology to work with these foreign universities to find a nationwide solution that grants these institutions the appropriate tax status and allows them to continue to provide their unique contributions to Japan’s educational environment.

INVESTMENT BARRIERS

Despite being the world’s second-largest economy, Japan continues to have the lowest inward foreign direct investment (FDI) as a proportion of total output of any major OECD nation. Foreign participation in mergers and acquisitions (M&A) activity, which accounts for some 80 percent of FDI in other OECD countries, also lags in Japan, although it is on an upward trend. This relative lack of foreign investment can act as a restraint on the expansion of imports.

Much of the recent increase in FDI flows reflects restructuring in the financial services and telecommunications sectors. The Japanese government has recognized the importance of FDI in

FOREIGN TRADE BARRIERS

-331-
ownership of cable television-related system operators, network operators, and program providers to 49 percent. For satellite broadcasts, foreign participation is limited to 33 percent.

**Satellite Re-Transmission**

The Integrated Broadcast Law mandates that Korean firms that wish to re-broadcast satellite transmissions of foreign programmers must have a contract with the foreign program provider in order to obtain approval from the Korean Broadcasting Commission (KBC). Foreign re-transmission channels are limited to 20 percent of the total number of operating channels. This restriction limits the amount of international broadcasting that could otherwise be made available to Korean consumers and limits foreign investment in the broadcasting sector.

**Restrictions on Voice-overs and Local Advertisements**

Presently, the Korean Broadcasting Commission’s guidelines for implementation of the Broadcasting Act contain restrictions on voice-overs (dubbing) and local advertising for foreign re-transmission channels. Allowing Korean language voice-overs would make broadcasts more accessible to Korean consumers (especially for breaking news and children’s cartoons); it would also benefit the Korean economy by creating more studio-production jobs and attracting foreign investment. The prohibition on local advertising for foreign re-transmission channels restricts the long-term viability of these channels in the Korean market.

**Legal Services**

The Korean government plans to open its legal services market in stages. The first step would be to regularize the legal status of foreign legal consultants. The U.S. Government has also been informed that the law would allow foreign law firms to open offices in Korea, although they would not be allowed to hire Korean attorneys or advise on domestic law. As of the publication of this report, the Korean government has not submitted draft legislation to its National Assembly. The U.S. Government continues to urge the Korean government to allow foreign law firms to practice law in Korea.

**Insurance**

Korea is the second-largest insurance market in Asia and seventh-largest in the world. Korea’s laws and regulations do not restrict foreign entry into insurance markets.

Korean and foreign companies (including U.S. firms) active in Korea’s insurance and savings markets are concerned about the supply of insurance services by Korea Post, a government agency, the National Agricultural Cooperative Federation (NACF), and the National Federation of Fisheries Cooperative (NFFC). These entities are not regulated by the Korean Financial Supervisory Commission (FSC) or the Financial Supervisory Service (FSS) as are private insurers. U.S. companies recognize that changing the regulation of these entities is difficult but seek a mechanism that would begin to address this concern. The U.S. Government has urged the Korean government to consider ways to bring these entities under the regulatory authority of the FSC and FSS. In response, the Korean government appears to be considering ways to improve the regulation of Korea Post’s and the cooperatives’ financial activities. The U.S. Government will continue to raise these issues with Korea.
Participation in the Distributive Trade Services* that came into effect in December 2004. Among other provisions, department stores, supermarkets and hypermarkets must reserve at least 30 percent of shelf space in their premises for goods and products manufactured by bumiputera-owned small and medium size industries. The guidelines also require that at least 30 percent of a store’s sales consist of bumiputera products. The Malaysian government continues to consider changes to these guidelines, in large part due to complaints from both domestic and foreign business interests.

Legal Services

Foreign lawyers may not practice Malaysian law, nor may they affiliate with local firms or use the name of an international firm. Foreign law firms may not operate in Malaysia except as minority partners with local law firms and their stake in any partnership is limited to 30 percent. Under the Legal Profession Act of 1976, the practice of Malaysian law is normally restricted to Malaysian citizens or permanent residents who have apprenticed with a Malaysian lawyer, are competent in Bahasa Malaysia (the official language), and have a local law degree or are accredited British Barristers at Law. The Attorney General has authority to grant limited exceptions on a case-by-case basis, provided the applicant has seven years of legal experience. Malaysian law does not allow for foreign legal consultancy except on a limited basis in the Labuan International Offshore Financial Center (see “Banking” below). Malaysia limits such foreign attorneys’ scope of services to advice concerning home country and international law. Persons not licensed as lawyers are subject to criminal penalties if they directly or indirectly undertake activities relating to the Malaysian legal system, including drafting documents.

Architectural Services

A foreign architectural firm may operate in Malaysia only as a joint-venture participant in a specific project with the approval of the Board of Architects. Malaysian architectural firms may not have foreign architectural firms as registered partners. Foreign architects may not be licensed in Malaysia but are allowed to be managers, shareholders, or employees of Malaysian firms. Only licensed architects may submit architectural plans.

Engineering Services

Foreign engineers may be licensed by the Board of Engineers only for specific projects and must be sponsored by the Malaysian company carrying out the project. The license is only valid for the duration of a specific project. In general, a foreign engineer must be registered as a professional engineer in his or her home country, have a minimum of 10 years experience and have a physical presence in Malaysia of at least 180 days in one calendar year. To obtain temporary licensing for a foreign engineer, a Malaysian company often must demonstrate to the Board that they cannot find a Malaysian engineer for the job. Foreign engineers are not allowed to operate independently of Malaysian partners or serve as directors or shareholders of an engineering consulting company. A foreign engineering firm may establish a non-temporary commercial presence if all directors and shareholders are Malaysian. Foreign engineering companies may collaborate with a Malaysian firm but only the Malaysian company may submit the plans for domestic approval.

Accounting and Taxation Services

Foreign accounting firms may provide accounting and taxation services in Malaysia only through affiliates. All accountants who wish to provide auditing and taxation services in Malaysia must register with the Malaysian Institute of Accountants (MIA) before they may apply for a license from the Ministry of Finance. Citizenship or permanent residency is required for registration with MIA. Malaysian citizens

FOREIGN TRADE BARRIERS
-387-
circulation of some foreign publications. In September 2006, Singapore banned the Far Eastern Economic Review on grounds that the publisher did not comply with Section 23 of the Newspaper and Printing Presses Act, whereby the offshore publisher must appoint a person within Singapore authorized to accept service of any notice or legal process on behalf of the publisher and post a security deposit of S$200,000 ($125,000). The Singapore government has also "gazetted" foreign newspapers i.e., numerically limited their circulation. Foreign publishers also face the risk of defamation suits should they be found to "interfere" with Singapore's domestic politics.

Legal Services

U.S. and other foreign law firms with offices in Singapore face certain restrictions. They cannot practice Singapore law, employ Singapore lawyers to practice Singapore law, or litigate in local courts. Since June 2004, U.S. and other foreign lawyers have been allowed to represent parties in arbitration in Singapore without the need for a Singapore attorney to be present. U.S. law firms can provide legal services with respect to Singapore law only through a Joint Law Venture (JLV) or Formal Law Alliance (FLA) with a Singapore law firm, subject to the Guidelines for Registration of Foreign Lawyers in Joint Law Ventures to Practice Singapore Law. Singapore relaxed one of these guidelines for U.S. law firms under the FTA. As of October 2005, 16 of the 64 foreign law firms in Singapore were from the United States. Additionally, there was one U.S. JLV and one FLA.

Except for law degrees from designated U.S., Australian, New Zealand and British universities, no foreign university law degrees are recognized for the purpose of admission to practice law in Singapore. Under the FTA, Singapore has recognized law degrees from Harvard University, Columbia University, New York University and the University of Michigan, effective April 7, 2006.

To address a perceived shortage of practicing lawyers, Singapore relaxed its criteria for admission of attorneys to the Singapore Bar, effective October 2006. One of the new criteria will admit to the Bar Singapore-citizen or permanent-resident law school graduates of the above-mentioned designated universities who were ranked among the top 70 percent of their graduating class or have obtained lower-second class honors (under the British system). The government also intends to allow highly skilled foreign lawyers to practice Singapore corporate, finance and banking law, and is considering possible implementation alternatives.

Engineering and Architectural Services

Engineering and architecture firms can be 100 percent foreign owned. In line with the FTA provisions, and also applicable to all foreign firms, Singapore has removed the requirement that the chairman and two-thirds of the firm's board of directors must be composed of engineers, architects or land surveyors registered with local professional bodies. Practicing engineers and architects must register with the Professional Engineers Board and the Architects Board, respectively. Under amended legislation, local and foreign job applicants, including U.S. degree-holders, will be required to have at least four years of practical experience in engineering or architectural works and pass an examination set by the respective Board.

Accounting and Tax Services

The major international accounting firms all operate in Singapore. Public accountants and at least one partner of a public accounting firm must reside in Singapore. Only public accountants who are members of the Institute of Certified Public Accountants of Singapore and registered with the Public Accountants

FOREIGN TRADE BARRIERS

-544-
television services has curtailed satellite broadcasts of foreign programs, including some U.S. programs. The two affected companies were allowed to resume operations in November and December 2006, respectively.

**Professional Services**

There is no formal national policy on professional services. In practice, many foreign doctors, nurses, engineers, architects, and accountants work in Sri Lanka. Most of them are employed by foreign companies. Sri Lanka has not made any WTO commitments on the presence of natural persons and national treatment is not accorded to foreign nationals working in Sri Lanka. Most foreign nationals do not have statutory recognition in Sri Lanka and cannot sign documents presented to government institutions or regulatory bodies.

The Immigration Department grants resident visas for expatriates and professionals whose services are required for projects or by companies approved by the Board of Investment (BOI). The Department also grants visas for foreign professionals required for projects approved by the government. Non-BOI companies, such as banks, can also recruit expatriate staff. Sri Lanka also operates a resident guest visa program for foreign investors and professionals who are recommended by the relevant ministry.

**Legal Services**

A person can provide legal consultancy services without being licensed to practice law in Sri Lanka. Foreigners are not allowed to practice law (i.e., appear in courts) and do not have statutory recognition in Sri Lanka. Sri Lankan citizens with foreign qualifications need to sit for exams conducted by the Sri Lanka Law College in order to practice and register in the Supreme Court.

**INVESTMENT BARRIERS**

Sri Lanka welcomes foreign investment but has restrictions in specific sectors. Foreign investment is not permitted in the following areas:

- non-bank money lending;
- pawn broking;
- retail trade with a capital investment of less than $1 million (with one notable exception: the Board of Investment (BOI) permits retail and wholesale trading by reputable international brand names and franchises with an initial investment of not less than $150,000);
- coastal fishing;
- education of students under 14 years of age for local examinations; and
- the awarding of local university degrees (note that this does not limit the awarding of degrees from overseas institutions).

Investment in the following sectors is restricted and subject to screening and approval on a case-by-case basis when foreign equity exceeds 40 percent:

- shipping and travel agencies;
- freight forwarding;
- higher education;
- mass communications;
- deep sea fishing;

**FOREIGN TRADE BARRIERS**

-555-
NTC plans to issue licenses for third-generation (3G) mobile telephone services have been delayed. By law, allocation of frequencies requires participation by both the NTC and a National Broadcast Commission (NBC), which is still not yet operational. It remains unclear how frequencies will be allocated and whether allocation must await the formation of the NBC.

An amendment to the Telecommunications Business Law went into effect in December 2005 that raised the limit of allowable foreign ownership from 25 percent to 49 percent. State-owned enterprises continue to control large segments of the market, particularly in fixed-line and international long-distance services. With the growth of new markets such as mobile phone and satellite services in recent years, however, the role of private companies in this dynamic sector has grown accordingly. The two largest mobile service operators have pursued controversial tie-ups with foreign telecommunications firms. In January 2006, Singapore-based Temasek bought a controlling interest in Shin Corporation, the parent of mobile provider AIS, and in October 2005, Norway's Telenor AS bought out both TAC and its parent company UCOM. The Ministry of Commerce initiated an investigation into foreign ownership of Shin Corporation that may force Temasek to divest some of its ownership to comply with the law.

Thailand's telecommunications operators have historically operated as state-owned enterprises and the legacy of state ownership continues to affect the business environment in this sector. The two outstanding issues are concession conversion and privatization. Beginning in the mid-1980s, the Thai government introduced competition into the telecommunications sector to increase capacity so as to meet the booming economy's demand for telecommunications services. The state-owned telecommunications companies, now TOT and CAT Telecom, granted several concessions to private companies on a Build-Transfer-Operate (BTO) contract basis. Under the BTO contracts, the private contracting party established telecommunications networks at their own expense. Upon completion of the concession period, all assets are to be transferred to the concession grantor. Revenue sharing payments for each concession have differed. A dual structure in the sector resulted, where the concessionaires both compete with TOT and CAT Telecom while at the same time submitting to their regulation and making revenue sharing payments to them. While early plans for reform of the sector called for concession conversion, the NTC decided not to interfere in the concessions but to begin issuing licenses to provide telecommunications services. Concessions are thus expected to expire gradually as the private operators migrate subscribers for mobile services from 2G to 3G services, which will bring their operations under the purview of the NTC and free them from revenue sharing payments.

The Thai government is also planning to partially privatize TOT and CAT Telecom, but the privatization has met resistance. Regulatory uncertainty on such issues as interconnection charges complicates the task of determining the companies' market value.

Legal Services

Current Thai law prohibits foreign equity participation in Thai law firms in excess of 49 percent, and foreign nationals are prohibited from practicing law in Thailand. However, under the U.S.-Thailand Treaty of Amity and Economic Relations (AER Treaty), U.S. investments are exempted from the general restriction on foreign equity participation in law firms. U.S. investors may own law firms in Thailand; but U.S. citizens and other foreign nationals (with the exception of "grandfathered" non-citizens) may not provide legal services. In certain circumstances, foreign attorneys may act in a consultative capacity.

Financial Services

After the 1997-98 financial crisis, the Thai government liberalized foreign firms' access to the financial sector. However, significant restrictions remain on foreign participation in the sector. While aliens have
SERVICES BARRIERS

Ukraine has few explicit restrictions on services, but they do exist in areas such as insurance, banking activities, auditing, legal services, television and radio broadcasting, and information agencies. As a result of the March 2006 bilateral WTO agreement with the United States, U.S. service providers will benefit from more open access in the areas of energy services, branching in banking and insurance, professional services, express delivery, and telecommunications, among others.

In 2005, the Ukrainian Parliament adopted legislation that will, within five years after WTO accession, permit foreign insurance companies to open branches in Ukraine. In the fall of 2006, it adopted amendments to the law on “Banks and Banking” that would permit foreign banks to open subsidiaries, and adopted a law “On Advocacy” that eliminates the nationality requirements for legal services.

Foreign professionals are permitted to work in Ukraine, but the lack of transparency and the multiplicity of licensing authorities hinder foreign access to the Ukrainian services market. A local content requirement exists for radio and television broadcasting, although it has not been stringently enforced in most cases. Additionally, in January 2006 Ukraine’s Parliament adopted a new law on television and radio broadcasting that eliminated restrictions on the share of foreign capital in the charter funds of television and radio broadcasting companies.

U.S. industry identified efforts in Ukraine in 2006 to limit the ability of foreign credit and debit card service providers to provide their services to clients of national electronic payments systems. Ukraine has taken on services commitments in the context of WTO negotiations to maintain an open and competitive banking system, including credit and debit cards, with full market access to electronic payments services. At present, there are no formal restrictions. The United States continues to monitor Ukraine’s compliance in this important area.

INVESTMENT BARRIERS

An underdeveloped banking system, poor communications networks, a difficult and frequently changing tax and regulatory climate, crime and corruption, and a weak legal system create obstacles to U.S. investment in Ukraine. The government is working to streamline regulations and eliminate duplicative and confusing laws regarding investment and business. In 2005, Ukraine created several agencies in order to attract investment to Ukraine, including the State Center for Foreign Investment Promotion within the Ministry of Economy, the State Agency for Investment and Innovation, and the State Agency for Investment and Innovation under the President.

The United States has a Bilateral Investment Treaty (BIT) with Ukraine, which took effect in 1996. The BIT guarantees U.S. investors the better of national and MFN treatment, the right to make financial transfers freely and without delay, international legal standards for expropriation and compensation, and access to international arbitration. Despite the BIT, there are a number of longstanding investment disputes faced by several U.S. companies. These disputes mainly date from the early 1990s and the initial opening of the Ukrainian economy to foreign investors. In most cases, however, there has been little progress toward resolution of these cases under subsequent Ukrainian governments.

Taxation

In 2003, Ukraine passed legislation on tax reform, establishing a flat tax on personal income of 13 percent, which will be raised to 15 percent as of January 1, 2007, in accordance with new legislation. In

FOREIGN TRADE BARRIERS

-609-