Excerpts mentioning legal services barriers from the USTR’s

2008 National Trade Estimate Report on Foreign Trade Barriers

available at

which is a link from:

Prepared Nov. 4, 2009 by Professor Laurel Terry (LTerry@psu.edu)

Countries for which barriers are included:
1. Cambodia
2. China
3. Colombia
4. Costa Rica
5. Cote d’Ivoire
6. EU
7. Hong Kong
8. India
9. Indonesia
10. Japan
11. Korea
12. Malaysia
13. Pakistan
14. Russia
15. Singapore
16. Sri Lanka
17. Ukraine
18. Venezuela
19. Vietnam
ACKNOWLEDGEMENTS

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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.

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FOREWORD

The 2008 National Trade Estimate Report on Foreign Trade Barriers (NTE) is the 23rd 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 elude fixed definitions, but may be broadly defined as government laws, regulations, policies, or practices that either protect domestic products from foreign competition or artificially stimulate exports of particular domestic products. This report classifies foreign trade barriers into 10 different categories. These categories cover government-imposed measures and policies that restrict, prevent, or impede the international exchange of goods and services. They include:

- Import policies (e.g., tariffs and other import charges, quantitative restrictions, import licensing, customs barriers);
- Standards, testing, labeling and certification (including unnecessarily restrictive application of sanitary and phytosanitary standards and environmental measures, and refusal to accept U.S. manufacturers' self-certification of conformance to foreign product standards);
- Government procurement (e.g., buy national policies and closed bidding);
• Export subsidies (e.g., export financing on preferential terms and agricultural export subsidies that displace U.S. exports in third country markets);

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

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

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

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

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

• Other barriers (barriers that encompass more than one category, e.g., bribery and corruption,\(^2\) or that affect a single sector).

The NTE 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: 57 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, the section on Uzbekistan has been deleted from this year’s NTE. U.S. exports to Uzbekistan fell consistently from 2003 through 2006. Our largest exports to Uzbekistan the last few years have been charitable goods for humanitarian relief. Overall, Uzbekistan accounts for less than 0.01 percent of U.S. exports.

In this Foreword, we are also providing an update on progress the Administration has made in reducing trade-related barriers to the export of greenhouse gas intensity reducing technologies (GHGIRTs), as called for by the Energy Policy Act of 2005 (Act). In October 2006, pursuant to section 1611 of the Act,\(^3\) USTR prepared a report that identified trade barriers that face U.S. exporters of GHGIRTs in the top 25 greenhouse gas (GHG) emitting developing countries and described the steps the United States is taking

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to reduce these and other barriers to trade. The Act also calls for USTR to report annually on progress made with respect to removing the barriers identified in the initial report. USTR submitted the first annual progress report in October 2007; this report, as well as the initial report, are available at http://www.ustr.gov. As noted in the October 2007 report, USTR will submit further annual progress reports as part of the NTE Report.

Since the October 2007 GHGIRT report, the United States, together with the European Communities (EC), have submitted a ground-breaking proposal as part of the WTO Doha Round negotiations to increase global trade in and use of environmental goods and services, including GHGIRTs. The proposal lays the foundation for an innovative new environmental goods and services agreement (EGSA) in the WTO and would include a commitment by all WTO Members to remove barriers to trade in a specific set of climate-friendly technologies. The initiative was prompted by President Bush's initiative earlier this year to seek an agreement with major economies on a new international climate agreement. The proposal underscores the importance of liberalizing trade in environmental goods and services in parallel by recognizing, for the first time, how the market works in this sector – how goods are bundled with services. For example, designing more energy efficient buildings can require consulting, design and construction services, as well as solar panels for heating.

The joint proposal seeks to eliminate tariff and nontariff barriers to environmental technologies and services on a global scale through a two-tiered approach: 1) A first-ever in the WTO agreement on worldwide elimination of tariffs on a specific list of climate friendly technologies recently identified by the World Bank; and 2) A higher level of commitment on the part of developed and the most advanced developing countries to eliminate barriers to trade across a broader range of other environmental technologies and an array of environment-friendly services. USTR will be working this year to advance this proposal and ensure that it is an integral part of the Doha round package of trade liberalization.

The United States is also continuing its efforts in APEC in connection with the initiative on environmental goods in APEC’s Market Access Group (MAG), launched in 2007. The work is focused on building a better understanding throughout the APEC region of cutting edge environmental technologies and building momentum for trade liberalization in this important sector. This year, the United States is working with Canada and New Zealand to organize a second environmental goods and services workshop highlighting climate mitigation and adaptation technologies and services. We also hope to develop an APEC database of environmental goods and services that could be updated regularly and used for unilateral, bilateral/regional, or multilateral liberalization efforts.

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 2007 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 2007 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.

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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 derivationally difficult to estimate the effect of even the overlapping tariff barriers on U.S. exports.

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

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

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

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

March 2008
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 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 37 countries, including the United States. The Antibribery Convention obligates its parties to criminalize the bribery of foreign public officials in the conduct of international business. It is aimed at proscribing the activities of those who offer, promise, or pay a bribe. (For additional information, see http://www.export.gov/fcc and http://www.oecd.org).

The United States played a critical role in the successful conclusion of negotiations that produced the United Nations Convention against Corruption, the first global anti-corruption instrument. The Convention was opened for signature in December 2003, and 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, 141 countries, including the United States, have signed the Convention and 49 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. The United States Government seeks binding commitments in free trade agreements (FTAs) that promote transparency and that specifically address corruption of public officials. The United States Government also is seeking to secure a meaningful agreement on trade facilitation in the 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 Section 1611 of the Act amends the Global Environmental Protection Assistance Act of 1989 (Public Law 101-240) to add new Sections 731-39. Section 732(a)(2)(A) directs the Department of State to identify the top 25 GHG emitting developing countries for the purpose of promoting climate change technology. The Secretary of State has submitted its report to Congress identifying these 25 countries. Section 734 calls on the United States Trade Representative “(as appropriate and consistent with applicable bilateral, regional, and mutual trade agreements) [to] (1) identify trade-relations barriers maintained by foreign countries to the export of greenhouse gas intensity reducing technologies and practices from the United States to the developing countries identified in the report submitted under section 732(a)(2)(A); and (2) negotiate with foreign countries for the removal of those barriers.”

4 These 25 countries were identified in the Department of State’s 2006 “Report to Congress on Developing Country Emissions of Greenhouse Gases and Climate Change Technology Deployment.” They are: China; India; South Africa; Mexico; Brazil; Indonesia; Thailand; Kazakhstan; Malaysia; Egypt; Argentina; Venezuela; Uzbekistan; Pakistan; Nigeria; Algeria; Philippines; Iraq; Vietnam; Colombia; Chile; Libya; Turkmenistan; Bangladesh; and Azerbaijan.

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

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Patents and Industrial Designs

Cambodia has a very small industrial base and infringement of patents and industrial designs is not yet commercially significant. The Law on the Protection of Patents and Industrial Designs provides for the filing, registration, and protection of patents, utility model certificates, and industrial designs. The Ministry of Industry, Mines, and Energy has also issued a sub-decree on granting patents and registering industrial designs.

Copyrights

Cambodia enacted a copyright law in January 2003. Responsibility for copyrights and related rights 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. The U.S. Government will continue to work with Cambodia under the TIFA to address this issue.

SERVICES BARRIERS

Legal Services

Under the GATS, Cambodia agreed to allow foreign lawyers to supply legal services with regard to foreign law and international law. It also agreed to allow them to supply certain legal services with regard to Cambodia’s law in “commercial association” with Cambodian law firms. The commitment defines “commercial association” as any type of commercial arrangement, without any requirement as to corporate form. Efforts to limit foreign lawyers to 49 percent ownership of any law firm have failed, but highlight the need to make explicit in regulations that there are no equity limitations on the practice of foreign and international law by foreign enterprises, and that there are no equity limitations on the formation of “commercial associations” under which foreigners may practice certain legal services with regard to Cambodia’s law.

Telecommunications Services

Private participation (including foreign) in mobile services, electronic mail, electronic data interchange, and code and protocol conversion are allowed and national treatment is accorded to foreign suppliers of these services. Multiple mobile operators are currently operating in Cambodia. 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 are provided exclusively by government owned Telecom Cambodia. A draft Law on Telecommunications that would eliminate Telecom Cambodia’s exclusivity in fixed-line services is awaiting approval at the National Assembly. The legislation would permit foreign equity participation in basic operations and seeks to facilitate the creation of an independent regulatory body.

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reservation system when booking airline tickets. China also continues to apply an annual sales requirement on foreign travel agencies, although there are no such requirements for domestic agencies.

**Education and Training Services**

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 nonprofit educational activities that do not compete with the MOE-supervised 9 years of compulsory education, thereby inhibiting much-needed foreign investment in the education sector. China also bans foreign companies and organizations from offering educational services via satellite networks.

The MOE’s *Implementing Rules for China-Foreign Cooperative Education Projects (2004)* limit foreign educators’ participation to certain activities, including education offering academic certificates, supplementary education, and pre-school education. These activities cannot take the form of activities at actual educational institutions.

Foreign universities may set up nonprofit operations. However, they must have a Chinese university host and partner to ensure that programs bar subversive content and that information that is imported is adapted to suit local conditions.

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 Protocol of Accession to the WTO, China agreed to lift quantitative and geographical restrictions on the establishment of representative offices by foreign law firms within 1 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 (MOJ) 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 are ambiguous. For example, the measures appear to create an economic needs test for foreign law firms wanting to establish offices in China, which could raise concerns regarding China’s compliance with its GATS commitments. The measures also seem 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 are 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 3 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, thus prohibiting them from providing advice on Chinese law to clients.

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. Additionally, foreign law firms are placed at a considerable disadvantage even after they are established in China. A foreign firm’s area of practice is severely restricted while domestic firms do not face similar restrictions. While domestic firms are only taxed as partnerships, foreign firms are subject to taxes at both the firm and individual levels. They are also not permitted to repatriate profits earned, since as representative offices, they are not permitted to convert profits in RMB into foreign currency. Furthermore, new foreign representatives must go through a lengthy approval process that can take more than 1 year, during which they must leave the country monthly to file for a renewal visa. Finally, the MOJ refuses to fully license Chinese attorneys that work in foreign firms and prohibits foreign law firms from providing advice on Chinese law even if they hire qualified Chinese lawyers, thus preventing foreign law firms from participating fully in China’s legal market.

INVESTMENT BARRIERS

The volume of foreign investment in China remained high in 2006 despite the introduction of significant new investment barriers. According to the United Nations Conference on Trade and Development, China received $72.4 billion in FDI in 2006. China was the world’s third-largest investment destination, after the United States and the United Kingdom. Foreign investors also continued to earn high rates of return in 2007, indicating that China remains an attractive market in which to invest despite the continuing challenges of doing business there. The World Bank Doing Business Report 2008 gave China a global ranking for “ease of doing business” of 83, an improvement of 9 spots from the previous year’s report. In 2007, investors continued to complain of a lack of transparency, inconsistently enforced laws and regulations, weak intellectual property protection, corruption, a lack of transparency, and an unreliable legal system incapable of enforcing contracts and judgments.

China’s leadership has repeatedly affirmed its commitment to further open China to foreign investment, including a strong statement at the JCCT meeting in December 2007 in which China reiterated its commitment to open investment and to the principle of nondiscrimination in investment regulation. However, there is rising concern that recent steps China has taken may increasingly discriminate against foreign investment. For example, the State Assets Supervision and Administration Commission (SASAC) in December 2006 issued the Guiding Opinion Concerning the Advancement of Adjustments of State Capital and the Restructuring of State-Owned Enterprises. Statements accompanying its release identified an expansive list of sectors deemed critical to the national economy including “pillar” industries such as equipment manufacturing, automotive, electronic information, construction, iron and steel, nonferrous metal, chemical, survey and design, and science and technology industries. SASAC committed to restrict foreign participation in these sectors by preventing further foreign investment in state-owned enterprises operating in these sectors. Furthermore, vague new language about economic security in China’s Provision on the Mergers and Acquisitions of Domestic Enterprises by Foreign Investors adopted in 2006 that includes terms such as “national economic security” and “critical industries” raises concerns that such language could forebode increased protectionist policies. The Foreign Investment Catalogue issued in November 2007, further suggests China’s investment policies

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inconsistency and confusion in application. Companies often have difficulty determining whether their activities contravene a particular law or regulation.

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

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

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

Commercial Dispute Resolution

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

At the same time, the Chinese government is moving to establish consistent and reliable mechanisms for dispute resolution through the adoption of improved codes of ethics for judges and lawyers and increased emphasis on the consistent and predictable application of laws. The Judges’ Law, issued by the Standing Committee of the National People’s Congress in 1995, requires judges to have degrees in law or in other subjects where they have acquired specialized legal knowledge, and permits judges appointed before the law’s implementation who do not meet these standards to undergo necessary training. In 1999, the Supreme People’s Court began requiring judges to be appointed based on merit and educational background and experience, rather than through politics or favoritism. In 2002, the Supreme People’s
Court issued rules designating certain higher level courts to hear cases involving administrative agency decisions relating to international trade in goods or services or IPR. According to the Supreme People’s Court, China’s more experienced judges sit on the designated courts, and the geographic area under the jurisdiction of each of these designated courts has been broadened in an attempt to minimize local protectionism. The rules provide that foreign or Chinese enterprises and individuals may bring cases in the designated courts raising challenges under the Administrative Litigation Law to decisions made by China’s administrative agencies relating to international trade matters. The rules also state that when there is more than one reasonable interpretation of a law or regulation, the courts should choose an interpretation that is consistent with the provisions of international agreements to which China has committed, such as the WTO rules.

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

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

Labor Issues

In recent years, China has expanded the scope of its national labor laws and regulations. In 2007, the National People’s Congress passed the Labor Contract Law, which is meant to clarify the rights and obligations of workers and employers and to promote better labor relations by making it more difficult for employers to summarily dismiss workers, and the Employment Promotion Law, which, among other things, expands the definition of illegal discrimination. Even with these changes, China does not adhere to certain internationally recognized labor standards with respect to freedom of association and the right to engage in collective bargaining. There are many reports indicating that China does not effectively enforce its labor laws and regulations concerning such issues as minimum wages, hours of work, occupational safety and health, and participation in social insurance programs. There are also persistent concerns about the use of forced prison labor and an increasing incidence of child labor.

The Chinese government is slowly developing a national pension system, unemployment insurance, medical insurance, and workplace injury insurance systems that require substantial employer contributions. These systems are still rudimentary and characterized by serious funding shortfalls, in part due to widespread noncompliance among domestic firms. A Chinese government audit report published in November 2006 revealed that more than RMB7 billion ($875 million) of China's RMB2 trillion ($250 billion) social security funds had been misappropriated. These insurance programs serve mainly urban residents. Rural residents and migrant workers, who make up the bulk of the work force, enjoy minimal social insurance coverage. This revelation has made social security the primary concern for many Chinese citizens, according to a subsequent survey.

The cost of labor is low but rising in much of China. The existence of a large pool of surplus rural workers, many of whom seek work in urban areas, has kept wage growth for unskilled workers low, but wages for skilled workers are rising rapidly. Some companies offering substandard wages and working conditions have experienced shortages of unskilled labor. Where competition for workers is intense and

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enforcement activities, such as raids and arrests. Despite these improvements, intellectual property industry representatives report that the rate of intellectual property enforcement is still a major concern.

SERVICES BARRIERS

The telecommunications, auditing, and energy sectors are generally open to participation by foreign companies. Some restrictions, such as economic needs tests and residency requirements, still remain in sectors such as accounting, tourism, legal services, insurance, distribution services, advertising, and data processing. The provision of legal services is limited to law firms licensed under Colombian law. Foreign law firms can operate in Colombia only by forming a joint venture with a Colombian law firm and operating under the licenses of the Colombian lawyers in the firm. Colombia permits 100 percent foreign ownership of insurance firm subsidiaries. It does not, however, allow foreign insurance companies to establish local branch offices. Insurance companies must maintain a commercial presence in order to sell policies other than those for international travel or reinsurance. Colombia denies market access to foreign maritime insurers.

International banking institutions are required to maintain a commercial presence in Colombia through subsidiary offices and therefore, must comply with the same capital and other requirements as local financial institutions. Colombian legislation has limits on the operation of banks and other financial institutions by separating fiduciary, investment banking, commercial loans, leasing, and insurance services from banking services. Current legislation (Law 389 of 1997) permits banking institutions to develop such activities in the same location, but the management of such services must be separate. Colombian legislation permits 100 percent foreign ownership in financial services, although the use of foreign personnel in the financial services sector remains limited to administrators, legal representatives, and technicians. Industry experts estimate that the elimination of trade barriers in the financial services sector could create up to $500 million in opportunities for U.S. firms.

Under the CTPA, Colombia will accord substantial market access across its entire services regime, subject to a limited number of exceptions. Colombia agreed to remove and to limit specific barriers. For example, Colombia will phase-in several liberalizations in financial services, such as allowing branching by banks and insurance companies and allowing the sale of international maritime shipping and commercial aviation insurance within 4 years of entry into force of the Agreement. Under the Agreement, mutual funds and pension funds will be allowed to use portfolio managers in the United States.

Transborder transportation services are restricted in Colombia. Land cargo transportation must be provided by Colombian citizens or legal residents with commercial presence in the country and licensed by the Ministry of Transportation. Colombia's law permits international companies to provide cabotage services (i.e., transport between two points within Colombian territory) "only when there is no national capacity to provide the service." The Ministry of Foreign Trade reserves the right to impose restrictions on foreign vessels of those nations that impose reserve requirements on Colombian vessels. Under the terms of the CTPA, Colombia committed to allow 100 percent foreign ownership of land cargo transportation enterprises in Colombia. The Agreement removes the Ministry of Foreign Trade's right to impose cargo reservation restrictions on U.S. flagged vessels.

Additionally, Colombia committed in the CTPA to allow companies in most sectors to hire managers and other professionals of their choice, free from nationality restrictions, including those applying to engineers and architects. Colombia also committed to remove onerous restrictions applying to agency relationships affecting the sale of goods. Some restrictions that remain under the CTPA are those requiring residency in the accounting and tourist sectors.

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elements of Costa Rica’s intellectual property laws appear to be in line with international standards, enforcement remains very weak. Initiatives, including the formation of an intergovernmental intellectual property rights commission and the training of judges and prosecutors on intellectual property laws, have not produced significant improvements in the prosecution of IPR crimes. Deterrence is further undermined as IPR violators are not aggressively prosecuted by the Attorney General of Costa Rica, a fact that is frequently attributed to scarce resources.

Costa Rica’s patent office continues to experience significant delays in processing applications, but has tried to remedy that problem by contracting technical patent reviews with two of Costa Rica’s educational institutions. Long delays in copyright enforcement cases continue to be a serious problem. Though piracy of satellite television transmissions by the domestic cable television industry has been curtailed, U.S. industry continues to express concern that some apartment buildings and hotels continue to engage in satellite signal piracy. Unauthorized sound recordings, videos, optical discs, and computer software are also widespread. Previous efforts to reduce their presence in the market have not continued over the last year.

In order to implement the CAFTA-DR, Costa Rica must make changes to its existing IPR laws and regulations to address limitations that currently prevent effective enforcement. These changes must be in place for the Agreement to enter into force. These and other IPR reforms will strengthen Costa Rica’s IPR protection regime.

Implementation of the CAFTA-DR obligations will provide stronger deterrence against piracy and counterfeiting by, for example, requiring Costa Rica to provide that its judicial authorities have the authority to order the seizure, forfeiture, and destruction of counterfeit and pirated goods and the equipment used to produce them, something that the government is not currently capable of doing in an expeditious or effective manner. The CAFTA-DR will also mandate both statutory and actual damages for copyright and trademark infringement, helping to ensure that monetary damages can be awarded even when it is difficult to assign a monetary value to the violation. Implementation will require Costa Rica to protect data submitted for regulatory approval against unfair commercial use for a period of 5 years following the issuance of marketing approval for pharmaceuticals and 10 years for agricultural chemicals. Finally, the CAFTA-DR obligations will require that Costa Rica accede to the UPOV Convention (International Convention for the Protection of New Varieties of Plants, 1991), the Budapest Treaty on the International Recognition of the Deposit of Microorganisms for the Purposes of Patent Procedure, and the Trademark Law Treaty, as well as make all reasonable efforts to provide patent protection for plants.

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Costa Rica’s insurance, telecommunications, electricity distribution, petroleum distribution, and railroad sectors are all state monopolies. In addition, there are restrictions on the participation of foreign companies in some private sector activities, such as customs handling, medical services, ferry service, prison operation, and professional services. When the Agreement enters into force with respect to Costa Rica, Costa Rica will accord substantial market access across the country’s entire services sector, subject to a few exceptions. Costa Rica will liberalize a significant portion of its insurance market when the Agreement enters into force. The remainder of Costa Rica’s market will be opened by 2011. Costa Rica also agreed to the establishment of an independent insurance regulatory body.

Costa Rican regulations restrict the ability of certain professions to practice on a permanent basis in Costa Rica, such as medical practitioners, lawyers, certified public accountants, engineers, architects, and teachers. Such professionals must be members of a local association that sets residency, examination, and

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apprenticeship requirements. However, under the CAFTA-DR, Costa Rica has agreed to allow the provision of certain professional services on a reciprocal basis and also agreed to provide for temporary licensing of professional services.

Costa Rica made specific commitments in the CAFTA-DR to open its telecommunications market in three key telecommunications services activities (private network, Internet, and mobile wireless services) and to establish a regulatory framework to foster effective market access and competition. Under the CAFTA-DR, certain telecommunications market segments in Costa Rica were to open up gradually, beginning with private network services on January 1, 2006. Internet services and wireless services were to have followed on January 1, 2007. However, since the CAFTA-DR did not enter into force with respect to Costa Rica by those dates, Costa Rica will provide such market openings when the Agreement enters into force.

Costa Rica made no commitments in the WTO for the provision of securities trading, underwriting services, or any type of insurance services. The CAFTA-DR, however, provides for liberalization in all these areas. Private commercial banks are required to open branches in rural areas of the country or to deposit with the Central Bank 17 percent of their checking account deposits for state owned commercial banks that have rural branches in order to qualify for the benefits of the law. Under the CAFTA-DR, foreign banks must be treated under the same rules as domestic private banks.

INVESTMENT BARRIERS

The CAFTA-DR establishes a more secure and predictable legal framework for U.S. investors operating in Costa Rica. Under the CAFTA-DR, all forms of investment are protected, including enterprises, debt, concessions, contracts, and intellectual property. Upon implementation of the CAFTA-DR, U.S. investors will enjoy, in almost all circumstances, the right to establish, acquire, and operate investments in Costa Rica on an equal footing with local investors. Among the rights the CAFTA-DR will afford to U.S. investors are due process protections and the right to receive fair market value for property in the event of an expropriation. Investor rights will be protected under the CAFTA-DR by an impartial procedure for dispute settlement that is fully transparent and open to the public. Submissions to dispute panels and dispute panel hearings will be open to the public, and interested parties will have the opportunity to submit their views.

Several U.S. investors have experienced difficulties executing contracts made with the Costa Rican government. While electricity distribution remains a state monopoly, an electricity cogeneration law enacted in 1996 allowed some private sector participation in the production of electricity, but not in its transmission. This law has since been modified to permit the private construction and operation of plants under build-operate-transfer and build-lease-transfer mechanisms, but the operator must have at least 35 percent Costa Rican equity. Existing private power producers have had their long-term, fixed-rate contracts challenged by certain Costa Rican governmental organizations, but these contracts have been honored. A United States led airport management consortium has maintained that the terms of its concession agreement have been repeatedly altered by the Costa Rican government.

OTHER BARRIERS

The Law regulating commercial representatives of foreign firms (Law No. 6209) grants local companies exclusive representation, even without a signed agreement, for an indefinite period of time. In most cases, foreign companies must pay indemnity compensation in order to terminate a relationship with the local company.
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 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 undertaking their own procurements. The Bureau National d'Etudes Techniques et de Developpement, the government's technical and investment planning agency and think tank, sometimes serves as an executing agency representing ministries in major projects to be financed by international institutions.

The government created the "Direction des Marches Publics," a centralized office of public bids in the Ministry of Finance to help ensure compliance with international bidding practices. While 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 point to corruption as an obstacle that affects procurement decisions. Cote d'Ivoire is not a signatory to the WTO Agreement on Government Procurement.

SERVICES BARRIERS

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, that 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 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 political instability since the 2002 conflict between national and rebel forces has substantially undermined investor confidence. The Ouagadougou Political Agreement, signed in March 2007, lays out a roadmap to elections which could help resolve the political crisis and improve the investment climate if implemented. There has been no progress on privatization since 2002 when the National Assembly effectively stopped

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proved unprofitable due to its universal service obligation. Under the current legal framework, private express delivery operators appear to be covered by the licensing regime as well as by the obligation to contribute to a compensation fund for universal postal service. Belgian and foreign express delivery operators continue to argue that they should be excluded from the scope of the universal service obligation because their services are clearly distinct from conventional postal services 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. The regulator's 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. In September 2007, the European Commission opened a formal investigation against Germany to assess whether DPAG was overcompensated for carrying out its universal service obligation, in addition to the aid already found to be incompatible in a previous Commission decision.

**Professional Services**

Professions are licensed at the Member State level. Member states maintain nationality and other country level requirements that impede professional mobility or market access by foreign service providers.

**Legal Services:**

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

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

**Czech Republic:** U.S.-educated lawyers may register with the Czech Bar and take an equivalency exam, but they are limited to practicing home country (U.S.) law and international law. To represent clients in Czech courts, U.S. lawyers must first undergo a 3 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. These firms may employ U.S. attorneys that are attached to the staffs as "advisors."

**Finland:** Citizens of countries outside the European Economic Area (EEA) can practice domestic and international law and represent clients in court, but they are not entitled to the title of Asianajaja (Attorney at Law). Only a Finn or an EEA citizen who meets certain requirements may be accepted as an Asianajaja. In addition to conferring prestige, the Asianajaja designation helps in the solicitation of clients, because Asianajaja may be held accountable for their actions by the Board of the Bar Association and by the Chancellor of Justice, while other lawyers and legal advisers are not subject to such oversight.

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France: New law firms entering the French legal services market must apply for a license from the French Bar. In practice, many U.S. firms register with the French authorities as a branch of an existing EU-registered partnership.

Hungary: U.S. lawyers may provide legal services only under a “cooperation agreement” in partnership with a Hungarian legal firm.

Ireland: In general, lawyers holding degrees from non-Irish law schools who wish to practice Irish law and appear before Irish courts must either pass transfer examinations or retrain as lawyers under the direction of the Law Society of Ireland. Only lawyers who have either been admitted to the Bar of England, Wales, or Northern Ireland; practiced as an attorney in New York, California, Pennsylvania (with 5 years experience required in Pennsylvania), or New Zealand; or 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. The law enabled 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 was composed exclusively of Italian and EU lawyers. U.S. lawyers working in Italy are usually members of international partnerships, related to their parent companies (U.S. law firms), and are not licensed to practice Italian law.

Slovakia: Slovak law requires lawyers holding credentials from, and law firms registered in, non-EU countries to register with the Slovak Bar Association to practice home country and international law in Slovakia. In the past several years, however, no U.S. attorneys have been able to register. The United States is concerned that the Slovak Bar has consistently tried to limit foreign lawyers’ ability to practice law in Slovakia based on their interpretation of the Slovak Advocacy Act.

Accounting and Auditing Services:

Greece: U.S. access to the Greek accounting market remains limited. A 1997 Presidential Decree established a method for fixing minimum fees for audits and established restrictions on the use of different types of personnel in audits. The Decree also prohibited auditing firms from doing multiple tasks for a client, thus raising the cost of audit work. While the restrictions in the 1997 Decree apply equally to Greek and foreign accountants, the restrictions are especially burdensome to U.S. and other foreign accounting firms because they make it difficult for those firms to take full advantage of the capabilities of their staffs and the diversity of their practice areas.

Architectural Services:

Austria: Only citizens from EU and EEA Member States are eligible to obtain a license to provide independent architectural services in Austria. This restriction does not appear to be reflected in the European Communities’ Schedule of Specific Commitments under the GATS.

Financial Services:

Poland: Foreign service providers have requested that Poland treat independent legal persons as a single taxable person (i.e., VAT grouping) as allowed by the EU VAT Directive. VAT grouping is already employed by the United Kingdom, the Netherlands, Ireland, Germany, Austria, Denmark, Finland, Sweden, Romania, Belgium, and Hungary. Spain and the Czech Republic also will be introducing VAT
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 forming a 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).

STANDARDS, TESTING, LABELING, AND CERTIFICATION

Food Labeling

Although Hong Kong has a population of only seven million residents, it is an important market for exports of U.S. food and processed products and serves as a transshipment point for food and processed products bound for China. The United States exported more than $1.3 billion of agricultural, fishery, and forestry products to Hong Kong in 2007. The Hong Kong government is in various stages of implementing several labeling schemes that could raise significant barriers to consumer-ready U.S.-origin processed food exports.

The Hong Kong government has re-notified the World Trade Organization (WTO) of its intention to implement mandatory nutrition labeling regulations. Given Hong Kong’s small market size for most individual products, repackaging products to comply with the new Hong Kong labeling standard may not be economically feasible. The United States has requested that the regulations allow flexibility for products that comply with U.S. labeling laws and is in the process of developing its formal response to the regulations. If the proposed regulations are passed in their current form, they would be so stringent that market participants estimate compliance costs for relabeling and/or restickering would result in thousands of low volume products disappearing from the market, thus harming consumer choice. In addition, this proposal would significantly increase barriers to market entry. Data reported from a limited but diverse sampling of U.S. and non-U.S. suppliers indicate that up to 80 percent of the 6,000 products that these firms currently export to Hong Kong would not justify the expense of new labeling. For nearly one-third of these items, companies estimate that the cost of compliance would exceed the products’ total annual sales to Hong Kong.

On July 9, 2007, an amendment to Hong Kong’s Labeling Regulation went into effect that requires manufacturers to declare allergenic substances and list the food additive functional class, as well as name or identification number (under the International Numbering System) on food labels. Hong Kong’s requirements vary only slightly from U.S. regulations. However, the United States is concerned that the regulations do not contribute to improved consumer awareness or information. All U.S. processed food products exported to Hong Kong already include extensive label information on ingredients, allergens, and additives. As a result of these small differences, U.S. food products, especially name brand processed foods, have had difficulty complying with the labeling changes in the period allotted. The United States has expressed its objections to this regulation.

During 2008, the Hong Kong government will review the effectiveness of guidelines, originally issued in July 2006, for the voluntary labeling of genetically modified food. The Hong Kong government in 2007 conducted a survey to evaluate the effectiveness of the voluntary food labeling system for genetically

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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. Only firms established as a partnership may provide financial auditing services and foreign-licensed accountants may not be equity partners in an Indian accounting firm. The government is working on opening up the sector to foreign chartered accountants and professional consultants through the Limited Liability Partnership Bill, which was introduced in Parliament in December 2006. Press reported in November 2007 that the bill had cleared Parliament's Standing Committee on Finance, raising the prospects of the bill's passage in early 2008.

Construction, Architecture, and Engineering

Many construction projects are offered only on a nonconvertible rupee payment basis. Only government projects financed by international development agencies allow payment in foreign currency. Foreign construction firms are not awarded government contracts unless local firms are unable to perform the work. Generally, foreign firms may participate in government contracts 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. Only foreign nationals from countries that allow Indian nationals the right to practice law may enroll in the Bar Council. FDI is not permitted in this sector, and foreign law firms are also not authorized to open offices in India. Foreign legal service providers may be engaged as employees or consultants in local law firms, but they cannot sign legal documents, represent clients, or be appointed as partners. India has not made any offers for liberalizing foreign access to the legal services sector at the WTO. The United States-India Legal Services Working Group, a TPF initiative created in December 2006, has faced difficulty in arranging its first meeting due to the Bar Council’s continued opposition to opening the legal services market in India.

Telecommunications

Despite positive steps towards liberalizing and introducing private investment and competition in its telecommunications services market, concerns remain regarding India’s weak multilateral commitments in basic and value added telecommunications services and the apparent bias of telecommunications policy towards government-owned services providers. In addition, many procompetitive recommendations of the telecommunications regulator have been delayed or rejected by the Department of Telecommunications (DOT) without adequate explanation.

India’s national telecommunications policy allows private participation in the provision of all types of telecommunications services. In April 2007, DOT guidelines operationalized an increase in foreign equity limits from 49 percent to 74 percent for National and International Long Distance services.

In India’s rapidly expanding and lucrative wireless telecommunications industry, the government is struggling to move forward with formalizing policies for reallocating telecommunications spectrum frequencies from defense, space, and other government bodies to commercial cellular mobile telecommunications operators. Expectations for the release of new second generation (2G) and third generation (3G) spectrum resulted in an avalanche of new applications for Unified Access Service
Commercial Courts has provided relief to some trademark holders. However, rights holders cannot always rely on the courts, even when they have strong evidence to support the cancellation of a registration.

SERVICES BARRIERS

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

Legal Services

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. A foreign law firm seeking to enter the market must establish a relationship with a local firm.

Distribution

In 1998 and 1999, Indonesia liberalized portions of the distribution services sector under the terms of its agreements with the IMF after the financial crisis. The Indonesian government eliminated restrictive marketing arrangements for cement, paper, plywood, and 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. Nonetheless, some U.S. direct selling companies have complained that Indonesia’s market is generally closed to investment in the direct selling industry.

Energy

The November 2001 Oil and Gas Law deregulated the downstream oil and gas sectors, which include refining, distribution, storage, and retail activities. Under the law, the state oil and gas company Pertamina was converted into a limited liability company and its public service obligation ended in 2003. The law also stipulated 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. 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. Since late 2005, about 25 local and international investors are reported to have obtained initial licenses for downstream operations.

Financial Services

Indonesia allows 99 percent foreign ownership in the banking sector, however, Indonesia’s GATS commitments remain bound at only 52 per cent. Financial service providers may not establish as a branch. Indonesia also continues to restrict the supply of certain cross-border insurance.
available to investors, including whether the tax rules unduly impede the ability of foreign investors to use triangular merger mechanisms.

The U.S. Government also continues to encourage Japan to strengthen further corporate governance mechanisms, including by facilitating and encouraging active proxy voting by institutional investors such as pension and mutual funds, requiring authorization of antitakeover measures by a company committee composed of a majority of truly independent directors, ensuring sufficient protection of minority shareholders in management buy-out and take-over bid situations, and encouraging the major Japanese stock exchanges to adopt listing rules or guidelines that encourage best corporate governance practices.

Article 821 of the new Company Law still has the potential to create burdens for foreign corporations that conduct their primary business in Japan through Japanese branch offices. The U.S. Government has recommended that Japan adopt a simple re-domestication procedure that allows foreign companies to merge or convert into a Japanese corporation, and continues to request that Japan amend Article 821 to prevent adverse effects on the legitimate operation of foreign companies in Japan.

**Legal System Reform**

Japan continues to impose restrictions on the ability of foreign lawyers to provide international legal services in Japan in an efficient manner. The U.S. Government is urging Japan to further liberalize the legal services market by allowing foreign lawyers to form professional corporations and establish multiple branch offices in Japan whether or not they have established a professional corporation and by counting all of the time foreign lawyers spend practicing law in Japan toward the 3 year experience requirement for licensure as a foreign legal consultant. In addition, the U.S. Government has requested that Japan ensure that Japanese lawyers may become members of international legal partnerships with lawyers outside Japan without restriction. Japan has agreed to continue to examine these issues including by holding further hearings with both the Japanese Bar Association and registered foreign lawyers practicing in Japan. The U.S. Government also is urging Japan to promote arbitration and other alternative dispute resolution (ADR) procedures, including by amending the Foreign Lawyers Law to explicitly permit foreign lawyers to act as neutrals and to represent parties in any international ADR proceedings taking place in Japan.

**Distribution and Customs Clearance**

The U.S. Government welcomes Japan’s efforts to formulate an Authorized Economic Operator (AEO) system in Japan. Under the Regulatory Reform Initiative, the U.S. Government has recommended that Japan apply the following measures to customs brokers with good compliance records: introduce a two-stage declaration of import to allow separation of declaration of shipment acceptance and declaration of tax and duty payment, which would enable express carriers to release import items in a timely way outside of regular business hours; allow customs brokers to make export declarations after export, a system that is effective in the United States and would reduce the impact of airport curfews; allow customs brokers using Nippon Automated Cargo Clearance System (NACCS) to declare express items at any convenient customs office beyond a territory of the Customs Office; and lower overcharge and NACCS charges.

To follow a global trend toward reducing customs workloads while maximizing efficiency, the U.S. Government recommends Japan increase the Customs Law de minimis limit from its current 10,000 yen to a level comparable to the $200 de minimis limit.

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Legal Services

Presently, only Korean-licensed lawyers may provide any form of legal advice in Korea, including advice on foreign law. Foreign-licensed lawyers therefore may not establish an office or provide advice on the law of the jurisdiction in which they are licensed, nor may they associate with, partner with, or hire Korean-licensed lawyers.

The Korean government plans to open its legal services market in stages. The first step would be to create a legal status for foreign legal consultants and allow foreign law firms to open offices in Korea. Subsequent liberalization stages would address the ability of foreign-licensed lawyers and firms to associate with, partner with, and hire Korean licensed lawyers.

Insurance and Banking

Korea is the second largest insurance market in Asia and the seventh largest in the world. Korea’s laws and regulations permit foreign insurance and banking financial service providers to establish as a subsidiary or a branch. Financial services providers see Korea’s restrictions on cross-border financial services and unwillingness to liberalize this sector as hindering Korea’s progress toward becoming a regional financial hub.

Insurance suppliers remain concerned that Korea Post (a government agency), the National Agricultural Cooperative Federation, and the National Federation of Fisheries Cooperative continue to operate at an advantage in the Korean insurance market as they are not regulated by the Korean Financial Supervisory Commission or the Financial Supervisory Service as are private insurers. In industry’s view, this provides these entities with a competitive advantage over private insurers.

Overall, financial services providers seek a mechanism in which to raise their concerns regarding regulatory and market access issues. Although an office specifically set up within Korea’s financial regulatory structure exists, foreign companies have not found it adequate to address their concerns. Other regulatory entities, including Korea’s insurance consumer complaint mechanism, reportedly hinder foreign insurance providers’ position in the market. U.S. service providers assert that reports generated under this system bias consumers toward purchasing insurance from large domestic firms.

Lack of transparency in the financial regulatory system is problematic for all financial services providers. Improvement in notice and comment periods is necessary for foreign suppliers to have input into the regulations that will be imposed upon them. Financial services suppliers remain concerned about the systemic problem of administrative guidance. While some changes in issuing administrative guidance were made in 2007, financial services providers seek additional transparency in the process. In July 2007, Korea’s National Assembly adopted the Capital Market and Investment Services Act, which enters into effect in January 2009. This Act allows financial services companies to introduce new products unless explicitly prohibited by law and establishes a clear legal basis for newcomers to apply for commercial licenses.

Korea’s strict data privacy rules require financial services suppliers to locate their servers physically in Korea, thus hampering foreign suppliers’ ability to take advantage of economies of scale in the region to perform data processing in their daily business activity.
Distribution Services, including Direct Selling

Malaysia’s requirements for the licensing and operation of direct selling companies include a provision that a locally incorporated direct selling company must allow for 30 percent bumiputera equity. The MDTC also “recommends” local content targets. Local companies that seek direct selling licenses require paid-in capital of RM1.5 million (approximately $397,000), while companies with foreign shareholders must have paid-in capital of RM5 million (approximately $1.3 million).

The Malaysian government also included local content requirements in the “Guidelines on Foreign Participation in the Distributive Trade Services,” which went 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 response to complaints from both domestic and foreign businesses.

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 7 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

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Banking and Insurance

Under the WTO Financial Services Agreement, Pakistan grants foreign firms the right to establish new banks as well as grandfathering acquired rights of established foreign banks and foreign securities firms. Foreign banks are permitted to open banking companies via the establishment of branches as well as wholly owned, locally incorporated subsidiaries subject to the condition that they have a global tier-1 (e.g., equity and retained earnings) paid up capital of $5 billion or more or they belong to countries which are part of regional groups and associations of which Pakistan is a member (e.g., the Economic Cooperation Organization (ECO) or the South Asian Association for Regional Cooperation (SAARC)). Foreign banks not meeting these conditions are capped at a 49 percent equity stake with a mandatory 51 percent local ownership.

The State Bank of Pakistan (SBP), Pakistan’s central bank, has changed its branch licensing policy and has eliminated restrictions on the number of branches foreign banks may have. Currently, foreign banks, like local banks, have to submit an annual branch expansion plan to the SBP for approval. The SBP approves new branch openings based on the bank’s net worth, adequacy of its capital structure, future earning prospects, credit disciplines, and the needs of the local population. However, all banks including foreign banks are now required to open 20 percent of their new branches in small cities, towns and villages. The SBP established the paid up capital requirements for commercial banks increasing them by Rs.1 billion every year. Currently banks are required to have Rs.3 billion as paid up capital, which will increase to Rs.5 billion by the end of 2007 and to Rs.6 billion by 2009.

Foreign brokers, like their Pakistani counterparts, must register with the Securities and Exchange Commission of Pakistan. Over the past several years, Pakistan has privatized the majority of its commercial banks (most of which previously had been nationalized). As of January 2007, approximately 80 percent of the commercial banking sector was privately-owned, and the government of Pakistan only retains an ownership stake in the National Bank of Pakistan, the nation’s largest commercial bank.

The government has opened the insurance market as one of its financial sector reforms. A recent change has allowed foreign investors to hold up to a 100 percent equity share of companies operating in the life and general insurance sectors. Foreign investors are also required to bring in a minimum of $2 million in foreign capital and are not required to raise an equal amount of equity in the local market if they bring in $4 million in foreign capital. There are no restrictions on the repatriation of profits and capital investment made in this sector can be repatriated with the permission of the SBP. Pakistan does not regulate insurance premiums. The government permits only the parastatal National Insurance Company to underwrite and insure public sector firms. Private sector firms must meet their reinsurance needs within the country. Firms may seek foreign reinsurance facilities only if domestic insurance companies cannot meet these needs. Market domination in the life insurance sector may pose a significant barrier to entry, as the state-owned State Life Insurance Company holds over 76 percent of this market, although that number has been declining over the past several years. Five domestically-owned companies account for 78 percent of the general insurance (property, casualty, and health) market.

Other Services

Foreign professionals may provide legal and engineering consultancy services with 100 percent equity participation. This reflects a 2004 change that eliminated the requirement that Pakistanis hold 40 percent local equity for 5 years and reduced the minimal capital requirement from $300,000 to $150,000.

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SERVICES BARRIERS

Russia's services market is relatively open to U.S. services suppliers, including in areas such as financial, education, legal services, and distribution, although specific problems remain in particular areas. The ability to provide services to public utilities and certain energy-related services (see discussion on energy in the section on Investment Barriers) remains limited. The process for an individual or a company to obtain a license to provide a service remains difficult and limitations on the form of commercial establishment affect some sectors. As of December 2007, U.S. companies were monitoring Russian proposals to develop new, draft legislation on retail trade which, if passed, could have potentially significant regulatory and legal implications for a wide range of retail trade and distribution activity.

As part of the bilateral WTO market access agreement with the United States, Russia has accepted commitments across a broad range of services sectors. Once Russia is a WTO Member and the United States grants permanent normal trade relations status to goods from Russia, U.S. firms will have improved access to services sectors including banking and securities, insurance, telecommunications, audio-visual services, distribution, express delivery, energy services, environmental services, and professional services.

Financial Services and Insurance

The 1996 federal law "On Banks and Banking Activity" permits foreign banks to establish subsidiaries in Russia. Once Russia is a WTO Member and the United States grants permanent normal trade relations status to goods from Russia, U.S. firms will be allowed to operate through subsidiaries, including 100 percent foreign-owned subsidiaries, and offer all types of noninsurance financial services and to supply, cross-border, many financial services, such as financial leasing, financial information and data processing, credit cards and other types of payments, and advisory services. However, Russia has not committed to allow foreign banks to establish branches in Russia.

In addition, the Russian government will retain the prerogative to limit the foreign sourced element of charter capital in the banking sector to 50 percent of the total charter capital. Nonetheless, if the ratio of foreign sourced to total charter capital in the banking sector ever exceeds the 50 percent cap, Russia's regulators have the discretion to take only those actions specified in Russia's WTO commitments.

In the insurance sector, foreign insurance firms are subject to a 49 percent equity restriction. Foreign firms that were active in Russia when this requirement came into effect, however, were grandfathered and are not subject to the foreign equity limit. U.S. insurance companies will be allowed to operate through subsidiaries, including 100 percent foreign-owned non-life insurance companies, and will be able to open direct branches at the end of a 9 year transition period. However, as in the banking sector, Russia will maintain the discretion to limit foreign sourced charter capital in the insurance sector and if the ratio of foreign sourced to total charter capital in the insurance sector exceeds the 50 percent cap, Russia's regulators will have the discretion to take certain actions specified in Russia's WTO commitments.

Telecommunications

Amendments to the 2003 Federal Law on Communications entered into force on January 1, 2007. The law's impact on competitive alternative (nonincumbent) telecommunications operators, many of which involve large amounts of foreign investment, has been substantial since these companies are now under tight government regulation. In particular, regulations on interconnection – the process by which alternative operators connect their networks to the Russian public telephone network – place

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circulation of some foreign publications. The Singapore government has also "gazetted" foreign newspapers *i.e.*, numerically limited their circulation. Singapore's leaders have threatened foreign publishers with defamation suits for perceived slights, often resulting in the foreign publishers issuing apologies and paying damages.

**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 a 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. Since July 2007, foreign attorneys have been allowed to own equity in JLVs up to a maximum of 25 percent of total shares.

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.

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). As of July 2007, the government allows highly skilled foreign lawyers meeting certain criteria to practice Singapore corporate, finance, and banking law.

**Banking**

*Retail Banking:* Singapore maintains legal distinctions between offshore and domestic banking units and the type of license held (full, wholesale, or offshore). Except in retail banking, Singapore laws do not distinguish operationally between foreign and domestic banks.

Singapore has granted 6 "qualifying full bank" (QFB) and 24 full service licenses to foreign banks, including one U.S. QFB and four U.S. full service banks. Since January 2006 under the FTA, U.S. licensed full service banks and QFBs are able to operate at an unlimited number of locations (branches or off-premises ATMs). Non-U.S. full service foreign banks have been allowed to operate since January 2005 at up to 25 locations. These full service banks can freely relocate existing branches and share ATMs among themselves. They also can provide electronic funds transfer, point-of-sale debit, and Central Provident Fund (Singapore's compulsory pension fund) related services.

However, holders of cards issued locally by foreign banks or financial institutions cannot access their accounts through the local ATM networks. They are also unable to access their accounts for cash withdrawals, transfers or bill payments at ATMs operated by banks other than those within their own bank or at foreign banks' shared ATM networks.

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• Imported English language movies shown on television are taxed at Rs 25,000 (approximately $250).

• English language television programs are taxed at Rs 10,000 (approximately $100) per half hour episode.

• Any foreign film or program dubbed in the local language Sinhala is taxed at Rs 90,000 (approximately $900) per half hour.

• Foreign television commercials are taxed at Rs 500,000 (approximately $5,000) per year.

Rates for non-English foreign programming are higher. Government approval is required for all foreign films and programs shown on television.

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). Non-BOI companies, such as banks, can also employ expatriate staff; however, in practice the Immigration Department has limited the number of expatriate staff levels below those desired by the banks. The Immigration Department also grants visas for foreign professionals required for projects approved by the government. 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

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

• nonbank money lending;

• pawn brokering;

FOREIGN TRADE BARRIERS

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cigarettes within Ukraine as well as growth in the amount of counterfeit pesticides and apparel on the market.

The Ukrainian Ministry of Health does not routinely check the validity of patents when it grants marketing approval in Ukraine.

In 2006, Ukraine adopted the Singapore Treaty on the Law of Trademarks aiming at establishing a uniform mechanism for administrative trademark registration.

Judicial System

Civil IPR lawsuits remain rare because of a general lack of confidence in Ukraine’s legal system, and because there are few judges properly trained in IPR law. However, a recording company won a landmark civil court case against the Ukrainian music download site www.mp3.ua. The court ruling imposed substantive penalties on the owners of mp3.ua and was subsequently upheld on appeal. February 2006 amendments to the Criminal Code drastically lowered the required threshold (from roughly $5,200 to $700) needed to pursue criminal prosecution and increased penalties up to 7 years imprisonment for major offenders. The amendments have helped bolster criminal enforcement in the courts. The U.S. Government has worked closely with the Government of Ukraine to provide specialized IPR training.

SERVICES BARRIERS

Restrictions on services exist in areas such as insurance, banking activities, auditing, legal services, television and radio broadcasting, and information agencies. During bilateral negotiations on services market access with a number of countries in the context of Ukraine’s negotiations to join the WTO, Ukraine agreed to open access for foreign service suppliers in a number of areas, including energy services, banking and insurance branches, professional services, express delivery, and telecommunications. When these commitments are fully implemented, Ukraine will have one of the most liberal services markets in the region.

In 2005, Parliament adopted legislation that will, within 5 years after Ukraine becomes a WTO Member, permit foreign insurance companies to open subsidiaries 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 branches, a law “On Advocacy” that eliminates the nationality requirements for legal services, and amendments to the law “On Publishing” that will cancel limitations on foreign investment in publication services over a 5 year transition period. In May 2007, Parliament amended the law “On Insurance” to allow for unrestricted reinsurance of risks related to waterway transportation, commercial aviation, and space launch (including satellites) from the date of WTO accession.

Foreign professionals are permitted to work in Ukraine, but a lack of transparency hinders 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. All foreign films are required to be dubbed or subtitled in Ukrainian.

In 2006, U.S. industry identified efforts to limit the ability of foreign credit and debit card service providers to provide their services to clients of national electronic payments systems as a significant barrier to trade. When Ukraine becomes a WTO Members, it must take on services commitments in the context of WTO negotiations to maintain an open and competitive banking system, including with respect to credit and debit cards, with full market access to electronic payments services. At present, Ukraine

FOREIGN TRADE BARRIERS

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Patents and Trademarks

The 1955 National Industrial Property Law provides the legal framework for patent and trademark protection in Venezuela. Venezuela's 1955 law is outdated and offers inadequate protections. The legal status of the CAN decision 486, which to some extent implements the WTO TRIPS Agreement, and CAN Decision 345, are currently in question since Venezuela withdrew from the organization in April 2006. Although the Venezuelan government has not yet formally clarified whether CAN norms still apply, it has continued to follow them.

U.S. companies remain concerned about the consequences of Venezuela leaving the Andean Community. If the Venezuelan government decides that CAN regulations still apply, U.S. companies will continue to monitor the impact of the Andean Tribunal’s 2002 interpretation of Articles 14 and 21 of Decision 486, which do not allow for the patenting of "second-use" products (e.g., new uses of previously known or patented products). Under pressure from the Andean Community and in line with some changes in leadership at the Autonomous Service for Intellectual Property (SAPI), Venezuela has revoked previously issued patents. Very few patents for new pharmaceuticals were awarded in 2004, and none were issued in 2005, 2006, or 2007. Since 2002, Venezuela's food and drug regulatory agency (INH) began approving the commercialization of new drugs which were the bioequivalent of innovative drugs and relied on innovator proprietary data submitted for INH marketing approval. As a result, innovative drug companies do not receive protection from unfair commercial use of their test data as required by TRIPS. In effect, the Venezuelan government allows others seeking marketing approval for the same products to use the same test data that required lengthy and expensive development.

Enforcement

The Venezuelan copyright and trademark enforcement branch of the police (COMANPI) attempts to provide copyright enforcement support with a small staff of permanent investigators. Lack of personnel, coupled with a very limited budget and inadequate storage facilities for seized goods, has forced COMANPI to work with the National Guard and private industry to improve enforcement of copyrighted material. SENIAT, Venezuela's tax and customs authority, passed a regulation in mid-2005 that allows ex officio seizure of illegal goods at customs points and inland, and gives companies 3 days to verify the product's authenticity and press charges. In most cases, companies and violators reach a settlement instead of going through a lengthy, and often fruitless, court proceeding. SENIAT continues to be the only agency actively protecting IPR, and has launched public anti-piracy and "zero tax evasion" campaigns that have raised awareness of IPR issues.

SERVICES BARRIERS

Venezuela maintains restrictions on a number of service sectors. Venezuela requires that certain professions be licensed in Venezuela (e.g., engineers, architects, economists, business consultants, accountants, lawyers, doctors, veterinarians, and journalists). Foreign nationals wishing to practice these professions in Venezuela must have their credentials validated by a Venezuelan university, provided that a reciprocity agreement exists with their country of origin. Some accounting and auditing functions (particularly government related) require Venezuelan citizenship, and only Venezuelan citizens may act as accountants in companies which trade over 25 percent of their total shares in the local stock exchange. A foreign lawyer cannot provide legal advice on foreign or international law without being licensed to practice Venezuelan law.
Despite the progress in putting in place a legal framework to protect local and foreign-held copyrights, enforcement remains uneven. This is particularly true for certain categories of products, such as software, music and video CDs, VCDs, and DVDs. Industry estimates of piracy rates for software, music, and videos run as high as 92 percent. Vietnam’s police have investigated, and in some cases raided and fined, businesses suspected of using pirated software. Vietnam’s ministries and regional governments are also implementing a WTO commitment to use only legitimately licensed software. Vietnam has taken initial steps to implement an agreement reached with Microsoft in May 2007, relating to the use of business applications software in use on government computers. Cable and broadcast television signal piracy decreased in 2007, but remains a concern. Local police authorities are often slow to enforce administrative and court orders against copyright infringers. Vietnam has, however, made progress in this area, including through a state-owned digital terrestrial broadcasters action in October 2007, to end all nonauthorized distribution of U.S.-owned broadcast content.

SERVICES BARRIERS

Under the terms of the BTA, Vietnam agreed for the first time to liberalize a broad array of service sectors, including telecommunications, accounting, banking, and distribution services, and to apply MFN treatment to U.S. services suppliers in all covered sectors and for all modes of supply (with itemized exceptions).

Vietnam’s WTO commitments include significant improvements in market access, which will benefit U.S. service providers. Vietnam’s Commercial Law requires a license for foreign participation in certain conditional sectors, such as financial services, telecommunications, and distribution.

Limits on foreign ownership and other market access limitations and exceptions to national treatment are described in Vietnam’s schedule of specific commitments, and they include the following service sectors: legal, taxation, architectural, engineering and integrated engineering, computer, advertising and marketing, audiovisual, express delivery, banking and securities, insurance, distribution, and telecommunications.

Legal Services


A law degree from a Vietnamese university is required for anyone wishing to provide legal advice in Vietnam. U.S. invested law firms, whether joint ventures or branches, may advise on Vietnam’s law only if they hire persons with Vietnamese law degrees who satisfy the same requirements applied to other Vietnamese practitioners. Licensing of branches is for 5 year periods and is renewable.

Advertising and Marketing Research Services

Foreign participation in joint ventures with service providers is limited at 51 percent equity. In January 2009, these restrictions will be lifted.

Vietnam restricts advertising in printed, electronic, and broadcast media of spirits and most wines.