Excerpts mentioning legal services barriers from the USTR’s

2010 National Trade Estimate Report on Foreign Trade Barriers

available at

which is a link from:

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Countries for which barriers are included:
1. Cambodia
2. China
3. Colombia
4. EU
5. India
6. Indonesia
7. Japan
8. Korea
9. Malaysia
10. Oman
11. Russia
12. Singapore
13. Thailand
14. Turkey
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FOREWORD

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

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

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

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

SCOPE AND COVERAGE

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

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

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

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

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

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

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

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

• Government-tolerated anticompetitive conduct of state-owned or private firms that restricts the sale or purchase of U.S. goods or services in the foreign country’s markets;

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

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

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

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

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

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

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

TRADE IMPACT ESTIMATES AND FOREIGN BARRIERS

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

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

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

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

The task of estimating the impact of nontariff measures on U.S. exports is far more difficult, since there is no readily available estimate of the additional cost these restrictions impose upon imports. Quantitative restrictions or import licenses limit (or discourage) imports and thus raise domestic prices, much as a

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tariff does. However, without detailed information on price differences between countries and on relevant supply and demand conditions, it is difficult to derive the estimated effects of these measures upon U.S. exports. Similarly, it is difficult to quantify the impact upon U.S. exports (or commerce) of other foreign practices, such as government procurement policies, nontransparent standards, or inadequate intellectual property rights protection.

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

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

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

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

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

March 2010

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

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

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

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

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

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

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

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

Footnotes:
1 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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SERVICES BARRIERS

Legal Services

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

INVESTMENT BARRIERS

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

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

ELECTRONIC COMMERCE

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

OTHER BARRIERS

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

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

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

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

**Travel and Tourism Services**

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

**Education and Training Services**

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

**Legal Services**

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

China also maintains separate regulatory requirements for foreign representative legal offices that are not applied to Chinese law firms as set forth in the December 2001 Regulations on the Administration of Foreign Firm Representative Offices and July 2002 implementing rules. The measures appear to create an economic needs test for foreign law firms seeking to establish representative offices in China.
addition, a foreign law firm may not establish an additional representative office until its most recently established office has been in practice for three consecutive years. China also requires that representatives of foreign law firms must have practiced for no less than two years outside of China as a member of a bar or law society of a WTO Member. New foreign representatives must undergo a lengthy approval process that can take more than one year, during which they must leave the country periodically to renew their visas.

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

INVESTMENT BARRIERS

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

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

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

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

EXPORT SUBSIDIES

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

INTELLECTUAL PROPERTY RIGHTS (IPR) PROTECTION

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

SERVICES BARRIERS

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

Legal Services

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

Financial Services

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

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

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

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

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

_Bulgaria:_ Bulgaria maintains several limitations on the provision of legal services, including a nationality requirement for qualification as a Bulgarian lawyer and restrictions on the ability of foreign law firms to establish in Bulgaria and to use their own names. In February 2009, the European Commission sent Bulgaria a formal letter of inquiry that asked the government to address the consistency of these and other legal provisions with Article 43 of the EC Treaty and with Directive 98/5/EC. In October 2009, the Commission issued a reasoned opinion against Bulgaria requesting it to remove restrictions on the free movement of lawyers employed by firms operating in the EU. If there is no satisfactory reply from the government, the Commission may refer the matter to the European Court of Justice. A case between an international law firm and local law firms on legal service restrictions is pending with the Bulgarian Supreme Administrative Court.

_Czech Republic:_ U.S.-educated lawyers may register with the Czech Bar and take an equivalency exam, but they are limited to practicing home country (U.S.) law and international law. U.S. firms may only establish in association with local firms and lend them their names; as a result, firms that operate in the country do so as independent Czech branches. These firms may employ U.S. attorneys that are employed as “advisors.”

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

_England:_ Following a 1992 reform that merged two legal professions into a single “avocats” profession, non-EU lawyers wishing to practice law in France must apply for a license from the French Bar and pass the French Bar exam. EU lawyers, in contrast, may qualify to practice law in France under agreements on the mutual recognition of diplomas. For non-EU firms, the ability to derive benefits from the mutual
recognition agreements is limited to those that can establish as branches of firms registered elsewhere in the EU.

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

**Ireland:** In general, lawyers holding degrees from non-Irish law schools who wish to practice Irish law and appear before Irish courts must either pass transfer examinations or retrain as lawyers under the direction of the Law Society of Ireland. Only lawyers who have either been admitted to the Bar of England, Wales, or Northern Ireland; practiced as an attorney in New York, California, Pennsylvania (with five years experience required in Pennsylvania), or New Zealand; or are admitted as lawyers in either an EU or a member state of the European Free Trade Association are entitled to take the transfer examination.

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

**Accounting and Auditing Services**

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

**Financial Services**

**Poland:** Foreign service providers have requested that Poland treat a grouping of independent legal persons as a single taxable person (i.e., VAT grouping), as allowed by the EU VAT Directive. VAT grouping is already employed by the United Kingdom, the Netherlands, Ireland, Germany, Austria, Denmark, Finland, Sweden, Romania, Belgium, Hungary, and the Czech Republic. (Since January 1, 2008, groups of companies established in Spain have also been able to opt for the new regime of VAT grouping). VAT grouping would allow financial service providers to recover VAT charges that they incur when making intra-company payments for supplies, including labor costs. As of 2009, there have been no changes, but this issue is on the agenda of an upcoming tax conference to be held in Warsaw in March, 2010.

**Energy Services**

The ownership of the Public Company for Natural Gas (PCNG) is currently split between the government of Cyprus and the semi-governmental Electricity Authority of Cyprus (EAC) (56 percent to 44 percent, respectively). In the future, to open the market to newcomers, it will be possible for private investors to take a five percent stake in the government's share of PCNG. On October 13, 2009, the Ministerial Board of the government appointed the PCNG Board of Directors. Its chair, until recently, was the Energy Regulator for the Cyprus Energy Regulatory Authority and previously was the General Manager of the

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results in a taxable presence in India and should be amended to avoid the taxable presence. The United States continues to raise this issue with India’s Ministry of Information and Broadcasting, including most recently at the United States-India ICT Working Group meeting in Washington in November 2009.

All pay television content providers are required to make their content available to all cable and satellite television system operators. The Telecom Regulatory Authority of India (TRAI) continues to impose price controls on cable television until it determines that other television platforms (e.g., satellite, Internet) are widely adopted. While TRAI has recently opened a public consultation on the pricing of channels carried by DTH platforms, it is not clear if it will also conduct a similar consultation for cable television.

Accounting

Foreign accounting firms can practice in India if their home country provides reciprocity to Indian firms. Only firms established as a partnership may provide financial auditing services, and foreign licensed accountants may not be equity partners in an Indian accounting firm. India also maintains burdensome restrictions on the use of foreign firm names, the number of firm partners, and the number of trainees per partner. Additional restrictions include limits on the number of the banking and insurance sector clients an auditing firm may serve simultaneously as well as the requirement for firms to “rotate off” clients every few years. Finally, there is a lack of independent oversight in the accounting industry. A quality review board established in 2006 is funded with industry money but has yet to carry out any investigations. India’s Limited Liability Partnership (LLP) Act, 2008, took effect in March 2009. The law aims to give professionals such as chartered accountants, lawyers, and venture capitalists more flexibility in setting up LLP firms.

Legal Services

Foreign law firms are not authorized to open offices in India. Foreign legal service providers may be engaged as employees or consultants in local law firms, but they cannot sign legal documents, represent clients, or be appointed as partners. India has not made any offers for liberalizing foreign access to the legal services sector at the WTO. The United States-India Legal Services Working Group, an initiative created at the TPF meeting in December 2006, has faced difficulty in starting a substantive dialogue due to opposition within certain quarters of the Indian legal profession. With U.S. Government assistance, U.S. and Indian panel members met informally during a legal conference in India in early 2009. However, in June 2009, the Bar Council of India (BCI), the legal governing body in India (membership in BCI is mandatory to practice law in India), passed a resolution (No. 66/2009) requiring all discussions regarding legal services to representatives of the American Bar Association (ABA) and members of BCI and that the ABA should constitute a committee for the purpose of these discussions. This resolution appeared to be a withdrawal of Indian participation from the Working Group on Legal Services established by the two governments. During the October 2009 TPF Services Focus Group discussion, Ministry of Commerce and Industry officials reported no progress on legal services in part due to opposition from BCI.

In December 2009, the Bombay High Court ruled that under existing law – principally, the 1961 Advocates Act and the 1973 Foreign Exchange Regulation Act – foreign law firms may not establish offices in India and that foreign lawyers may not engage in legal practice in India, including corporate advisory and other “non-litigious” activities. The court directed the Indian central government to clarify the scope of work foreign law firms could undertake.

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product usage.” Foreign firms bidding on high value government sponsored projects report that they have been asked to purchase and export the equivalent value of selected Indonesian products. Indonesia is not a signatory to the WTO Agreement on Government Procurement.

INTELLECTUAL PROPERTY RIGHTS (IPR) PROTECTION

Indonesia was elevated to the Special 301 Priority Watch List in 2009 because of growing concerns about IPR protection and enforcement in Indonesia as well as new market access barriers on intellectual property products. In particular, U.S. companies have serious concerns that widespread optical disc piracy and counterfeiting of consumer goods, including pharmaceuticals, not only causes significant economic losses for rights holders, but also poses significant health and safety risks. Cable signal piracy and the illegal downloading of copyright works using mobile devices also remain pervasive. In addition, Indonesia has implemented policies that undermine the protection afforded by the country’s IPR regime and thereby increase harm to U.S. rights holders. Two such policies – a regulation issued by the Ministry of Health preventing foreign pharmaceutical companies from registering drugs if they do not manufacture in Indonesia and a regulation issued by BPOM – could severely restrict the registration and availability in Indonesia of pharmaceutical products containing alcohol or ingredients of porcine (pork) origin, including vaccines and products delivered in gelatin capsules. The United States continues to raise these concerns with Indonesia and to urge Indonesia to strengthen its IPR protection and enforcement regime.

SERVICES BARRIERS

Indonesia maintains significant and far-reaching trade and investment barriers in many key services sectors.

Legal Services

Only Indonesian citizens may obtain a full license to practice as lawyers. Foreign lawyers are permitted only to work in Indonesia as “legal consultants” and must first obtain the approval of the Ministry of Justice and Human Rights. A foreign law firm seeking to enter the market must establish a relationship with a local firm.

Express Delivery and Logistics Services

In September 2009, the Indonesian legislature introduced new restrictions on postal services, broadly defined to include courier, express delivery, and other logistics services. The law requires that postal service providers be majority-owned by Indonesians and that foreign providers limit their activities to provincial capitals with international airports and seaports.

Health Services

Hospital services are mostly closed to foreign investment, though Indonesia does allow for up to 65 percent foreign ownership in hospital services in the cities of Medan and Surabaya. Indonesia also restricts foreign health care professionals from practicing in Indonesia. Foreign trained physicians are only allowed to supervise and perform procedures in the course of educating Indonesian physicians.
management accountability to shareholders in accordance with international best practices. Specifically, the U.S. Government has urged Japan to identify and eliminate impediments to cross-border mergers and acquisitions, including the availability of reasonable qualifying rules for tax-deferred treatment for many such transactions, and to take measures to ensure that shareholder interests are adequately protected when Japanese companies adopt anti-takeover measures or engage in cross-shareholding arrangements.

The U.S. Government also continues to encourage Japan to identify legislation and other measures necessary to strengthen corporate governance mechanisms, including by: facilitating and encouraging active and appropriate proxy voting by institutional investors such as pension and mutual funds; ensuring the independence of outside directors; allowing the boards of directors of Japanese corporations to delegate certain decision making functions to committees composed solely of independent directors; strengthening protection of minority shareholders by clarifying fiduciary duties of directors and controlling shareholders; and encouraging the stock exchanges to adopt listing rules and guidelines that will improve the corporate governance of listed companies and ensure that the interests of minority shareholders are protected when the board of directors decides to issues new shares, conduct a reverse stock split or allocate shares to third parties. The government of Japan has convened several groups to examine these and other measures.

The U.S. Government continues to look to Japan to amend Article 821 of the Company Law to prevent adverse effects on U.S. companies seeking to legitimately conduct their primary business in Japan through Japanese branch offices.

Legal System Reform

Japan imposes restrictions on the ability of foreign lawyers to provide international legal services in Japan in an efficient manner. The U.S. Government continues to urge Japan to further liberalize the legal services market by allowing foreign lawyers to form professional corporations and establish multiple branch offices in Japan whether or not they have established a professional corporation, counting all of the time foreign lawyers spend practicing law in Japan toward the three year experience requirement for licensure as a foreign legal consultant, and speeding up the registration process for new foreign legal consultants. The U.S. Government has also requested that Japan take measures to ensure that no legal or Bar Association impediments exist to Japanese lawyers becoming members of international legal partnerships with lawyers outside Japan, and to ensure that foreign legal consultants can legally provide alternative dispute resolution (ADR) services and represent parties in any international ADR proceedings taking place in Japan.

In order to encourage victims of trade secret theft to cooperate with prosecutors in bringing criminal charges against wrongdoers, the U.S. Government is urging Japan to adopt necessary procedures that will ensure that the content of a trade secret will not be disclosed to the public in the criminal trial.

Distribution

Through this initiative, the U.S. Government has recommended that Japan take a variety of steps to improve customs processing and to facilitate other faster and lower-cost solutions in the distribution sector. In this regard, the U.S. Government is encouraged by and welcomes Japan’s work to formulate an Authorized Economic Operator (AEO) system, which allows exporters with good compliance records to process goods more expeditiously through Customs. To facilitate more efficient cargo flows, the U.S. Government has been recommending that Japan exempt AEO exporters from paying the 5 percent consumption tax for cleared cargo. Currently, Japan Customs refunds this tax, but an exemption would

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In 2009, Korea’s government, led by MCST, continued its progress on IPR enforcement in several areas. MCST has made efforts to ensure that all central and municipal government agencies are using properly licensed software and next year plans to carry out a similar review at the corporate level. Additionally, MCST held its second annual 100-day campaign against off-line pirated copyrighted material, known as the “100 Day Seoul Clean Project,” from April until August of 2009. MCST noted it plans to continue this project on an annual basis. During the 100 Day Seoul Clean Project, MCST and Korean law enforcement raided street vendors and stores selling pirated DVDs, CDs, software, and books. According to MCST’s statistics, seizures of pirated material increased 24 percent to 214,199 illegal items, and prosecutions increased 46 percent to 544 cases, compared to the numbers from last year’s campaign.

Korea has also demonstrated a renewed commitment to investigating and prosecuting “topsites” (password-protected sites that are the initial depository of pirated material, where other pirates go to access the pirated material) and has indicated a commitment to carrying out additional enforcement activities against book piracy on Korean campuses.

SERVICES BARRIERS

Screen and Broadcast Quotas

Korea maintains a screen quota for films requiring that any movie screen show domestic films at least 73 days per year – a 50 percent cut from the quota of 146 days that existed until July 2006. Korea also maintains a variety of foreign content quotas for terrestrial, cable and satellite television, radio broadcasting, and Internet Protocol television. Overall, foreign programs may not exceed 20 percent of terrestrial television or radio broadcast time or 50 percent of cable or satellite broadcast time on a quarterly basis. Within those overall quotas, Korea maintains annual quotas that further limit broadcast time for foreign films to 75 percent of all films for terrestrial, cable, and satellite broadcasts; foreign animation to 55 percent of all animation content for terrestrial broadcast and 65 percent of all animation content for cable and satellite broadcasts; and popular music to 40 percent of all music content. Another quota, on a quarterly basis, limits content from any one country to 60 percent of the quota available to foreign films, animation, or music.

Restrictions on Voiceovers and Local Advertisements

The Korean Broadcasting Commission’s guidelines for implementation of the Broadcasting Act contain restrictions on voiceovers (dubbing) and local advertising for foreign retransmission channels. These prohibitions continue to be of concern to U.S. industry, as they limit the profitability of such channels in the Korean market.

Legal Services

On February 27, 2009, the Korea National Assembly passed the Foreign Legal Consultant Act (FLCA), creating a partial opening of the domestic legal services. Under the new law, law firms from countries that have a free trade agreement with South Korea will be able to start consultancy businesses in Korea. The laws allow foreign attorneys with a minimum of three years of work experience to provide consulting services on the law of the jurisdiction in which they are licensed. Before the FLCA, only Korean-licensed lawyers could provide any form of legal advice in Korea, including advice on foreign law.

The Korean government plans to open its legal services market in several stages. The first step created a legal status for foreign legal consultants and allowed foreign law firms to open offices in Korea.

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Subsequent liberalization stages would address the ability of foreign-licensed lawyers and firms to associate with, partner with, and hire Korean-licensed lawyers.

Insurance and Banking

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

Insurance suppliers remain concerned that Korea Post (a government agency), the National Agricultural Cooperative Federation, and the National Federation of Fisheries Cooperative continue to operate at an advantage in the Korean insurance market because, unlike private insurers, they are not regulated by the Korean Financial Services Commission or the Financial Supervisory Service. This can provide these entities with a competitive advantage over private insurers.

Lack of transparency in the financial regulatory system is a widespread problem and continues to affect financial services suppliers. Improvement in notice and comment periods is necessary for foreign providers to have input into the regulations that will be imposed upon them. Financial services suppliers also remain concerned about regulatory oversight in the form of vague “administrative guidance.” Although Korea made some changes in issuing administrative guidance in 2007, financial services suppliers seek additional transparency in the process. The National Assembly adopted the Investment Services and Capital Markets Act in June 2007 and most provisions of the Act entered into force on February 4, 2009. The Korean government responded to U.S. concerns and delayed implementation of some portions of the Act while launching a process intended to address potential barriers to cross-border financial transactions. The Act allows financial services companies to introduce new products unless explicitly prohibited by law and establishes a clear legal basis for newcomers to apply for commercial licenses. In the amendments to the Enforcement Decree of the Financial Investment Services and Capital Markets Act, the government relaxed its requirements regarding private equity funds and introduced a special purpose Acquisition Company in September 2009.

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

Telecommunications

Korea currently prohibits foreign satellite service providers from selling services (e.g., transmission capacity) directly to end users without going through a company established in Korea. Given investment restrictions in place (see below), and the fact that establishing a local presence may not make economic sense, this prohibition significantly restricts the ability of foreign satellite service providers to compete in the Korean market.

The National Assembly passed legislation in December 2007 to regulate the convergence technology Internet Protocol television (IPTV). In 2008, the newly-formed Korea Communications Commission (KCC) began issuing implementing regulations. The U.S. Government is closely monitoring this process with regard to transparency and due process. U.S. companies view some of the licensing requirements under discussion as market restricting, (e.g., applying content quotas to real-time IPTV).
INTELLECTUAL PROPERTY RIGHTS (IPR) PROTECTION

Despite efforts to strengthen its IPR regime over the past few years, including by creating an IPR court in 2007, Malaysia has remained on the Special 301 Watch List since 2001 because of continuing concerns including its failure to substantially reduce pirated optical disc production and exports.

SERVICES BARRIERS

Malaysia’s services sector constitutes 45 percent of the national economy and has been a key driver of economic and job growth in Malaysia for several years. In an effort to establish a knowledge-based services economy less reliant on manufactured exports, the government aims to increase the share of the services sector to GDP to around 60 percent by 2020. In support of this objective, in May 2009, the Najib administration announced a limited set of liberalization measures covering some 27 service subsectors. Further reforms reportedly are being considered.

Telecommunications

Malaysia made limited GATS commitments on most basic telecommunications services and partially adopted the WTO reference paper on regulatory commitments. Based on Malaysia’s GATS commitments, foreign companies are entitled to acquire only up to a 30 percent equity stake in existing licensed public telecommunications operators and foreign participation is limited to facilities-based suppliers. These limitations are not reflected in Malaysian law, however, but in ministerial policy. In certain instances Malaysia has allowed greater than 30 percent equity participation in the telecommunications market, but the manner in which such exceptions are administered is nontransparent and is perceived by foreign suppliers as arbitrary. In some cases, firms permitted to invest up to a certain equity limit are subsequently asked to divest to lower foreign equity levels. The United States will continue to urge Malaysia to bind foreign equity limits to the full extent permissible under Malaysian law, i.e., to 100 percent, to foster a more predictable and hospitable investment climate.

Distribution Services, including Direct Selling

Guidelines governing distribution services include requirements for the use of locally-produced products. Among other provisions, department stores, supermarkets, and hypermarkets must reserve at least 30 percent of shelf space in their premises for goods and products manufactured by bumiputera-owned small and medium size industries. The guidelines also require that at least 30 percent of a store’s sales consist of bumiputera products. These guidelines are currently under review by the Malaysian government.

Locally incorporated direct selling companies must allow for 30 percent bumiputera equity. The Malaysian government also “recommends” local content targets, which effectively translates into a requirement. Local companies that seek direct selling licenses require paid-in capital of RM1.5 million (approximately $397,000), while companies with foreign shareholders must have paid-in capital of RM5 million (approximately $1.3 million).

Legal Services

Foreign lawyers may not practice Malaysian law, nor may they affiliate with local firms or use the name of an international firm. Foreign law firms may not operate in Malaysia except as minority partners with local law firms and their stake in any partnership is limited to 30 percent. The Attorney General has authority to grant limited exceptions on a case-by-case basis under the law restricting the practice of

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Malaysian law to Malaysian citizens or permanent residents who have apprenticed with a Malaysian lawyer, are competent in *Bahasa* Malaysia (the official language), and have a local law degree or are accredited British Barristers at Law, provided the applicant has seven years of legal experience. Malaysian law does not allow for foreign legal consultancy except on a limited basis in the Labuan International Offshore Financial Center (see section on “Financial Services” below).

**Architectural Services**

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

**Engineering Services**

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

**Accounting and Taxation Services**

All accountants seeking to provide auditing and taxation services in Malaysia must register with the Malaysian Institute of Accountants (MIA) before they may apply for a license from the Ministry of Finance. Citizenship or permanent residency is required for registration with the MIA. Foreign accountants and auditors are only allowed to practice with registered Malaysian accountants, with foreigners permitted to hold no more than 40 percent of shares.

**Financial Services**

In 2009, the Malaysian government announced a liberalization package for the conventional and Islamic financial sectors. As part of this package, foreign equity limits were increased from 49 percent to 70 percent for domestic Islamic banks, investment banks, insurance companies, and Islamic insurance operators. Foreign equity above 70 percent is considered on a case-by-case basis for insurance companies if the investment is determined to facilitate the consolidation and rationalization of the insurance industry. Foreign equity of 70 percent is allowed for unit trust management companies providing retail services and for stock broking companies. Foreign equity of 100 percent is allowed for fund management companies providing wholesale services.
website. The U.S. business community has reported that bidders' costs can sometimes increase dramatically when award decisions are delayed, sometimes for years, or the bidding is reopened with modified specifications and, typically, short deadlines. Oman's Ministry of Defense may require that companies involved in defense-related transactions participate in its offset program, entitled “Partnership for Development.”

In accordance with its commitment in its WTO accession, Oman began the process of acceding to the WTO Agreement on Government Procurement (GPA) in 2001, but it has not completed the process and remains as an observer to the GPA.

INTELLECTUAL PROPERTY RIGHTS (IPR) PROTECTION

In the FTA, Oman committed to provide strong IPR protection and enforcement for copyrights, trademarks, geographical indications and patents. Oman revised its IPR laws and regulations to implement these FTA commitments and acceded to several international IPR treaties.

As part of the GCC Customs Union, the six Member States are preparing a common trademark law, as well as a common unfair competition law to protect from unfair commercial use undisclosed information submitted for marketing approval of pharmaceutical products. The United States is engaged in a dialogue with GCC technical experts to ensure that the trademark law and unfair competition law will facilitate Member States’ implementation of international and bilateral obligations.

SERVICES BARRIERS

Banking

Oman does not permit representative offices or offshore banking.

Legal Services

By a decree from the Ministry of Justice in October 2009, non-Omani attorneys, including U.S. attorneys practicing in Oman, are prohibited from appearing in courts of first impression. Within the next several years, the Ministry of Justice plans to bar foreign lawyers from appearing in all of its courts.

INVESTMENT BARRIERS

Under the FTA, Oman is required to accord MFN treatment and national treatment to U.S. investors, who also have the right to make financial transfers freely and without delay. In addition, Oman is required to apply international law standards for expropriation and compensation and to provide access to international arbitration. Many forms of investment are protected under the FTA, including enterprises, debt, concessions, contracts, and intellectual property rights. As a result, U.S. investors in almost all circumstances are entitled to establish, acquire, and operate investments in Oman on an equal footing with Omani investors and with investors of other countries. The FTA also prohibits the imposition of certain restrictions on U.S. investors, such as requirements to buy Omani rather than U.S. inputs for goods manufactured in Oman.

Concerns remain regarding the ability of U.S. businesses to acquire office space. Although U.S. investors are permitted to purchase freehold property in designated residential developments in accordance with regulations promulgated by the government in 2007, businesses must adhere to more restrictive
establish criminal liability, and the general reluctance of prosecutors to initiate criminal cases in the field of IPR, even when evidence substantiates the claim.

**SERVICES BARRIERS**

Russia’s services market is relatively open to U.S. services suppliers, including in areas such as financial services, education, legal services, and distribution, although specific problems remain in particular areas. The ability to provide services to public utilities and certain energy-related services (see discussion on energy in the section on Investment Barriers) remains limited. The process for an individual or a company to obtain a license to provide a service remains difficult, and limitations on the form of commercial establishment affect some sectors.

**Financial Services and Insurance**

The 1996 federal law "On Banks and Banking Activity" permits foreign banks to establish subsidiaries in Russia. However, Russia does not allow foreign banks to establish branches in Russia. While there is no cap on foreign charter capital in the banking sector, in the insurance sector, foreign insurance firms are subject to a 49 percent equity limitation.

**Telecommunications**

The telecommunications services market reached $37.2 billion in 2008 and is expected to grow to $48.5 billion by 2013. Many in the industry continue to criticize the lack of transparency in the licensing process, as well as the 5 year to 10 year license validity period, which they argue does not allow them sufficient time to recoup their investment. The scarcity of civilian frequencies has led to competition among Russian mobile operators and impeded the development of new wireless networks in Russia, such as 3G and WiMAX. (Only about 5 percent of Russia’s communication frequencies are used for civilian purposes, while 95 percent are reserved for military use.) Despite lobbying efforts from mobile operators, there is no indication that the Ministry of Communications and Mass Media will free up more frequencies for civilian use.

Industry reports that certification of new products in the telecommunications industry still suffers from a lack of transparency. Additionally, the satellite industry reports that the licensing process for obtaining access to a foreign satellite is overly burdensome and lacks transparency. Further, they claim that some of the legal requirements and administrative responsibilities associated with the provision of satellite services appear to be discriminatory, with the Russian government granting a preference for Russian satellite communications systems.

**INVESTMENT BARRIERS**

Russia’s foreign investment regulations and notification requirements can be confusing and contradictory, which has an adverse effect on foreign investment. In addition, U.S. investors and others cite corruption in commercial and bureaucratic transactions as a barrier to investment. President Medvedev’s vow to tackle corruption in Russia included the creation of an Anti-corruption Council in the summer of 2008 and an anti-corruption legislation package, which was promulgated in December 2008. However, little progress has been seen on implementation.

Telecommunications and media services companies report specific investment restrictions. Russian entities with more than 50 percent foreign ownership are prohibited from sponsoring television and video

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INTELLECTUAL PROPERTY RIGHTS (IPR) PROTECTION

In connection with its FTA commitments and obligations under international treaties and conventions, Singapore has developed a generally strong IPR regime. Nevertheless, the United States continues to have concerns regarding the government’s efforts to enforce IPR. These include: the continued transshipment of infringing goods through Singapore, insufficient deterrent penalties for end-user piracy, and the lack of meaningful enforcement against online infringers.

SERVICES BARRIERS

Basic Telecommunications

Facilities-based operators continue to be limited in their ability to take advantage of wholesale pricing for local provider SingTel’s “last mile” local leased circuits. When completed in 2012, Singapore’s next generation national broadband fiber network should allow fuller, more reasonable priced network access to provide telecommunication services to homes and businesses, bypassing the bottleneck of SingTel-owned circuits.

Audiovisual and Media Services

Singapore restricts the use of satellite dishes and has not authorized direct-to-home satellite television services. Singapore’s Media Development Authority (MDA) must license the installation and operation of broadcast receiving equipment, including satellite dishes. Satellite broadcasters that want to operate their own uplink facility must get a special license from MDA. Satellite broadcasters lacking their own facility are restricted to using one of four available uplink facilities.

Distribution, importation, or possession of any “offshore” or foreign newspaper must be approved by the government. Singapore has curtailed or banned the circulation of some foreign publications and limited their circulation when it perceives defamation of the Singapore government in the publication.

Legal Services

U.S. and other foreign law firms with offices in Singapore cannot practice Singapore law, employ Singapore lawyers to practice Singapore law, or litigate in local courts, unless specifically approved to do so. In December 2008, Singapore granted “qualifying foreign law practice” (QFLP) licenses to six foreign law firms to practice Singapore law, but Singapore lawyers in a QFLP law firm cannot be full partners or share in worldwide profits with other partners in the firm.

Banking

Singapore maintains legal distinctions between offshore and domestic banking units and the type of license held (full, wholesale, or offshore). Except in retail banking, Singapore laws do not distinguish operationally between foreign and domestic banks. Wholesale banks can operate in only one location, unless the Monetary Authority of Singapore approves an additional location.

Foreign banks and other financial institutions that issue credit cards in Singapore are unable to provide ATM services through local networks for holders of those cards. Foreign banks can only provide ATM services to locally-issued credit card holders through their own network or through a foreign bank’s
Legal Services

U.S. investors may own law firms in Thailand; but U.S. citizens and other foreign nationals (with the exception of "grandfathered" non-citizens) may not provide legal services. In certain circumstances, foreign attorneys may act in a consultative capacity.

Financial Services

Significant restrictions remain on foreign participation in the financial services sector. Under the 1962 Commercial Banking Act, foreigners were allowed to hold a maximum of 25 percent of the equity in Thai banks, but in practice Thai regulators had waived the foreign shareholding ceiling with respect to most local banks due to their need for funds. The 2008 Financial Institutions Business Act, the consolidated financial act that replaced the 1962 Commercial Bank Act and a 1979 Act on financial services, increased the statutory percentage of foreign equity ownership to 49 percent in August 2008. However, foreign ownership between 25 percent and 49 percent requires prior approval from the Bank of Thailand. The law also allows the Ministry of Finance to authorize foreign ownership above 49 percent if deemed necessary to support the stability of the overall financial system during an economic crisis.

The Financial Sector Master Plan (FSMP I), which took effect in early 2004 and was completed at the end of 2008, called for the consolidation of financial institutions and encouraged mergers. The Second Financial Sector Master Plan (FSMP II), which will further liberalize and strengthen the financial industry, was approved by the Thai Cabinet in mid-November 2009.

Foreign banks are limited to one branch and are not permitted to operate off-site automated teller machines (ATMs), which are considered branches. Subsidiaries established under the period of FSMP I are entitled to open up to five bank branches, including a headquarters office. Under FSMP II, foreign banks will be allowed to open two additional branches regardless of location from 2010 onward. The FSMP II also will allow some foreign bank branches to have up to 20 branches and 20 ATMs subject to Bank of Thailand approval. Foreign management personnel are limited to six professionals in full branches and subsidiaries of foreign banks, although exceptions are often granted. In August 2009, pursuant to Thailand’s commitments under the ASEAN Framework Agreement on Services, the Bank of Thailand waived the foreign management personnel restriction if the personnel are nationals from members of ASEAN.

Permission for foreigners to have more than a 49 percent equity stake in Thai securities firms is granted on a case-by-case basis.

Accounting Services

Foreigners cannot be licensed as Certified Public Accountants unless they pass the required examination in the Thai language, are citizens of a country with a reciprocity agreement, and are legally resident in Thailand. Foreign accountants may serve as business consultants.

Transport Services and Communication Services, including Express Delivery Services

The 2005 Multimodal Transport Act introduced uncertainty with respect to the treatment of foreign shipping companies. Approval of implementing regulations has been delayed, so the full impact of the law remains unclear. While the text of the law itself appears to require foreign shipping companies performing multimodal services in Thailand to either incorporate in Thailand or appoint a Thai agent (as
INTELLECTUAL PROPERTY RIGHTS (IPR) PROTECTION

Turkey was listed on the Watch List in the 2009 Special 301 Report. Key concerns cited in the Report included continued uncertainty as to Turkey’s commitment to protect data generated to obtain marketing approval for pharmaceutical products, setbacks in Turkey’s enforcement of protection for trademark rights, continued widespread counterfeiting of products, and piracy of books and software.

Enforcement of Turkey’s intellectual property rights protection laws has improved in recent years. For example, the software industry welcomed a 2008 publication by the Ministry of Culture of a new circular reminding all government agencies of the requirement to use licensed software. Enforcement agencies engaged in several large operations to seize counterfeit goods over the course of 2009; however, industry reports that considerable gaps in enforcement efforts remain.

SERVICES BARRIERS

Telecommunications Services

The Telecommunications Authority (TK) has been actively taking steps necessary to promote a competitive Turkish telecommunications market. Two problems the sector saw as major impediments to a competitive telecommunications market were the lack of both number portability rules and 3G licenses. TK started requiring mobile number portability in November 2008 and issued three 3G licenses to the major domestic cell phone operators. (Prior to November 2008, TK was hampered by its lack of adequate authority to provide effective enforcement of its rules, but a regulatory change granted it additional powers to regulate the market.)

TK is also responsible for enforcing bans on Internet content determined by courts to be offensive. This has on many occasions led to TK blocking access for all consumers to various Internet-based service providers, such as the weblog hosting site wordpress.com, social networking sites like MySpace, and the video-sharing website YouTube.

Other Services Barriers

There are restrictions on establishment in financial services, legal services, the petroleum sector and broadcasting (see the Investment Barriers section). Turkish citizenship is required to practice as an accountant or certified public accountant, or to represent clients in Turkish courts. Legislation awaiting final approval by Parliament would permit foreign doctors to work in Turkey.

INVESTMENT BARRIERS

Almost all areas open to investment by the Turkish private sector are fully open to foreign participation without screening or prior approval, although there are restrictions on establishment in the financial services, legal services, broadcasting and petroleum sectors. Foreign equity ownership is limited to 25 percent in broadcasting, although Parliament is considering draft legislation to ease these restrictions. Foreign investors have sometimes found their investments undermined by legislative or court action.

Energy Sector

Turkish law calls for a liberalized energy market in which private firms are able to develop projects with a license obtained from the Energy Market Regulatory Authority, an independent regulatory body. The

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