UNITED STATES
BARRIERS TO TRADE AND INVESTMENT

REPORT FOR 2007

EUROPEAN COMMISSION

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This report has been compiled by the European Commission's Directorate General for Trade in co-operation with the European Commission's Delegation in Washington, D.C. and other services of the Commission on the basis of material available to them at the end of December 2007.

This year's Report on U.S. Trade and Investment Barriers focuses on some key active, upcoming trade barriers and measures that prevent EU exporters from effectively drawing upon the full potential of EU-U.S. trade relations. Details on the trade barriers mentioned in the body of the report are attached in the annex.

If you feel that a trade barrier has not been sufficiently covered in either this report or the MADB, you may now lodge an on-line complaint about the barrier you experience with the European Commission's Market Access Team via

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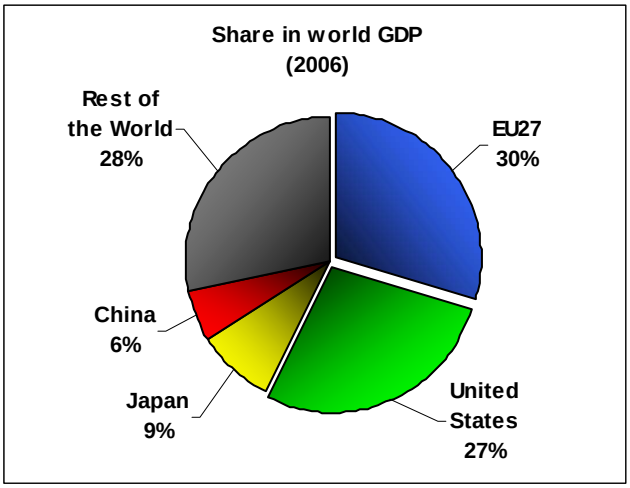

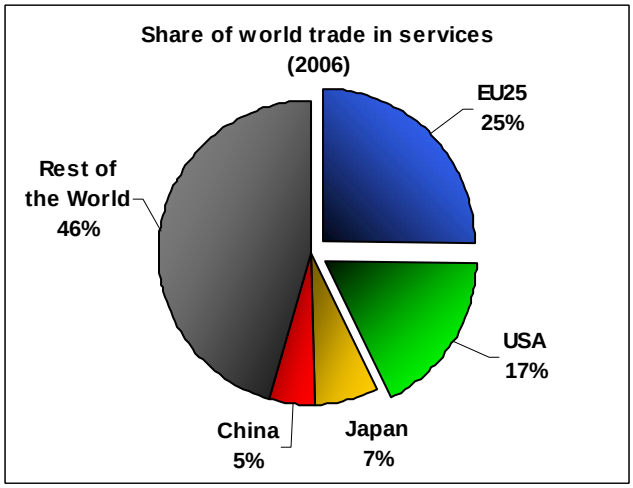

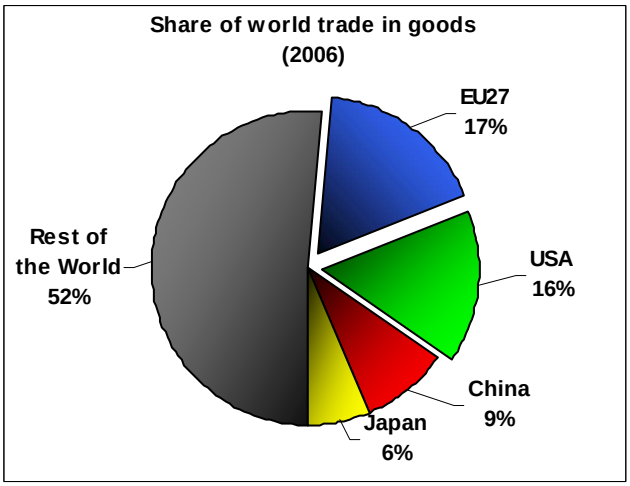

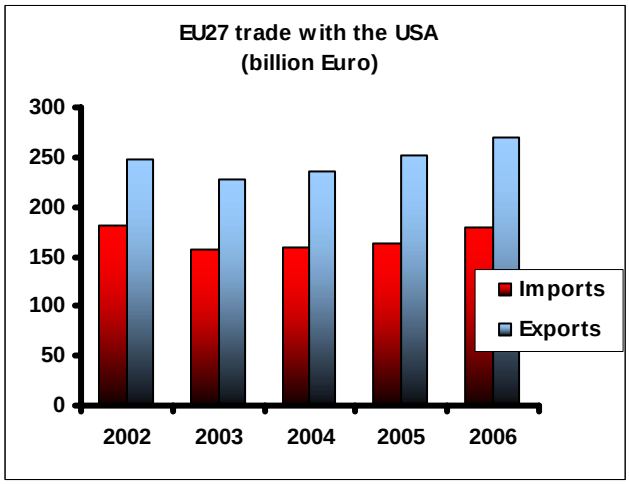

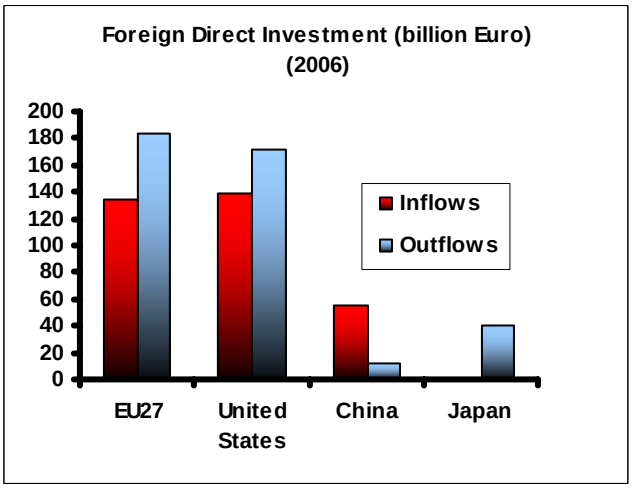

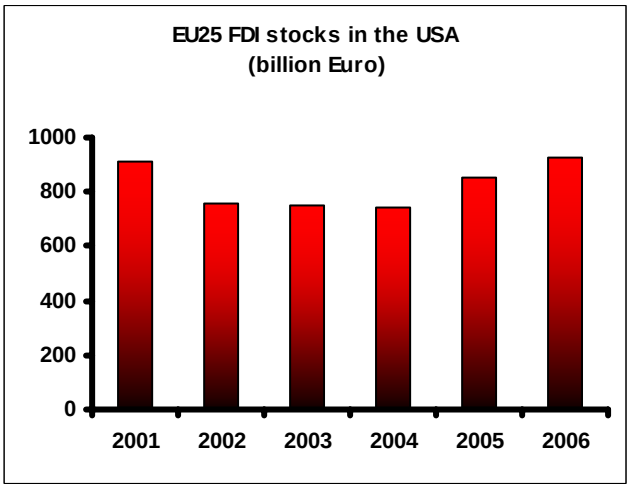

Source: Eurostats, IMF, UNCTAD, World Bank
Note: World is calculated excluding intra-EU trade

1. EU-U.S. TRADE RELATIONS – A BRIEF OVERVIEW

The European Union and the United States are each other's main trading partners and enjoy the largest bilateral trade relationship in the world. In 2006 their combined economies accounted for nearly 60 % of global GDP, approximately 33 % of world trade in goods and 42 % of world trade in services. The total flow of Foreign Direct Investment (FDI) between the EU and the U.S. was approximately Euro 147 billion. The EU FDI stock held in the U.S. amounts to roughly Euro 926 billion. Total FDI stocks held in each others countries reach approximately Euro 1.89 trillion.

The size and importance of the bilateral trade relationship makes the EU and the U.S. the key trade players on the global scene. EU-U.S. economic cooperation defines standards around the world and sets the pace in the WTO. Europe and America support a “rules-based” trading system and are working towards a successful conclusion of the Doha Development Agenda (DDA) round of trade talks.

In 2007, the EU and the U.S. launched a new effort, the Transatlantic Economic Council (TEC), to integrate our economies even more fully by identifying key areas where greater convergence between economies and systems could reap rewards on both sides of the Atlantic. Bringing together government, industry, labour, and consumers, the TEC holds the promise of an ever deeper and more mutually productive transatlantic relationship. At the first TEC meeting in November 2007, important progress was achieved in areas such as the launch of the investment dialogue, the negotiations on mutual recognition of accounting standards and of U.S and EU trade partnership programmes, secure cargo and a number of more technical regulatory issues.

In even this closest of partnerships, however, there still exist trade barriers and differences that hinder trade and investment. This annual report on U.S. trade barriers from the European Commission highlights some of the impediments that the European Union encounters when doing business with the U.S. The barriers described range from the small and relatively easily addressed to larger, more complicated problems, including challenging regulatory questions and some issues that have been or are being litigated at the World Trade Organisation. No matter the size or economic impact, all barriers need to be addressed, as far as possible, to help maintain and strengthen both transatlantic confidence and broader faith in the multilateral trading system.

The year 2007, in fact, saw the successful resolution of one long-running trade dispute: the U.S. repealed countervailing duties, imposed on the basis of findings concerning "privatisation" of EC exporters, which were declared illegal by the WTO in December 2006. Other disputes remain before the WTO or await U.S. compliance with findings by World Trade Organisation dispute settlement bodies.

While the overall economic impact of outstanding EU-U.S. trade disputes constitutes only a small proportion of the total EU-U.S. trade volume, our differences should be carefully managed to prevent unnecessary conflict, including costly and time-consuming litigation, and damage to the economies on both sides of the Atlantic. The European Commission remains firmly committed to addressing existing and future obstacles to trade and investment in the U.S. market in a constructive way, through bilateral, plurilateral and multilateral channels.

Transatlantic trade and investment is very good for Europe, and also for America and Americans. It is thus the EU's hope that the U.S. will work diligently in 2008 to remove trade barriers facing European companies seeking to do more business in America.

2. SECURITY RELATED TRADE BARRIERS

2.1. Cargo Trade

The U.S. launched the Container Security Initiative (CSI) in 2002 to counter potential terrorist threats to the international maritime container trade system. The CSI consists of four elements: security criteria to identify high-risk containers; pre-screening containers before they arrive in U.S. ports; using technology to pre-screen high-risk containers; and developing and using smart and secure containers. The U.S. Customs and Border Protection (CBP) launched the system to achieve a more secure maritime trade environment while attempting to accommodate the need for efficiency in global commerce. Ports participating in the CSI use technology to assist their officers in quickly inspecting high-risk containers before they are shipped to U.S. ports. So far, ten Member States have signed declarations of principle with the CBP to introduce CSI in their ports as well as an agreement on stationing U.S. Customs officials in their ports.

In order to ensure a level playing field among European ports, the EU concluded an agreement that expands the EU-U.S. customs co-operation agreement to include transport security aspects and to prepare minimum standards for all EU ports to participate in the CSI. In August 2005, the U.S. agreed to the participation of more EU ports in the CSI where they comply with certain jointly agreed minimum standards and where no U.S. officials will be stationed. For this project, a pilot action has been performed in 2007 in the port of Szczecin (Poland). Similar actions are envisaged in Aarhus (Denmark) and Salerno (Italy) for the beginning of 2008. The EU-U.S. working group established by the expanded agreement is currently working on further measures which are intended to diminish the barriers caused by this initiative.

According to EU industry, the CSI screening and related additional U.S. customs routines are causing significant additional costs and delays to shipments of EU machinery and electrical equipment to the U.S. This burden is so severe that a number of small European engineering companies have decided not to export to the U.S. any longer. There is also competitive distortion in this fiercely competitive engineering market between the EU and U.S. engineering companies since to date there is, de facto, no reciprocity between the EU and the U.S. in this regard.

On 13 October 2006, U.S. President Bush signed into law the Safety and Accountability for Every Port Act, the so-called SAFE Port Act. The Act contains a number of provisions that impact upon port security as well as international supply chain security. Section 231 of the Act foresees the establishment of a pilot programme at some foreign ports to test integrated non-intrusive imaging and radiation detection scanning equipment for all U.S.-bound containers. This pilot programme goes against a modern customs approach of risk based controls through effective targeting followed by scanning and/or inspection when necessary and may slow down traffic in ports.

The port of Southampton (UK) had been chosen to participate in this pilot project to study the feasibility of a 100% scanning approach. However, the U.S. did not await the results of this pilot action before pressing ahead with the "Implementing Recommendations of the 9/11 Commission Act of 2007" (also known as the 9/11 Commission Recommendations bill), which were signed on 3 August 2007.

As far as maritime cargo is concerned, the implementation of the 100 % scanning requirement is foreseen with a 5-year deadline by 1 July 2012. For the EU and other major partners, the envisaged scanning of all U.S.-bound containers in more than 600 ports from which ships

leave for the U.S. would lead to major trade disruptions and an additional administrative burden. It would require major re-structuring of EU ports and place a very heavy financial burden on EU business and ultimately its taxpayers. The bill does not include a spending authorisation/financial clause for equipping foreign ports. Therefore costs for the installation of the necessary equipment are expected to be borne by the port and shipping companies. An indication of the potentially devastating economic impact was provided by the pilot programme in the context of the U.S. Secure Freight Initiative (SFI) that was intended to evaluate the feasibility of 100% scanning and to install such full scanning equipment in seven international ports. It appropriated roughly $60 million to cover costs in some, although not in all of the ports. For the Southampton pilot alone the costs were estimated at $14.5 million.

The new legislation also sets out other requirements (e.g. standards for container security devices and/or smart box technology), which have the potential to hamper the possibility for EU trade to compete fairly with their U.S. competitors and to excessively burden the EU export supply chain.

For cargo carried on passenger aircraft the bill even requires a 3-year phase-in implementation with benchmarks of 100 % "screening", but at this stage, it's not yet clear whether and how the requirements for air cargo will affect international transport.

The Commission, Member States, port operators and the entire trade community are seriously concerned about this new U.S. legislation, in particular with respect to the potential costs of the scanning requirement, its possible effects on competitiveness, and its negative impact on transatlantic trade flows. This measure is unilateral and would disrupt trade and cost legitimate EU and U.S. businesses a lot of time and money while no real benefit is proved when it comes to improving security.

3. EXTRATERRITORIALITY AND UNILATERALISM

3.1. Extraterritoriality

U.S. provisions having extraterritorial effect are a frequently used tool to implement U.S. policies across their own border. Today, the U.S. has a number of such provisions in place which hamper international trade and investment and may not as such conform to international trade law. These include for example the Cuban Liberty and Democratic Solidarity Act, known as the Helms Burton Act signed by Bill Clinton in 1996. The Act has been repeatedly condemned by the EU, which reserves the right to resume actions at the WTO. Other examples include the Iran-Libya Sanctions Act (ILSA). This Act was amended by President Bush in April 2004, terminating actions against Libya in light of its renunciation of international terrorism. In 2006 Congress passed the Iran Freedom Support Act, extending the provisions of ILSA in the case of Iran for another five years until 2011.

These extraterritorial provisions continue to cause problems for EU companies. Subsequently the EU has expressed its opposition to this kind of legislation, or any secondary boycott or legislation having extraterritorial effects, through a number of representations and steps, such as the Council Regulation 2271/96 (the so-called "Blocking Statute") of 22 November 1996. Other trading partners of the U.S., such as Canada and Mexico, have strengthened or adopted similar blocking legislation.

Another example of such legislation concerning Iran is the Iran Non-Proliferation Act (INPA) signed into law on 14 March 2000. It allows the U.S. Administration to apply its own sanctions to exports which are subject to EU Member State and EU export control regimes,

while also unilaterally expanding the scope of export controls on EU exports beyond those agreed multilaterally.

Nevertheless, 2007 saw two welcome changes in the decisions by the Securities and Exchange Commission (SEC) to ease deregistration rules for non-U.S. companies and to drop the costly requirement for EU companies wanting a U.S. listing to reconcile their accounts (prepared in accordance with International Financial Reporting Standards) with U.S. Generally Accepted Accounting Principles (GAAP).

Furthermore, Section 319 of the Uniting and Strengthening America by Providing Appropriate Tools Required to Intercept and Obstruct Terrorism Act, known as the PATRIOT Act, signed in 2001, deals with allegations of money laundering and the forfeiture of funds in the U.S. inter-bank accounts. Some European banks have alleged that it applies extraterritorial provisions to financial services. The European Commission is concerned about such allegations and their impact on the legal certainty and ability of European banks to conduct business in the U.S. The European Commission is still working with U.S. Treasury authorities to assess the nature of this problem and, if necessary, to remedy the situation in such a way as to give European banks sufficient legal clarity to conduct their business.

3.2. Unilateralism

'Unilateralism' may take the form of either unilateral sanctions or unilateral retaliatory measures against allegedly 'offending' countries or companies. Both types of measures are based on an exclusive U.S. assessment of the actions of a foreign country or its legislation and administrative practice irrespective of multilaterally agreed rules. This approach has in the past cast doubt on U.S. support for a multilateral rules-based system to address trade problems. Whilst the U.S. has in practice made extensive use of the WTO fora, including its dispute settlement system, it has not renounced the possibility of taking actions unilaterally. As a result, the EU has obtained important results in two WTO dispute settlement cases, one against the U.S. suspension of customs liquidation in the banana dispute, and one against Sections 301-310 of the Trade Act of 1974. The latter authorises the U.S. Government to take action to enforce U.S. rights under any trade agreement and to combat practices by foreign governments which the U.S. Government deems to be discriminatory, unjustifiable or restrictive to U.S. commerce.

The EU also initiated dispute settlement proceedings against "carousel" legislation (Section 407 of the Trade and Development Act of 2000), which the U.S. has so far not applied. A more recent example of unilateral action is the U.S. continued suspension of obligations in the EC – Hormones dispute in the form of persisting excessive import duties despite the EU's removal of inconsistent measures.

4. TARIFF BARRIERS

Despite the substantial tariff reduction and elimination agreed in the Uruguay Round, the U.S. retains a number of significant duties and tariff peaks in various sectors including food products, textiles, footwear, leather goods, ceramics, glass, and railway cars.

The EU hopes to achieve further reduction of U.S. tariffs within the context of the ongoing Doha Development Round. According to the current state of play, substantially all tariff peaks should be eliminated following the 'Swiss Formula'. Although little progress has been made, the EU continues to pursue this goal throughout the negotiations.

A more recent example of tariff barriers is the issue concerning multilayer parquet. The U.S Bureau of Customs and Border Protection has reclassified multilayer parquet. It no longer

falls under the parquet panel category, imports of which are duty free. Instead it is categorized as plywood, which is charged with a duty rate of 8 %. EU Member States and producers continue to raise their discontent about this reclassification.

5. NON-TARIFF BARRIERS

5.1. Regulatory Divergences

In a global economy international standards are an indispensable tool to eliminate technical barriers to trade, to facilitate and increase market access, to improve the quality and safety of products and services, and to promote and disseminate know-how and technologies. For governments, the use of international standards in the context of their regulatory policy is also an important element for the implementation of the WTO-TBT Agreement. All parties to the Technical Barriers to Trade (TBT) Committee are committed to the wider use of international standards as the basis for their regulation.

However, regulatory barriers have also long been recognised as significant impediments to trade and investment between the EU and the U.S. A particular problem in the U.S. is the relatively low level of implementation and use of international standards set by the international standardisation bodies.

Furthermore, EU exporters to the U.S. market face steep regulatory barriers. In the U.S., products are increasingly being required to conform to multiple technical regulations regarding consumer protection (including health and safety) and environmental protection. Although in general not *de jure* discriminatory, the complexity of U.S. regulatory systems can represent an important structural impediment to market access. Obstacles for European exporters include for example a burdensome pharmaceutical approval system, the American Automobile Labelling Act, documentary and labelling requirements for textiles, as well as restrictions regarding the distribution of wines and spirits.

It is not uncommon that equipment for use in the workplace is subject to a number of different standardising bodies. In the case of pressure equipment for instance: the U.S. Department of Labor certification, a county authority's electrical equipment standards, specific regulations imposed by large municipalities, and other product safety requirements as determined by insurance companies.

This situation is aggravated by the lack of a clear distinction between essential safety regulations and optional requirements for quality, which is due in part to the role of some private organisations as providers of assessment and certification in both areas. For instance, this is the case for product-safety requirements and other standards for electrical and electronic equipment as well as construction products. Moreover, for products where public standards do not exist, product safety requirements can change overnight when the product liability insurance market makes a new assessment of what will be required for insurance purposes. Differences in standards and food safety requirements between the U.S. and the EU are exemplified by the export conditions for Grade-A milk products as well as provisions for organic products under the National Organic Program of 2001.

A more integrated and streamlined transatlantic regulatory environment would significantly reduce costs for producers and consumers on both sides of the Atlantic and improve the competitive situation of EU and U.S. companies in the global economy. As the world's two most important trading partners there is much to gain from fewer barriers to bilateral trade and investment.

Reinforced regulatory cooperation is therefore important to help dismantle existing regulatory barriers and preventing new ones from emerging. At the EU-U.S. Summit on 30 April 2007, the two sides signed a "Framework for Advancing Transatlantic Economic Integration between the United States of America and the European Union". Key elements of this framework were the adoption of a work programme of cooperation and the establishment of the Transatlantic Economic Council to oversee, guide and accelerate the implementation of this work programme. Regulatory authorities on both sides aim at achieving greater convergence of technical rules through a number of sectoral and methodological regulatory dialogues. Since its inception in 2005, the High Level Regulatory Cooperation Forum has met regularly to facilitate the exchange of best regulatory practice across sectors. Although progress is being made through EU-U.S. regulatory cooperation, EU exporters continue to face a number of post-import impediments. The proliferation of regulations at State level presents particular problems for companies without offices in the U.S. Moreover, the EU-U.S. Agreement on Mutual Recognition, in force since 1 December 1998, has not been fully implemented. This is due to the absence of mandatory third party certification and operational difficulties which were not foreseen at the time of the agreement.

5.2. Registration, Documentation, Customs Procedures

There is a lack of recognition of EU origin, while the EU is a customs union with a single customs territory; the direct consequence is non-acceptance of EC certificates of origin by U.S. Customs.

The implementation of the food-related provisions of the Public Health Security and Bioterrorism Preparedness and Response Act of 2002, known as the Bioterrorism Act, puts severe burdens on trade in food and feed products to the U.S. Additionally, in response to recent scandals and scares around imports of unsafe food, feed and drinks, the U.S. is currently considering a number of independent proposals on how to improve the safety of such imports. The outcome of this initiative is still widely unpredictable. However, it is apparent that a few elements are contained that may negatively impact on EU exporters. These include for example import inspection fees, country of origin labelling, and mandatory certification of 'high risk foods'.

The U.S. Code, Title 46, Section 12108 and the American Fisheries Act of 1998 represent considerable shipping restrictions for fishermen as foreign-built vessels are not eligible to receive a fishing licence. U.S. rules of origin for textiles continue to affect European exports of fabrics, scarves, bed linen, table linen, bedspreads as well as quilts containing cotton and wool. Equally burdensome are the restrictions introduced through Section 8e of the Agricultural Marketing Agreement Act of 1937, stipulating that the importation of a number of agricultural commodities regulated under the Federal Marketing Orders (MO) shall be prohibited unless they are in compliance with grade, size, quality and maturity provisions set in the MO.

5.3. Import Prohibitions

The right of sovereign nations to take measures to protect their essential national security interests has been widely recognised by multilateral and bilateral trade agreements and, of course, particularly since the events of 9/11. However, it is in the interest of all trade partners that such measures are prudently and sparingly applied. Restrictions to trade and investment cannot be justified on national security grounds if they are, in reality, essentially protectionist in nature and serve other purposes. Under Section 232 of the Trade Expansion Act of 1962, U.S. industry can petition for the restriction of imports from third countries on the grounds of

national security. The application of Section 232 is however not dependent on proof from industry. Consequently, the law provides U.S. manufacturers with the opportunity to seek protection on the grounds of national security, when in reality the aim can be simply to curb foreign competition. In addition, the chemicals sector is affected by import restrictions for certain drug precursor chemicals. Similarly, the Jones Act uses national security reasons to prohibit the use of foreign vessels.

In the area of fisheries, the Marine Mammal Protection Act of 1972 establishes significant import prohibitions. While the EU wholeheartedly supports the protection of marine mammals, particularly dolphins; it rejects certain provisions – not directly related to animal protection –which may impede trade. Another example is the recently introduced restriction on the commercialisation and production of foie gras in a number of states.

5.4. Levies, Charges and Import Duties

EU exports face a number of additional customs impediments, such as import user fees and excessive invoicing requirements on importers, which add to costs in a similar way to tariffs. The most significant user fee is the Merchandise Processing Fee, which is levied on all imported merchandise except for products from the least developed countries, from eligible countries under the Caribbean Basin Recovery Act, the Andean Trade Preference Act, U.S. FTA partners, or from U.S. Offshore possessions. Although the current MPF includes an upper limit on the custom user fee, it is still likely to exceed service costs as the charges are based on the value of the imported goods.

Furthermore, the U.S. levies two taxes/charges on the sale of cars in the U.S. Both the Corporate Average Fuel Economy (CAFE) payment and the so-called Gas Guzzler Tax, place the tax primarily on imported cars and are therefore of concern to European exporters.

Concerning the agricultural sector, in its 2007 Farm Bill proposals the USDA suggested applying a dairy assessment to imports, a levy of 15 cents per 100 pounds of milk equivalent, to finance dairy promotion and research activities. This could potentially prevent any increase of sales on the U.S. dairy market for European producers.

European wine producers have to compete against another significant barrier. According to U.S. federal law, wine produced in or imported into the U.S. is subject to a "gallonage tax" with different tax bands according to the alcoholic content. However, while 'small' U.S. producers are eligible for a tax credit, their European counterparts are not entitled to the same rebate.

5.5. Sanitary and Phytosanitary Measures

In the agricultural area, a number of sanitary and phytosanitary (SPS) issues remain a significant source of difficulty for EU producers. Most problematic in this respect is the trading of animal products. For example, since 1997 the U.S. has had special rules in place on the import of ruminant animals (bovine animals) and products thereof from all European countries based on concerns about Bovine Spongiform Encephalopathy, commonly termed BSE. Although the EU and U.S. collaborated closely towards the adoption of a global BSE standard in the Global Animal Health Organisation (OIE), and although the U.S. insist that their trading partners, notably in Asia, use this standard to assess the risk of U.S. beef, the U.S. remains unwilling to use these agreed rules for EU products.

Other long-standing trade barriers apply to exports of beef, pork and poultry products and are originally motivated by animal health protection. Imposing trade restrictions on products from a region which is affected by disease outbreaks is a quick, administrative process - and rightly so. However, the lifting of these trade restrictions should be equally fast and pragmatic once the disease has been eradicated. In many cases the U.S. administration has used complex and lengthy rulemaking procedures to restore trade, which can take several years longer than the re-acquaintance of an official disease-free status under the global rules of the OIE.

The Veterinary Equivalence Agreement, signed on 20 July 1999, provides a framework for pragmatic regulatory cooperation between the EU and U.S. in these areas of animal health and food safety. But the pace of discussions is very slow and does not at all exploit the opportunities provided by the Agreement. An example of the slow progress in regulatory cooperation is the sanitary measure applied by the U.S. for imports of live bivalve molluscs. The EU and the U.S. apply different testing methods to determine the safety of molluscs. According to the EU both approaches yield the same result and are equally effective. The U.S. however does not currently recognise the EU approach as equivalent, which effectively prevents European producers from exporting to the U.S.

Burdensome rules for the importation of dairy products make it extremely difficult for EU producers to be approved to export to the U.S., and as mentioned above this may be further exacerbated by potential measures in the Farm Bill which would apply a Mandatory Dairy Promotion Assessment to imported dairy products.

The current U.S. import regime for Grade A milk products constitutes an effective block to any trade as there is currently no Federal State that would be willing to inspect establishments in the EU (or any other foreign country) under the Pasteurized Milk Ordinance. Discussions with the Food and Drug Administration (FDA) to regulate Grade A milk imports under a federal regime are still at an initial stage.

Furthermore, the U.S. requires that Pest Risk Analysis (PRA) be carried out for new non-manufactured agricultural products before the import conditions are established. This is done through a genus by genus approach. The time between applying and inclusion on the list of approved products can take several years (or even decades), even when other products from the same area of production with the same phytosanitary risks are permitted. Difficulties and delays have been noted for fruits, vegetables, and ornamental plants, although they are even more explicit for plants.

Other SPS-related restrictive measures exist for plant health covering imports of fresh fruits, perennials and nursery stock, as well as standards and certification of ornamental plants established in growing media.

5.6. Public Procurement

In the field of public procurement, the main U.S. trade barriers are contained in a wide array of clauses in federal, state and local legislation and regulation giving preference to domestic suppliers or products, or excluding foreign bidders or products altogether. In addition, there are federal restrictions on the use of federal grant money by State and local government. These restrictions are called 'Buy America' (Buy America Act or BAA). Taken together, these restrictions, such as the "Buy America" provisions of the Department of Transportation (DoT), cover a significant proportion of public purchasing in the U.S. Furthermore, as the U.S. International Trade Commission noted in its 2004 report: "The Economic Effects of Significant U.S. Import Restraints", the complexity and partially overlapping nature of existing restrictions makes it nearly impossible to determine the total value of government-

purchased imports subject to these restrictions. Regarding development aid, restrictive provisions for U.S. Food Aid purchases and transportation require that at least 75% of tonnage is transported on vessels carrying the U.S. flag. Moreover, on a significant number of sectoral issues, "Buy American" restrictions are imposed for ball and roller bearings, on electrical and electronic equipment, and are the legal basis of local content requirements for steel in public procurement cases.

Another practical limitation lies in the lack of transparency related to sub-federal procurement opportunities. Unlike the EU - where all tender notices for central and sub-central procurements are published on a single electronic site free of charge (the TED data base) - only U.S. federal notices are published on a single electronic site (fedbizopps.gov). This situation effectively hinders foreign suppliers' access to sub-federal procurement markets. Potential bidders do not know where to look for relevant procurement opportunities and/or information relating to sub-federal purchases.

Despite the fact that the WTO Government Procurement Agreement (GPA) substantially increased tendering opportunities for both sides, the EU remains concerned about the wide variety of discriminatory "Buy America" provisions that persist. Small business set-aside schemes, exemplified by the Small Business Act of 1953, also limit bidding opportunities for EU contractors.

The Department of Defense (DoD) also has significant procurement expenditures that exclude foreign suppliers of goods or services. The DoD is the largest public procurement agency within the U.S. government, spending billions of dollars annually on supplies and other requirements. Many procurements fall under "national security" exceptions to open procurement obligations. The concept of "national security" was originally used in the 1941 Defense Appropriations Act to restrict DoD procurement to U.S. sourcing. Now known as the "Berry Amendment", its scope has been extended to secure protection for a wide range of products only tangentially-related to national security concerns. There has been a trend towards making the DoD's other domestic preferences, apart from the BAA, less restrictive by expanding them to qualifying countries which maintain reciprocal memoranda of understanding (MoU) with the U.S. In practice, all North Atlantic Treaty Organisation (NATO) countries (except Iceland), as well as all major non-NATO allies of the U.S. have signed MoUs with the U.S. allowing for a waiver of the corresponding restrictions. However, these MoUs are subject to U.S. laws and regulations, and consequently, other overriding ad hoc restrictions can be imposed annually by Congress through the authorisation/appropriations process.

The Commercial Space Act of 1998 applies national security restrictions to space launching services. These restrictions, which initially applied to the launch of military satellites, are now also applied on national security grounds to satellites for civilian use. The measures are part of a set of co-ordinated actions to strengthen the U.S. launch industry and are clearly detrimental to European launch service providers. European operators remain effectively barred from competing for most U.S. government launch contracts which account for approximately 50% of the U.S. satellite market.

5.7. Trade Defence Instruments

Several U.S. trade defence measures have been brought by the European Union to the WTO Dispute Settlement system. Many aspects of U.S. trade defence legislation and practices have already been ruled as inconsistent with WTO Agreements. Implementation by the U.S. of these WTO findings has, at best, also been slow.

The methodology and application of U.S. trade defence instruments has been challenged frequently and successfully - and not only by the EU - in the WTO Dispute Settlement system, such as the laws, regulations and methodology for calculating dumping margins (*zeroing*). As a result, the Department of Commerce (DoC) stopped the use of zeroing in original investigations when comparing export prices and normal value on an average-to-average basis. However, the U.S. is yet to address the issue of zeroing in reviews of AD measures and in other comparison methods. Several other aspects of U.S. trade defence legislation and practices, including those relating to safeguards, have also been shown to be inconsistent with WTO Agreements. WTO rulings against U.S. trade remedies include the *Continued Dumping and Subsidy Offset Act of 2000 ("Byrd Amendment")*. Despite the welcomed news of its repeal in 2006, the Byrd Amendment's WTO-incompatible distribution of collected anti-dumping and countervailing duties to the U.S. complainants will continue for several more years as a result of a transition clause.

The *Antidumping Agreement* and the *Subsidy and Countervailing Measures Agreement* (SCM) contain a so-called "sunset review". Measures should not last longer than five years unless it is deemed that their termination would likely lead to the continuation or recurrence of dumping or subsidisation which are causing injury. For many years the U.S. kept in place countervailing duty measures on privatised steel firms dating back as far as 1985. However, the U.S. International Trade Commission decided on 14 December 2006 to revoke the measures. The U.S. had also enacted anti-dumping and countervailing duties on uranium imports from France, Germany, the Netherlands, and the UK in 2002, which were partially revoked in 2006 and were subject to a sunset review in 2007. Following the review, concluded on 29 November 2007, the remaining countervailing duties order against France has also been revoked. Nonetheless the anti-dumping measures on low-enriched uranium from France remain in force.

5.8. Subsidies

The EU continues to be concerned about the significant direct and indirect government support given to U.S. farmers and industry by means of direct subsidies, protective legislation and tax policies. The adoption by the U.S. Congress of the Farm Security and Rural Investment Act of 2002 ("Farm Bill") significantly increased the trade-distorting effect of U.S. farm subsidies. This Act is clearly inconsistent with the express commitments of WTO Members, reinforced at Doha in November 2001, that farm policies should be reformed in the direction of less trade distorting forms of support. Closely related to the Farm Bill are the commodity loan programmes with marketing loan provisions for crops like wheat, rice, corn, soybeans and other oilseeds. These programmes are administered by the Farm Service Agency (FSA) through the Commodity Credit Corporation (CCC). Additionally, several agricultural export programmes such as the Export Enhancement Program, the Dairy Export Incentive Program and Market Access Program, the Export Credit Guarantee Program (GSM-102) as well as the Food Aid Programs provide considerable amounts of subsidies for U.S. farmers.

On 6 October 2004, the EU initiated a WTO dispute settlement procedure against a number of U.S. federal, state and local subsidies to Boeing. This action followed the U.S. purported unilateral withdrawal from the 1992 EC-U.S. Agreement on Trade in Large Civil Aircraft on the same day and the initiation of WTO dispute settlement procedures against alleged European support for Airbus. U.S. subsidies challenged by the EU in the WTO include a USD 4 billion package in the State of Washington (combining tax breaks, tax exemptions or tax credits), infrastructure projects for the exclusive benefit of Boeing, USD 16.6 billion funding

from NASA and DoD for aeronautics R&D and a USD 900 million package in the State of Kansas in the form of tax breaks and subsidised bonds. WTO panel proceedings in both cases are ongoing, and are expected to last well into 2008. The EU also remains concerned about the significant level of subsidies to the U.S. shipbuilding, aircraft engine manufacturers and steel industries.

The EU recognises the severe financial consequences of 9/11 on U.S. airlines and the need to ensure that vital transport services in the U.S. are maintained. Nevertheless, the on-going large scale state aid for airlines represents a significant protection from commercial pressures also faced by foreign carriers and is an impediment to fair trade on transatlantic air routes. EU Regulation No 868/2004 allows for specific measures to be taken against third countries' carriers in order to counteract subsidisation and unfair pricing practices resulting from such non-commercial advantages.

U.S. subsidies also cause problems for the European biodiesel industry. The issue has emerged due to a surge in subsidised biodiesel exports to the EU, which has depressed prices and profits and caused several producers to shut down their operation. The problem is that the U.S. subsidises biodiesel producers by means of tax credits, which impacts not only on U.S. sales but also on exports to other countries, notably the EU. In contrast the EU provides subsidies to consumers, which only affect the EU market and imports are eligible for the same benefits as EU products. The subsidies are significant ($1 per gallon or Euro 200 per tonne) and they are enabling imports from the U.S. to enter at below the EU industry's raw material costs. In effect U.S. biodiesel exports to the EU have increased sharply, from less then 100,000 tonnes in 2006 to 1 million tonnes in 2007, which already represents nearly 20% of the EU market share.

6. INVESTMENT RELATED MEASURES

6.1. Foreign Direct Investment Limitations

The Foreign Investment and National Security Act (FINSA, formerly Exon-Florio Amendment) to the 1950 Defense Production Act (H.R. 556) and subsequent legislation is restraining foreign investment in (or ownership of) businesses relating to national security. FINSA is implemented by the Committee on Foreign Investment in the United States ("CFIUS"), an inter-agency committee chaired by the Secretary of Treasury which is now a statutory body established by law. The law allows a foreign acquisition of a U.S. corporation to be blocked on national security grounds. The lack of a clear definition of "national security" may lead to an overly wide interpretation of the term by the U.S. The EU recognises that there are security issues to be resolved relating to trade and investment, particularly in the aftermath of 9/11, but has long expressed concern about excessive use which could be interpreted as a disguised form of protectionism. Import, procurement and investment restrictions, as well as the extraterritorial application of export restrictions are affected.

U.S. restrictions on foreign investment are particularly evident in the shipping, energy and communications sectors. Apart from this matter, the EU would like the U.S. to resolve outstanding foreign ownership issues to allow the EU-U.S. agreement on aviation services to be brought to a rapid conclusion.

Further investment constraints exist in the telecommunication sector (Section 310 of the 1934 Communications Act), where U.S. law enforcement agencies have imposed strict corporate governance requirements on companies seeking Federal Communications Commission (FCC) approval of the foreign takeover of a U.S. communications firm in the form of far-reaching Network Security Arrangements. (See also section 8.1)

Foreign investment is also restricted for coastal and domestic shipping under the Jones Act and the *U.S. Outer Continental Shelf Lands Act*, which includes fishing, dredging, salvaging or supply transport from a point in the U.S. to an offshore drilling rig or platform on the Continental Shelf. Non-U.S. investors must form a U.S. subsidiary for exploitation of deep-water ports and for fishing in the U.S. Exclusive Economic Zone (*Commercial Fishing Industry Vessel Anti-Reflagging Act of 1987*). Under the 'American Fisheries Act of 1998', fishing vessel-owning entities must be at least 75% owned and controlled by U.S. citizens in order to receive a fishing permit. Licences for cable landings are only granted to applicants in partnership with U.S. entities (*Submarine Cable Landing Licence Act of 1921*).

Under the Federal Power Act, any construction, operation or maintenance of facilities for the development, transmission and utilisation of power on land and water over which the Federal government has control, are to be licensed by the Federal Energy Regulatory Commission. Such licenses can be granted only to U.S. citizens and to corporations organised under U.S. law.

6.2. Tax Discrimination

Several aspects of U.S. taxation practices constitute additional difficulties to foreign investment in the U.S. market. These are mainly related to the nature of reporting requirements and conditions for deductibility of interest payments. Firstly, concerns about federal tax measures focus on the nature of reporting requirements and the fact that domestic and foreign companies are treated differently. Secondly, the so-called "earnings stripping" provisions in the Internal Revenue Code 163j and its limits on tax deductibility of interest payments applies relatively strict rules that do not necessarily always conform to internationally-accepted principles.

7. INTELLECTUAL PROPERTY RIGHTS

7.1. Copyright and Related Areas

Despite a number of positive changes in U.S. legislation following the Uruguay Round, copyright issues are still problematic due to Section 110(5) of the 1976 U.S. Copyright Act ("Irish Music" case). Despite losing a WTO case on the issue, the U.S. has not yet brought its Copyright Act into compliance with the WTO Agreement on Trade Related Aspects of Intellectual Property Rights (TRIPs). The EU has safeguarded its rights to suspend trade benefits granted to the U.S. if the Copyright Act is not amended.

7.2. Appellations of Origin and Geographical Indications

The continuing misuse of EU geographical indications on food and drinks produced in the U.S., especially in the wine sector, as well as other food products, is a source of considerable frustration for EU producers. Particularly problematic is the fact that the U.S. still considers a number of European wine names as 'semi-generics'. U.S. producers making use of 'semi-generics' can take advantage of, or could damage, the reputation of the Community geographical indications in question.

7.3. Patents, Trademarks and Related Areas

Under Article 31 of the TRIPs Agreement, governments that use patents are required to promptly inform the patent right holders. Although patents are extensively used by the U.S authorities, it appears that U.S. government departments frequently fail to comply with that

obligation. This is problematic because right holders are consequently likely to miss the opportunity to initiate an administrative claim process.

Section 337 of the Tariff Act of 1930 provides remedies for holders of U.S. intellectual property rights by keeping the imported goods which are infringing on such rights out of the U.S. ("exclusion order"), or to have them removed from the U.S. market once they have come into the country ("cease and desist order").

Section 211 of the U.S. Omnibus Appropriations Act of 1998 ("Havana Club") prohibits, under certain conditions, the registration or renewal of a trademark that is identical or similar to a trademark previously owned by a confiscated Cuban entity. No U.S. Court can recognise or enforce any assertion of such rights. According to the Appellate Body report of 2002, Section 211 is in violation of both the national treatment and the most favoured nation obligations of the TRIPs.

The co-existence of fundamentally different patent systems (the U.S. continuing with its "first-to-invent" system whilst the "first-to-file" system is followed by the rest of the world) continues to create considerable problems for EU companies, especially considering the high U.S. litigation costs in patent matters. The existence of different systems is a shared EU-U.S. problem and there is a need to harmonise the systems. However, there seems to be prospects for a solution in the near future as the U.S. no longer fundamentally opposes the first-to-file system. Although to date no agreement has been reached on the issue, negotiations seem to be going in a good direction.

In a similar fashion, transatlantic differences regarding patents are exemplified by the application of the Hilmer Doctrine in patent interference cases, which has been clearly detrimental to European companies. Further complications emerge because American and European law take different approaches to the question of patentability of software and business methods. Last but not least, U.S. provisions concerning plant variety such as the Plant Patent Act seriously impede trade in breeding material for ornamental plants.

8. SERVICES

8.1. Communication Services

The GATS *Basic Telecommunications Agreement*, in force since February 1998, has a widely positive impact on communication services. Nonetheless, EU and foreign-owned firms are still faced with substantial barriers to access the U.S. market. These include for example restrictions to investment, lengthy proceedings, conditionality of market access and reciprocity-based procedures. *Section 310 of the 1934 Communications Act* established restrictions to foreign direct investment in U.S. companies holding a broadcast or common carrier radio licence (See also section 6.1). There are also limits to foreign indirect investment, although this is subject to a public interest waiver. The U.S. Administration and the Federal Communications Commission (FCC) consider that this waiver provision is sufficient for the FCC not to apply *Section 310(b) (4) of the 1934 Communications Act* to WTO Members. This situation, however, does not provide certainty to European operators.

Market access barriers also exist for digital terrestrial television services. In 1996 the FCC mandated an exclusive transmission standard in the U.S., known as ATSC. This has since prevented the competing European technology (DVB-T) from accessing the U.S. market. Further difficulties accessing the U.S. market are encountered by EU based satellite communications operators.

The reduction in the number of competitors in the wire line sector and internet backbone market, notably as a result of mergers, coupled with a litigious environment raises some concerns and will require particular attention to ensure fair and non-discriminatory access. Particularly problematic is the question of how to guarantee last mile access to customers.

8.2. Business and Financial Services

The implementation schedule of the General Agreement on Trade in Services (GATS) for professional services has brought about some improvement in market access. However, a number of problems remain to be tackled in order to secure more transparent and open access to the U.S. market. The Sarbanes-Oxley Act of 2002, adopted as a reaction to U.S. corporate scandals, has had a significant impact on U.S.-listed EU companies, as well as on EU auditing firms, which could face conflicting laws on audit and corporate governance. Since the end of 2006, the perceived loss of competitiveness of U.S. capital markets, and notably New York, as opposed to London, Hong Kong, Singapore and other "emerging" financial centres has prompted debate in the U.S. This debate has focused on *Sarbanes-Oxley*, under the threat of class action. U.S. authorities, and notably the SEC, have since embarked on a series of reforms. As a result of this new momentum and the commitment of EU institutions, significant progress is currently being made in the area of mutual recognition of accounting standards. On 15 November 2007, the Securities and Exchange Commission (SEC) agreed that foreign companies preparing their accounts in accordance with International Financial Reporting Standards (IFRS) would no longer have to reconcile them with U.S. GAAP. A two year transitional regime will be applicable to firms using the EU opt out from International Accounting Standard no. 39. Discussions have also started on the issue of mutual recognition of auditing oversight. Finally, EU firms wishing to leave U.S. capital markets used to be virtually prevented from doing so due to excessively restrictive SEC deregistration. These rules have now been relaxed since the adoption of a new SEC rule on deregistration, effective since June 2007, and several EU firms have already taken advantage of this new possibility.

A new issue to emerge is the treatment of EU global custodians in the U.S. International banks must register in the U.S. as broker-dealers under Section 15 of the Securities and Exchange Act 1934 if they provide global custody and certain related services directly to U.S. investors from outside the U.S. This is not the case for U.S. banks doing the same business since they are covered by an exception pursuant to SEC "Regulation R" adopted in September 2007. As it is now, U.S. banks enjoy an advantage as they are able to provide the same services to investors in the EU without registration in the EU and they are spared from SEC supervision in this respect.

Much of the focus of EU-U.S. discussions in the field of financial regulation over the past three years has been to find pragmatic and mutually satisfactory solutions to ensure that provisions of the U.S. law do not have unintended consequences for activities of EU established entities and vice-versa. In general, recognition of equivalence of home-country standards for capital and banking markets would significantly reduce the regulatory burden of firms and financial institutions that are active on both sides of the Atlantic. Additionally, the current requirement for non-U.S. reinsurers to post 100% collateral for their U.S. acceptances is both discriminatory and technically unjustifiable in the modern age. In December 2006, the Reinsurance Task Force of the National Association of Insurance Commissioners (NAIC) endorsed the principle of a move away from the current discriminatory collateral requirements for non-U.S. reinsurers towards a system where collateral is charged for all reinsurers regardless of origin on the basis of a credit rating established by a ratings organisation. The Task Force agreed to carry out further work on the details of the move with a view to

adoption by the NAIC Executive Committee before the end of 2007. However the latest draft proposals published at the beginning of September 2007, whilst containing some good ideas, are much more discriminatory than the proposals agreed in December 2006. The Commission is fully engaged through the Financial Markets Regulatory Dialogue to find a mutually acceptable solution to this issue.

Concerns relating to access to U.S. financial markets frequently centre on the extent to which compliance with U.S. regulatory provisions is a proportionate or justified condition for providing financial services directly to U.S.-domiciled investors or counterparties. EU financial institutions are already subject to comparable and demanding authorisation and supervision in Europe. Several regulations of the U.S. Securities and Exchange Commission for foreign securities firms represent substantial barriers for the establishment of branches or subsidiaries.

These concerns gain currency as remote trading and investment strategies are already being implemented on a transatlantic basis. In the context of the current debate on the competitiveness of U.S. capital markets mentioned above, the SEC has used a number of occasions since the beginning of 2007 to indicate its willingness to move away from its previous position to allow foreign brokers, dealers and exchanges to offer their services in the U.S. It is expected that further developments will occur in early 2008.

Since 2002, the EU-U.S. Financial Markets Regulatory Dialogue has been tackling existing issues of concern and acting to prevent new ones from emerging. Financial services negotiations in the framework of the GATS are also important. In this context, the EU is working to improve access for European financial institutions to U.S. markets in a number of key sectors. Unfortunately, the U.S. has not yet offered major new commitments in financial services. A permanent and MFN-based agreement entered into force in March 1999 and GATS negotiations on financial services were re-launched in Geneva in 2000.

8.3. Transport Services

With regard to air transport, the EU and U.S. signed a first-stage Air Transport Agreement on 30 April 2007, applicable from 30 March 2008. The Agreement encompasses 60% of world traffic. The Agreement allows EU and U.S. air carriers to operate to and from any point in the U.S. from and to any point in the EU. It also provides possibilities to operate air transport services on international routes beyond the EU and U.S. Furthermore, the Agreement refers to further harnessing investment opportunities, thus addressing foreign ownership limitations, in second-stage negotiations. The first-stage agreement also creates new opportunities for EU air carriers to wet lease aircraft to U.S. air carriers for use on international routes between the U.S. and third countries. Measures adopted on aviation security since 9/11 as well as the large scale governmental financial assistance provided to U.S. airlines are issues that also need addressing. *Section 1117 of the Federal Aviation Act* requires that, in general, transportation funded by the U.S. Government (passengers and cargo, mail is covered by separate legislation) must be performed by U.S. carriers. By contrast, in the EU, any obligation for government officials to use “national flag” is considered to be anti-competitive. The EU-U.S. Air Transport Agreement creates new rights for EU airlines to carry certain categories of U.S. Government-financed traffic under the Fly America programme, with a commitment to pursue further access in the future.

The '*Merchant Marine Act of 1920 (Jones Act)*' prohibits foreign-built vessels from engaging in (direct or indirect) coastal trade while they cannot be documented or registered for dredging, towing or salvaging. In addition, there has been no progress on the elimination of requirements that U.S. Government-owned or financed cargoes be shipped on U.S.-flagged

ships. U.S. maritime security legislation (such as the *Container Security Initiative* as well as the *SAFE Port and 9/11 Commission Act* – see chapter 2.1 Cargo Trade) is also of concern to the EU. In addition, the U.S. has not included any maritime services-related commitments within even its most recent Doha WTO Round services offer.

9. ANNEX

Tariffs and Duties

Tariff Levels

Title	Textile Tariffs
Sector	Textiles and Leather
Description	High tariffs make the U.S. one of the most difficult export markets for EU textiles and clothing industry. Industry considers that the U.S. tariff peaks constitute a very harmful barrier because they are focussed on very competitive products. Tariffs peaks range from 32% for some clothing, 25% for fabrics and 13.2 % for yarns. In addition, specific duties apply for a wide range of textile products. Many significant tariffs and tariff peaks will remain on products of export interest to the EU. These include (a) certain woollen fabrics and articles of apparel for which duty rates in 2002 reached 27.6% plus a specific rate of 9.7 cents/Kg in certain fabrics and 32.5% for some apparel and (b) several footwear products for which the current duty rates are 48% or 37.50% plus a specific rate of 90 cents/pair.
State of play	In the context of the WTO negotiations on NAMA the EC in its second submission of 31 October 2003 (TN/MA/W/11), proposed, inter alia, that Members agree, to deeper tariff cuts for textiles, clothing and footwear with a view to bringing these tariffs within a narrow common range as close to zero as possible. This proposal has to be put in the context of the recent end of the textile and footwear quota regimes.

Title	Footwear and Leather Tariffs
Sector	Textiles and Leather
Description	Tariffs levels on leather (3% or 5%) represent an important barrier for European exporters, considering the margins in the sector (from 1 to 5%) and the fact that EU leather is the most expensive of all U.S. imports, while other competitors are able to import into the U.S. at preferential regime (NAFTA and other preferential agreements). Furthermore, EU industry is denied access to footwear tenders for the U.S. Army. As Canada is allowed to participate in those tenders, the measure could be described as discriminatory against European companies. U.S. tariff peaks affect gaiters and other special footwear. Although gaiters are not a priority for the EU industry, it is interested in exporting hunting shoes. For the moment, such tariff peaks are a barrier to such exports. Tariffs for some footwear products are as high as 48% of the Free on Board (FOB) value (More information is available at DG Trades Applied Tariffs Database under Product Code 64).
State of play	In the context of the WTO negotiations on NAMA the EC in its second submission of 31 October 2003 (TN/MA/W/11), proposed, inter alia, that Members agree, to deeper tariff cuts for textiles, clothing and footwear with a view to bringing these tariffs within a narrow common range as close to zero as possible. This proposal has to be put in the context of the recent end of the textile and footwear quota regimes.

Title	Ceramics and Glass Tariffs
Sector	Ceramics and Glass
Description	Tariff negotiations in the Uruguay Round still left a number of important tariff peaks, customs duties on ceramics and glass products remain relatively important and higher in the U.S. than in Europe. The U.S. has rejected the Community's offer to abolish tariffs in this sector even though Mexico, one of Europe's leading competitors in the U.S. market, should, after a transitional period, enjoy a zero duty rate by virtue of the NAFTA (North Atlantic Free Trade Area). In certain areas where EU producers have a traditionally strong position on the U.S. market, such as hotel ware, the most that the Americans were willing to concede was a simple reduction of the rates. • For ceramic (not porcelain or china) hotel and restaurant ware, the rate is now 28%. • For porcelain or china, the rate is currently 25%. • For glassware, maximum rate remain the same (38%) even if it must be noticed that most of the glass products are between 10% and 20%.

Title	Parquet Tariffs
Sector	Wood, Paper and Pulp
Description	The European producers of multilayer parquet (or engineered/laminated wood flooring) are experiencing difficulties in exporting their products to the U.S. These difficulties have arisen over the decision by U.S. Customs and Border Protection (CBP) to no longer accept the classification

	of such products under heading 44.18.30 of the customs code as parquet panels, which is duty free. Instead, CBP considers such products as plywood, which falls under heading 44.12 with a duty rate of 8%. CBP has also reclassified another type of parquet previously also exported duty-free to the U.S. under code 44.18.30, into 44.18.90 with 3.2% duty.

Internal Taxation

Title	Merchandise Processing Fee
Sector	Horizontal
Description	The most significant of the customs user fees is the Merchandise Processing Fee (MPF). The MPF is levied on all imported merchandise except for products from the least developed countries, from eligible countries under the Caribbean Basin Recovery Act and the Andean Trade Preference Act, and from U.S. offshore possessions. It is levied also on merchandise entered under Schedule 8, Special Classifications, of the Tariff Schedules of the U.S. Fixed previously at 0.17% of the value of the imported goods, the MPF rose to 0.19% in 1992 and amounts to 0.21% ad valorem on formal entries with a maximum of U.S.$485 as from 1 January 1995. At the request of Canada and the EU, the GATT Council instituted a Panel in November 1987 that stated that the U.S. Customs user fees for merchandise processing were not in conformity with the General Agreement. The Panel ruled that customs user fees should reflect the approximate cost of customs processing for the individual entry in question. This principle was not met by an ad valorem system such as that used by the U.S. The GATT Council adopted the Panel report in February 1988. The present customs user fee structure is somewhat more equitable, since the fixing of a ceiling makes it less onerous for high-value consignments. However, the fee is still likely to exceed the cost of the service since it is still based on the value of the imported goods.
State of play	Whilst the MPF was to last until 30 September 1990 when established, it was recently extended (as part of the American Jobs Creation Act of 2004) until 30 September 2014.

Title	Corporate Average Fuel Economy (CAFE) Payment
Sector	Automotive
Description	The Corporate Average Fuel Economy (CAFE) payment is a civil penalty payment levied on a manufacturer or importer whose range of models has an average fuel efficiency below a certain level, currently 27.5 miles per gallon (approx. 10.3 litres per 100km). CAFE favours large integrated automakers or producers of small cars rather than those who concentrate on the top end of the car market, such as importers of European cars. According to the latest estimates available, European-based auto makers with a total market share in the U.S. of only 9%, bear almost 100% of the CAFE penalties. Since 1983, manufacturers have paid more than $675 million in CAFE civil penalties. According to the National Highway Traffic Safety Administration, most European manufacturers regularly pay CAFE civil penalties ranging from less than $1 million to more than $20 million annually.

Title	Gas Guzzler Tax
Sector	Automotive
Description	Manufacturers who sell cars that fail to meet certain fuel economy levels have to pay the so-called Gas Guzzler Tax. The latter was introduced as part of the 1978 Energy Tax Act. Car manufacturers must follow U.S. Environmental Protection Agency (EPA) procedures to calculate the tax. This means that all cars (but not mini-vans, trucks or SUVs) failing to meet a fuel economy figure of 22.5 miles per gallon (approximately 10.5 litres per 100km) are subject to a tax of $1,000 per car for those just below the 22.5 miles per gallon threshold to $7,700 per car for models getting less than 12.5 miles per gallon. Fuel economy test results are calculated on the basis of a formula that weights city and highway driving cycles (55% city and 45% highway driving). Fuel economy values are calculated before sales begin for the model year; the tax has to be paid once the production has ended for the model year. The total amount of the tax, collected by the Internal Revenue Service (IRS), reflects the number of cars sold that fail to meet the EPA requirements. A particular fuel economy label (the window sticker on new cars) displays the amount of the tax paid. In general, the European Union wholeheartedly supports measures for environmental protection. However, in this particular case the tax has several flaws which in practice discriminate against European car manufacturers. First, the fuel economy cut-off point (i.e. less than 22.5 miles per gallon) is not founded on any reasonable or objective criterion. Second, the Gas Guzzler Tax is particularly unbalanced as it does not apply to minivans, sport utility vehicles (SUVs), and pick-up trucks. According to the EPA, Congress did not impose a tax on these vehicle types because in 1978, at the time the law was enacted, they represented a relatively small fraction of the overall fleet of passenger vehicles and were used more for

	business purposes than personal transportation. Congress updated the law in 1990 (by doubling the tax penalties) but chose not to address the discrepancy in treatment between cars and light trucks. However, the light-truck category (including minivans, SUVs and pick-up trucks) has been the fastest growing segment of the new-vehicle market.

Other Tariffs and Duties

Title	Dairy Promotion and Research Assessment on Imports
Sector	Agriculture and Fisheries
Description	In its 2007 Farm Bill proposals, USDA suggests to apply to imports the dairy assessment, a levy of 15 cents per 100 pounds of milk equivalent financing dairy promotion and research activities, paid by domestic producers since 1983.
State of play	Legislative language pertaining to the Dairy Import Assessment is present in the House version of the 2007 Farm Bill.

Title	Hormones Dispute (Continued Suspension of Obligations)
Sector	Horizontal
Description	In 1989 the EU banned imports of hormone treated meat. The U.S. and Canada responded by imposing retaliatory measures, suspending their obligations and imposing import duties in excess of bound rates on imports from the EU, and by initiating a WTO dispute settlement proceeding. In 1998, the EU lost the WTO dispute brought by the U.S. and Canada. The reason was that the legislation was not based on a full scientific risk assessment in relation to the risk arising from the ingestion of meat from animals treated with hormonal growth promoters. The Appellate Body overruled the earlier Panel but recommended that the EU bring its measures into conformity with obligations under the Agreement on Sanitary and Phytosanitary Measures (SPS). The EU followed by eliminating the WTO inconsistencies and based its new Hormones Directive of 22 July 2003 on a full scientific risk assessment. Despite compliance with WTO rules and proceedings the U.S. (and Canada) up-to-date continue to apply their retaliatory measures.
State of play	The amendments to the Hormones Directive were adopted by the Council on 22 July 2003, and the new Directive 2003/74/EC, implementing the WTO ruling, entered into force on 14 October 2003. On 27 October 2003, the EU notified to the WTO that it had implemented the WTO ruling of 1998 and that, as a consequence, the U.S.' sanctions vis-à-vis the EU were no longer justified. However, the U.S. disagreed and since then has not lifted its sanctions. At the Dispute Settlement Body meeting of 7 November 2003, the EU proceeded to notify the new Directive as compliant in this case. The U.S. (and Canada) disagreed and kept their retaliatory measures. Furthermore the U.S. did not initiate a compliance dispute in the WTO, as is foreseen for such situations according to the WTO's Dispute Settlement Understanding. Informal attempts to persuade the U.S. to suspend its sanctions and to initiate a WTO review under Article 21.5 DSU have up-to-date failed. Consequently the EU requested on 8 November 2004 formal consultations with the U.S. (and Canada) regarding the continued application of the countermeasures. The EU's challenge is directed against the U.S.' continued suspension of its obligations and its continued imposition of import duties in excess of bound rates on imports from the EU despite the EU's removal of the inconsistent measures. The WTO Agreement does not allow simply continuing to apply sanctions since this would amount to a prohibited unilateral determination of alleged non-compliance by the EU. Since the consultations held in December 2004 failed to resolve the dispute, the WTO dispute settlement panel was established on 17 February 2005. The panel proceedings are still ongoing but nearing their end, having comprised the first ever oral hearings open to the public based on a joint request by the parties. After a first hearing in September 2005, the second oral hearing and a meeting with the experts took place, also with public access, on 27-28 September and 2-3 October 2006. The interim report has in the meantime been issued, but the public circulation of the final report will not happen before January 2008.

Trade Defence Instruments

Anti-Dumping

Title	Zeroing in Determination of Dumping Margins (WTO DS 294)
Sector	Horizontal
Description	Dumping is established when the price of a product on the domestic market (normal value) exceeds the price on the export market. To obtain a more meaningful comparison however, the calculation is usually performed in different stages; most commonly, the product is sub-divided into models having similar characteristics and for which prices should be similar. Normal values

	and export prices are compared within these sub-groups and the dumping margin for the product is obtained by adding the results of these sub-comparisons. "Zeroing" consists in disregarding the results of the sub-comparisons yielding a negative result when adding them to calculate dumping at the level of the product. In other words, the absence of dumping on certain models (i.e. sub-divisions of a certain product) is not deemed to compensate for dumping that is taking place on others. This leads to an increase in the overall margin of dumping and, in certain cases, to a decision that dumping is taking place when an overall comparison would have resulted in the absence of dumping. This prompted the EC to initiate a first WTO dispute (DS 294) on the law, the implementing regulation, the DOC methodologies defining the zeroing practice and 31 specific cases (15 new investigations, i.e. leading to the imposition of the AD measure in the first place, and 16 annual administrative reviews of previously imposed AD measures) in which zeroing had been used.
State of play	As a result of the Panel and Appellate Body's findings adopted by the DSB on 9 May 2006, the U.S. was condemned: • for using zeroing in 15 specific original investigations, and for maintaining in such investigations a zeroing methodology which is WTO incompatible per se. • for using zeroing in 16 specific reviews. As regards the EC challenge of the U.S. zeroing methodology in reviews, the Appellate Body considered that there were insufficient facts on the Panel's record to complete the Panel's analysis and decide whether that methodology was WTO inconsistent as such or not. However, the finding on the 16 specific cases made clear that every calculation of a dumping margin with zeroing in a review will be WTO incompatible. The U.S. had until 9 April 2007 to implement the DSB ruling. But, to date, the implementation has been incomplete and unsatisfactory. On the one hand, the U.S. stopped using zeroing when calculating dumping margins on a weighted average to weighted average basis in original investigations initiated after, or ongoing on 22 February 2007 (Final modification of methodology published by USDOC on 27 December 2006 - 71 FR 77722). In the 15 specific original investigations, the U.S. re-calculated the dumping margins without zeroing and revoked the anti-dumping duty for those exporters now found not to have dumped or to dump below de minimis level. On the other hand, the U.S. has left a number of important issues open: • The application of the new not-zeroed duty rate not only to imports entering the U.S. after 9 April, but also to collect duties after 9 April even if the import entered before 9 April. Collecting duties on the basis of the condemned "zeroed" rate is maintaining the WTO incompatible measure after the implementation deadline. • The non-elimination of zeroing in subsequent administrative reviews. In most cases, imports are currently subject to a duty rate established in a subsequent administrative review, which has replaced the rate of the original investigation. The WTO has already accepted that the measure taken in an administrative review concluded after the implementing measure and replacing it is also a measure taken to implement the ruling on the original measure, and may be condemned as an improper implementation to the extent that it is affected by the same WTO inconsistency (U.S. – Softwood Lumber IV, AB report (WT/DS257/AB/RW), paras 80-93). • The proposed substantial increase of the "all others" rate in 3 cases (Stainless Steel Bar from France – from 3,9% to 35,92%, UK – from 4,48% to 83,85% and Italy – from 3,81% to 6,6%). This rate applies to imports from exporters which did not get their individual rates in the original investigation (notably new exporters). As a side effect of revoking the order on certain exporters, the "all others" rate was re-calculated and exclusively based on the higher rate calculated for non cooperating exporters. This is in effect determining retroactively that exporters subject to the "all others rate" were guilty of behaviour that would warrant the application of "adverse inferences" without demonstrating that such treatment is appropriate. • The absence of revision of the injury determination in certain cases. Where non-zeroing resulted in finding the imports from certain exporters as non dumped, the U.S. did not analyse whether this modification in the volume of dumped imports affected the previous finding that dumped imports caused injury (Bed Linen, Panel report, paras 6.138-6.140). • The absence of correction of a basic mathematical error in the original 1999 investigation on imports of Stainless Steel Sheet and Strip in Coils from ThyssenKrupp Italy. This pushed the non-zeroed dumping margin just above de minimis level and allowed to maintain the AD measure, which would otherwise had been repealed. DOC admitted the error but refused to correct it on the ground that this was not required by the DSB recommendation. • On the 16 specific administrative reviews, the United States has not taken any action. It alleges that it does not have to, as each of the 16 measures condemned have been superseded by later administrative reviews in the meantime. • As a result, the EC is now challenging the U.S. implementing actions before the WTO in

	a so called 21.5 compliance procedure. A panel was established on 25 September 2007 and composed on 13 November. The Panel report should then be circulated within 90 days and may be followed by an appeal. The panel's interim report is expected mid-June. In parallel, the EC is pursuing another WTO dispute on the use of zeroing by the U.S. (DS 350) to address issues left open by the WTO ruling under DS 294. Thus, the United States has used zeroing in a number of anti-dumping measures, which were taken after the initiation of the DS 294 dispute and therefore could not be covered by it. The new dispute covers all those measures, which apply to exports from 10 Member States (Belgium, France, Finland, Germany, Italy, Latvia, Netherlands, Spain, Sweden and UK) to the United States, and include such products as pasta, ball bearings, steel products, brass sheet and strip, and chemical products. The other issue left open by DS 294 was the existence of a zeroing methodology in reviews, on which the Appellate Body could not make a finding in the absence of sufficient factual findings in the Panel's report. The new DS 350 dispute initially covered the zeroing methodology in reviews. But, this was dropped at the later stage of the Panel as Japan, in the meantime, had been successful in its claim that the U.S. was maintaining a WTO incompatible zeroing methodology in reviews (DS 322 - decided by the Appellate Body on 23 January 2007).The panel in DS 350 was established at the DSB meeting of 4 June 2007 and its interim report is expected end of June 2008.

Title	Byrd Amendment (Continued Dumping and Subsidy Offset Act)
Sector	Horizontal
Description	The Continued Dumping and Subsidy Offset Act (CDSOA or the so-called Byrd Amendment) signed into law in October 2000, provides that proceeds from anti-dumping and countervailing duties shall be paid to the U.S. companies responsible for bringing the cases. This is clearly incompatible with several WTO provisions. The enactment of this legislation raised immediate and widespread concerns not only in the EU but in the whole WTO membership. The EU and 10 other WTO members (Australia, Brazil, Chile, India, Indonesia, Japan, Korea, and Thailand later joined by Canada and Mexico) brought a complaint to the WTO dispute settlement system and their claims were supported by 5 other WTO Members acting as third-parties. This unprecedented joint action was a clear indication of the important systemic concerns that the legislation raises. Since the enactment of the CDSOA, the U.S. authorities have distributed to domestic petitioners more than $1.6 billion. Further, a very limited number of recipients received a major part of the payments. Of the total disbursed so far, one third went to one company and its subsidiaries. Every year half of the payments went to a very limited number of companies (4 in 2001, 3 in 2002, 2 in 2003, 9 in 2004, 4 in 2005 and 13 in 2006). Following the condemnation of the Byrd Amendment in the WTO in January 2003, the United States finally repealed the Byrd Amendment on 8 February 2006, but allowed for a transition period. The repeal will not affect the distribution of the anti- dumping and countervailing duties collected on imports made before 1 October 2007. Since in the U.S., these duties are usually collected several years after the import, this means, in turn, that distribution under the Byrd Amendment may continue for several years after 1 October 2007. The Congressional Budget Office foresees that the repeal of the Byrd Amendment will not produce effects before 1 October 2009.
State of play	22 December 2000: The EC, together with eight other WTO partners (Australia, Brazil, Chile, India, Indonesia, Japan, Korea, and Thailand), requested formal WTO consultations with the U.S. This joint action was a clear indication of the important systemic concerns that the legislation raises among WTO Members. [2005-06-27] 23 August 2001: Upon joint request from the nine co-complainants, a single panel was established by the DSB. [2005-06-28] 10 September 2001: Canada and Mexico, which had requested formal WTO consultations with the U.S. on 21 May 2001, joined the panel proceeding initiated by the other nine co-complainants at a special meeting of the DSB. 16 September 2002: The Panel confirmed that the Act was an impermissible response to dumping and subsidisation and rendered meaningless the WTO provisions requiring Members to test the domestic industry's support for application before initiating an investigation, by making such support a condition to get access to funds. As a result of the WTO inconsistency of the Act itself, the Panel took the unusual step of recommending that the Act be repealed. [2005-06-28] 16 January 2003: The Appellate Body confirmed that the Act was an impermissible response to dumping and subsidisation and, per se, WTO incompatible. [2005-06-28] 13 June 2003: An arbitrator granted the U.S. until 27 December 2003 to comply with this ruling, which the U.S. failed to do. [2005-06-28] 31 August 2004: The WTO arbitrators concluded that the EU could impose retaliatory measures on imports from the U.S. worth 72% of the payments made to the U.S. industry in the most recent year from duties collected on EC products. The level of retaliation will consequently vary

	every year so as to reflect the fluctuations in the amount of payments made under the CDSOA. The award is the same for the other requesting parties as the 72% coefficient represents the average trade effect of each dollar disbursed under the CDSOA as measured by an econometric model. [2005-06-28] 10 November 2004: The EU and six co-complainants (Brazil, Canada, India, Japan, Korea and Mexico) requested the authorisation to suspend the application of concessions or other obligations to the U.S. in accordance with the arbitration award. The requested authorisations were granted in the meeting of the Dispute Settlement Body on 24 November 2004. Chile requested and obtained the same authorisation in the following meeting on 6 December 2004 [2005-06-28] 25 April 2005: The Council adopted the Commission proposal to impose, from 1 May 2005, an additional import duty of 15% on paper, agricultural, textile and machinery products of the U.S. On the same day Canada also imposed additional import duties on certain U.S. products. [2005-06-28] August/September 2005: Japan and Mexico started to apply retaliation. The House of Representatives requested public comments on whether to include a repeal of the Byrd Amendment into a miscellaneous trade bill. [2005-09-15] 8 February 2006: the United States enacted the Deficit Reduction Act of 2005, which among other provisions, repeal the Byrd Amendment but allows for a 2+ year transition. The repeal will not affect distribution of the anti-dumping and countervailing duties collected on imports made before 1 October 2007. Under U.S. practice, collection of duties does not take place at the time of imports, but usually several years after the import, which means, in turn, that distribution under the Byrd Amendment may continue for several years after 1 October 2007. The Congressional Budget Office foresees that the repeal of the Byrd Amendment will not produce effects before 1 October 2009. 24 April 2006: The European Commission adopted a regulation for the 1st annual revision of the level of retaliation applied in the dispute. Eight new products were added to the list of products subject to retaliation (different types of blankets, paper products, photocopying apparatus and drills). [2006-06-14] 1 October 2006: the United States started the 6th distribution under the Byrd Amendment. The total amount paid in that distribution reached more than U.S. $ 380 million putting the total amount distributed so far at more than U.S. $ 1.6 billion. [2006-12-14] 16 April 2007: The European Commission adopted a regulation for the 2nd annual revision of the level of retaliation applied in the dispute. 32 new products have been added to the list of products subject to retaliation to reflect the increase in the amount disbursed under the Byrd Amendment (different types of paper products, textile products, footwear, mobile homes, and pieces of furniture and ball-point pens).

Title	Uranium Antidumping Duties
Sector	Iron, Steel and Non-Ferrous Metals
Description	In March 2002, the U.S. imposed a countervailing duty on imports of low-enriched uranium from France, Germany, Netherlands and UK, and an anti-dumping duty on France. The countervailing duty for Urenco was only just over 2% (now de-minimis) but the combined duty for France was over 30% (since reduced substantially in the first two reviews). In a decision of 3 March 2005, further confirmed by a decision of 9 September 2005, the U.S. Court of Appeals of the Federal Circuit ruled that enrichment was a service, not a good as the Department of Commerce (DoC) had found, and therefore could not be subject to anti-dumping or countervailing measures. In two remand orders dated 5 January 2006, the U.S. Court of International Trade directed the DoC to revise its final antidumping duty determination and order its final countervailing duty determination order, in accordance with the two decisions of the U.S. Court of Appeals of the Federal Circuit. This finding was confirmed in September 2005. In July 2006, the CVD Orders on low-enriched uranium from Germany, Netherlands and the UK were revoked. The CVD order against France has also been revoked but the AD measures on low-enriched uranium from France continue to remain in force (following a sunset review concluded on 29 November 2007) pending a possible appeal by the U.S. Government/Industry to the Supreme Court and possible legislative action to change the definition of goods and services in 2008.

Title	Steel Sunset Reviews
Sector	Iron, Steel and Non-Ferrous Metals
Description	The Uruguay Round negotiations introduced in the Antidumping and Subsidy and Countervailing Measures (SCM) agreements the obligation to terminate the measures after five years unless the authorities determine in a review ("sunset review") that termination of the measures would likely lead to the continuation or recurrence of dumping and injury. The objective of introducing sunset review provisions was to avoid never-ending measures. It is the EU understanding that

	the substantive disciplines governing the imposition of the duty should apply, albeit with some modifications, to the prolongation of the duty for another five years. The U.S. conduct of sunset reviews falls short of these requirements. For example, the U.S. imposes unwarranted conditions on the participation of exporters in sunset reviews, requiring respondents to cover 50% of exports before it will conduct a full sunset review. The U.S., due to this minimalist interpretation of the SCM Agreement, has kept in place many CVD orders dating back as far as 1985, although the subsidies involved have usually expired, ceased to exist or confer only minimal benefits. The EU brought the U.S. sunset review practice to dispute settlement in 2001 in the DS213 Carbon Steel from Germany. Although the challenge was not immediately successful (the Appellate Body confirmed that DoC could self-initiate sunset reviews and use a 0.5% de-minimis), it did lead indirectly to the revocation of the measure in question, and some of the statements of the Appellate Body on the obligations of the U.S. in sunsets were helpful. Further to the 2006 revocations of AD and CVD orders on a number of products in sunset reviews (most notably cut-to-length steel plate from 8 EU Member States and carbon steel flat products from 4 EU Member States), this last year has also been mostly successful for EU steel exporters. In June 2007, the DoC revoked the AD order on Oil Country Tubular Goods from Italy, which followed the revocation of the CVD order on the same product in December 2006. Furthermore, the U.S. ITC revoked the AD order on Hot-rolled carbon steel flat products from the Netherlands (in April 2007) and from Romania (in October 2007). A number of additional revocations on steel products occurred as a result of the WTO 'zeroing' case (see barrier fiche Zeroing in Determination of Dumping Margins (WTO DS 294 and DS 350)). As regards stainless steel bars, a sunset review resulted in the revocation of the AD order against France, Germany, Italy, and the UK, and the CVD order against Italy, on 8 January 2008. These decisions mean that a large number of the U.S. steel measures imposed in 1993 have now been repealed. However, there remain a few other products subject to measures, especially stainless products. This, together with a successful outcome of the ongoing WTO disputes on zeroing (see also barrier fiche Zeroing in Determination of Dumping Margins (WTO DS 294 and DS 350)), would at last significantly reduce the number and scope of EU steel products subject to U.S. TDI.

Other Trade Defence Instruments

Title	Sections 301-310 of Trade Act
Sector	Horizontal
Description	Section 301 of the 1974 Trade Act, as amended by the Omnibus Trade and Competitiveness Act of 1988 (hereafter, 1988 Omnibus Act), authorises the U.S. Government to take action to enforce U.S. rights under any trade agreement and to combat practices by foreign governments which the U.S. Government deems to be discriminatory, unjustifiable or restrictive to U.S. commerce. Title VII of the 1988 Omnibus Act relating to the removal of government procurement barriers was renewed. Furthermore, the 1988 Omnibus Act introduced a Special 301 procedure targeting intellectual property rights protection outside the U.S. Under Special 301, the U.S. Trade Representative (USTR) has created a priority watch list to identify foreign countries that are deemed to deny adequate and effective protection of intellectual property rights (IPR). Countries placed on the priority watch list are the focus of increased bilateral attention and the USTR officially initiates investigation procedures that may eventually result in unilateral trade measures. The watch list is reserved for those countries that do not protect U.S. intellectual property or that deny market access to IPR-related industries. Title III, chapter 1 (sections 301-310) of the U.S. Trade Act of 1974, as amended, in particular sections 306 and 305, imposes strict time limits within which unilateral determinations must be made and trade sanctions must be taken. The legislation mandates USTR to take this type of unilateral action within time frames that in certain cases cannot possibly comply with WTO rules. This is particularly relevant in cases where the U.S. should follow the procedure of Article 21.5 DSU to resolve disagreements over the WTO compatibility of measures taken by other Members to implement panel rulings. However, in the context of a Panel proceeding, the U.S. Administration indicated formally that the Act would always be applied in a manner consistent with the U.S. obligations under the WTO. The U.S. has resorted to unilateral action even since the WTO Uruguay Round Agreement entered into force on 1 January 1995. For instance, in the Bananas case, the U.S. sought to suspend trade concessions against the EU before the DSB could decide whether the EU was in conformity with WTO rules. The EU challenged Section 301 legislation, as it may result in some cases in unilateral determinations and retaliatory action even before the WTO bodies can make their own judgement on a given situation. A WTO Panel ruled on 8 November 1999 that the statutory language of Sections 301 to 310 of the 1974 Trade Act was as such inconsistent with the rules of the WTO DSU. However, because the U.S. administration formally undertook to always refrain from taking action under Sections 301-310 in the absence of a previous WTO determination, the Panel concluded that no violation was taking place. The practical result of

	this ruling has been to make Sections 301-310 ineffective against WTO members. Nevertheless, in cases where bilateral (as opposed to WTO) agreements are alleged to have been violated, Section 301 is still regularly used as a unilateral trade policy instrument. Under the various elements of Section 301 legislation, trading partners are given no choice but to negotiate on the basis of an agenda set by the U.S., on the basis of judgements, perceptions, timetables, and indeed, U.S. legislation.
State of play	Member states Hungary, Italy, Lithuania, Poland and Romania remain on the 2007 Watch List. Bulgaria, Latvia and the EU were removed from the 2007 Section 301 Report. The Czech Republic was added to the Watch List in early 2008. The U.S. continues to stick by its formal Statement of Administrative Action in which it undertakes to always act in a manner consistent with the U.S. obligations under the WTO.

Non Tariff Barriers

Registration, Documentation, Custom Procedures

Title	SAFE Port Act & Implementing Recommendations of the 9/11 Commission Act of 2007
Sector	Services - Transport
Description	On 13 October 2006, U.S. President Bush signed into law the so-called SAFE Port Act (hereafter the Act). The Act contains a number of provisions that impact upon port security as well as international supply chain security. Section 231 of the Act foresees the establishment of a pilot programme at some foreign ports to test integrated non-intrusive imaging and radiation detection scanning equipment for all U.S.-bound containers. This pilot programme goes against a modern customs approach of risk based controls through effective targeting followed by scanning and/or inspection when necessary and may slow down traffic in ports. The port of Southampton (UK) had been chosen to participate in this pilot project to study the feasibility of a 100% scanning approach. The U.S. did not await the results of this pilot action, before pressing ahead with the "Implementing Recommendations of the 9/11 Commission Act of 2007". On 3 August 2007, the President signed into law the "Implementing Recommendations of the 9/11 Commission Act of 2007". This legislation introduces the requirement of 100% scanning in foreign ports of all maritime cargo destined for the U.S. as from July 2012. The envisaged scanning of all U.S.-bound containers in more than 600 ports from which ships leave for the U.S. will be extremely expensive to implement at EU ports, could lead to major trade disruptions and add an additional administrative burden. Costs for the installation of the necessary equipment are expected to be borne by the port and shipping companies. In comparison, the costs of the pilot programme in the context of the U.S. Secure Freight Initiative (SFI) that was intended to evaluate the feasibility of 100% scanning and to install such full scanning equipment in seven international ports, appropriated $60 million to cover costs in some, although not in all of those ports. For the Southampton pilot project alone the costs were estimated at $14.5 million. The new legislation also sets out other requirements (e.g. standards for container security devices and/or smart box technology), which have the potential to hamper the possibility for EU trade to compete fairly with their U.S. competitors and to excessively burden the EU export supply chain. The Commission, Member States, port operators and the entire trade community are seriously concerned about this new U.S. legislation, in particular with respect to the potential costs of the scanning requirement, its possible effects on competitiveness and its negative impact on transatlantic trade flows. This measure is unilateral and would disrupt trade and cost legitimate EU and U.S. businesses a lot of time and money while no real benefit is proved when it comes to improving security.
State of play	The bill is to be implemented within a 5-year deadline (by 1 July 2012). For cargo carried on passenger aircraft the bill even requires a 3-year phase-in implementation with benchmarks of 100 % "screening", but at this stage, it's not yet clear whether and how the requirements for air cargo will affect international transport. The Act includes an option to extend the implementation date by two years. This however is deemed not to provide sufficient certainty. Ports would need to plan well in advance such important investments as those required by the implementation of the scanning provisions. The EU continues raising its objections at political level, including at the last meeting of the Transatlantic Economic Council (TEC) on 9 November 2007 and at DG level, especially through the promotion of mutual recognition of EU and U.S. security standards and the need for proper risk analysis, which in our view is the right approach to "secure trade".

Title	[Early warning] Tightening of U.S. import conditions for food and beverages
Sector	Horizontal
Description	The U.S. response to recent scandals and scares around imports of unsafe food, feed and drinks is taking shape. Administration and legislators have introduced about a dozen independent proposals to improve the situation and the exact outcome of this debate is still unpredictable. However, a few elements emerge, which may have an impact on EU exports: • Import inspection fees. • Renewal of FDA registration of all establishments every two years. • Mandatory certification for 'high risk foods' (on the basis of establishments or countries and under the conditions established in a Memorandum of Understanding). • Voluntary certification programs, e.g. related to bio-preparedness, adherence to which will allow expedited border processing. • Country of origin labelling. • Increased civil penalties and bonding amounts for imports. • Other, less predictable elements are the accreditation of private laboratories for conformity checks and possible adjustments in the Final Rule on Prior Notice for imported foods.

Title	American Automobile Labelling Act
Sector	Automotive
Description	The American Automobile Labelling Act provides that passenger cars and other vehicles must be labelled with, inter alia, the proportion of U.S. and Canadian-made parts and the final point of assembly. These requirements are intended to influence consumers to buy cars of U.S.-Canadian origin. There is also an obligation to indicate the origin of engines and gearboxes that could discourage U.S. manufacturers from importing parts from Europe. Moreover conforming to the labelling requirement may involve the disclosure of confidential data from non-U.S. manufacturers.

Title	Textile Rules of Origin
Sector	Textiles and Leather
Description	Under the U.S. rules of origin of 1996, the origin of apparel products is generally determined by the country where they are assembled. These rules being quite similar to EU rules of origin, there were few complaints made by EU producers of apparel. However, for certain products (mainly fabrics, bed and table linen, silk accessories), the country of origin is where the fabric is made. As a consequence, the origin of the final product becomes the third country origin (e.g. India or Pakistan) and it was required to indicate the name of the country where the fabric was made (e.g. made in China). This legislation particularly affected EU products imported into the EU as grey fabric from third countries (such as Pakistan or India) and processed into dyed, printed fabrics or table linen before being re-exported to the U.S. In order to address this issue, in July 1997, the EU signed an Agreement with the U.S. for certain products (silk scarves and fabrics, printed cotton and printed man-made fabrics). The Agreement concerned specifically two aspects (1) U.S. authorities agreed to return to former rules of origin; (2) U.S. authorities exempted a limited number of products from existing marking rules (the requirement to indicate the country where the fabric is produced, i.e. made in) in order to allow the import into the U.S. of silk accessories with a different marking. For example, a silk scarf processed (dyed and printed) in Italy with imported silk fabric could be marked designed in Italy with Chinese fabric. The Congress adopted in May 2000, the Trade and Development Act reinstating the rules of origin that existed prior to 1996 for certain textile products. Nevertheless, European companies still face difficulties with the rules of origin, especially for products such as scarves, bed linen, table linen, bedspreads, quilts containing cotton and wool. For these products, according to the U.S. rules of origin, the country of origin is still the country of origin of the fabrics, even if the fabrics have been dyed and printed and have undergone two or more finishing operations in the EU. Therefore, the producers of these products have to label their products with the country of origin of the fabric. This, according to them, does not reflect the work of design and the production process, which have been made in Europe. Regarding marking of origin, customs allow some flexibility. The goods can be marked with, for example, designed in Italy, but in immediate proximity of this indication and at least in comparable size, there should be marked legibly and permanently the name of the country of

	origin preceded by Made in and Product of.
State of play	In the context of the WTO negotiations on NAMA-NTB, the EC and U.S. have made a joint specific negotiating proposal in relation to labelling for textiles, clothing, footwear and travel goods aimed at establishing disciplines on requirements for labels.

Title	U.S. Customs Refusal of EU Origin
Sector	Horizontal
Description	U.S. Customs does not recognise the EU as a country of origin, nor does it accept EU certificates of origin. In order to justify EU country of origin status, EU firms are required to furnish supplementary documentation and follow further procedures, which can be a source of additional costs. The European Commission and the Transatlantic Business Dialogue (TABD) have consistently urged the U.S. to recognise a simple EU origin. U.S. Customs noted this issue extends the scope of customs policy and that inter-agency consensus did not yet exist. Some U.S. industries and organised labour opposed the change whilst other business had cost concerns (i.e. marketing). For example, tyres imported into the U.S. are required by law to be labelled with their country of origin. If tyres marked "made in the EU" were accepted, market access would be improved and trade less onerous.

Title	Textiles Documentary and Labelling Requirements
Sector	Textiles and Leather
Description	Extensive product description requirements complicate EU textile exports to the U.S. and result in additional costs. Rules are burdensome for marking and labelling retail packages to clarify the country of origin, ultimate purchaser in the U.S. and the name of the country in which the article was manufactured or produced. Furthermore, there are requirements relating to the typology/physical characteristic of clothing labels (given size, font used, etc). These standards are different than those from the EU, meaning that special labels are needed for the U.S. market. In addition, customs formalities for imports of textiles, clothing and footwear to the U.S. require the provision of particularly detailed and voluminous information, which lead to additional costs and in some cases include confidential processing methods (type of finishing, of dyeing, etc). Much of this information seems to be relevant for customs or statistical purposes. The extension of the liquidation period up to 210 days also functions as an important trade barrier. Apparel articles often have a short life span (e.g. fashion items must be sold within two to three months) and therefore have to be marketed immediately. Consequently, the retailer or the importer is often not in a position to re-deliver the goods upon Customs and Border Protection (CBP) request, in which case CBP applies a high penalty (100% of the value of the goods). These delays are particularly damaging for seasonable products or for fashionable products.
State of play	In the context of the WTO negotiations on NAMA-NTBs, the EC and the U.S. have made a specific negotiating proposal in relation to labelling for textiles, clothing, footwear and travel goods aimed at establishing disciplines on requirements for labels.

Title	Section 8e of the Agricultural Marketing Agreement Act of 1937 (Act)
Sector	Agriculture and Fisheries
Description	The following commodities are currently regulated under Federal Marketing Orders (MO): tomatoes, raisins, olives (other than Spanish-style green olives), avocados, mangoes, limes, grapefruit, green peppers, Irish potatoes, cucumbers, oranges, onions, walnuts, dates (other than dates for processing), hazelnuts (filberts), table grapes, eggplants, kiwifruit, nectarines, pistachios, apples, cherries, caneberries. These MOs provide requirements for the above mentioned commodities produced in one or more American States during a certain period of time. It is possible that the Farm Bill currently being debated in the US will introduce additional marketing orders, notably for clementines. Section 8e of the Agricultural Marketing Agreement Act of 1937 (Act) provides that the importation into the United States of any such commodity, during the period of time such MO is in effect shall be prohibited unless it complies with grade, size, quality and maturity provisions set in the MO. In practice it means that any such commodities, imported from third countries, are checked against these requirements before release into free circulation in any American States. In the same time, such commodities produced and sold in an American State where the MO does not apply are not checked and do not need to meet these requirements. According to TBT, all technical requirements should equally apply both to imported and domestic products.

Title	Bioterrorism Act
Sector	Agriculture and Fisheries
Description	The U.S. Public Health Security and Bioterrorism Preparedness and Response Act was signed into law on 12 June 2002. The measure is intended to address security risk surrounding the supply of foodstuffs. The implementation of the so-called Bioterrorism Act (BTA) necessitates the registration of all foreign facilities that supply food to the U.S., prior notification of all shipments to the U.S., record-keeping by foreign enterprises to allow traceability of foods, and procedures for the administrative detention of suspect foods. The measures cover all the main food exports to the U.S., beverages (including wines and spirits), processed foods, dairy products, and fruit and vegetables. Deliveries by international mail by private individuals are exempted, but foreign mail order companies are still subject to these burdens. The additional red-tape resulting from the implementation of the BTA does affect EU agri-food businesses in particular small and medium enterprises. Key elements of BTA include: Registration of facilities - requires every "food facility" from which foods are exported to the U.S. to be registered with the U.S. Food and Drugs Administration (FDA). Food facilities are also required to identify their U.S. agent, which implies that they must have a U.S. agent in order to be registered. The prior notice measure requires that every shipment to the U.S. must be preceded by advance notice of no more than 5 days and at latest by eight hours (if by sea) or by four hours (if by air) before arrival. Products imported from unregistered food facilities or for which inadequate notice is given cannot be imported and will be removed to secure storage. Also, EU member states expressed concerns related to U.S. lack of recognition of our plant-passport system, applied for re-exports of plant products originated in other MS different of the exit one. EU's certification system for re-exports is fully in line with ISPM 12 (Guidelines for Phytosanitary Certificates) and this lack of recognition is adversely affecting EU exports. Other trade concerns are related to U.S. requirements for nursery products to be fumigated in a facility supervised by them before exporting. Record-keeping provisions set out the minimum rules for documentation related to imported foodstuffs and in principle cover all facilities that have to register. This provision may have far reaching extraterritorial effects. The Commission has repeatedly stressed the need for transatlantic consultation on these issues to increase the effectiveness of EU-U.S. coordination addressing potential terrorist threats to the food supply.

Title	Container Security Initiative (CSI)
Sector	Horizontal
Description	The U.S. launched the Container Security Initiative (CSI) in 2002 so as to counter potential terrorist threats to the international maritime container trade system. The CSI consists of four elements: security criteria to identify high-risk containers; pre-screening containers before they arrive to U.S. ports; using technology to pre-screen high-risk containers and developing and using smart and secure containers. The U.S. Customs and Border Protection (CBP) launched the system to achieve a more secure maritime trade environment while attempting to accommodate the need for efficiency in global commerce. Ports participating in the CSI use technology to assist their officers in inspecting quickly high-risk containers before they are shipped to U.S. ports. So far, ten Member States have signed declarations of principle with the CBP to introduce CSI in their ports as well as an agreement on stationing U.S. Customs officials in their ports. The CSI screening and related additional U.S. customs routines are allegedly causing significant additional costs and delays to shipments of EU machinery and electrical equipment to the U.S. This burden is so severe that a number of small European engineering companies have decided not to export to the U.S. any longer because of CSI. There is also competitive distortion in this fiercely competitive engineering market between EU and U.S. engineering companies since up to now there is, de facto, no reciprocity between the EU and the U.S. in this issue.
State of play	In order to ensure a level playing field among European ports, the EU concluded an agreement that expands the EU-U.S. customs co-operation agreement to include transport security aspects and to prepare minimum standards for all EU ports to participate in the CSI. In August 2005, the U.S. agreed to participation in the CSI of more EU ports, which comply with certain jointly agreed minimum standards and where no U.S. officials will be stationed. For this project, a pilot action has been performed in 2007 in the port of Szczecin (Poland). Similar actions are envisaged in Aarhus (Denmark) and Salerno (Italy) for the beginning of 2008. The EU-U.S. working group established by the expanded agreement is currently working on further measures which are intended to diminish the barriers caused by this initiative.

Quantitative Restrictions and Related Measures

Title	Marine Mammal Protection Act
Sector	Agriculture and Fisheries
Description	The Marine Mammal Protection Act of 1972 aims at protecting marine mammals, particularly dolphins, by progressively reducing the acceptable level of dolphin mortality in U.S. tuna-fishing operations in the Eastern Tropical Pacific (ETP) Ocean and providing for sanctions to be taken against other countries which fail to apply similar standards for dolphin protection. The MMPA requires that countries that wish to import from the ETP must receive an "affirmative finding" from the National Marine Fisheries Service (NMFS). The criteria for receiving an "affirmative finding" relate to the membership (or launching and completing the accession within six months) to the Inter-American Tropical Tuna Commission (IATTC) and the need to have a "tuna tracking and verification system" that conforms to the Tuna Tracking and Verification System adopted under the Agreement for International Dolphin Conservation Programme (AIDCP). Spain was unable to join the IATTC within the 6 month time period. Therefore, it would appear that Spanish tuna products coming from the Eastern Tropical Pacific would not be allowed to enter the U.S. market. Additionally, canned tuna from Spain, not explicitly labelled as coming from outside the ETP would probably be prohibited from entering the U.S. market due to the difficulty to determine the origin of the canned tuna.
State of play	The Community, by Council Decision 1999/405/EC of 10 June 1999, authorised Spain to join the IATTC, on a provisional basis. This authorisation was granted pending the entry into force of the new Convention of IATTC (the so called Antigua Convention) which permits membership of the European Community. Spain formally acceded to the Convention in June 2003. The EU has recently become a full member of the AIDCP and has already introduced into Community Law the System for Tracking and Verification of Tuna through the Council Regulation (EC) N° 882/2003 of 19 May 2003. On 7 June 2006 the EU notified its ratification of the Antigua Convention. The IATTC Antigua Convention will enter into force 15 months after the deposit of the seventh instrument of ratification or accession of the Parties to the IATTC Convention.

Title	Section 232 of the 1962 Trade Expansion Act
Sector	Horizontal
Description	Under Section 232 of the Trade Expansion Act of 1962, U.S. industry can petition for the restriction of imports from third countries on the grounds of national security. Protective measures can be used for an unlimited period of time. The Department of Commerce (DoC) investigates the effects of imports that threaten to impair national security either by quantity or by circumstances. Section 232 is supposed to safeguard U.S. national security, not the economic welfare of any company, except when that company's future may affect U.S. national security. The application of Section 232 is not dependent on proof of injury to U.S. industry. In the past, the EU has voiced its concern that Section 232 gives U.S. manufacturers an opportunity to seek protection on grounds of national security, when in reality the aim is simply to curb foreign competition. On 1 February 2001, the DoC initiated an investigation to determine the effects on national security of imports of iron ore and semi-finished steel. The DoC released its report on 9 January 2002, which found that imports of iron ore and semi-finished steel do not threaten to impair U.S. national security. Therefore no action under Section 232 to adjust the level of imports was recommended to the President.

Title	Food Aid Program
Sector	Services - Transport
Description	Under U.S. regulations, only U.S. agricultural commodities may be used in food aid transactions. Legislation expressly includes among its food aid objectives opening up markets for U.S. exports (PL-480) and provision for overseas donations of surplus commodities acquired by the Commodity Credit Corporation (Section 416-b). The provision of such non-genuine food aid causes significant losses to commercial supplies of commodities. Several EU markets have been targeted by non-genuine U.S. food campaigns. Regarding transportation of U.S. food aid, the U.S. imposes cargo preferences on the World Food Program (WFP) requiring that at least 75% of tonnage granted is transported on vessels carrying the U.S. flag. It is, however, recognised that freight rates on ships carrying the U.S. flag are generally higher than those of other ships. The cost difference between the estimated amount of freight on a ship not carrying a U.S. flag and the actual freight on a U.S. vessel is called the Cargo Preference Premium. From 2002, income and expenditures are being recorded on the basis of the adjusted global freight estimates (net of cargo preference premiums). However, as a service to the U.S., the WFP continues to account for cash receipts and cash disbursements related to U.S. cargo preference premiums thus adding important operational costs. The EU considers this is a way of extending restrictive and discriminatory public

	procurement practices beyond the U.S. public procurement market. In fact, this policy imposes Buy American requirements on a UN organisation. The propensity of the U.S. to use food aid to countries not suffering food shortages as a means of disposal of surplus farm products has the effect of disturbing local markets, cuts out traditional supplies and undermining local producers. Following EU complaints, the U.S. has partially reviewed its policy. However, the 2002 Farm Act has reinforced the role of U.S. food aid as an export enhancement tool and this has been further underlined by Congress in the debate over the budget for FY06, where the Congress has opposed a proposal by the administration to allocate 25% (i.e. $300 million) of the PL 480 Title II programme for local and regional purchases of food commodities (by USAID) outside the U.S. market. In addition, in the present WTO negotiations, the U.S. -both Administration and Congress- are resisting strongly any attempt to strictly regulate food aid operations. In particular they oppose the principle of providing food aid in cash insisting that also in future all U.S. food aid be procured on the U.S. market (including preference for transport / handling on U.S. logistics). The administration has again for FY 07 proposed to allocate 25% of the PL 480 Title II programme for local and regional purchases of food commodities (by USAID) outside the U.S. market, but the House version of the Farm Bill does not include such provision. Groups representing shipping companies and agribusiness interests have opposed using the budget of the main food aid program to buy food in developing countries instead of relying on American food shipped overseas. The new Farm Bill, which doesn't promise any significant increases in the food aid budget nor policy changes, is now under consideration in the Congress.

Standards and other Technical Requirements

Title	Organic Products
Sector	Agriculture and Fisheries
Description	Under the 2001 U.S. National Organic Program (NOP), a provision exists for imported products to be recognised as organic. The EU and the U.S. have entered into bilateral negotiations with a view to mutually recognising the equivalency of the organic production systems applied by each Party. This should facilitate trade in products originating from organic production methods while ensuring the integrity of the organic production method. While substantial progress had been made in the negotiations for two years, the talks are at a standstill since May 2004 and no further road map has been laid out.

Title	Electrical and Electronic Equipment Barriers
Sector	Electronics
Description	The electrical safety field in the U.S. is ruled by workplace safety regulations developed by the Occupational Safety and Health Administration (OSHA), the National Electric Code and safety standards for electrical equipment that are not always aligned with international standards. There is an imbalance in terms of market access as European exporters of electrical and electronic equipment and appliances have to comply with 3rd party approval processes, whereas US manufacturers can market such products on the basis of a "Self-Declaration of Conformity". There is also an imbalance in market access for the certification industry. Whilst US certifiers can freely offer their services to US industry to support their self-assessment of safety requirements for products to be marketed in the EU, EU certifiers need either recognition by OSHA to become an NRTL (Nationally Recognised Testing Laboratory) or recognition by one of the NRTLs in order to offer testing services.
State of play	Firstly it is important to note that there is not a single U.S. market for electrical and electronic products as partially divergent federal, regional, state, sectoral and even county and city technical regulations, procurement specifications and product standards split up the market. It is not sufficient to comply with federal regulations and obtain clearance from Customs and Border Protection (CBP) to market electrical and electronic equipment in the U.S. As a result of this OSHA's approval system, which aims at ensuring that products used in the workplace are safe, has become the de facto rule for market access for most electrical and electronic products. This system, designed in the 70's, presumes the necessity of 3rd party approval for all electronic and electrical goods. This approval is done by a variety of competing testing and certification agencies, some offering testing facilities in the EU. Local safety regulations quite often require NRTL approval, whereas some regulations even seem to request approval from one specific NRTL, Underwriters Laboratories. This NRTL used to have a monopoly and retains the largest market share in the certification market. It recently acquired a number of EU certifiers. The information on import conditions received by European equipment exporters from U.S. Embassies, Chambers of Commerce abroad and the CBP often proves insufficient and inadequate. The de facto fragmentation of the U.S. market forces exporters to make expensive adaptations of their product models and type approvals to local and sectoral requirements. This undermines the economies of scale that a unified marketplace of the size of the U.S. market would otherwise make possible. Second, besides diverging among themselves, the standards on electrical and electronic

	products used in the U.S. tend to diverge from International Electrotechnical Commission (IEC) standards. These international standards are applied not only in Europe but in a great majority of third countries too. As a consequence, European exporters cannot export to the U.S. the electrical and electronic models that they sell to the rest of the world. Moreover, the U.S. does not have a policy to promote international standards as a basis for market access and seeks to extend the reach of its regime to those countries with which it has particularly intense trade in electrical and electronic equipment. This undermines the use of international standards in the global market place leaving scope for third countries to justify national deviations. The EU would like to see a more unambiguous commitment on the part of the U.S. for IEC standards. Third, despite the fact that technological development and consumer awareness in this sector favours self-certification by manufacturers, backed up by post-market surveillance and control, third party certification of electrical equipment and appliances is still mandatory (de jure and/or de facto), in the U.S. market. This is one of the most burdensome entry barriers for European electrical equipment and appliances. Technological development and consumer awareness have permitted public regulators in the EU and around the world to reduce the extent of pre-marketing third party testing and certification of these products in favour of self-certification by manufacturers backed up by post-market surveillance. This disparity in conformity assessment creates an uneven playing field in the EU-U.S. trade of electrical goods, accruing disproportionately high costs to suppliers of the U.S. market. Furthermore, it is a barrier in convincing some 3rd countries to refrain from mounting similarly high market access barriers. Fourth, it must be noted that the EU was forced to suspend in January 2003 the Annex for Electrical Safety to the EU-U.S. Mutual Recognition Agreement (MRA), since all attempts to develop practical solutions and confidence building measures to have EU certifiers accepted to operate in the NRTL scheme had been rejected by the Occupational Safety and Health Administration (OSHA). Under the MRA, European designated laboratories would certify equipment according to U.S. regulations. The OSHA has continuously denied European authorities the right to designate European laboratories to operate under the Annex on Electrical Safety and this behaviour has nullified the benefits of the MRA in this sector. This is in contrast with the situation for U.S certifiers who face no barriers to offer their services to the manufacturing industry for certifying that they meet the requirements in the EU. Fifth, since telecommunications equipment is subject to continuous testing and assessment in its development and production process, it should be unnecessary to repeat such tests by a third party. Industry stresses the advantages of an appropriate supplier declaration of conformity. U.S. regulatory agencies have begun a review of this approach, and are moving in certain instances towards manufacturers' declarations of conformity (PCs, VCRs, for example). The Federal Communications Commission (FCC) has deregulated its requirements for wired terminal equipment attachment (much in line with the regulatory approach used in the EU). However, the FCC continues to require third party certification of radio equipment that has been deregulated in the EU in terms of technical product requirements and approval procedures. The FCC is therefore encouraged to move toward a "manufacturers' declaration of conformity" for radio equipment. The current U.S. system has led to an unbalanced market access situation between the EU and U.S. and to various complex approval systems in the world. If the U.S. will adopt lighter conformity assessment procedures, it will be possible to call upon these regimes to deregulate. The FCC should be encouraged to ensure that U.S. operators only require certification of U.S. specific operations of mobile equipment or align its regime with the EU regime.

Title	Pharmaceutical and Herbal Products (FDA Approval)
Sector	Pharmaceuticals
Description	The Food and Drug Administration (FDA) must approve a new medicinal product before it can be commercialised. However, the delays for non-U.S. new medicinal products are longer than for U.S. developed medicinal products. By means of an over-the-counter (OTC) procedure, approved active substances for many medicinal products are put on a list (OTC-Monograph) by the FDA, so that different final products derived from these active substances can be marketed without any application or delay, as long as the active substance has a U.S. market history. This restricts market access for OTC products with lengthy marketing experience in countries with equally sophisticated medicines regulatory systems and particularly hampers access for plant-based (herbal) medicinal products with a long tradition in Europe. The issue has been explicitly discussed at the "Transatlantic Administrative Simplification Workshop" on 28 November 2007.
State of play	New provisions clarifying the criteria and procedure for classifying foreign OTC products generally recognised as safe and effective were adopted on 1 April 2002. Main criteria are five continuous years of marketing in at least one country outside the United States and a number of further requirements. While these provisions were welcome in principle, administrative market access hurdles for herbal medicines from Europe exist since new herbal medicines still face difficulties in the authorisation process. The last meeting took place in March 2005, where new terms of reference to guide future

	cooperation were developed and approved. In the framework of CHIC, the FDA , DG Enterprise and Industry have exchanged extensively information on respective regulatory systems, safety concerns, and alternative testing methods to animal testing, including discussing the establishment of a rapid alert system to exchange data on adverse reactions. The exchange of information is, however, only a first step It is equally important that the U.S. and EU authorities take each other's findings into consideration when regulating cosmetic products (including certain over-the-counter drugs) and their ingredients.

Title	Shipping on U.S.-flagged Vessels
Sector	Services - Transport
Description	The U.S. has a number of statutes in place that require certain types of government-owned or financed cargoes to be carried on U.S.-flag commercial vessels. Whilst over 95% of all international maritime trade to and from the U.S. is carried by foreign shipping companies, the impact of these measures denies EU competitors access to this pool of U.S. cargo, while providing U.S. ship owners with guaranteed cargoes at protected, highly remunerative rates. The application of these measures to U.S. public procurement contracts introduces uncertainty for those businesses whose tenders include shipping goods to the U.S. Whether they are required to ship the goods on U.S.-flagged vessels, which charge significantly higher freight rates than other vessels, is not known until after the award of the contract. The relevant legislative provisions are: • The Cargo Preference Act of 1904 requires that all items procured for or owned by the military departments be carried exclusively on U.S.-flag vessels. Waivers may be granted if the rates charged are excessive or otherwise unreasonable. • Public Resolution N°17, enacted in 1934, requires that 100% of any cargoes generated by U.S. Government loans (i.e. commodities financed by Export-Import Bank loans) be shipped on U.S.-flag vessels. The U.S. Maritime Administration, MARAD, may grant waivers due to, for example, insufficient number of vessels or tonnage capacity available, unsuitable scheduling, unreasonable rates. • The Cargo Preference Act of 1954 requires that at least 50% of all U.S. government-generated cargoes covered be transported on U.S.-flagged vessels to the extent such vessels are available at fair and reasonable rates. Waivers may be granted in an emergency. • The Food Security Act of 1985 amended the above U.S. Cargo Preference Act of 1954 by introducing a provision to require that the percentage of shipments of agricultural cargo executed under foreign assistance programmes carried on U.S. flagged vessels be increased from 50% to 75%. • U.S. Mineral Leasing Act, as amended, stipulates that exports of Alaskan North Slope oil must be transported on U.S.-flagged vessels (with some exceptions).

Title	Pasteurised Milk Products (Grade A)
Sector	Agriculture and Fisheries
Description	Certain dairy products, called "Grade A milk products" which include pasteurised milk and milk based products (fluid milk, cream, cottage cheese and yoghurt), are regulated under a Federal/State cooperative programme administered jointly by the Food and Drug Administration (FDA) and the National Conference on Interstate Milk Shipments (NCIMS) which is mainly comprised of state dairy regulatory officials. FDA and NCIMS jointly produce a Grade A dairy safety document, entitled the Pasteurized Milk Ordinance (PMO), which sets forth the rules and inspection requirements to be met by firms who would like to engage in the interstate commerce of Grade A products. According to an FDA notice published in January 2000 there are three options for firms interested in exporting Grade A dairy products to the U.S., the exporting company must sign a contract with a State, which must accept to treat it as if it were within its own jurisdiction (including the inspection and the control of the observance of the U.S. regulation by inspectors of the State several times per annum); or the region/country of the exporting firm must adopt and comply with the U.S. rules, in order to become a member of the Conference; or the programme and the regulations in the exporting country are recognised equivalent to the U.S. programme by the FDA. The first two options are closed, however, because (1) no Federal State is currently prepared to accept an application from a foreign company or country and (2) full compliance with the Pasteurized Milk Ordinance is almost impossible for a EU company. Only two EU firms have been able to make it onto the NCIMS list, considering the requirement to meet all PMO provisions and to finance the ongoing inspections by U.S. state officials. Upon the European Commission request, FDA has agreed to enter into equivalence discussions with the EU and a working plan for these discussions was agreed in October 2005. Several meetings

	have been held since but progress is limited so far. It is the hope of the European Commission that these discussions can be advanced expeditiously in order to remedy the present situation in which it is extremely difficult to export Grade A milk products into the U.S.

Title	Non-Use of International Standards
Sector	Horizontal
Description	The U.S. standardisation system is different from the European model in respect to the development and use of international standards. Although a significant number of U.S. Standards Development Organisations (SDOs) standards often have a high standing internationally for their technical content in the industry sector and are claimed to be technically equivalent to international ones, their process do not require balanced representation, either in terms of nationality (U.S. dominated) or participation of all interested parties and consensus building (NGOs and SMEs interests are not ensured as in ISO and IEC). Hence they may not fully meet the requirements of the TBT. The essential characteristic of the European Standardisation system which comprises the three European Standardisation Organisations-CEN, CENELEC and ETSI is the pursuit of total harmonisation - one European Standard (EN) is adopted and implemented through out the EU. This access to a market of 490 million people through compliance with one European standard is available equally to European and non-European manufacturers and service providers. In addition the commitment of the European Standardisation system to the primacy of international standardisation through the existence of cooperative Agreements between ISO and CEN and IEC and CELELEC, ensures not just an open European market but also market access to those regions which have a similar commitment to the International Standardisation Bodies, ISO and IEC. The United States system is different from the European one. Although through its accreditation of about 250 Standards Development Organisations, ANSI-the American National Standards Institute-has made available more than 10.000 American National Standards, these alone rarely provide access to the U.S. market, as exporters to the U.S. must also meet prevailing state and federal laws. There are few unique national standards applied across the whole country and access to the U.S. market is not granted simply through compliance with standards. Even though ANSI is a member of ISO and IEC, both these two International Organisations are viewed as 'little' more than SDOs, competing with more than 800 SDOs in U.S. This fragmented and sectoral approach to U.S. standards development activities encourages the most prominent SDOs not to limit their activities to national boundaries. In addition the sectoral and competitive bases of the SDOs activities make it extremely difficult to develop unique standards, which are able to grant access to the total U.S. market. The EU has attempted to clarify some of these issues at the TBT Committee in Geneva but, as explained above due to the fundamental differences between the U.S. and EU systems no progress was made in this respect.
State of play	The metric or SI system is now the international standard. However, the U.S. does not accept it as such. Although currently most U.S. states (with two exceptions) accept metric-only markings, this is not the case at the federal level where federal legislation requires markings in non-metric units. The U.S. federal obligation to dual mark products is a non-tariff barrier that considerably hampers exports to the U.S. by small and growing SMEs and notably constitutes a barrier to market entry. Consequently, these firms before being able to export products to the U.S. are required to re-label them with additional (U.S. inch-pound) markings that go beyond those required by the international standard, which is sufficient under EC law.

Title	Digital Terrestrial Television
Sector	Services - Communications & Audiovisual
Description	In 1996, the Federal Communications Commission (FCC) mandated an exclusive transmission standard for digital terrestrial television in the U.S., known as ATSC. This decision has prevented the technology (DVB-T), developed in Europe and being adopted in several countries around the world, from entering the U.S. market. Several market players in the U.S. have called for a review of the FCC decision regarding, at least, the modulation system of the ATSC transmission standard so as to allow the market to choose the technology best suited for the innovative services and applications to be offered to consumers. Nevertheless, the FCC confirmed its decision in a January 2001 Order, following a period of comparative tests between ATSC and DVB-T modulation systems held in the U.S. whose procedure and results have been disputed by the DVB-T industry. This is in clear contradiction of U.S. Governments calls for technological neutrality and market driven approaches in other sectors, such as mobile communications. Moreover, as another example of regulatory intervention in this market, the EU notes that on 8 August 2002, the FCC adopted an order requiring that almost all television receivers include digital television reception capability after 1 July 2007 (beginning on 1 July 2004, with receivers

	with screen sizes 36 inches and above). This order, which aims to speed up the conversion to digital television, will further strengthen the position of the ATSC digital transmission standard in the U.S. market. In addition, on 9 June 2005 the FCC modified the schedule by which new broadcast television receivers are required to include the capability to receive over-the-air digital television broadcast signals to further speed up the conversion to digital television. In this respect, Congress has adopted legislation setting a firm date of 17 February 2009 to end the transition to digital TV and establish a $1.5 billion subsidy programme to help consumers dependent on over-the-air TV to purchase set-top boxes. The Department of Commerce's National Telecommunications and Information Administration (NTIA) appear to be on schedule to meet its obligations as they are defined in the Digital Television Transition and Public Safety Act of 2005. Beginning 1 January 2008, and continuing through 31 March 2009, consumers will be able to request up to two $40 coupons per household to purchase an approved DVT converter box. The FCC is also devoting significant resources to facilitate a smooth transition and is following a three-pronged approach including policymaking, enforcement and consumer outreach. Also noticeable is the adoption by the FCC, on 10 September 2003, of technical standards regarding the distribution of video programming on digital cable systems for devices marketed and labelled as digital cable ready and the establishment of some encoding rules. Finally, on 4 November 2003, the FCC adopted an anti-piracy mechanism, known as the broadcast flag for digital over-the-air broadcast television to limit the indiscriminate redistribution of copyrighted content via the Internet. The European Commission submitted its views on this matter on 15 March 2004 to the U.S. State Department stressing that in the particular case of measures intended to guarantee the protection of intellectual property rights in the new digital world, regulators and policy makers must try to achieve a fair balance between the rights of content providers and the interests of other parties, such as consumers, broadcasters and manufacturers of equipment. On 12 August 2004, the FCC released an Order approving 13 digital output protection technologies and recording methods that will give effect to the broadcast flag, including the digital recording technology developed jointly by Philips Electronics North America Corp. and Hewlett Packard. The FCC encouraged the Federal Trade Commission and the Department of Justice to remain vigilant regarding possible anti-competitive behaviour by technology proponents. However, this Order, as well as a related order concerning the compatibility of TV receivers with cable systems (the so-called Plug and Play Order), have been challenged in the U.S. Court of Appeals for the DC Circuit. The FCC asked the Court to stay its proceedings while it reviewed the Orders following Petitions for Reconsideration by Parties on all sides of the issues in the Plug and Play Order case, the Court agreed but in the Broadcast Flag Order case, the Court did not and on 6 June 2005 the Court decreed that the FCC lacked jurisdiction to impose the broadcast flag anti-piracy mechanism on manufacturers of TV sets and other apparatus capable of receiving a digital signal. European Commission services will continue to monitor developments in this area and, in particular, any future initiative at Congressional level to re-instate the broadcast flag and impose a similar protection for digital radio services. Digital Audio Broadcasting On 11 October 2002, the FCC approved a technology developed by iBiquity Digital Corporation for the transmission of analogue and digital radio signals and allowed radio stations to begin interim, voluntary digital transmission, deferring consideration of licensing and service rules to a future proceeding. On 15 April 2004, the FCC initiated a proceeding to explore rules for digital audio broadcasting. FCC sought in particular comments on whether the advent of DAB requires the adoption of service rules addressing music piracy.

Government Procurement

Title	Berry Amendment to the 1941 Defence Appropriations Act
Sector	Horizontal
Description	The concept of national security was originally used in the 1941 Defence Appropriation Act to restrict procurement by the DoD to U.S. sourcing. Now known as the Berry Amendment, its scope has been extended to secure protection for a wide range of products only tangentially-related to national security concerns -- for example, the 1992 General Accounting Office ruling that the purchase of fuel cells for helicopters is subject to the Berry Amendment fabric provisions, and the withdrawal of a contract to supply oil containment booms to the U.S. Navy because of the same textile restrictions. An audit report by the Defence Department's Office of Inspector General concluded that for certain DoD procurements during fiscal years 1996 and 1997, about half of the solicitations and contracts examined had not incorporated or enforced the relevant domestic sourcing requirements. In response, DoD's procurement director has taken steps to ensure that contracts at or above the simplified acquisition threshold (presently U.S.$ 100,000) are domestically sourced. To comply with the Buy America provisions, contracting officers must generally add 50% to the price when evaluating offers with non-qualifying country end products against offers with domestic end products. In September 1996, Congress adopted an amendment that extended the initial scope of the

	Berry Amendment to cover also all textile fibres and yarns used in the production of fabrics. The result of this extension was that EU fibres and yarns could no longer be used by U.S. manufacturers for producing fabrics that they sell to the DoD. In 1998, a waiver allowing the procurement of para-aramid fibres and yarns under certain conditions was adopted through the National Defence Authorisation Act for fiscal year 1999 (Strom Thurmond Act). The FY2006 Defense Authorization Act (Section 833) contains changes to the Berry Amendment that expand the coverage of this amendment's Buy American provisions. The new language requires DoD to notify Congress within seven days if it awards a contract to a foreign manufacturer and place the contract on a General Services Administration Web site. The new provisions also expand the coverage of the Berry Amendment by requiring that components of textiles and apparel are also made in the U.S. In addition, the bill contains a provision (Section 832) mandating training programmes for DoD personnel about the Berry Amendment. Taken together, these provisions will hamper DoD's flexibility in applying the Berry Amendment by opening DoD waiver decisions to continuous challenge by the U.S. textile industry. The FY2007 Defense Authorization Act contains some Buy American/Berry Amendment provisions, including the one establishing a Strategic Materials Protection Board that would identify items critical to U.S. national security and a related provision that instructs the Defense Department to work cooperatively toward complying with the "Berry Amendment" (specialty metals). In this context, working cooperatively means that the bill prohibits the purchase of non-domestically melted or produced specialty metals but allows for certain exceptions like exemption for electronic components containing small amounts of specialty metals. Exception is made also for procurement outside the U.S. and for cases when there is no domestically available specialty metal of satisfactory quality. Procurement of specialty metals from foreign sources is allowed also in furtherance of agreements with foreign governments or to offset sales made by the U.S. government or U.S. firms. One-time waiver authority of the specialty metals domestic source requirement is given by the Secretary of Defense for items manufactured before the date of enactment of this act. The FY2007 bill gives defence contractors four years to publicly disclose non-compliance or certify plans for future compliance and prevents the Board from adding or deleting items from the list of metals already protected by the Berry Amendment. Further DoD procurement restrictions are based on the National Security Act of 1947 and the Defence Production Act of 1950, which grant authority to impose restrictions on foreign supplies in order to preserve the domestic mobilisation base and the overall preparedness posture of the U.S. At the same time, defence procurement from foreign companies is sometimes also impeded by Buy America restrictions on federally-funded programmes.

Title	Memoranda of Understanding (Defence Acquisitions)
Sector	Horizontal
Description	There has been a trend towards making DoD's other domestic preferences, apart from the Buy American Act preferences, less restrictive by expanding the preference to qualifying countries. These are countries that maintain reciprocal memoranda of understanding (MoU) with the U.S. In practice, all North Atlantic Treaty Organisation (NATO) countries (except Iceland), all major non-NATO allies of the U.S. (e.g. Australia, New Zealand) as well as Sweden, Finland and Austria have signed MoUs with the U.S. allowing for a waiver of the corresponding restrictions. However, these MoUs are subject to U.S. laws and regulations, and consequently, other overriding ad hoc restrictions can be imposed annually by Congress through the authorisation/appropriations process. In 2005, the defence authorisation and appropriations process for FY2006 was no exception to this trend. A number of proposed provisions raised concerns those related to beneficiaries of alleged foreign subsidies and those contained in the House version of the bill that would establish a five-year ban on procurement from any person selling items on the U.S. Munitions List to China. These worrisome provisions were dropped from the final version of the bill. The White House issued Statements of Administrative Policy arguing in favour of keeping flexibility in applying the Buy American Act. For example, U.S. legislation allows the Administration (DoD and USTR) to rescind a waiver if it determines that a particular ally discriminates against U.S. products. Similarly, the National Defense Authorization Act for Fiscal Year 2005 requires the Secretary of Defense to make every effort to ensure that the policies and practices of the Department of Defense reflect the goal of establishing an equitable trading relationship between the United States and its foreign defence trade partners, including encouraging and ensuring that United States firms and United States employment in the defence sector are not disadvantaged by unilateral procurement practices by foreign governments, such as the imposition of offset agreements. To this effect, the Defense Secretary will also be required to develop a strategy as well as review and modify existing MoUs etc. with foreign defence trade partners. Furthermore, it is especially regrettable that Congress, after having adopted the Fastener Quality Act of 2000, continues to impose Buy American procurement restrictions on anchor and mooring chains. There are also indications that U.S. procurement officers disregard the exemption of Buy American restrictions for MoU countries (e.g. fuel-cells, ball and roller bearings, and steel

	forging items). The barriers to defence trade with the U.S. result from a complex set of rules and practices aiming at imposing domestic source restrictions on U.S. defence acquisition. A partial identification of all these barriers is provided in a July 1998 report of the U.S. General Accounting Office that was established to justify these domestic source restrictions. The following examples illustrate the large variety of obstacles facing EU exporters to the U.S. • Specific requirements to produce goods on U.S. soil. This can take many forms, for example as part of the DoD programme approval procedure, a requirement exists that any major defence item must be produced on U.S. soil, so that EU companies can only do business by selling the licences to manufacture (e.g. Harrier Vertical Take-Off and Landing Jet). • There is no grant-back given for changes made to products by the licensee (a common element of licensing systems in the area of non-defence goods, as the original owner then benefits from changes made). • Foreign comparative tests (FCT) are carried out to assess the best product for goods not produced in the U.S. Funds to carry out such tests were reduced in 1999, although the defence budget itself was increased. Also, experience shows that, where an FCT pinpoints a successful product, DoD seeks a licence to make that product in the U.S. rather than entering into a direct supply contract with the offshore producer. The effect of this practice is that EU suppliers look for a U.S. production partner early in the process. • Barriers arising from the use of the Foreign Military Sales Regulation (FMSR). The FMSR introduces maximum foreign content threshold requirements for products exported with FMS support. This means that U.S. prime contractors willing to seek FMS support are reluctant to design foreign content into their products. Instead, they prefer replacing any foreign content by U.S. production under licence (e.g. armoured vehicles were obtained under licence from Austria and then sold on to Kuwait through the FMS system this took sales to third countries away from European companies). • Technical data / Technology export control requirements. Non-nationals cannot take their own foreign companies' technical data out of the U.S. (even if only for showing around for sales purposes) unless the U.S. company is granted a licence to export that data and consequent rights over the data. • U.S. subsidiaries. One way of circumventing the U.S.-soil production requirements is to set up a subsidiary in the U.S. However, such subsidiaries need to obtain both security clearance and authorisation to operate. A precondition for obtaining this is that the overseas parent company must relinquish management control of the subsidiary (U.S. Security Manual). These Chinese walls are quite systematically established. • Lack of access to bidder conferences/security clearance considerations. Foreign nationals rarely have access to bidder conferences and other pre-contract award procedures, because they are not granted the required security clearances at that stage of the procurement process.

Title	Space Launching Services
Sector	Services - Transport
Description	Federal law and policy maintain high barriers to U.S. Government utilization of foreign launch services. The President's U.S. Space Transportation Policy authorized on December 21, 2004, requires the launch of U.S. government payloads (satellites) on space launch vehicles manufactured in the U.S. unless exempted by the Director of the Office of Science and Technology Policy, in consultation with the Assistant to the President for National Security Affairs. An exception is provided for use of foreign launch vehicles on a "no-exchange of funds" basis for limited scientific programmes. The NASA Authorization Act of 2005 enshrines the President's 2004 policy in law stating that NASA shall not launch a payload on a foreign launch vehicle except in accordance with the policy. The Commercial Space Act of 1998 also requires the Federal Government to acquire space transportation services from U.S. commercial providers whenever such services are required. The Act's definition of a U.S. commercial provider effectively excludes all foreign launch service providers by establishing domestic content in excess of 50 percent. Other restrictions on foreign launch services are now being considered by Congress. In December 2007, Members of the Florida Congressional Delegation introduced "Launch America" legislation that could prohibit NASA from the utilization of foreign launch vehicles for cargo missions to the International Space Station (ISS) and mandate the use of U.S. space launch services. The prohibition against foreign launch services could apply to NASA funded missions conducted with the Europe's ATV (Autonomous Transfer Vehicle), the Japanese Heavy Transfer Vehicle (HTV), or the Russian Progress supply vehicle. The legislation, if passed and signed into law, could have a serious impact on the utilization of the ISS during a five-year or even longer period, beginning in 2011, when the U.S. Space Shuttle is no longer in service and NASA's replacement systems, the Ares/Orion and U.S. commercial vehicles currently under

	development, are not yet operational. In addition to these barriers, subsidies for U.S. launch services providers are at an all-time high. The 2004 Space Transportation Policy provides that the Secretary of Defence fund the annual fixed costs for both primary U.S. launch systems, the Evolved Expendable Launch Vehicles (EELV) now operated by the Lockheed Martin-Boeing joint venture, the United Launch Alliance (ULA). The President's Budget for Fiscal Year 2009 requests $358 million in funding for launch services but proposes fixed cost funding under "Assured Access" and "Launch Capabilities" categories of $40 million and $747 million respectively-twice the amount of the variable launch services costs. These high fixed cost subsidies translate to competitive advantages for Atlas V and Delta IV in the commercial satellite launch market. Taken together, these measures are part of a set of co-coordinated actions to strengthen the U.S. launch industry and are clearly detrimental to European launch service providers. European launch operators remain effectively barred from competing for most U.S. Government launch contracts, which account for more than 50 percent of the U.S. satellite market. Meanwhile, European Government support for fixed launch costs of 192 million Euros per year under the European Guaranteed Access to Space (EGAS) program are set to expire in 2010 as U.S. subsidies, set at three times the European level, continue to grow. The EU has no similar barriers to space launch services or a "Buy European" launch policy as demonstrated by the recent launches of the Sicral 1B and CosmoSkymed European government satellites on U.S. launchers. The same situation exists for the providers of remote sensing capabilities. The U.S. Commercial Remote Sensing Policy of 25 April 2003 directs the U.S. government to rely to the maximum practical extent on U.S. commercial remote sensing capabilities, not only for military and homeland security but also for civil uses. It is a stated goal of this policy to enable U.S. industry to compete successfully as a provider of remote sensing space capabilities for foreign governments and foreign commercial users.

Title	Buy American Act
Sector	Horizontal
Description	1. The Buy American Act (BAA), initially enacted in 1933, is the core domestic preference statute governing U.S. procurement. It covers a number of discriminatory measures, generally termed Buy American restrictions, which apply to government-funded purchases. The Executive Order 10582 of 1954, as amended, expands the scope of the BAA in order to allow procuring entities to set aside procurement for small businesses and firms in labour surplus areas, and to reject foreign bids either for national interest or national security reasons. The Buy American Act 1) Restricts the purchase of supplies, which are not domestic end products, for use within the U.S. A foreign end product may be purchased if it is determined that the price of the lowest domestic offer is unreasonable or if another exception applies, and 2) Requires, with some exceptions the use of only domestic construction materials in contracts for construction in the U.S. 3) Buy American Act uses a two-part test to define a domestic end product a) the article must be manufactured in the U.S.; and 2) the cost of domestic component must exceed 50% of the cost of all the components. The Buy American Act applies to purchase of supplies valued from U.S. $3,000 to U.S. $193,000 as well as construction purchases valued from U.S. $3,000 to U.S. $7,407,000 Some of the Buy American provisions prohibit public sector bodies from purchasing goods and services from foreign sources; some establish local content requirements, while others still extend preferential price terms to domestic suppliers. For example, Federal agencies are required to procure only U.S. mined or produced unprocessed goods, and only manufactured goods with at least a 50% local content. In terms of price preferences, typically a 6% penalty would be added on the bid of a foreign firm for civilian projects; a 12% penalty for such projects when the local competitor is a small enterprise from an area with high unemployment; and a 50% penalty in the case of defence contracts. Buy American restrictions not only directly reduce the opportunities for EU exports, but via content requirements also discourage U.S. bidders from using European products or services. The U.S. industry, through the court system and legislative lobbying, ensures that Buy American preferences are vigorously enforced and maintained. Suppliers based in countries that are parties of the GPA are generally not directly excluded from the scope of the BAA and other restrictive regulations. Instead, legislation generally foresees the granting of waivers as regards these suppliers (inter alia, through the 1979 Trade Agreements Act). However, the actual implementation of these waivers may lead to legal uncertainty and act as a barrier. 2. In addition, significant barriers of access to the U.S. procurement market result from Buy America provisions which prescribe the products, State or local authorities can purchase for projects co-funded by Federal grants. The European Commission estimated Buy America to

	affect about U.S.$ 35 billion of contracts in Fiscal Year 2005. One of the most obvious areas of Buy America is federal aid administered by the Department of Transportation (DoT) under several different acts, including the Highway Administration Act, the Urban Mass Transit Act, and the Airports Improvements Act. In accordance with these acts, the DoT provides aid to the State and local governments for various transportation-related procurements. The Federal government may fund 40% to 80% of the project (depending on the nature of the grant), while the State or local government must fund the remaining share. All purchases of goods and services related to these projects must meet various Buy America provisions, usually domestic content requirements of 60% and, failing that, a price penalty of up to 25%. Typically, these provisions also require that all iron, steel and other manufactured goods have to be assembled and originate in the U.S. 3. Buy American or buy local legislation is also rife at State level. More than half of all U.S. States and a large number of localities do apply some "Buy Local" restrictions in one form or another. In some cases, the procurement of particular products (e.g. steel, coal, printing and cars) are subject to such restrictions. Affirmative action schemes favouring small business or particular types of business (e.g. minority-owned) are also applied extensively in a large number of States. Although 37 of the 50 States are covered by the GPA of 1994, the scope remains very limited, as procuring entities such as municipalities and utilities are not included. Among the 13 States that have not been bound by the U.S. offer, some maintain very substantial local preferences, which have a very negative impact on EU and other foreign suppliers. This is the case of Alaska, New Mexico, South Carolina and, to a lesser extent, Ohio and Virginia. In the case of New Jersey, State legislation also provides that for the construction of public works projects financed by State funds, the material used (e.g. cement) must be of domestic origin. Even in the GPA-bound states, various exemptions (i.e. for purchases of cars, coal, printing and steel and for set-aside) seriously limit the procurement opportunities open to foreigners. Besides, all procurements by States and localities that benefit from particular types of federal funding (e.g. in mass transit and highway projects) are subject to the Buy America Act (BAA). 4. Although the BAA applies in principle to the procurement of goods, it has also inspired similar provisions in the procurement of services. In March 2002, the State of New Jersey introduced new legislation for procurement of services specifying that only citizens of the United States and persons authorised to work in the United States pursuant to federal law may be employed in the performance of services under the contract or any subcontract awarded under the contract. This measure mainly affects computer services suppliers and suppliers with call centres outside the U.S. Although the State of New Jersey is not covered by the U.S. commitments under the GPA, the measure risks creating a contagious effect. In August 2003, the State of Michigan adopted a bill containing similar provisions. Other States such as Connecticut, Maryland, Missouri and Wisconsin have announced similar bills.

Title	Steel Local Content Requirements
Sector	Iron, Steel and Non-Ferrous Metals
Description	Steel is subject to the imposition of local content requirements or preferences given in works and other government procurement contracts for bids which include locally produced steel. This practice is notably common at the sub-federal level. Many States (such as Connecticut, Louisiana, Maine, Michigan, Illinois, Maryland, New York, Pennsylvania, Rhode Island and West Virginia) have such requirements that also apply to private contractors and subcontractors.

Title	Small Business Act
Sector	Horizontal
Description	The Small Business Act of 1953 (SBA), as amended, requires executive agencies to place a fair proportion of their purchases with small businesses. This "set-aside" scheme is specifically exempted from application of the WTO Government Procurement Agreement (GPA) under General Note 1 to the U.S. Appendix I. Under the SBA, any contract for the purchase of goods or services with an estimated award value greater than U.S.$ 3,000 but not exceeding U.S.$ 100,000 will be automatically set-aside for (U.S.) small business unless fewer than two small businesses submit competitive bids for that procurement. Small business set-asides can occur in procurements above U.S.$ 100,000 on a discretionary basis. In addition to meeting certain size criteria, a business is eligible for small business status, for procurement purposes, only if it maintains a place of business in the U.S. and makes a significant contribution to the U.S. economy through payment of taxes and/or use of U.S. products, materials, and/or labour. The size criteria vary depending on the product or service being procured. The standard size criteria for eligibility as a small business for goods producing industries are 500 employees or fewer. However, for some industries (i.e. pulp, paper boxes,

	packaging; glass containers; transformers, switchgear and apparatus; relays and industrial controls; miscellaneous communications equipment; search, detection, navigation guidance systems and instruments) the employee limit is 750 and for some others (i.e. chemicals and allied products; tyres and inner tubes, flat glass, gypsum and generators; telephone and telegraph apparatus) it is 1000. For services industries, depending on the sector, firms with total annual revenues of less than U.S.$2.5 million to 17 million are considered to be small businesses. In 1999, the Small Business Administration launched another programme- HUBZone- that provides contracting benefits to small businesses located in "historically under-utilised business zones". The first goal of the programme is to channel at least 1% of overall federal procurement to HUBZone small businesses, which at current federal spending levels equates to about $2 billion. By the year 2003, that goal rises to 3%, or about $6 billion. Until 30 September 2000, the procedures under the programme applied only to acquisitions made by certain departments and agencies; after that date, the procedures apply to all federal agencies. For acquisitions beyond thresholds and open to competition, price evaluation preferences may be granted, calculated by adding a factor of 10% to all offers. The notion of fair proportion means that the government-wide goal for participation by small businesses shall be established at no less than 20% of the total value of all prime contract awards for each fiscal year. Under normal bid procedures, there is a 12% preference for small businesses in bid evaluation for civilian agencies (instead of the standard 6%). An important number of States also operate particularly proactive small businesses and minority set-aside policies. The Small Disadvantaged Business Certification and Eligibility Program assists small disadvantaged businesses (SDBs) by certifying them as SDB-eligible firms. To be certified by the SBA as an SDB, a small business must be at least 51% owned and controlled by an individual determined as socially and economically disadvantaged. A price evaluation adjustment, as determined every year by the DoC., is applied for SDBs under the Programme in authorised competitive acquisitions meeting certain criteria. It is estimated that in States like Texas such policies effectively exclude foreign firms from around 20% of procurement opportunities. In Kentucky, as much as 70% is set aside for small businesses. The active promotion of small businesses is a common concern for the EU and the U.S. The EU is, however, concerned that the U.S. "set-aside" measures and their exemption from the GPA favour U.S. industry and have exclusionary effects to the detriment of foreign competitors

Title	Transport-Related Buy America Provisions
Sector	Services - Construction & Engineering
Description	One of the most obvious areas of Buy America is federal aid administered by the Department of Transportation (DoT) under several different acts, including the Highway Administration Act, the Urban Mass Transit Act, and the Airports Improvement Act. In accordance with these acts, the DoT provides aid to the State and local governments for various transportation related procurements. The State or local government at some level must match that money. Specifically, the Federal government may fund 40% to 80% of the project (depending on the nature of the grant), while the State or local government must fund the remaining share. All purchases of goods and services related to these projects must meet various Buy America provisions, usually domestic content requirements of 60% and, failing that, a price penalty of up to 25%.

Title	Ball and Roller Bearings
Sector	Iron, Steel and Non-Ferrous Metals
Description	Congress has imposed a Buy American requirement on the procurement of ball and roller bearings since 1988, which remain in effect in 2007. In May 1996, the Federation of European Bearings Manufacturers' Association (FEBMA) made a submission to the Department of Defense (DoD), in opposition to the restriction. The National Defense Authorization Act of Fiscal Year 1997 contains the McCain Amendment authorising the DoD to waive Buy America requirements that would impede the reciprocal procurement of defence items under the Memoranda of Understanding (MoU). In September 2005, the DoD issued a final rule amending the Defense Federal Acquisition Regulations Supplement (DFARS) to authorise the Defence Logistics Agency Component Acquisition Executive to waive domestic source requirements on the acquisition of ball and roller bearings, when adequate domestic supplies are not available to meet DoD requirements on a timely basis, and provided that such acquisition is made in order to acquire capability for national security purposes. Sec. 8046 of the FY2007 Defense Appropriations Act reiterates this waiver provision. The EU will monitor the implementation of this waiver authorisation.

Subsidies

Title	Biodiesel Subsidies
Sector	Other Industries

Description	The Europe Union is the major market for Biodiesel and accounts for 77% of world production. The EU market is worth about €5 billion per year. The U.S. is the world's second largest producer and is by far the major source of EC imports. The issue has emerged due to a surge in U.S. subsidised Biodiesel exports to the EU, which has depressed prices and profits and caused several producers to shut down their operation. The problem is that the U.S. subsidizes Biodiesel producers by means of tax credits, which impacts not only on U.S. sales but also on exports to other countries, notably the EU. In contrast the EU provides subsidies to consumers, which only affects the EU market and imports are eligible for the same benefits as EU products. The subsidies are significant ($1 per gallon or 200 Euro per tonne) and they are enabling imports from the U.S. to enter at below the EU industry's raw material costs. In effect U.S. Biodiesel exports to the EU have increased sharply, from less then 100,000 tonnes in 2006 to 1 million tonnes in 2007, which presents already nearly 20% of the EU market share.
State of play	EU industries have repeatedly complained about these subsidies, which are the so-called "B-99" tax credits to U.S. producers of Biodiesel, alleging that they are countervailable. The issue is becoming more urgent as the EU industry (EBB which has 52 member companies in 19 Member States) decided on 30 November 2007 to prepare anti-dumping and CVD complaints and the Commission expects to receive such complaints by March 2008.

Title	Agriculture marketing loans
Sector	Agriculture and Fisheries
Description	The Commodity loan programme allows U.S. producers of designated crops to receive loans from the U.S. government at a crop-specific loan rate per unit of production by pledging production as loan collateral. This programme has had significant budgetary outlays over the past few years, largely related to marketing loans. Marketing loan provisions allow farmers to repay commodity loans at less than the original loan rate (plus interest) when market prices are lower. Marketing loans provide farmers economic incentives to retain ownership of crops and sell them rather than forfeit ownership to the government to settle loans. Many U.S. farmers use a two-step marketing procedure in which they receive programme benefits when prices are seasonably low (and programme benefits high) and then sell their crop later in the marketing year when prices have risen. Producers can receive marketing loan benefits through two different channels the marketing loan gains (loan programme) and the loan deficiency payments. Under the loan programme, farmers place their crop under the commodity loan programme by pledging and storing all or part of their production as collateral for the loan, receiving a per-unit loan rate for the crop. But rather than repay the full loan (plus interest), farmers may repay the loan at a lower repayment rate at any time during the loan period that market prices are below the loan rate. Marketing loan repayment rates are normally based on either local, posted country prices or the prevailing world market price. The difference between the loan rate and the loan repayment rate represents a programme benefit to producers. Alternatively, farmers may choose to receive marketing loan benefits through direct loan deficiency payments (LDP). The LDP allows the producer to receive marketing loan benefits without having to take out and subsequently repay a commodity loan. The LDP rate is the amount by which the loan rate exceeds the posted county price or prevailing world market price.
State of play	10 January 2003 The European Oilseed Alliance (EOA) lodged a complaint under the Trade Barrier Regulation, claiming that loan rates, marketing loan subsidies, direct payments and counter-cyclical payments granted to U.S. oilseed producers under the 2002 Farm Act are causing serious prejudice to the EU. 13 March 2003 Commission, after consultation of the Advisory Committee established by the TBR considered that the complaint contained sufficient evidence to justify the initiation of an examination procedure in accordance with Article 8 of the TBR. 20 October 2003 Investigation report was submitted to the Member States. Its findings were that some of the U.S. oilseed subsidies would be protected by Article 13 of the Agreement on Agriculture, whilst for others the level of the U.S. support in the marketing year 2001 appear to have had significant price effects, but the Commission did not have sufficient evidence to reach a final conclusion on whether they cause or threaten to cause serious injury. The Commission is monitoring the evolution of the oilseed market and the U.S. subsidies in order to collect further evidence on the negative impact of the U.S. oilseed subsidies on prices and will present a report, whenever appropriate, on the basis of the information available and in any event no later than the end of 2005, which will review the situation in the light of the further evidence obtained and the applicable legal provisions. In 2005, the Commission reviewed the situation and reported to the TBR Committee on the evolution of the case. The monitoring continues.

Title	Farm Bill
Sector	Agriculture and Fisheries
Description	Agriculture policy was overhauled in 2002 with the passing of the Farm Security and Rural Investment Act of 2002 (Farm Act). Despite a consensus among WTO Member States that farm policies should be reformed in the direction of less trade-distorting forms of support, the 2002 Farm Act went in the opposite direction and increased the distorting effect of U.S. farm subsidies. The main elements of the U.S. 2002 legislation are • introduction of new counter-cyclical payments for arable crops, designed to compensate for falls in market prices. These payments, together with the continued loan programme, shield farmers from low prices and thus perpetuate a cycle of over-production and downward pressure on prices; • updating of base areas on hitherto fixed arable crop payments, thus re-linking these subsidies to current production; • payment of a new counter-cyclical subsidy to dairy farmers to counteract price movements; • introduction of a promotional levy on dairy imports, which could be applied in a manner to act as a tariff increase • new subsidies for producers of fruit and vegetables, wool, mohair, honey, and for grassland livestock farmers; • substantial increases in export assistance measures, including a 120% increase in the Market Access Promotion programme to $200 million per year, and non-emergency food aid programmes explicitly designed to expand U.S. export opportunities and dispose of surplus production; • subsidies for energy producers who utilise agricultural commodities, such as maize and soya.
State of play	The U.S. 2002 farm policy has been widely criticized, both within and outside the U.S. The main reasons for criticism are (a) the potential for the crop subsidies to depress world prices; (b) the counter- cyclical nature of both the loan programme and the new counter –cyclical support, which shields U.S. producers from the market and (c) the concern that the U.S. could exceed its WTO limit of $19.1 billion production-linked support (the AMS limit). The EU is monitoring the implementation of the 2002 Farm Act for compliance with trade rules and, as necessary, is defending its rights, notably in the framework of the WTO (notifications in accordance with the provisions of the Agreement on agriculture, trade policy review mechanism). The U.S. only notified the implementation of the 2002 Farm Bill to the WTO in November 2007, as the current Bill draws to a close, given that the commodity support provisions expire at the end of the 2007 crop year. The EU is scrutinizing the U.S. notification and is concerned that the counter-cyclical payment scheme is reported as "non-product specific" support and is therefore not counted against the AMS ceiling. Especially as the USDA data shows significant spending on counter-cyclical payments during the course of 2004 and 2005.

Title	State Subsidies WTO Notification
Sector	Horizontal
Description	Transparency in the area of subsidies is an obligation of the Agreement on Subsides and Countervailing Measures (SCM). However, the notification of subsidies is frequently delayed.
State of play	Up to 1998 the U.S. only notified the WTO of a limited number of Federal programmes, many of which were relatively small, and would not notify its many State-level subsidies. Following pressure from the EU, in the form of detailed questions and a counter-notification under Article 25.10 of the SCM, the U.S. finally began to notify certain State-level subsidies in its new and full notification of 1998. The notification was reviewed in the WTO Subsidies Committee in May 1999. The EU still remained concerned by the lack of information on U.S. State-level subsidies, particularly large, ad hoc investment incentives. The reporting of Federal subsidies was improved, although there were still gaps as regards certain sectors, notably aerospace. The U.S. undertook to include non-notified subsidies, including those identified by the EU, in the next update notification. This should have been provided in 1999. However, no update was provided until the Subsidies Committee on 2 July 2002, where the U.S. provided an update on subsidies for 1999 and 2000 and a new and full notification for 2001. In October 2003 the U.S. presented a new and full notification for the 2002 fiscal year. The 2005 new and full subsidy notification covering the fiscal year 2003 and 2004 were submitted only after a 2 year delay by the end of 2007.

Title	Aircraft Engine Manufacturers

Sector	Aircraft
Description	The EU is concerned by U.S. Government subsidies granted to U.S. engine manufacturers in the form of benefits from R and D funded by NASA, the DoD - dual use technology - and other mechanisms. GE and Pratt and Whitney are the dominant beneficiaries. These subsidies, which are non-repayable and can be directly traced to specific engine programmes, average around $2 billion annually.

Title	Airline State Aid
Sector	Services - Transport
Description	Whilst recognising the severe financial consequences of 11 September 2001 on U.S. airlines and the need to ensure that vital transport services in the U.S. were maintained, the EU is concerned about the scale of financial assistance provided by the U.S. Government to U.S. air carriers, particularly since financial problems of many airlines predated 11 September. This assistance could place U.S. airlines at an unfair advantage compared to their European competitors who have received only tightly controlled compensation for the four-day closure of U.S. airspace. In the U.S. in the months after 11 September, $5 billion was made available to U.S. airlines according to their size and a further $10 billion was made available in loan guarantees to ailing companies. A second round of aviation related assistance totalling $2.4 billion was also provided in the Emergency Supplemental Appropriations Act of 2003. The government has supplied third party war risks insurance at virtually no cost to U.S. airlines and their suppliers. Although similar coverage was provided by several EU Member States, this was only done for a limited period and against payments of premiums. The overall assistance given by the U.S. Government to the U.S. industry represents significant protection from the commercial pressures facing foreign air carriers and is a potential impediment to fair trade on transatlantic air routes. Other areas of state aid include the Transportation Security Administration (TSA) awarded reimbursement grants totalling $100 million to 58 domestic air carriers for the direct cost of reinforcing cockpit doors. This grant money is in addition to $97 million for domestic carriers that the Federal Aviation Administration (FAA) awarded for the same purpose. In addition, in recent years four major U.S. carriers have sought bankruptcy protection under Chapter 11, and two have terminated and transferred their pension plans to a federal corporation, the Pension Benefit Guaranty Corporation (PBGC). Pension reform legislation pending before the Congress, if adopted, would provide specific relief to U.S. airlines, allowing them an additional 20 years to pay their pension liabilities. Provisions on government subsidies and support are included in the EU-U.S. Air Transport Agreement, which will be applied from 30 March 2008. It is recognised that government subsidies can adversely affect competition. If fair and equal opportunity to compete is adversely affected, the Joint Committee set up by the Agreement may develop appropriate responses. The Joint Committee will maintain an inventory of issues regarding government subsidies and support.

Title	Agricultural Export Subsidies and Promotion
Sector	Agriculture and Fisheries
Description	The U.S. operates a range of programmes designed to subsidise and/or promote exports of U.S. agricultural products. Under the Export Enhancement Program (EEP), the U.S. Department of Agriculture (USDA) pays cash bonuses to exporters, allowing them to sell agricultural products in targeted countries at prices below the exporters costs of acquiring them. The stated purpose of the programme is to enable U.S. exporters to meet prices that are being subsidised by other Governments into the world market. The EEP has not been used to any great extent in recent years, but potentially applies to products exported to over 70 countries. The Dairy Export Incentive Program (DEIP) is used for dairy market development purposes. Commodities eligible under the DEIP are milk powder, butterfat and Cheddar, Mozzarella, Gouda, Feta, cream and processed American Cheeses. The Market Access Program offers a share of costs for promotion campaigns for agricultural products (the majority being high value and value added) in selected export markets. The total budget for market development programmes for FY2005 was $254 million.

Title	Jones Act and Shipbuilding Subsidies
Sector	Shipbuilding
Description	The Merchant Marine Act of 1920 "Jones Act", as amended in 1936, provides for various shipbuilding subsidies and tax deferments for projects meeting domestic built requirements. These are provided via the Operating Differential Subsidy (ODS), the Capital Constructions Fund (CCF) and the Construction Reserve Fund (CRF).

	Pursuant to this act, the United States prohibits the use, sale or lease of foreign built or foreign reconstructed vessels in commercial application between points in national waters or the waters of an exclusive economic zone. Despite the discriminatory nature of this U.S. regulation, the United States is permitted to continue to apply the Jones Act under paragraph 3 of the GATT 1994. Pursuant to this article, the United States may prohibit the use, sale or lease of foreign built or foreign reconstructed vessels in commercial application between points in national waters or the waters of an exclusive economic zone. Even if there is strictly speaking no prohibition of import, we can see that this prohibition of use is a de facto prohibition on imports. Moreover, the definition of vessels has been interpreted by the U.S. Administration to cover hovercraft and inflatable rafts. These limitations on rebuilding act as another discrimination against foreign materials the rebuilding of a vessel of over 500 gross tonnes (gt) must be carried out within the U.S. if it is to engage in coastwise trade. A smaller vessel (under 500 gt) may lose its existing coastwise rights if the rebuilding abroad or in the U.S. with foreign materials is extensive (46 U.S.C. 83, amendments of 1956 and 1960). The Merchant Marine Act also established under Title XI, the Guaranteed Loan Program to assist in the development of the U.S. merchant marine by guaranteeing construction loans and mortgages on U.S. flag vessels built in the U.S. In 1993, this was extended to cover vessels for export. In December 1994, the OECD Shipbuilding Agreement was signed. It aims at the elimination of all direct and indirect support in the shipbuilding sector and was expected to have an impact on the U.S. subsidy programme. The EU, South Korea and Norway deposited their instruments of ratification for the Agreement in December 1995 with Japan following in June 1996. Opposition in the Congress originating from the naval industry prevented the U.S. from ratifying the Agreement. Subsequent bills attempting to implement the ratification failed and the U.S. did not enter the Agreement in 2001. During FY2000, the Maritime Administration (MARAD) approved U.S.$886 million worth of Title XI guaranteed loan applications for 15 vessels and barges and 2 cruise ships. From FY2001-2004 MARAD has approved over U.S.$1258 million in loan guarantees. For Fiscal Year 2004, the Maritime Administration (MARAD) approved $152 million in loan guarantees. For Fiscal Year 2005, MARAD approved $140 million in loan guarantees. This measure is subject to a substantive review in the WTO according to Article III of the GATT.

Title	Export Credit Guarantee Program
Sector	Agriculture and Fisheries
Description	The Export Credit Guarantee Programme which is managed by USDA/FAS has a major impact on a number of key agricultural markets. Under this programme, the U.S. government guarantees credits up to 98 % of the export value on a short-term to long term basis varying from up to 180 days under the Supplier Credit Guarantee Program SCGP, 3 years under the General Sales Manager (GSM) 102 and up to 10 years under GSM-103. The export credit programmes includes a specific list of commodities per country allocation. It is one of the main export policy tools of USDA, with annual allocations exceeding $5 billion and declared annual subsidy levels of over $400 million. The programme has a default rate of over 10% historically, and it is characterised by uncertainty (and lack of transparency) with respect to the implicit subsidy component stemming from the terms and conditions which are more favourable than what the private sector is offering in this area, the rescheduling of payments or bilateral debt forgiveness. Both the GSM-102 and GSM-103 are distortive insofar as the credit terms exceed the average life of the product/commodity in question, and the risk premia are inadequate to cover the long-term operating costs and losses of the programmes. Furthermore, new commitments are not only demand driven but based on a selection of buyer country and product by the U.S. Administration. In U.S. - Upland cotton, the Panel, in September 2004, and the Appellate Body, in March 2005, found that, despite Article 10.2 of the Agreement on Agriculture, export credit guarantees are not exempt from the export subsidy disciplines of that Agreement. The Panel and the Appellate Body condemned the export credit guarantee programmes at issue in this dispute (GSM 102, GSM 103 and SCGP) as prohibited under the illustrative list of the Subsidies Agreement because the premia paid by cotton exporters did not cover the expenses of the agency in charge of the programmes over the 1992-2002 period. Following the cotton ruling, the USDA announced some changes in the operation of GSM 103, GSM 102 and SCGP to bring them in conformity with WTO requirements. The U.S. administration has also proposed to repeal another export programme particular to cotton, the Step 2 program, which Congress ultimately passed into law, even though after the deadline imposed by the WTO rulings. The SCGP and GSM-103 programmes have been suspended and are not currently being operated and STEP2 users marketing payments have been repealed as of 1 August 2006. The GSM 102 (now the only operating programme) has been modified and increased fees have been introduced which vary with country risk, repayment term and frequency. The caps on 1% of fees that can be collected remain in place, although proposals to lift them have been put forward in the 2007 farm bill proposal. This is a significant subsidy element in the existing U.S. export credit guarantee

	programmes. Despite these changes by the U.S., Brazil initiated a WTO "compliance" dispute against what it considers to be an insufficient U.S. attempt to bring about compliance with WTO rules. The Panel, whose report was circulated on 18 December 2007, found, inter alia, that the modifications of GSM 102 were not sufficient to remove the subsidy and that by acting inconsistently with Articles 10.1 and 8 of the Agreement on Agriculture as well as with Articles 3.1a) and 3.2 of the Agreement on Subsidies and Countervailing Measures, the U.S. failed to comply with the DSB recommendations. The European Commission is of the view that the changes (i.e. introduction of risk-based fees) to GSM 102, and the suspension of GSM 103 and SCGP introduced by the administration as a result of the Cotton ruling are a step in the right direction but are not sufficient either for purposes of implementation (as now confirmed by the compliance panel) or to eliminate all forms of subsidies flowing through the U.S. programmes. The Facilities Guarantee Agreement supports exports of equipment, goods and services related to the agricultural sector (up to eight years) with an annual budget of $250 million. State-level export promotions remain unnotified to the WTO. In 2001, Washington State paid an export subsidy to foreign purchasers of apples. This was contrary to U.S. WTO undertakings. Following representations by the EU, the USTR agreed to discontinue the measure and committed not to launch similar programmes in the future. Finally, the propensity of the U.S. to use food aid to countries not suffering food shortages as a means of disposal of surplus farm products has the effect of disturbing local markets, cuts out traditional supplies and undermines local producers. Following EU complaints, the U.S. has partially reviewed its policy. However, the 2002 Farm Act reinforced the role of U.S. food aid as an export enhancement tool and this has been further underlined by Congress which opposed a proposal by the administration to allocate 25% (i.e. $300 million) of the PL 480 Title II programme for local and regional purchases of food commodities (by USAID) outside the U.S. market. The U.S. administration has retained this proposal in the 2007 farm bill. In addition, in the present WTO negotiations, the U.S. -both Administration and Congress- are resisting strongly any attempt to strictly regulate food aid operations. In particular they oppose the principle of providing food aid in cash insisting that also in future all U.S. food aid be procured on the U.S. market (including preference for transport / handling on U.S. logistics).

Title	Boeing Subsidies
Sector	Aircraft
Description	Since 1992 direct and indirect government support to the aircraft industry in the United States and the European Union has been regulated by the bilateral EU-U.S. Agreement on Trade in Large Civil Aircraft. The U.S. purported to unilaterally withdraw from the 1992 bilateral EC-U.S. Agreement on Trade in Large Civil Aircraft in October 2004(a move that the EU continues to consider invalid as it did not respect the required conditions), and, on 6 October 2004, requested consultations regarding alleged support to Airbus by the EU and certain of its Member States (DS 316). The EU responded immediately by initiating WTO dispute settlement proceedings regarding a number of U.S. measures, including federal state and local subsidies (DS 317). For its part, the EU is challenging various U.S. State subsidies benefiting Boeing. These subsidies amount to billions of USD for Boeing. Illustrative examples include a USD 4 billion package in the State of Washington (combining tax breaks, tax exemptions or tax credits and infrastructure projects for the exclusive benefit of Boeing) and a USD 900 million package in the State of Kansas in the form of tax breaks and subsidised bonds. As regards U.S. federal measures, the EU has successfully challenged the tax breaks -- in theory repealed in 2006 by U.S. legislation -- offered to Boeing under the Foreign Sales Corporation successor legislation, the American Jobs Creation Act. These tax benefits, which the EU estimates at a value to Boeing of USD 2.1 billion over the period 1989-2006, were supposed to end on 1 January 2007. However, a recent official IRS Memorandum allows U.S. exporters, including Boeing, to continue to benefit from the illegal tax breaks even after the end of 2006 which should have marked the end of all benefits under the FSC and successor legislation. The EU is challenging these continued subsidies to Boeing, which could amount to USD tens/hundreds of millions. In addition to the federal tax breaks, the EU is challenging the U.S. system under which: federal R&D contracts ultimately benefit Boeing's LCA division and Boeing's aircraft models; • Boeing sees its own R&D expenses reimbursed; • Boeing benefits from extensive cooperation with NASA and DOD engineers at no cost; • Boeing is able to use testing facilities and equipment also at no cost. In addition, under this system, a large number of patents and other technologies are put at the disposal of Boeing free of charge, including through the transfer of patents held by U.S. federal agencies (and resulting from U.S. government funded research) to Boeing. The EU estimates the total benefits of federal research programs to Boeing at around USD 16.6 billion.

	The EU considers that the above mentioned subsidies are in violation of Articles 3, 5, and 6 of the SCM Agreement and Article III of the GATT 1994. The EU intends to demonstrate before the WTO panel that the above subsidies benefiting Boeing have allowed the company to engage in aggressive pricing of its aircraft which has caused lost sales for and injury to Airbus. Consultations were held in Geneva on 5 November 2004. On 12 January 2005, the EU and the U.S. agreed to suspend WTO action for 3 months pending discussions towards the conclusion of a new bilateral agreement on subsidies for Large Civil Aircraft. However, both sides did not reach an agreement and in the following, the U.S. requested the establishment of a panel on 31 May 2005; the EU submitted a similar request the same day. During the DSB meeting on 13 June 2005, the U.S. argued that a number of the measures referred to in the EU panel request of 31 May 2005 were not listed in the consultation request of October 2004. For reasons of absolute legal certainty, the EU on 27 June 2005 filed a second consultation request which explicitly lists all the measures in question. The U.S. has accepted the request for consultations, which were held in Geneva on 3 August 2005. The Panel was established on 20 July 2005 and composed on 17 October 2005. The first phase of the fact-gathering (Annex V) procedure was completed by 22 December 2005 with the submission of replies by the parties to follow-up questions posed on information submitted on 18 November. The Facilitator submitted his report on the above procedure to the Panel on 24 February 2006. During the Annex V procedure the U.S. refused to provide information, inter alia, on 13 programmes not explicitly listed in the initial consultation request of the EU. Unlike the EU, which filed a request for preliminary rulings in DS316 on 26 October 2005 requesting the Panel to clarify the scope of the proceeding, the U.S. refused to do so in DS317. In view of this, on 23 November 2005 the EU requested the Panel to invite the U.S. to make a preliminary ruling request before the completion of the Annex V process, or take any other decision with equivalent effect. The Panel did not issue such a decision. The final working procedures only require the U.S. to make a preliminary ruling request at the latest at the time of their first submission. This situation of procedural limbo needed to be resolved quickly, since the U.S. non-cooperation deprived the EU of access to documents falling within the scope of the dispute, in particular regarding NASA and Department of Defence subsidies. Consequently, the EU on 20 January 2006 filed a request for the establishment of a (second) panel based on its second request for consultations of 27 June 2005. The (second) panel (for DS317) was established on 17 February 2006. Subsequently, the U.S. submitted a second consultation request in DS316 on 31 January 2006 (now DS 347), which has largely the same purpose as the EU request, i.e. to explicitly list measures which were contained in the U.S. panel request, but not in the consultation request. The U.S. repeatedly blocked the initiation of an Annex V process during DSB meetings. On 23 May 2006 the EU transmitted Annex V questions for the U.S. to the Facilitator. The questions were substantially identical to the questions submitted in the previous Annex V procedure, but some new questions had been added. This was followed by a meeting between the parties, the Facilitator and the WTO Secretariat to resolve the blockage of the Annex V procedure, to no avail. The Facilitator then informed parties on 6 June 2006 that his views were that the initiation of an Annex V procedure requires positive consensus -- the EU objected, providing its own understanding of WTO law. The EU requested the WTO Director General to compose the panel in DS317 bis (second offensive EU case) on 17 November 2006. The Panel was composed on 23 November 2006, with Mr. Crawford Falconer as Chairman, and Mssrs. Franciso Orrego Vicuna and Varachai Plasai as Members. On 4 December 2006 the WTO Secretariat renamed DS317 bis, which became DS353. Pursuant to the composition of the Panel, the EU filed a request for preliminary ruling to the Panel on 24 November 2006, asking the Panel to:- either rule that the Annex V information-gathering procedure had been initiated at the EU"s request in April/May 2006, and that the U.S. was under an obligation to answer the questions that have been put to them on 23 May 2006 - or, alternatively, to use its fact-seeking powers under Article 13 DSU to request the U.S. to provide relevant information that would be identified by the EU. The Panel rejected the EU's requests, and responded that it would not use its Article 13 DSU prerogatives before the parties have filed their first written submissions. Subsequently, following the first meeting of the Panel with the parties, the Panel posed questions to the Parties, including a number of questions to the U.S. that related to the EU's earlier request. The EU filed its first written submission on 22 March 2007. The U.S. for its part filed its first written submission on 6 July 2007. Third Parties filed their first written submissions on 1 October 2007. The first meeting of the Panel with the parties took place on 26 and 27 September 2007. The Parties had also agreed that parts of the hearing should be open to the public. As a result, a public screening of the open parts of the hearings was scheduled to take place at the WTO on 28 September 2007.

	The Parties filed their rebuttal submissions on 19 November 2007 (instead of 6 November 2007 as initially scheduled), and filed their responses to the Panel's questions, on 5 December 2007. The first meeting of the Panel with the Third Parties will take place on 15 January 2008, followed by the second meeting of the Panel with the Parties on 16-17 January 2008. According to the current timetable, the issuance of the final Panel report is due on 16 June 2008. In addition to the WTO case, the EU has also expressed its concern over legislation (Fiscal Year 2002 Defense Appropriations Act) that would have allowed 100 tanker aircraft to be ordered by the U.S. Air Force (USAF) from Boeing (KC-767A tanker program) without allowing real competition from EADS/Airbus, which would have resulted in procurement at a price substantially above the market value of the aircraft. This legislation may also have contributed to a procurement scandal within the Air Force leading to several criminal, legislative, and administrative investigations of both government and Boeing officials, and to the cancellation of the contract awarded to Boeing under the KC-767A tanker program. In the wake of these investigations, the Fiscal Year 2005 Defense Authorization Act, which would seem to allow for competition, and the pledge by DoD (following a report of the DoD Inspector General on this matter) to seek such competition should the Air Force decide it needs new aircraft, chances for true competition appear much better. The Request for Information from USAF included language that would in effect have prevented EADS and its partner Northrop-Grumman to bid in the new competition. This language was subsequently removed from the Request for Proposal. The European Commission will continue to monitor the situation.
State of play	Some key dates in the WTO process in 2007/2008: • 22 March 2007: EU files confidential version of First Written Submission • 6 July 2007: U.S. files confidential First Written Submission • 26-27 September 2007: First panel hearing • 28 September 2007: EU puts non-confidential version of First Written Submission on its website • 16 and 17 January 2008: second panel hearing (rebuttals submitted on 6 November 2007) • 7 April 2008: issuance of the confidential interim Panel report (to the Parties) • 16 June 2008: issuance of the final Panel report • Publication of the final report: (after translation of the final report – approximately 2-4 months)

GATS Specific Measures

Title	Wire Line and Wireless Telecommunications
Sector	Services - Communications & Audiovisual
Description	The reduction in the number of competitors in the wireline sector, notably as a result of mergers, raises some concerns, in particular regarding the provision of local connectivity (namely special access lines for businesses requiring dedicated, non-switched connections to external networks), as well as Internet connectivity services. Special access lines are key inputs for the provision of global telecoms services and particular attention is required to ensure a fair and non-discriminatory special access offer. Several submissions to the Federal Communications Commission (FCC) in the relevant proceedings have also expressed concerns about a reduction of competition in the internet backbone market leading to de-peering, dominance and packet-discrimination concerns. Meanwhile, the FCC has continued its work on several key proceedings concerning the provision of unbundled network elements by incumbent local exchange carriers, IP-enabled services, its ambitious Broadband Agenda and the allocation of spectrum for advanced wireless services. Unfortunately the U.S. regulatory framework remains unstable as a result of court proceedings, including at State level. Indeed, a number of court decisions have had a noticeable impact on some of the recent FCC rulings on the one hand, the FCC has had to revise several times its Triennial Review Order concerning unbundled network elements, notably with respect to local access in residential markets, as a result of a succession of court rulings vacating its decisions. According to the FCC the resulting Order favours facilities-based competition by phasing out the permitting wide unbundling of circuit switching for key elements such as loops and significantly curtailing unbundling of higher capacity transmission facilities transport, where there is clear and demonstrable impairment, and by removing the obligation of incumbents to provide competing carriers with unbundled access to mass market local circuit switching. As a result, services-based competition (where new entrants rely on the access to certain elements of the incumbents' network to enter and compete in the market) may prove more difficult in the future. The effects of the new regulatory framework emerging in the U.S. on the establishment of foreign operators will have to be properly examined, in particular, the FCCs new rules on the provision of unbundled network elements (UNEs) by incumbent local exchange

	carriers, which became effective on 11 March 2005. In addition, in June 2005, the Supreme Court supported the FCC March 2002 Declaratory Ruling classifying cable modem broadband service as an information service, allowing the FCC to proceed with its deregulatory approach to broadband services. In general terms the FCC seems to favour the progressive establishment of a model based on competition between infrastructure-based operators (at least for advanced services). The Supreme Court decision allowed the FCC in August 2005 to classify high speed Internet access services over wireline facilities (and cable modem) as information services, rather than telecommunications services. As a result, after a one-year transition period, facilities-based wire line broadband Internet access service providers are no longer required to separate out and offer the wire line broadband transmission component of wire line broadband Internet access services as a stand-alone telecommunications service, separately from their Internet service. In the same line, the FCC declared in November 2006 Broadband over Power Line (BPL)-enabled Internet access service to be also an information service, as cable modem service and DSL Internet access service. It will have to be assessed whether such classifications may affect competition and the ability of new players to enter the U.S. market. This question is equally linked to the proposed change in the classification of certain services in the initial U.S. offer in the current GATS negotiations (e.g. the classification of packet switched data transmission services as information services and no longer as basic telecommunication services or the creation of a new category of "other communications services", which may result in the non-application of the provisions of the so-called GATS Reference Paper on Pro-competitive Regulatory Principles to services that otherwise would be covered by it). Overall, the U.S. regulatory framework needs a comprehensive review to streamline it and make it less segmented along legacy technology lines. A more flexible approach based on a straightforward analysis of problematic market situations and identification of targeted adequate remedies rather than ad hoc legislative and/or regulatory solutions as new technologies and services develop would allow the regulator to focus on substantive competition issues where they arise and to apply targeted remedies. A more comprehensive and technology neutral approach to regulation of communications services would also address in a consistent manner public security or consumer protection issues that concern ultimately all communications services. Despite the commitments made at the WTO and especially those pursuant to the GATS Basic Telecommunications negotiations concluded in 1997 and which entered into force in February 1998, European and other foreign-owned firms seeking access to the U.S. market have faced substantial barriers, particularly in the satellite sector (which has suffered from lengthy proceedings, conditionality of market access and de facto reciprocity-based procedures) and the mobile sector (e.g. investment restrictions, lengthy and burdensome proceedings and protectionist attitudes in certain congressional circles). A number of changes have been introduced, in particular in relation to the U.S. spectrum management policy and licensing procedures in the satellite sector. The EU notes these and other gradual improvements on a number of issues, but since some of the previously identified obstacles remain, must conclude that market access is still not fully ensured and this situation is not in line with the market access policy advocated by the U.S. Finally, U.S. law enforcement agencies, in implementing the so-called Exon-Florio statute, have imposed strict corporate governance requirements on companies seeking FCC approval of the foreign takeover of a U.S. communications firm in the form of network security arrangements to mitigate alleged national security concerns.

Title	SEC Regulations for Securities Firms
Sector	Services - Financial
Description	EU securities firms may register as broker-dealers or investment advisers, and may in principle establish both in the form of branches or subsidiaries. However, the establishment of a branch in the U.S. by foreign securities firms to engage in broker-dealer activities, although legally possible, is in fact not practicable since registration as a broker-dealer means that the foreign firm has to register thus becoming subject to the Securities and Exchange Commission (SEC) regulation. Foreign mutual funds have not been able to make public offerings in the U.S. because the SEC's conditions make it impracticable for a foreign fund to register under the U.S. Investment Company Act of 1940. The SEC has not so far clarified the conditions under which EU exchanges can place trading screens terminals with U.S. professional or institutional investors (without having to register as a "national securities exchange"). The right to place trading screens with U.S. professional/institutional investors could attract increased liquidity for securities admitted to trading on EU exchanges, as well as reducing intermediation costs for U.S. market participants trading EU-listed securities. The efficient and transparent organisation of European exchanges

	and the demanding regulatory framework in which they operate suggest that regulatory considerations should not be a bar to allowing sophisticated U.S. market participants to trade freely on those exchanges. The SEC has used a number of occasions since the beginning of 2007 to indicate its willingness to move away from its previous position to allow foreign brokers, dealers and exchanges to offer their services in the U.S. It is anticipated that further developments should occur in this respect at the end of 2007/ beginning of 2008.

Title	Air Transport Services (Foreign Ownership Restrictions)
Sector	Services - Transport
Description	Air transport services, as far as the exercise of traffic rights is concerned, are not covered by the GATS (as detailed in a specific Annex to the Agreement) but rather through bilateral air services agreements. The Federal Aviation Act of 1958 requires U.S. airlines to be under the actual control of U.S. citizens in order to be licensed for operation. For airline corporations, 75% of the voting interest must be held by U.S. citizens and two-thirds of its board of directors must be U.S. citizens. This latter limitation makes U.S. rules on foreign ownership considerably more restrictive than relevant EU rules. Cross border investment is an important driving force behind liberalisation. Reducing foreign ownership restrictions would give better access for carriers to international capital and facilitate cross-border restructuring, which in turn would contribute to growth, competitive effectiveness, and the promotion of competition and consumer benefits. The EU-U.S. Air Transport Agreement signed on 30 April 2007 refers to further investment opportunities as one of the objectives for second-stage negotiations.

Title	Aircraft Leasing
Sector	Services - Transport
Description	Rules pertaining to the leasing of aircraft are determined by the Federal Aviation Administration (FAA) regulations which distinguish between dry leasing (without crew) and wet leasing (with crew). In general, for dry leasing, the lessee is granted operational control of the aircraft, whilst for wet leasing, the leaser retains operational control of the aircraft. The U.S. rules on wet lease prevent any lease of non-U.S. registered aircraft by U.S. carriers. No Community-registered aircraft with Community crew can thus be leased to U.S. companies. The EU-U.S. Air Transport Agreement includes the opportunity for EU carriers to lease to U.S. carriers aircraft with crew for international air transportation. The Agreement will be applied provisionally from 30 March 2008. Before the end of 2007, the U.S. Department of Transportation will issue guidance for the economic and technical requirements for the provision of aircraft with crew by foreign carriers.

Title	Satellite Services
Sector	Services - Communications & Audiovisual
Description	European satellite operators have encountered serious difficulties in serving the U.S. market as a result of the FCC application of its DISCO II public interest framework that considers the effect on competition in the U.S., spectrum availability, eligibility and operating (e.g. technical) requirements, and national security, law enforcement, foreign policy and trade concerns. These difficulties were compounded by the ORBIT Act of 2000 which required, Intelsat, Inmarsat Ventures plc and New Skies N.V. to conduct Initial Public Offerings (IPOs) by a set deadline, and the FCC to apply the Act's privatisation criteria in order to determine whether to grant market access to these entities. There were serious concerns on the part of the EU that these criteria applied to no other competitor, foreign or domestic, and could lead the FCC to limit these entities' access to the U.S. market, thereby reducing competition. In the past, a number of cases were brought to the attention of the European Commission by satellites operators such as Inmarsat Ventures plc, New Satellites N.V, Eutelsat, and SES Global. UK based Inmarsat Ventures plc, for instance, was granted access to the U.S. market but this grant was subject to further review after Inmarsat conducted an IPO, or revocation of its authorisation to provide non-core services to the U.S. if it failed to conduct the IPO. In the case of Eutelsat, the FCC, upon a competing claim by Loral Skynet to use a specific orbital location to provide FSS, would not allow U.S. earth station operators to link up with Eutelsat's satellite at the disputed orbital location in the absence of a settlement with Loral Skynet in spite of the priority rights that Eutelsat had acquired by the ITU. Eutelsat's customers eventually received FCC authorisation to link up with its satellite. HISPASAT received authorisations by the FCC, according to DISCO II provisions, to operate its satellites in the USA but earth stations were not authorized to use these satellites to provide any Direct-to-Home (DTH) service, Direct Broadcast Satellite (DBS) service, or Digital Audio Radio Service (DARS) to, from, or within the United States. On the other hand, the 2003 ITU-R World Radio Conference (WRC-03) modified the conditions for use of the Ku extended band (13.75-14 GHz) to allow the implementation of FSS earth stations as small as 1.2 m whereas today only 4.5 m earth stations are generally permitted

	under the rules. The U.S., even though it recognized this modification to the international Radio Regulations as a signatory to the Final Acts of the WRC-03, and these Acts became international law as of 1st July 2003 (Article 59 of the ITU Radio Regulations), has not yet incorporated into its national radio regulations the results of the WRC-03 related to the FSS (Earth-to-space) in the band 13.75-14.00 GHz. This restriction implies that U.S. earth stations are not allowed to use HISPASAT satellites operating in this band and provokes an imbalance between other companies that are using Ku standard band and HISPASAT, noting that there is considerable demand for such stations, and consequently there are many locations in the United States where such terminals can in fact be used to deliver a variety of services. The adoption of rules such as those requested would permit the needed and long overdue expansion of such services. These cases show that proceedings by the FCC on spectrum allocation and licensing have been rather difficult raising in certain cases questions on their objectivity, transparency and their applicability on a timely, consistent and non-discriminatory manner. It must be noted that, between April and June 2003, the FCC introduced several reforms in its satellite licensing procedures to accelerate them and introduce more predictability. In particular, in an order issued in May 2003, the FCC attempted to expedite the satellite licensing process, creating a single queue for all new satellite applications and two different licensing frameworks and removing restrictions on sales of satellite licenses so as to facilitate transfers of licenses in the secondary market. Nevertheless, the DISCO II public interest framework is maintained in addition to those rules applying for U.S. market access. An ITU priority date is not considered sufficient to show that a non-U.S. licensed satellite operator will meet all the public interest factors weighed by the FCC and does not preclude the FCC from licensing the operator of a U.S.-licensed GSO satellite on a temporary basis pending launch and operation of a satellite with higher priority in cases where the non-U.S.-licensed satellite has not been launched yet. Finally, the U.S. still maintains a MFN exemption on the provision of one-way satellite transmission of Direct to Home (DTH), Direct Broadcast Satellite (DBS) and digital audio services, taken by the U.S. at the very end of the GATS negotiations on basic telecom services.

Title	Section 310 of the 1934 Communications Act
Sector	Services - Communications & Audiovisual
Description	Foreign Ownership / Investment Regulations Section 310 of the 1934 Communications Act establishes restrictions to foreign investment in U.S. companies holding a broadcast or common carrier radio license (the latter include also aeronautical en route or aeronautical fixed radio station). Such licenses shall not be granted to, or held by, foreign governments or their representatives, aliens, foreign corporations, or corporations of which more than 20% of the capital stock is owned or voted by a foreign entity. Foreign indirect investment is limited to 25% subject to a public interest waiver. In addition, to provide telecommunications services, operators typically need to integrate radio transmission stations, satellite earth stations and in some cases, microwave towers into their networks. Foreign-owned U.S. operators face additional obstacles in obtaining the licensing of these various elements relative to U.S.-owned firms. As a result, the U.S. broadcasting market today is hardly accessible to foreign media companies. The Telecommunications Act of 1996 only eliminated the restriction on foreign directors and officers. It significantly relaxed many of the existing broadcast ownership rules (leading to substantial consolidation in the commercial broadcast radio industry) and mandated the FCC to review them every two years to determine "whether any of such rules are necessary in the public interest as a result of competition. At the time, the U.S. undertook market access and regulatory commitments on most telecommunications services (voice telephone, data, telex, telegraph, private leased circuit services; local, domestic, long-distance and international, etc.). Regulatory commitments in particular impose that the U.S. regulation be in line with a number of principles to have inter alia adequate licensing procedures, to promote competition, and to ensure proper interconnection. The Basic Telecom negotiations in the WTO did not change the situation with respect to foreign direct investment, as limitations on direct foreign ownership of common carrier radio licences have been explicitly retained in the U.S. schedule of commitments. However, the U.S. took commitments on foreign indirect ownership but did not modify its domestic legislation. In November 1995, in the run-up to the WTO negotiations on Basic Telecommunications, the Federal Communications Commission (FCC) adopted a rule on entry of foreign-affiliated carriers into the U.S. market, adding a new factor to the FCC's public interest review, notably for the purpose of granting waivers to those restrictions on foreign indirect investment imposed by Section 310 of the 1934 Communications Act. Specifically, the FCC introduced an Effective Competitive Opportunity Test (ECO-test). The FCC also issued in May 1996 a notice of proposed rulemaking applying the ECO-test to foreign-licensed satellites. The EU submitted objections in both proceedings. On 25 November 1997, the FCC adopted two rulings (a general ruling on foreign participation in the U.S. market, and a specific one on the satellite services market entitled DISCO-II) to implement the commitments of the U.S. in the Basic Telecom Agreement.

In these rulings the FCC replaced the ECO-test with a rebuttable presumption that entry by carriers from WTO countries and by satellites licensed by WTO countries is pro-competitive, but the FCC retained the unclear "public interest" criteria which can still be invoked to deny a licence to a foreign operator for various motives, such as trade concerns, foreign policy concerns and very high risk to competition. Although the FCC expressed its intention to only deny market access on this basis in exceptional circumstances (which are not well defined) the discretion retained by the FCC remains of concern to the EU and raises questions as to the compatibility of the FCC rules with U.S. WTO commitments.

In March 2004, the FCC amended its International Communications Policy in recognition that markets have become more competitive but it re-affirmed the relevance of its benchmarks policy applicable to international settlement rates since 1997. This policy, which seeks unilaterally and arbitrarily to move these rates towards costs, may violate WTO rules. Concerns were heightened in 2004 as some parties sought to apply the Benchmarks' policy to the mobile communications sector. The FCC decided instead to initiate in October 2004 a Notice of Inquiry to evaluate the effects of high foreign mobile termination rates on U.S. consumers and competition.

General Ownership Regulations

Within this context, the FCC conducted a comprehensive review of its media ownership regulations. In June 2003, it adopted an Order relaxing previous restrictions (e.g. elimination of the local TV broadcast duopoly rule, increase from 35 to 45% of the cap on a TV broadcast network's reach of the national audience and elimination of the existing ban on broadcast newspaper and radio-television cross-ownership in large markets and replacement of this ban by a set of cross-media limits in small and medium size markets). The Order was immediately challenged in the U.S. Court of Appeals for the 3rd Circuit.

In June 2004, the 3rd Circuit U.S. Court re-affirmed the FCC decision to eliminate the ban on media cross-ownership but called in question the FCC methodology in setting specific limits on media combinations and remanded the Order to the FCC. In January 2005, the FCC decided not to appeal to the Supreme Court. Although a number of broadcasters and publishers took the issue to the Supreme Court, the Court decided not to review the Third Circuit Court decision. The 3rd Circuit did not address the FCC broadcast TV network ownership rules because Congress in the meantime rolled back the cap from 45% to 39%.

In December 2007 the FCC concluded its quadrennial review of broadcast ownership rules. The Commission amended the 32-year-old absolute ban on newspaper/broadcast cross-ownership by crafting an approach that would allow a newspaper to own one television station or one radio station in the 20 largest markets, subject to certain criteria and limitations – see below for more detail, although please note it is still possible that the new rule could be challenged in the Courts / Congress over the coming months.

The rule adopted by the FCC would permit cross ownership only in the largest markets where there exists competition and numerous voices. The revised rule balances the need to support the availability and sustainability of local news while not significantly increasing local concentration or harming diversity. Under the new approach, the Commission presumes a proposed newspaper/broadcast transaction is in the public interest if it meets the following test:

(1) the market at issue is one of the 20 largest Nielsen Designated Market Areas ("DMAs");
(2) the transaction involves the combination of only one major daily newspaper and only one television or radio station;
(3) if the transaction involves a television station, at least eight independently owned and operating major media voices (defined to include major newspapers and full-power TV stations) would remain in the DMA following the transaction; and
(4) if the transaction involves a television station, that station is not among the top four ranked stations in the DMA.

All other proposed newspaper/broadcast transactions would continue to be presumed not in the public interest, subject to certain exceptions.

Thus major U.S. players may now consider consolidating or swapping their assets. Non-U.S. companies will however not be able to participate in this development because of the existing foreign ownership restrictions.

The U.S. Administration holds the view that it is not necessary to adopt specific legislation to abolish foreign indirect investment restrictions in the telecoms sector (namely Section 310(b)(4) of the 1934 Communications Act), since the FCC may waive these restrictions under the current law by invoking the public interest. However this waiver provision, which entails lengthy and costly proceedings, does not provide certainty to European operators. The EU will continue to monitor the situation carefully and will oppose any action, through legislation or otherwise,

	that would conflict with the U.S. WTO commitments.

Other Non-Tariff Measures

Title	Treatment of EU Global custodians
Sector	Services - Financial
Description	International banks must register in the U.S. as broker-dealers under Section 15 of the Securities and Exchange Act 1934 if they provide global custody and certain related services directly to U.S. investors from outside the U.S. This is not the case for U.S. banks doing the same business since they are covered by an exception pursuant to SEC "Regulation R" adopted in September 2007. The reasoning for exempting U.S. banks is that they are already subject to Fed supervision which should not be replicated by SEC (however, this also applies to foreign banks doing business in the U.S.).

Title	Sub-federal ban on the commercialisation and production of foie gras
Sector	Agriculture and Fisheries
Description	A number of U.S. states have introduced potentially excessive restrictions on the commercialisation of foie gras, effectively banning it from their markets. On 26 April 2007 the municipal council of Chicago introduced legislation banning the commercialisation of foie gras in restaurants as of June 2007. California has introduced a ban on the commercialisation and production of foie gras, effective as of 2012. Other U.S. states are also considering the adoption of similar legislation, notably New York, Oregon, Massachusetts and Washington. EU industry fears that this trend will continue, leading to an eventual closure of the U.S. market.

Title	PATRIOT Act
Sector	Services - Financial
Description	Section 319 of the PATRIOT Act, adopted in 2001, deals with the forfeiture of funds in United States inter-bank accounts by those accused of money laundering. It requires U.S. correspondent banks to maintain certain records concerning a foreign bank that has a U.S. correspondent account. Furthermore it provides authority for the Treasury Secretary and the Attorney General to subpoena the foreign bank's offshore records concerning the account and authorises forfeiture of deposits in the foreign bank.
State of play	Both the subpoena authority and the forfeiture clause have potential extraterritorial impact. The European Commission and others have complained vigorously both at the time of the adoption of the Act and during the comment period on proposed Treasury implementing regulations. In response, U.S. authorities said that they had no intention of using this seizure authority indiscriminately or in derogation of existing and efficient mechanisms, such as Mutual Legal Assistance Treaties, for the seizure of funds located outside of the U.S. Despite this reassurance, there have been some allegations from European banks and from individual Member States that there is still a lack of clarity about the circumstances under which the U.S. would make use of Section 319 and when it would refrain from doing so. The European Commission will continue to work with U.S. Treasury to ensure that these concerns and others are duly addressed.

Title	Section 407 of the Trade and Development Act (Carousel Law)
Sector	Horizontal
Description	Section 407 of the Trade and Development Act , enacted on 18 May 2000, enables the U.S. Trade Representative (USTR) to periodically revise the list of products subject to retaliation when, according to the U.S., another country fails to implement a WTO dispute decision. The periodic revision of the law has become known as "carousel retaliation." The law provides for a mandatory and unilateral revision of the list of products subject to suspension of GATT concessions 120 days after the application of the first suspension and then every 180 days thereafter, in order to affect imports from Members which have been determined by the U.S. not to have implemented WTO recommendations.
State of play	The EU believes that the "carousel" legislation is fundamentally at odds with the basic principles of the WTO Dispute Settlement Understanding, being a unilateral act and affecting the predictability of the trading system. The cumulative effect of application of the "carousel" system goes well beyond what is authorised by the WTO. It therefore, requested WTO consultations, which were held on 5 July 2000, making it clear that it was not acceptable to apply this legislation. The U.S. has for the time being refrained from applying it and, therefore, the EU has not requested the establishment of a panel.

Title	Insurance Market Fragmentation and Collateral Requirement

Sector	Services - Financial
Description	A remaining impediment for EU insurance companies seeking to operate in the U.S. market is the fragmentation of the market into 56 different jurisdictions, with different licensing, solvency and operating requirements. Each state has its own insurance regulatory structure and, by contrast to banking, federal law does not provide for the establishment of federally licensed or regulated insurance companies. However, interest in establishing an optional federal statutory structure for licensing and regulation of insurance is growing. The decentralised U.S. regulatory/supervisory structure entails heavy compliance costs for EU companies in each of the 56 jurisdictions. The National Association of Insurance Commissioners (NAIC) is making an attempt to harmonise some basic regulatory requirements between the states, but this will be a long process. The NAICs recommendations are not binding, so even if state insurance commissioners agree to some further harmonisation, implementation at state level cannot be guaranteed. A major issue of concern however has been the requirement for non-U.S. reinsurers to post 100% collateral for their U.S. acceptances (i.e. their U.S. reinsurance business). The collateral requirement is not technically justified and leads to important costs not only for European reinsurers, but also for the U.S. insurance industry and their policyholders. Discussions between the European Commission Services and U.S. insurance commissioners on the collateral issue continue as part of the more general EU-U.S. Financial Markets Regulatory Dialogue and the NAIC-CEIOPS-European Commission Dialogue on Insurance. In December 2006, the Reinsurance Task Force of the NAIC endorsed the principle of a move away from the current discriminatory collateral requirements for non-U.S. reinsurers towards a system where collateral is charged for all reinsurers regardless of origin on the basis of a credit rating established by a ratings organisation. The Task Force agreed to carry out further work on the details of the move with a view to adoption by the NAIC Executive Committee before the end of 2007. However the latest draft proposals, whilst containing some good ideas, (i.e. a single port of entry and equivalence concept) are much more discriminatory than the proposals agreed in December 2006.The Commission is fully engaged through the Financial Markets Regulatory Dialogue to find a mutually acceptable solution to this issue.

Title	Sarbanes-Oxley Act
Sector	Services - Financial
Description	The Sarbanes-Oxley Act of 2002, adopted as a reaction to U.S. corporate scandals, has a significant impact on U.S.-listed EU companies as well as on EU auditing firms, which could face conflicting laws on audits and corporate governance. On the implementation of the Sarbanes-Oxley-Act, the U.S. Securities and Exchange Commission (SEC) and the Public Company Accounting Oversight Board (PCAOB) launched two public consultations in December 2006 with a view to reforming corporate governance aspects thus responding to strong market concerns on costs. The new SEC deregistration rules for foreign companies have entered into force in 2007. The continuing development of technical co-operation between the PCAOB in the U.S. and the European Commission and Member States on audit regulation, in particular the independent public oversight of the audit profession on either side, will be a major (political) challenge in 2008.
State of play	Requirement to use U.S. GAAP: EU companies admitted to trading on the New York Stock Exchange (or other U.S. exchanges) must reconcile financial statements with U.S. accounting standards (U.S. GAAP). This means a significant cost for EU companies raising capital in the U.S. Following the regulation adopted by the Council on 7 June 2002, all listed EU companies are required to prepare consolidated accounts under International Financial Reporting Standards (IFRS) (formerly international accounting standards) by 2005 thereby complying with international best practice set by independent accounting standard-setters. The EU believes that EU firms whose financial accounts are published in accordance with IFRS should not be required to publish reconciliations to U.S.-GAAP when being listed on U.S. exchanges. In April 2005, the SEC adopted a roadmap towards the recognition of IFRS by 2009 at the latest. With a view to convergence, the IASB (International Accounting Standards Board) and the U.S. Financial Accounting Standards Board (FASB) published on 27 February 2006 a Memorandum of Understanding. It describes the projects they intend to undertake jointly and includes an estimated timeline. The Commission welcomed the MoU. However we have also pointed out that the IASB must focus firmly on business need before making any further changes to the accounting standards as companies need a period of relative stability in order to implement IFRS. On 3 July 2007, the SEC published for public comment a proposal to eliminate the current reconciliation requirement for foreign private issuers filing their financial statements using IFRS as published by IASB. On 15 November 2007, SEC voted on the final rule, which provides that foreign issuers publishing their accounts in accordance with IFRS will not have to reconcile them with U.S. GAAP for their financial statements covering years ended after 15 November 2007. EU companies using the EU opt out on IAS 39 will be also able to benefit from the exemption for

	the next two years provided they reconcile their accounts with full IFRS. Following the end of this two years period, only accounts published in accordance with IFRS as published by the IASB will be accepted by SEC. It is important to ensure that the IASB's standards can be fully endorsed in the EU and that the existing carve-out concerning hedging rules can be removed. Consistent with this, the European Commission recently issued a joint statement with the U.S. SEC, the Japanese Financial Services Agency and IOSCO announcing reforms of the overall governance of the IASB and its parent entity, the International Accounting Standards Committee (IASC) Foundation. The statement foresees, among other requirements, measures to enhance the transparency and due process of the IASB's standard-setting process. Deregistration: The regulatory requirements for firms listed on a U.S. exchange have increased significantly over the last few years, especially due to the Sarbanes-Oxley Act of 2002. European firms listed on U.S. exchanges may consider delisting. SEC rules made it virtually impossible for foreign firms to delist from NYSE or NASDAQ, and even if they were, SEC registration requirements still applied if the registrant had more than 300 U.S. shareholders, which was often the case. In December 2006, the SEC issued a revised proposal to reform the current requirements and to ease the conditions for deregistration of foreign companies. With the support of the Member States via the European Securities Committee, securities regulators and EU issuers, the Commission sent detailed comments on the proposal issued by the SEC in order for the new rules to be workable for EU industry. The U.S. SEC took these concerns on board and adopted a final rule in March 2007, which entered into force in June 2007.Under the final rule, it becomes possible for companies to terminate SEC registration if the percentage of their average daily trading volume in the U.S. is less than 5% of their average daily trading volume worldwide. Many EU companies listed in the U.S. have since chosen to take advantage of this possibility.

Title	Shipping Code Restrictions for EU Fishermen
Sector	Services - Transport
Description	The U.S. Code, Title 46, Shipping, Section 12108, prevents EU fishermen from fishing in U.S. waters under the U.S. flag as foreign-built vessels are not eligible to receive a fisheries licence. This situation also precludes the possibility of joint ventures and joint enterprises. In addition, the American Fisheries Act of 1998 included a provision that increased the percentage of shares in a vessel that must be held by U.S. citizens in order for the vessel to be considered a U.S. vessel from 50% to 75%.

Title	Wine Distribution
Sector	Wines & Spirits
Description	Some state legislation prevents cross-state retail sales of wines and spirits; prohibit EU exporters from distributing, rebottling, or retailing their own wine; require duplicate label approvals; levy fees and charges; and other procedures. Direct distribution is becoming an increasingly important issue .Certain states allow in-state wineries to ship directly to retailers and restaurants, bypassing the traditional three-tier system. As a result of the "Costco" ruling, states that allow such direct-distribution will be forced to open direct-distribution to out-of state producers or to eliminate direct-distribution rights altogether. However, foreign wines are not allowed to be distributed directly to retailers. A number of states, termed the "reciprocal states", have agreed among themselves to facilitate the distribution of wines among themselves, whilst requiring imported wines to continue to be channelled via the more -burdensome procedures and trade-restrictive concessionary networks. In addition some state regulations on direct to consumer shipment are changing due to the U.S. Supreme Court's Granholm ruling. As a result certain states are now allowing shipments of wine directly to consumers if the winery obtains a permit from the state they wish to ship to. However, in most of the cases only domestic wineries are eligible to obtain the permit. In both cases, direct to consumers' shipment and direct distribution, state legislators do not take imported products into account when establishing regulations and appear to discriminate against foreign wines.
State of play	The issue is being discussed in the framework of the EU/U.S. wine talks. (i.e. meetings of December 2006, October 2007, and January 2008)

Title	Pressure Equipment Regulation
Sector	Other Industries
Description	Pressure equipment in the U.S. is regulated on a local level, e.g. by local jurisdictions. For some specific pressure equipment used at the work place, this local regulation is complemented by Occupational Safety and Health Administration (OSHA) rules, which is part of the federal U.S.

	Department of Labor. The regulation on pressure equipment in the U.S. relies on the national standards of the American Society of Mechanical Engineers (ASME) code. Although the ASME code is the basis, most of the local jurisdictions'' regulations complement it by additional and locally slightly different provisions mainly on administrative procedures resulting in what can be perceived as excessive red tape. Moreover, the prescriptive approach of the U.S. legislation impedes innovative approaches to technical problems and grants a de facto regulatory monopoly to a private organisation. At the meeting in Washington on May 3, 2004, the U.S. claimed that pressure equipment legislation on the state/jurisdiction level is considered to have no trade impact and is therefore not notified to the WTO. In order to have their products accepted in the U.S. market, European manufacturers need to have their welders and non-destructive testing (NDT) personnel certified according to ASME requirements, which incurs extra costs. Another problem concerns ASME list of approved materials. European pressure equipment manufacturers envisaging to use a particular material for the U.S. market, which is not listed in the ASME code, are faced with significant problems. The only possibility is the so called code case procedure that it is very time-consuming, costly and requires a lot of test series and corresponding data. Many U.S. jurisdictions provide for state specials, which are items of pressure equipment that have been granted a (partial) exemption from the ASME code. "State specials are very rare and in practice not economic for new pressure equipment (i.e. only to be considered if already-existing pressure equipment designed according to a foreign code should be brought to the U.S.). Since state specials are implemented by State law, any improvement in this respect would require the modification of 50 State laws a process which is not feasible, moreover since no coordinated action can be expected. This prescriptive approach of the U.S. legislation impedes any alternative solution to enter the market. No international or European standards are accepted. The ASME code requires a mandatory initial (and then frequently repeated) inspection of manufacturers - and independent of the amount of pressure equipment manufactured - by an Authorised Inspection Agency (AIA). For foreign manufacturers the AIA has to be an insurance company authorised to write pressure equipment insurance in at least one U.S. jurisdiction, while third-party inspection of U.S. manufacturers may also be performed by local jurisdictions. According to information from the National Board, the future nomination of non-U.S. foreign government agencies as AIAs, which would have to be accredited to ASME criteria, is about to be approved. Although such a change would certainly be a positive development, the mandatory AIA inspection still creates high entry costs to the U.S. market for European manufacturers and there is no analogy imposed by European legislation on U.S. manufacturers. High entry costs particularly penalise small manufacturers producing only limited quantities of pressure equipment for the U.S. market with respect to their U.S. peers.

Sanitary and Phytosanitary Measures

Title	Ornamental Plants Established in Growing Media
Sector	Agriculture and Fisheries
SPS measure	Risk analyses
Description	The provisions on standards and certification of plants established in growing media (CFR 1996, Title 7, Subtitle B, Ch. III, §319-37-8) were last revised and effective on 3 November 1999 to permit the import into the U.S. of certain plant genera in sterile growing media. This has only moderately reduced the obstacles encountered by EU exports of potted plants to the U.S. The fundamental problem remains that USDA-APHIS only considers authorisations including risk assessments on the basis of applications genus by genus. The USDA phytosanitary approach to risk assessment has been very slow (in some instances 10+ years) and appears disproportionate to the low risk involved (demonstrated by the recent PRA performed by the USDA). Furthermore, the new rule contains some requirements that are difficult for exporters to fulfil; e.g. it is impossible to satisfy certain obligations because some of the species or genera have a growth cycle that is shorter than the waiting period required by USDA before export can take place. Almost all sorts of plants and growing media (except soil) are permitted for import. However, when the permitted plants are in permitted growth media the import is not permitted, unless a special Pest Risk Assessment (PRA) has been performed by USDA´s Animal Plant and Health Inspection Service (APHIS). The process of obtaining PRA has proved to be extremely slow.
State of Play	This is a longstanding issue which has been ongoing for the last 25 years. As of 1 May 2006, the U.S. approved the entry of Xmas cactus (Schlumbergera spp.) and Easter Cactus (Rhipsalidopsis spp.) from the Netherlands and Denmark in approved growing media, subject to specific growing, inspection and certification requirements.

	New applications for approval of additional genus have been submitted. We have asked that they next consider Bromeliaceae genera (which seem to be in the pest risk analysis stage), Campanula plants, and other ornamental plants. The U.S. should continue efforts to revise and accelerate the process of approval of new applications of plants in growing media allowing their entry into the U.S.

Title	Sanitary measures applied by USA for imports of live bivalve molluscs
Sector	Agriculture and Fisheries
SPS Measure	Disease causing organisms
Description	U.S. tests the water in which oysters are reared for coliforms, whereas the EU requires testing of the flesh of the oyster. The EU claims that the two different approaches achieve the same level of protection, and therefore should be regarded as equivalent, within the framework of Article 4 of the WTO Agreement on sanitary and phytosanitary measures. The Community Reference Laboratory for this issue has studied the two approaches and has confirmed that the same level of protection is achieved.

Title	Rules for import of dairy products into USA
Sector	Agriculture and Fisheries
SPS Measure	Legislation
Description	Certain milk products must come from establishments on a list of Inter State Milk Shipments (IMS). To be imported, three options are available: • the exporting establishment must enter into a contract with a State, which must treat the exporting establishment as though it falls under its jurisdiction, and meet relevant U.S. rules. • the exporting country must adopt and apply U.S. rules • the exporting countries rules must be recognised as equivalent to those of USA To date only Greece and Spain have been approved to export to Florida.

Title	Hardy Nursery Stock
Sector	Agriculture and Fisheries
SPS measure	Quarantine
Description	The U.S. requires a two year post-entry quarantine on an importers premises for hardy nursery stock. Its main purpose is believed to be the detection of latent infections by organisms of quarantine concern.

Title	United States- Bovine animals and products
Sector	Agriculture and Fisheries
SPS measure	Bovine spongiform encephalopathy
Description	In 1997, the U.S. introduced rules on the import of ruminant animals and products thereof from all European countries based on concerns about Bovine Spongiform Encephalopathy (BSE). These rules are still in place.
State of Play	General statement on BSE to all Third Countries on 17/03/2004 in reaction on the statement of the USA In response to the confirmation of the first case of BSE in the U.S. in December 2003, the U.S. has voiced strong support for the respect of OIE rules by importing countries. However, hypercritically, the U.S. does not respect these rules for imports from the EU.

Title	Maturate Meat Products
Sector	Agriculture and Fisheries
SPS measure	Import licence
Description	Imports into the U.S. of uncooked meat products (sausage, ham and bacon) have been subject to a long-standing prohibition. Following repeated approaches by the EU, U.S. import regulations were modified to permit the import of Parma ham, Serrano hams, Iberian hams, Iberian pork shoulders and Iberian pork loins. However, U.S. still applies a prohibition on other

	types of uncooked meat products (e.g. San Daniele ham, German sausage, Ardennes ham) despite the fact that meat products may come from disease free regions and that the processing involved should render any risk negligible.

Title	Fresh fruit and vegetables
Sector	Agriculture and Fisheries
SPS measure	Risk analyses
Description	Restrictions on the import of fresh fruit due to a stringent inspection programme, cold treatment, lack of progress on Pest Risk Analysis for new varieties and fruits. In 2002, Spain requested APHIS the authorization of certain stone fruits (peaches, nectarines, apricots, plumbs and cherries) along with avocados and ripe tomatoes (the latter from the Canary Islands). All the applications were accompanied by the respective Pest Risk Analyses. In April 2005, Spain received a letter from APHIS requesting a number of comments on the apricot's Pest Risk Analysis. The letter was duly replied and information provided. As of now no official reply has been received by Spain, nor on any of the applications. Since 2002, Spain has been unsuccessfully trying to get some information from APHIS on the status of these applications without getting any response.

Investment Related Barriers

Trade Related Investment Measures

Title	Helms-Burton Act
Sector	Horizontal
Description	On 12 March 1996, President Clinton signed into law the Cuban Liberty and Democratic Solidarity (Libertad) Act of 1996 (referred to as the Helms-Burton Act). This was the latest in a series of legislative initiatives since the U.S. proclaimed a trade embargo against Cuba in 1962 (Section 620 (a) of the Foreign Assistance Act of 1961; further reinforced by the Food Security Act of 1985 and the Cuban Democracy Act of 1992). The Helms-Burton Act among others (a) allows U.S. citizens to file lawsuits for damages against foreign companies investing in confiscated U.S. (including Cuban-American) property in Cuba (Title III of the Act) and (b) requires the U.S. Administration to refuse entry to the U.S. of the key executives and shareholders of such companies (Title IV of the Act). The EU is of the view that these measures are contrary to U.S. obligations under the WTO Agreements, in particular the GATT and GATS. In that respect, the EC initiated a WTO dispute settlement procedure on 3 May 1996.
State of play	On 11 April 1997, an Understanding was reached with the U.S. concerning the Helms-Burton Act. The Understanding charted a path towards a longer-term solution through the negotiation of international disciplines and principles for greater protection of foreign investment, combined with the amendment of the Helms-Burton Act. The EC agreed to suspend its WTO case, but reserved the right to restart or to re-launch the WTO dispute settlement procedure, if action was taken against EU companies or individuals under the Helms-Burton Act, or waivers as described in the Understanding were not granted, or were withdrawn. At the 18 May 1998 EU-U.S. Summit in London, building upon the April 1997 Understanding, the EU and the U.S. reached an Understanding on a package of measures to resolve the dispute. The Understanding offers the real prospect for a permanent solution, but still depends on acceptance by the U.S. Congress before full implementation may take place. The Understanding contains three main elements. The first element is the Understanding on investment disciplines. It contains a clear commitment on the part of the U.S. Administration to seek from Congress the authority to grant a waiver from Title IV of the Helms-Burton Act (visa restrictions) without delay. With respect to Title III (submission of lawsuits against trafficking in expropriated property), the Understanding provides for a U.S. commitment to continue to waive the right of U.S. citizens to file lawsuits. Contrary to the Understanding, neither the waiver under Title IV nor a permanent waiver under Title III was granted. However, the Understanding waivers under Title III have been continuously granted on a six-monthly basis (the last waiver having been granted on 16 January 2008 with effect as of 1 February 2008) and no action has been taken, so far, against EU citizens or companies under Title IV, although the U.S. Administration continues to investigate certain EU companies' investments in Cuba. The existence of the Helms Burton Act and the lack of permanent waivers under Titles III and IV continue to constitute an on-going threat to EU companies doing or intending to do legitimate business in Cuba. The second element is the Transatlantic Partnership on Political Co-operation (TPPC), which should be seen in conjunction with the EU's efforts vis-à-vis U.S. Administration to restrain its use of unilateral sanctions with extraterritorial effects, so-called 'secondary boycotts'. The TPPC states that the U.S. Administration will not seek or propose, and will resist, the passage of such

	sanctions legislation. The last element of the Understanding relates to the Iran-Libya Sanctions Act (ILSA). At the London Summit in 1998, the U.S. Administration did not grant the EU a multilateral regime waiver as foreseen by the Understanding of 11 April 1997. However, the U.S. determined, under Section 9(c) of ILSA, to waive the imposition of sanctions against a major EU investment project in gas exploration in the South Pars field in Iran and committed that similar cases could be expected to be granted similar waivers. The Understanding reached at the May 1998 Summit in no way softens the EU's position that the Helms-Burton Act is contrary to international law. The EU never acknowledged the legitimacy of these Acts and fully reserves its right to resume the WTO case against the Helms-Burton Act. Full implementation depends on congressional support, which still appears not to be forthcoming. The EU and its Member States can only fulfil the European commitments once the presidential waiver authority has been fully exercised.

Title	Iran-Libya Sanctions Act and Iran Freedom Support Act
Sector	Horizontal
Description	The Iran and Libya Sanctions Act (ILSA), signed into law on 5 August 1996, provided for mandatory sanctions against foreign companies that made an investment above U.S.$20 million contributing directly and significantly to the development of petroleum or natural gas in Iran or Libya. In addition, mandatory sanctions were also applicable against companies that violated the UN Security Council trade sanctions against Libya. ILSA spells out the following possible sanctions 1. The President may direct the U.S. Export-Import Bank not to approve any guarantee, insurance, or credit in connection with any goods or service to the sanctioned company. 2. The President may order the U.S. government not to issue any specific license or grant any permission to export goods or technology to the sanctioned company. 3. U.S. financial institutions may be barred from making loans or providing credits totalling more than U.S.$ 10 million in 12 months to a sanctioned company, unless the loans or credits are to be used «in activities to relieve human suffering». 4. The U.S. government may not buy or contract to buy any goods or services from the sanctioned company. 5. The President may impose other sanctions to restrict imports related to the sanctioned company. 6. The law also provides possible sanctions against a sanctioned financial institution. The President may delay the imposition of sanctions for up to 90 days for consultations with the government with jurisdiction over the person or company.
State of play	In November 1996, the EU passed a Blocking Statute which encompassed ILSA and Helms-Burton, among other U.S. laws. The 11 April 1997 EU-U.S. Understanding on Helms-Burton and ILSA specified that the U.S. agreed to work with the EU toward the objective of meeting the terms (1) for granting EU Member States with a Section 4 (c) waiver with regard to investments in Iran; and (2) for granting EU companies Section 9 (c) waivers with regards to investments in Libya. On 18 April 1997, the Council took note of the Understanding and agreed to suspend the WTO Panel while authorising the Commission to recommence or re-establish the Panel if adverse action pursuant to Helms-Burton or ILSA was taken against EU companies or waivers were not granted. On 21 April 1998, the WTO Panel lapsed automatically under WTO rules. Following the 1997 Understanding, the EU and the U.S. agreed on a package deal at the 18 May 1998 EU-U.S. Summit in London, which contains three elements (1) an agreement on disciplines for investments into illegally expropriated property; (2) a U.S. commitment to self-restraint with regard to future extraterritorial sanctions legislation, as expressed in the Transatlantic Partnership on Political Co-operation; (3) an assurance of future waivers for EU companies under both the Helms-Burton Act and the ILSA. At the EU-U.S. 1998 Summit, the U.S. did not grant the EU a Section 4 multilateral waiver as foreseen by the 1997 Understanding, but opted instead to waive the imposition of sanctions against TOTAL for its investment in gas exploration in the South Pars field, and indicated that it expected to undertake the same waiver for similar cases in the future. With regard to Libya, the U.S. agreed to "engage with the EU in a sustained process for consideration of waivers under section 9 (c) of ILSA to companies for the EU". ILSA was renewed in 2001. On 23 April 2004 in light of Libya's efforts to dismantle its weapons of mass destruction and missile programs and its renunciation of terrorism, the U.S. Department of Commerce, Bureau of Industry and Security (BIS) issued new interim regulations removing most of the restrictions on the export and re-export of goods, technology and software to Libya.

	On 30 September 2006, President Bush signed the "Iran Freedom Support Act," which extends and amends the Iran and Libya Sanctions Act of 1996, codifies certain existing sanctions against Iran, and authorizes assistance to support democracy in Iran. The Act basically extends ILSA for another five years, until 2011, and drops Libya from the law and its penalties.

Direct Foreign Investment Limitations

Title	Exon-Florio Amendment
Sector	Horizontal
Description	On 24 October 2007 the Foreign Investment and National Security Act of 2007 (FINSA) came into force, replacing Section 5021 of the 1988 Trade Act, the so-called Exon-Florio Amendment to the Defense Production Act. It requires the President to review mergers, acquisitions or take-overs that could result in foreign control of legal persons engaged in interstate commerce to determine their potential effects on U.S. national security if any. This screening is carried out by the statutory Committee on Foreign Investment in the U.S. (CFIUS), which is chaired by the Department of Treasury and acting on behalf of the President. It is composed also of various other Departments, including Homeland Security, Commerce, Defense and State, as well as the Director of National intelligence as a non-voting member. For each case Treasury designates a lead agency. The length of time taken by the screening process, the uncertainty, and the legal and economic costs involved potentially have a negative impact on foreign investment. Moreover, should the President decide that any such transactions threaten national security, which is widely interpreted - he can take action to suspend or prohibit these transactions. This could include the forced divestment of assets. There are no provisions for judicial review or for compensation in the case of divestment. Since this legislation was originally introduced, the scope of Exon-Florio has been further enlarged. While the delays for initial review (30 days) and subsequent investigation (45 days) remain unchanged, an investigation must be made if a foreign government-owned entity engages in any merger, acquisition or take-over that gives it control of the company, or if control of critical infrastructure is involved (except if the Secretary of the Treasury and the head of lead agency determine that the transaction will not impair national security). Reporting obligations towards Congress are enhanced. They include a report by the President to Congress on the results of each CFIUS investigation and an evaluation, among other factors to be considered, of the potential effect of the proposed or pending transaction on U.S. international technological leadership in areas affecting U.S. national security, blurring the line between industrial and national security policy. This legislation could conflict with the principles of the OECD Code of Liberalisation of Capital Movements and the National Treatment Instruments. While the EU understands the wish of the U.S. to take all necessary steps to safeguard its national security, there is continued concern that the scope of application may be carried beyond what is necessary. In this context, the EU has drawn attention to the lack of a definition of national security and the uncertainty as to which transactions are notifiable. The new law is the result of extended public discussion and various motions in Congress following intended investment by the Chinese oil company CNOOC and Dubai Ports World. In a post 9/11 scenario it tightened existing rules, but avoided worse restrictions such as extended timelines or overriding of Presidential decisions by Congress. Even with the new law uncertainties remain. Foreign investors may feel obliged to give prior notification of their proposed investments. In effect a very significant number of EU firms' acquisitions in the U.S. are subject to pre-screening. There will still be an 'evergreen' provision. A review after conclusion of a procedure may take place if false or misleading material had been submitted, or relevant information been omitted, or if there is an intentional breach of a mitigation agreement if there are no other remedies to address such breach. In recent years, the negotiation of Agreements (to mitigate national security concern has become more common. These mitigation agreements can require the establishment of a separate subsidiary to handle classified contracts. The legal and economic costs resulting from the CFIUS review process can be high, not to mention the delays in completing a transaction.
State of play	Awaiting implementation rules. The EU has repeatedly raised its concerns with relevant U.S. interlocutors, with the aim of avoiding additional obstacles to foreign direct investment.

Title	Energy Acts
Sector	Services - Energy
Description	Under the Federal Power Act, any construction, operation or maintenance of facilities for the development, transmission and utilisation of power on land and water over which the Federal Government has control are to be licensed by the Federal Energy Regulatory Commission. Such

	licences can only be granted to U.S. citizens and to corporations organised under U.S. law. For the operation, transfer, receipt, manufacture, production, acquisition and import or export of facilities which produce or use nuclear materials, the Atomic Energy Act requires that a licence be issued but the licence cannot be granted to a foreign individual or a foreign-controlled corporation, even if there is incorporation under U.S. law.

Tax Discrimination

Title	Earnings Stripping Provisions
Sector	Horizontal
Description	The so-called "earnings stripping" provisions in Internal Revenue Code 163j limit the tax deductibility of interest payments made to "related parties" which are not subject to U.S. tax, and of interest payments on loans guaranteed by such related parties. In practice, most "related parties" affected will be foreign corporations. These provisions are designed to prevent foreign companies from avoiding tax by financing a U.S. subsidiary with a disproportionately high amount of debt as compared with equity, with the result that profits are paid out of the U.S. in the form of deductible interest payments rather than as dividends out of taxed income. The objective of the "earnings stripping" provisions is reasonable and in line with internationally agreed tax policy. However, the U.S. rules for calculating the ceiling in any year on the amount of admissible interest uses a formula, the results of which can be inconsistent with the internationally accepted arm's-length principle. If, ultimately, this leads to the disallowance of relief for the interest payable, it could have discriminatory consequences, because a tax treaty partner would not be obliged to make a corresponding adjustment to taxable profits in the other country. The provisions relating to loans guaranteed by related parties could also disallow the interest on a number of ordinary commercial arrangements with U.S. banks, and provide a disincentive from raising loans with them.

Title	Tax Code Reporting Requirements
Sector	Horizontal
Description	The information reporting requirements of the U.S. Tax Code as applied to certain foreign-owned corporations mean that domestic and foreign companies are treated differently. These rules apply to foreign branches and to any corporation that has at least one 25% foreign shareholder. They require the maintenance, or the creation, of books and records relating to transactions with related parties. The documents must be stored at a place specified by the U.S. tax authorities, and an annual statement filed containing information about dealings with related parties. There are stiff penalties for non-compliance with the various provisions. The information reporting requirements of the U.S. Tax Code are onerous. Although their purpose, the prevention of tax avoidance and evasion, is reasonable, they are burdensome and add to the complexity for foreign-owned corporations of doing business in the U.S.

Title	U.S. Wine tax discrimination
Sector	Wines & Spirits
Description	Under U.S. federal law, wine produced in or imported into the U.S. is subject to a "gallonage tax" with different tax bands according to the alcoholic content. However, small U.S. producers not producing more than 250.000 gallons a year (= ca. 125.000 bottles / 10.000 crates) are eligible for a tax credit of USD 0,90 per gallon on the first 100.000 gallons, and a degressive rebate for production between 100.000 and 250.000 gallons. The tax credit is a rebate on the federal excise duty on wine; the excise duty is paid by producers upon selling wine or by the importer of wine at the moment of taking the wine out of the customs depot. Only U.S. producers have access to the federal tax credit and tax rebate. In addition to the federal tax, differential fiscal measures and excise duties are also levied on wine at State level. These measures provide for tax breaks for small domestic producers or tax credits for local producers whilst no similar exemptions / benefits are granted to imported wine.
State of play	The federal tax credit scheme targeting small domestic producers as well as the States differential treatment in favour of domestic products were examined by the GATT panel in the U.S. –Malt Beverages dispute of 16 March 1992 where it was found that the scheme violated the U.S.'s obligations under Art. III.2 of GATT. Although the panel report was adopted, the federal law providing for the scheme was never repealed or modified and remains in application. The issue has been raised at the occasion of the EC/U.S. wine talks meetings in 2006 and 2007. According to the information provided by U.S. authorities the scheme remains operational. U.S. also mentioned that there is no rule requiring U.S. origin of the grapes used to produce the wine but that this is the practice.

Intellectual Property Rights

Legislation on Copyright and Related Rights

Title	Section 110(5) of 1976 Copyright Act (Irish Music)
Sector	Services - Communications & Audiovisual
Description	Section 110 of the U.S. Copyright Act provides for limitations on exclusive rights granted to copyright holders for their copyrighted work, in the form of exemptions for broadcast by non-right holders of certain performances and displays, namely, "homestyle exemption" (for "dramatic" musical works) and "business exemption" (works other than "dramatic" musical works). Concretely, Section 110(5) permits the playing of broadcast music in public places (such as bars, shops, restaurants etc.) without the payment of a royalty fee. The described practice has caused a loss of income to right-holders, as a large number of commercial establishments do not pay any royalty fees. Moreover, the incomplete copyright protection in the U.S. has broader economic effects negatively affecting the overall position of authors on the U.S. market. At the request of the EU and its Member States, at the DSB meeting of 25 May 1999, a Panel was established. On 27 July 2000, the DSB adopted the Panel report that found Section 110(5)(B) of the U.S. Copyright Act to be incompatible with the TRIPs Agreement, in connection with the Bern Convention on the Protection of Literary and Artistic Works, as it provides an exceedingly broad derogation from the exclusive right of authors to authorise the public communication of their works. In particular, Section 110(5) allows the public retransmission of broadcast music in commercial premises (bars, shops, restaurants etc.) without royalties being paid. In 2001, an arbitration panel determined that the level of nullification or impairment was equal to 1.219.900 per year. As the U.S. declared not to be in a position to comply promptly with the WTO ruling; the EC agreed to discuss a possible mutually acceptable arrangement. The parties eventually reached a common understanding the U.S. was to provide financial assistance to EU performing societies with a view to developing activities for the promotion of authors' rights, pending compliance with the DSB recommendations and rulings. The understanding covered a 3-year period ending on 21 December 2004. In July 2002, the U.S. Congress passed the Trade Promotion Authority Act, which included a provision setting up a fund for the payment of settlements of WTO disputes. In April 2003, the Wartime Supplemental Appropriations Act foresaw an appropriation to make a payment in connection with the Section 110(5) dispute. In the light of these legislative developments, the U.S. and the EC notified to the WTO a mutually satisfactory temporary arrangement on 23 June. In September 2003, the U.S. made the agreed payment. The arrangement expired on 21 December 2004 and the U.S. has so far failed to offer either a temporary or definitive solution to the dispute. For the time being there are no legislative initiatives to bring the Copyright Act into compliance with the TRIPs Agreement. The EC's right to suspend concessions or other obligations has been safeguarded by means of a request under Article 22.2 DSU made on 7 January 2002. The requested suspension of TRIPs obligations consists in the levying of a special fee to U.S. right holders that apply for action by the EU customs authorities to block pirated copyright goods. The EC request was immediately submitted to arbitration due to U.S. opposition. The arbitration procedure is currently suspended.

Trademarks Legislations

Title	Section 211 of Omnibus Appropriations Act (Havana Club)
Sector	Wines & Spirits
Description	Section 211 of the Omnibus Appropriations Act prohibits, under certain conditions, the registration or renewal of a trademark or a trade name which is identical or similar to a trademark or trade name used in connection with a business confiscated at the time of the Cuban revolution. It also prevents U.S. Courts from recognising or enforcing any assertion of rights to such marks or trade names under the same conditions. Section 211 was introduced into the Omnibus Appropriations Act of 1998 at the behest of Bacardi, in order to bar its competitor, Havana Club Holding (HCH), from protecting its trade mark "Havana Club" in the U.S. "Havana Club" is a premium rum produced in Cuba and marketed worldwide by Havana Club Holding through Havana Club International (HCI). Formed in 1993, Havana Club Holding is a joint venture between Havana Rum and Liquors of Cuba and Pernod Ricard of France. Havana Club Holdings owns registration of the "Havana Club" trademark in 183 countries and has the right to acquire the U.S. registration from Cubaexport, which had registered the mark in the United States in 1976.
State of play	After WTO consultations failed, the EU and its Member States requested the establishment of a WTO Panel on Section 211. On 26 September 2000, a WTO panel was established to rule on the

	compatibility of Section 211 with the obligations of the U.S. under the TRIPs Agreement. The Panel's report, issued on 6 August 2001, confirmed that Section 211 was in violation of Article 42 of TRIPs by denying trademark owners access to the courts. Furthermore, it stated expressly that Section 211 should not apply when the trademark has been abandoned. However, there were two points where the Panel did not agree with the EU's claims. The Panel considered that trade names are not covered by TRIPs and that TRIPs does not regulate the question of the ownership of intellectual property rights. The Appellate Body report, issued on 2 January 2002, substantially reversed the reasoning of the panel and ruled that Section 211 discriminates in favour of U.S. nationals and against Cuban nationals vis-à-vis other foreigners. According to this report, Section 211 violates two core obligations of the TRIPs Agreement which are the National Treatment and Most Favoured Nation (MFN) Treatment obligations. The Appellate Body confirmed that, under the TRIPs, WTO Members do have an obligation to protect trade names. However, the Appellate Body found that the U.S. statute was in conformity with Article 42 of the TRIPs Agreement, thereby reversing the panel findings on that point and maintained the finding of the panel that the TRIPs does not govern the issue of the determination of ownership of IP rights. The DSB adopted the Panel's and the Appellate Body's reports at the regular DSB meeting on 1 February 2002 , which implied the obligation for the U.S. to bring its legislation in conformity with its TRIPs obligations. The reasonable period of time for implementation, extended several times, expired on 30 June 2005. In July 2005, the DSB adopted a U.S./EU agreement which preserves the right for the EU to request the authorisation to suspend the application to the United States of concessions or other WTO obligations at a later stage. In August 2006, Section 211 was used to deny renewal of the U.S. trademark registration of "Havana Club". That decision has been appealed by the company concerned. By the end of 2007, the U.S. has not adopted any implementing measure of the DSB ruling.

Legislation on Appellations of Origin and Geographic Indications

Title	Protection of EU wine Geographical Indications
Sector	Wines & Spirits
Description	By virtue to the Wine Agreement on trade in wine between the EU and the USA, the U.S. protects Community geographical indications via their labelling rules (TBT legislation) and are designated as 'names of origin'. This agreement is without prejudice to EU rights under the TRIPS and does not affect the EU legislative framework for GIs (Geographical Indications). The U.S. implements its TRIPS obligation relating to GI via trademark law. This legal instrument is not appropriate for geographical indication protection for, among others, the following reasons: trademarks may be transferred (not possible for GIs since they can be used by any person established in the delimited area producing goods in compliance with the specification), trademarks shall be renewed otherwise the owner loses his protection (GI does not need to be renewed), the protection of GI is subject to private actions (GI is protected ex-officio by public authorities), trademark is owned by a person (there is no ownership for GIs).

Title	Protection of EU wine Geographical Indications (semi-generics)
Sector	Wines & Spirits
Description	On 10 March 2006, the agreement on trade in wine between the United States and the EU entered into force. With this agreement, both parties recognise and protect via their labelling rules each others 'wine names'. Regarding 17 important EU wine GI's considered as 'semi-generic terms' in the U.S., the U.S. agreed to seek to change their legal status to restrict their use to EU wines only, as far as wine labels issued after a certain date are concerned. This restriction does not apply to wine labels issued for wines of U.S. origin before that date. On the 9 December 2006 the U.S. Congress adopted new labelling legislation for the EU semi generics (i.e. Tax Relief and Health Care Act of 2006- Section 422) aimed to restrict the use of these names to EU products for new wine labels. This new text was signed by the U.S. President and thus enacted as law on the 20 December 2006. The fact that these names are still considered in the U.S. as semi-generics weakens the reputation of the Community geographical indications concerned in the U.S. U.S. users of semi-generics can take advantage of, or could damage, the reputation of the Community geographical indications in question. The collective effort and investment made by producers of the EU geographical indications concerned to build the reputation of these names is materially impacted by the legal status of semi-generics in the U.S. and disadvantages genuine European wines traded in the U.S. versus U.S. products using these terms. A joint declaration attached to the existing EU-U.S. wine agreement provides that issues such as geographical indications and the future phasing out of the remaining labels using the 17 EU names for wines of U.S. origin will be on the agenda. Negotiations for a second phase wine agreement were launched in June 2006 and further meetings have been held in 2006 and 2007.
State of play	Negotiations are ongoing. The next meeting will be held in January 2008.

Legislation on Patents (Including Plant Varieties)

Title	Principle of First-to-Invent
Sector	Horizontal
Description	The U.S. patent system applies the principle of "first-to-invent", while the rest of the world follows the principle of "first-to-file", fixing thereby a clearly defined moment when the priority right to a patent is established. The first-to-invent principle creates several obstacles for EU and U.S. companies trying to obtain a patent right in the U.S., namely because it has a considerable economic impact on the potential right holder. The issue has figured on top of the Transatlantic Business Dialogue agenda and the latter has recommended the adoption of the first-to-file approach in the U.S.
State of play	The issue is being discussed within the so called Alexandria process or Group B+. Since April 2007, there is a bipartisan, but not governmental, U.S. patent reform bill in the U.S. Congress that supports introduction of First–to-File system, but it is uncertain whether this bill will be finally adopted.

Title	IPR Infringement Cases (Section 337 of 1930 Tariff Act)
Sector	Other Industries
Description	Section 337 of the Tariff Act of 1930 provides remedies for holders of U.S. intellectual property rights by keeping the imported goods which are infringing such rights out of the U.S. ("exclusion order") or to have them removed from the U.S. market once they have come into the country ("cease and desist order"). These procedures are carried out by the U.S. International Trade Commission (ITC) and are not available against domestic products infringing U.S. patents. Under the 1988 Omnibus Trade and Competitiveness Act, several modifications have been introduced to Section 337. However, in its present form, Section 337 does not eliminate the major GATT inconsistencies raised by the 1989 GATT Panel. As a result, Section 337 appears to continue to be in violation of Article III 4 GATT and of a number of provisions contained in TRIPs.
State of play	Since February 2000, the ITC has started new investigations against a number of European and Canadian companies. In the absence of any abusive claim or dilatory claim concepts applicable to the Section 337 procedure they appear to have no other purpose than to compel the European defendants to settle. The Commission is concerned by these developments and it regularly raises the "Section 337" issue in its bilateral contacts with the U.S. Administration. The Commission does not discount further action at the WTO level.

Title	Plant Patents
Sector	Agriculture and Fisheries
Description	United States Department of Agriculture (USDA) and United States Patent and Trademark Office (USPTO) should revise the current interpretation of novelty criteria for plant patents (for asexually reproduced material) and utility patents in-line with the International Convention for the Protection of New Varieties (UPOV). For foreign plant breeders it is almost impossible in case of vegetative reproduced plants to get a Plant Patent system. Contrary to most other countries, foreign breeders only have a period of one year after the marketing of their plants outside the U.S. to get breeders rights protection in the U.S. for their varieties. This means that a marketing decision has to be made immediately whether or not to protect a certain variety in the U.S. However, international agreements are based on a four year period, which is more realistic. Although the Plant Patent Act does not represent a case of IPR infringement per se, the restriction of one year does seriously impede trade in breeding material for ornamental plants to the U.S.

Title	Hilmer Doctrine
Sector	Horizontal
Description	European companies are confronted with discrimination due to the application of the Hilmer doctrine which does not follow the rule that the prior art which is relevant for assessing the novelty and the inventiveness of an invention may be defined as all information which has been available to the public anywhere in the world in any form before the priority date of a claimed invention. Furthermore, an international application (Patent Cooperation Treaty, PCT) arising from European countries is not included in the U.S. prior art until the date of the entry into the U.S. national phase even if that application has been published previously. This doctrine is clearly detrimental for European companies although it is authorised by Article 27(5) of PCT.
State of play	The issue is being discussed within the so called Alexandria process or Group B+.

Other (export related)

Export Prohibition and Other Quantitative Restrictions

Title	Drug Precursor Chemicals
Sector	Chemicals
Description	In the area of drug precursor chemicals, the "Combat Methamphetamine Epidemic Act of 2005" contained in the U.S. Patriot Act authorisation establishes potential import prohibitions for certain drug precursor chemicals. The Act was signed by U.S. President Bush on 9 March 2006 and became Public Law Number 109-177. In particular, Sections 721 and 722 require the importer to provide information on distribution including sales along the supply chain and allow the Attorney General to prohibit the importation of the concerned precursor chemicals in the case of refusal to fully co-operate with the Attorney General. The State Department is responsible for implementing these provisions and determines the world's largest exporters and importers who will then be subject to certification. EU Member States are likely to be on that list. The deadline for this new law will be March 2008.

Title	Encryption Control Policy
Sector	Electronics
Description	Potential problems are posed by the differential treatment of encryption items depending on whether they are transferred to government and non-government end users. In addition, the generalised introduction of the technical review of encryption products above a certain key length in advance of sale creates a difficulty for the European industry for cases of re-export. The effect of the Cryptography Note, as introduced in the Wassenaar Arrangement, has been reduced by the U.S. authorities through the introduction of two new requirements crypto functionality should not be modified or customised and the items cannot be network infrastructure products such as high end routers or switches designed for large volume communications. The latter items still need to be licensed. A combination of the continuing constraints on the export of strong encryption products and on the interoperability of systems employing such technology inhibits not only trade in encryption products but also, more importantly, the effective growth of e-commerce. Thus, significant barriers to international trade in encryption products without key recovery continue to exist, despite the fact that EU Member States, like the U.S., are all members of the Wassenaar Arrangement. There is a trend, reported by some EU Member States, of the U.S. denying the export of certain dual-use items from EU Member States which is especially worrying, given the high non-proliferation commitment of the EU Member States and the substantial initiatives they have taken in this area, in particular at the Thessaloniki European Council meeting in June 2003. At this European Council meeting, a declaration of principles and an action plan against proliferation of weapons of mass destruction was adopted which contains a number of provisions regarding the strengthening of export controls of dual-use related items in an enlarged EU.

Title	Iran Non-Proliferation Act
Sector	Horizontal
Description	On 14 March 2000, the Iran Non-Proliferation Act (INPA) was signed into law. It provides for discretionary sanctions against foreign companies transferring to Iran goods, services and technology listed under the international export control regimes, as well as any other item prohibited for export to Iran under U.S. export control regulations, as potentially contributing to the development of weapons of mass destruction. INPA constitutes extraterritorial legislation. On the one hand, it allows the U.S. Administration to apply its own sanctions to exports which are subject to EU Member State and EU export control regimes. On the other hand, it unilaterally expands the scope of export controls on EU exports beyond those multilaterally agreed upon. Its adoption is incompatible with the U.S. commitment under the Transatlantic Partnership for Political Cooperation (TPPC) to resist the passage of extraterritorial sanction legislation.
State of play	EU concerns were repeatedly expressed in the run-up to the adoption of this Act. Taking these into account, President Clinton issued a statement when signing the bill into law, undertaking to work with Congress in order to seek to rationalise the reporting requirements on transfers deemed legal under the applicable foreign laws and consistent with the multilateral export control regimes. In 2005 persons were arrested within the EU on grounds of extraterritorial application of criminal charges levied by the U.S. against EU exporters who were not involved in export of dual use items covered by neither international export control regimes nor EC Regulation on export of dual use items and were not related to Weapons of Mass Destruction Programmes. The INPA also prohibits the U.S. Administration to acquire space related technology and services from Russia. In the framework of the International Space Station (ISS) programme, the U.S.

	has to acquire Russian Soyuz from 2006 in order to fulfil its space transportation obligations in the ISS programme, because the U.S. Space Shuttle will not be available in the extent necessary for maintaining the ISS. Europe, as a partner in the ISS programme, depends on the U.S. complying with its obligations. An amendment to the INPA authorises the Bush Administration to derogate from certain provisions that had become an obstacle to the acquisition of Russian space technology and services.