Compilation of EU Trade Barrier issues with the US

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Contents

AGRICULTURAL & FOOD PRODUCTS

IPR: inadequate protection of GIs

Title	(*) **IPR: inadequate protection of GIs**
Creation Date	06 déc. 2007
Last update/check	25 nov. 2011
Sector	Agriculture and Fisheries
Measure	Legislation on Appelations of Origin and Geographic Indications
Third Country	United States of America

Description

Difficulties to protect intellectual property rights and prevent the continuing use of EU geographical indications on food and drinks produced or sold in the U.S., especially in the wine and food (such as cheese and meat products) sectors are a source of considerable frustration for EU producers. The fact that the U.S. still considers a number of important European wine names as 'semi-generics' remains problematic, despite progress achieved under the 2006 Wine Agreement. While no new wine labels using 'semi-generics' are approved, U.S. producers making use of "grandfathered" 'semi- generics' can still take advantage of, or could damage, the reputation of the geographical indication in question.

Background

Agricultural product and foodstuff GIs

The US protects these GIs via the trademark (TM) system. Under this system, right holders may prevent the misuse of GIs in accordance with Article 22.2 TRIPS (i.e. criteria of misleading of the public, unfair competition). The EU together with many WTO Members demand enhanced protection for these GI products in the DDA negotiations.

EU GI stakeholders have complained that the protection of GIs in the US trademark system suffers deficiencies. For example, Italy has brought to the Commission's attention the fact that "Parmigiano-Reggiano" was registered as a certification mark in the US. However, under this system, demonstrating a TM infringement is based on the criteria of likelihood of confusion. As a consequence, the group of producers tried to obtain the registration of the two names "Parmigiano" and "Reggiano" separately, considering that, due to the criteria of the likelihood of confusion, it would be difficult to demonstrate the infringement of the certification mark "Parmigiano-Reggiano" in case only one of the terms is used. The certification mark "Reggiano" was registered in 2008, but the certification mark "Parmigiano", applied for in 1998, is still not registered.

Wines

On 10 March 2006, the agreement between the Community and the US on trade in wine entered into force. With this agreement, both parties recognise and protect via their labelling rules each others 'names of origin for wine'. Regarding 17 important EU wine GI's considered as 'semi-generic terms' in the US, the US 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 US origin before that date.

On 9 December 2006, US Congress adopted new labelling legislation for the EU 'semi generics' (Tax Relief and Health Care Act of 2006- Section 422) restricting the use of these names to EU products at the expense of new wine labels. This act was signed by the US President and enacted as law on 20 December 2006.

However, the fact that these names are still considered in the US as 'semi-generics' for wine labels existing before 10 March 2006 may weaken the reputation of the EU geographical indications concerned in the US. US users of 'semi-generic' names can take advantage of, or could damage, the reputation of the EU geographical indications in question.

Actions Taken	Negotiations for a second phase wine agreement were launched in June 2006 and further annual meetings were held. Unfortunately, those "second-step talks" have not allowed progress on 'semi-generics' so far.
Barrier id	075092
Barrier Status	Ongoing

(*) In its conclusions of 8 December 2008, the Council of the European Union asked the European Commission "to draw up, in conjunction with Member States, a list of trade barriers to be prioritised in each of the EU's major trading partners ...". These barriers are marked as "key barriers" in the Market Access Database.

Pasteurised Milk Products (Grade A)

Title	**Pasteurised Milk Products (Grade A)**
Creation Date	17 nov. 2006
Last update/check	21 mars 2011
Sector	Agriculture and Fisheries
Measure	Standards and Other Technical Requirements
Third Country	United States of America
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 US, 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 US regulation by inspectors of the State several times per annum); or the region/country of the exporting firm must adopt and comply with the US 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 US 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 US 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 US.
Barrier id	060104
Barrier Status	Ongoing

Rules for import of dairy products into USA

Title	**UNITED STATES - Rules for import of dairy products into USA**
Creation Date	20 févr. 2008
Last update/check	11 janv. 2013
Barrier id	085116
Sector	Agriculture and Fisheries
SPS measure	Non-transparent legislation
Country	United States of America
Description of the measure	**Grade A milk products** (pasteurised products) must come from establishments on a list of *Inter State Milk Shipments* (IMS). To be imported into the USA, three options are available: Option 1 - 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 US rules. Option 2 - the exporting country must adopt and apply US rules. Option 3 - the exporting countries rules must be recognised as equivalent to those of USA.
Barrier Status	Monitoring solution
Actions Taken	The issue has been repeatedly brought to the attention of the USA-Food and Drug Administration (FDA), by the European Commission, but to date only 2 European companies (from Greece and Spain) have been approved under "option 1" to export to the USA.
Hs codes	04 - Dairy produce; birds' eggs; natural honey; edible products of animal origin, not elsewhere specified or included

Bovine animals and products

Title	(*) **United States- Bovine animals and products**
Creation Date	01 déc. 1996
Last update/check	18 juil. 2012
Barrier id	960083
Sector	Agriculture and Fisheries
SPS measure	Bovine Spongiform Encephalopaty (BSE)
Country	United States of America
Description of the measure	Unjustified import restrictions on a number of animals and animal products relating to Bovine Spongiform Encephalopathy (BSE).
Background	In 1997, US 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, however they are more strict than agreed in international standards set by the World Organization for Animal Health (OIE) creating disproportionate and discriminatory trade restrictions. US committed to align its import requirements to the OIE standards by drafting a 'BSE comprehensive rule'. The draft US "Comprehensive Rule on BSE" was published for public commenting in the Federal Register on 16 March 2012.
Barrier Status	Ongoing
Actions Taken	Demands on alignment to the international standards are regularly voiced at all levels.
Hs codes	• 0102 - Live bovine animals • 01 - Live animals

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Sanitary measures applied by USA for imports of live bivalve molluscs

Title	**US - Sanitary measures applied by USA for imports of live bivalve molluscs**
Creation Date	20 févr. 2008
Last update/check	11 janv. 2013
Sector	Agriculture and Fisheries
SPS measure	Other SPS import restrictions
Country	United States of America
Description of the measure	The USA requires the testing of the water in which bivalve molluscs (e.g. oysters) are reared for coliforms, whereas the European Union requires testing of the flesh of the bivalve molluscs for *Escherichia coli*. The European *Community Reference Laboratory for monitoring bacteriological and viral contamination of bivalve molluscs* has studied the two approaches and has confirmed that the same level of protection is achieved. 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/SPS Agreement (Sanitary and Phytosanitary).
Actions Taken	The EC would like the USA to reconsider its approach and to take the necessary steps for allowing imports of EU bivalve molluscs into the USA. The issue has been repeatedly brought to the attention of the USA-Food and Drug Administration (FDA) by the European Commission. Imports of bivalve molluscs from the USA will continue to be allowed, on a provisional basis, until 01 July 2010. This period would allow to conclude on equivalence of the public health legislation governing the sector.
Hs codes	• 0307 - Molluscs, whether in shell or not, live, fresh, chilled, frozen, dried, salted or in brine; aquatic invertebrates other than crustaceans and molluscs, live, fresh, chilled, frozen, dried, salted or in brine; flours, meals and pellets of aquatic invertebrates other than crustaceans, fit for human consumption

Slow procedures on applications to allow import of new types of plant products

Title	(*) **UNITED STATES - Slow procedures on applications to allow import of new types of plant products**
Creation Date	24 mars 2010
Last update/check	11 janv. 2013
Barrier id	105334
Sector	Agriculture and Fisheries
SPS measure	Risk analyses (including PRA - Pest Risk Analyses)
Country	United States of America
Barrier Status	Ongoing

(*) In its conclusions of 8 December 2008, the Council of the European Union asked the European Commission "to draw up, in conjunction with Member States, a list of trade barriers to be prioritised in each of the EU's major trading partners ...". These barriers are marked as "key barriers" in the Market Access Database.

Export Credit Guarantee Program

Title	**Export Credit Guarantee Program**
Creation Date	01 déc. 1996
Last update/check	16 déc. 2008
Sector	Agriculture and Fisheries
Measure	Subsidies
Third Country	United States of America
Description	The Export Credit Guarantee Programme which is managed by USDA/FAS has had a major impact on a number of key agricultural markets. Under this programme, the US government used to guarantee 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. In the US farm bill 2008 the GSM-103 and SCGP programmes have been repealed. The export credit programmes include a specific list of commodities per country allocation and 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. The GSM-102 is 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 US Administration. As a result of the dispute settlement case on upland cotton, changes have been made with regard to the currently only remaining export credit guarantee program – the GSM-102. In US - 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 under this 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 US administration 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 had subsequently been suspended and STEP2 users marketing payments had been repealed as of 1 August 2006. The GSM 102 (now the only operating programme) had been modified and increased fees have been introduced which vary with country risk, repayment term and frequency.

Despite these changes by the US, Brazil initiated a WTO 'compliance' dispute against what it considered to be an insufficient US 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 US 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 and subsequent repeal by the US farm bill 2008 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 recently confirmed by the compliance panel) or to eliminate all forms of subsidies flowing through the US programmes. In the US Farm bill 2008 the cap of 1% on the premium exporters have to pay for the export credit guarantee under programme GSM 102 has been removed. This represented a significant subsidy element, however it is not clear whether the new premiums reflect market premiums. State-level export promotions remained unnotified to the WTO. In 2001, Washington State paid an export subsidy to foreign purchasers of apples. This was contrary to US 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 US 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 US has partially reviewed its policy. The US Farm bill 2008 did not introduce significant changes to US food aid policy. Although the objectives have been reworded it remains to be seen whether they will continue as an export enhancement tool for US agricultural products. The Congress consistently 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 US market. The outcome as appearing in the US Farm Bill 2008 is only a pilot programme of $5 million per year. In the present WTO negotiations, the US - both Administration and Congress – have resisted 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 US food aid be procured on the US market (including preference for transport / handling on US logistics).

Barrier id	960303
Barrier Status	Ongoing

Farm Bill

Title	**Farm Bill**
Creation Date	09 juil. 2002
Last update/check	06 févr. 2009
Sector	Agriculture and Fisheries
Measure	Subsidies
Third Country	United States of America
Description	In June 2008 the US passed the 2008 Farm Act, the Food Conservation and Energy Act (FCEA) of 2008. Despite a consensus among WTO Members that farm policies should be reformed in the direction of less trade-distorting forms of support, the 2008 Farm Act went in the opposite direction, just like the 2002 Farm Bill and again reinforced the trade-distorting nature of US farm subsidies. A key feature of the 2008 Farm Act was the introduction of a new support scheme for arable crops known as the Average Crop Revenue Election programme (ACRE). Where traditionally most US support schemes compensate farmers in case of commodity price drop, ACRE compensates farmers for a drop in income. Thus ACRE addresses the concern that producers were overcompensated in times of low prices and high yields, when incomes were high, but undercompensated for low incomes when low yields forced prices above the level that would trigger price support. ACRE allows producers to lock in an income guarantee based at recent comparatively high levels. However, in order to participate in ACRE, producers must accept a reduction both in price linked support and in the decoupled support that they receive. Producers may enter the scheme the first year, 2009/10 or in later years. But once producers choose ACRE, they must remain in the scheme for the whole implementation period of the 2008 Farm Act. If they want to maintain their current level of commodity price linked support and decoupled payments they cannot move to ACRE. Farmers will have to choose one of these options by end of May for 2009/10. Since ACRE uses product specific parameters in the establishment in the level of support, it should be considered a trade distorting Amber Box programme. Other changes introduced in the 2008 Act include: • A slight increase of some reference commodity prices (loan rate, target price) used in the calculation of price linked support. This implies, compared to previous reference prices, a higher compensation if prices drop; • For dairy price support the US, in the past, considered the whole milk production as benefitting from this support. However, with the 2008 Act the US limits this type of support to skimmed milk powder, butter and cheddar cheese; • A countercyclical programme in the dairy sector allowing direct payments to producers, when milk prices drop. The programme , initially created in the 2002 Bill was intended to expire, but is extended under the 2008 Act; • A new permanent disaster fund for crops and livestock replaces ad-hoc disaster payments as seen in the past; • Renewal of the export credit guarantee slightly modified and repeal of the

export enhancement programmes (although there has been no expenditure under the EEP since 2002). Introduction of a small pilot programme of $5million a year for local procurement of food aid;
- Expansion of subsidies for renewable energy production.

The US notified the implementation of the 2002 Farm Bill to the WTO in November 2007, as the 2002 Bill drew to a close, given that the commodity support provisions expired at the end of the 2007 crop year. Some of the price linked support under this Bill was notified to the WTO in such a manner that it did not count against its ceiling for trade distorting support. Several Members (including the EC) have questioned the justification for this approach.

Actions Taken	Beyond this more technical detail, the US 2002 Farm Bill was in a general way criticized, both within and outside the US. Three recurrent subjects for criticism were (a) the potential for the crop subsidies to depress world prices; (b) the counter-cyclical nature of price linked support, which shields US producers from the market and (c) the risk that the US could eventually exceed its WTO limit of $19.1 billion production-linked support (the AMS limit). These criticisms have been ignored in the 2008 Farm Act. Instead the new ACRE scheme creates yet another tier of countercyclical support, albeit this time income related. The EU, in defending its rights, will closely monitor the implementation of the 2008 Farm Act for its compliance with trade rules in accordance with both the provisions of the WTO Agreement on agriculture and the WTO trade policy review mechanism. Other WTO partners such as Canada and Brazil participate actively in this process.
Barrier id	020074
Barrier Status	Monitoring solution

Agricultural Export Subsidies and Promotion

Title	**Agricultural Export Subsidies and Promotion**
Creation Date	01 déc. 1996
Last update/check	30 janv. 2009
Sector	Agriculture and Fisheries
Measure	Subsidies
Third Country	United States of America
Description	Prior to the 2008 Farm Bill, the US operated a range of programmes designed to subsidise and/or promote exports of US agricultural products. In the Farm Bill 2008 the Export Enhancement Program (EEP) which allowed funding of $478 million annually in export subsidies was repealed. The program had been inactive since 2001. 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. This program has been extended under the 2008 Farm Bill. The Market Access Program (MAP) offers a share of costs for promotion campaigns for agricultural products (the majority being high value and value added) in selected export markets. The US had three export guarantee programs. The Supplier Credit Guarantee program (SCGP) and two export credit guarantee programs GSM-103 and GSM 102 (GSM= General Sales Manager). The first two have been repealed and GSM-102 renewed providing credit guarantees up to 3 years with a $5.5 billion annual budget. The controversial 1% cap on fees has also been removed.
Barrier id	960092
Barrier Status	Ongoing

WINE AND SPIRITS

Section 211 of Omnibus Appropriations Act (Havana Club)

Title	**Section 211 of Omnibus Appropriations Act (Havana Club)**
Creation Date	28 sept. 1999
Last update/check	19 janv. 2009
Sector	Wines & Spirits
Measure	Trademarks Legislation
Third Country	United States of America
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 US 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 US. "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 US registration from Cubaexport, which had registered the mark in the United States in 1976.
Actions Taken	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 US 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 US 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 US 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 US 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 US/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 US trademark registration of "Havana Club". That decision has been appealed by the company concerned.

By the end of 2008, the US has not adopted any implementing measure of the DSB ruling.

Barrier id	990079
Barrier Status	Ongoing

Wine tax discrimination

Title	**US Wine tax discrimination**
Creation Date	06 déc. 2007
Last update/check	09 févr. 2009
Sector	Wines & Spirits
Measure	Other
Third Country	United States of America
Description	Under US federal law, wine produced in or imported into the US is subject to a 'gallonage tax' with different tax bands according to the alcoholic content. However, small US 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 US 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.
Actions Taken	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 US-Measures affecting alcoholic and malt beverages (16 March 1992) where it was found that the scheme violated the US's obligations under Art. III:2 of

the 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/US wine talks meetings in 2006, 2007 and 2008. According to the information provided by U.S. authorities the scheme remains operational. US also mentioned that there is no rule requiring US origin of the grapes used to produce the wine but that this is the practice.

Barrier id	075091
Barrier Status	Ongoing

Wine Distribution

Title	**Wine Distribution**
Creation Date	28 mars 2006
Last update/check	09 févr. 2009
Sector	Wines & Spirits
Measure	Other Non-Tariff Measures
Third Country	United States of America

Some state legislation prevents cross-state retail sales of wines and spirits; prohibits EU exporters from distributing, rebottling, or retailing their own wine; requires duplicate label approvals; levies 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.

Description

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 US 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 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.

Actions Taken	The issue is being discussed in the framework of the EU/US wine talks.
Barrier id	060043
Barrier Status	Ongoing

AIRCRAFT

Boeing Subsidies

Title	**Boeing Subsidies**
Creation Date	27 oct. 1997
Last update/check	26 févr. 2009
Sector	Aircraft
Measure	Subsidies
Third Country	United States of America
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-US Agreement on Trade in Large Civil Aircraft. The US purported to unilaterally withdraw from the 1992 bilateral EC-US 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 US measures, including federal state and local subsidies (DS 317). For its part, the EU is challenging various US 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 US federal measures, the EU has successfully challenged the tax breaks -- in theory repealed in 2006 by US 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 US 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 US 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 US federal agencies (and resulting from US 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 US 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 US 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 US 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 US 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 US 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 US refused to do so in DS317. In view of this, on 23 November 2005 the EU requested the Panel to invite the US 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 US 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 US 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 US 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 US panel request, but not in the consultation request.
The US repeatedly blocked the initiation of an Annex V process during DSB meetings. On 23 May 2006 the EU transmitted Annex V questions for the US 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 US 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 US 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 US that related to the EU's earlier request.

The EU filed its first written submission on 22 March 2007. The US 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 US 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.

Actions Taken

Some key dates in the WTO process in 2007/2008:

- 22 March 2007: EU files confidential version of First Written Submission
- 6 July 2007: US 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)

Barrier id	970301
Barrier Status	Ongoing

AUTOMOTIVE

Corporate Average Fuel Economy (CAFE) Payment

Title	**Corporate Average Fuel Economy (CAFE) Payment**
Creation Date	01 déc. 1996
Last update/check	04 févr. 2008
Sector	Automotive
Measure	Internal Taxation
Third Country	United States of America
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 US 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.
Barrier id	960072
Barrier Status	Monitoring solution

SHIPBUILDING

Jones Act and Shipbuilding Subsidies

Title	**Jones Act and Shipbuilding Subsidies**
Creation Date	01 déc. 1996
Last update/check	21 mars 2011
Sector	Shipbuilding
Measure	Subsidies
Third Country	United States of America

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 US 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 US 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 US 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 US 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 US merchant marine by guaranteeing construction loans and mortgages on US flag vessels built in the US. 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 US 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 US from ratifying the Agreement. Subsequent bills attempting to implement the ratification failed and the US did not enter the Agreement in 2001. During FY2000, the Maritime Administration (MARAD) approved US$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 US$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.
Barrier id	960098
Barrier Status	Ongoing

ELECTRONICS

Electrical and Electronic Equipment Barriers

Title	**Electrical and Electronic Equipment Barriers**
Creation Date	01 déc. 1996
Last update/check	05 févr. 2009
Sector	Electronics
Measure	Standards and Other Technical Requirements
Third Country	United States of America
Description	Most electrical products in the EU go through a product approval process called "internal production control", which in international discussions often is referred to as Suppliers' Declaration of Conformity (SDoC). The European Commission requested that the US Occupational Safety & Health Administration (OSHA) deregulates its current procedures that require products to go through nationally recognised testing laboratories, ideally by a move towards SDoC. Nationally Recognised Testing laboratories (NRTLs) are third-party laboratories that have met OSHA requirements for performing safety testing and certification of electrical and other products used in the workplace. NRTLs test and certify these products to determine whether they conform to appropriate U.S. product-safety testing standards. SDoC, applicable for most electrical products placed on the European Union market, obliges manufacturers to adhere to strict safety requirements and obliges them to be able to document compliance at all times. It leaves however the detailed modalities for the proof of compliance to the manufacturer and does not require him to use a locally recognised test laboratory. They therefore are free to use the services of any competent (e.g. accredited) test laboratory or use in-house competence.
Actions Taken	On 20 October 2008 OSHA published a request for information and comments on a proposal to permit the use of Suppliers' Declaration of Conformity (SDoC) as an alternative to the Nationally Recognised Testing laboratories (NRTLs) product-approval process. The public has had 90 days to respond (i.e. until 20 January 2009).
Barrier id	960054
Barrier Status	Ongoing

OTHER INDUSTRIES

Wood, Paper and Pulp - Parquet Tariffs

Title	**Parquet Tariffs**
Creation Date	17 nov. 2006
Last update/check	19 janv. 2009
Sector	Wood, Paper and Pulp
Measure	Tariff Levels
Third Country	United States of America
Description	The EU parquet industry, as well as several EU Member States, have raised their concerns at the tariff duty applied by US Customs to multi-layer parquet panels, notably following the 2007 modification of the Harmonised Tariff System of the US (HTSUS). Several products that had been subject to a zero duty for many years previously are now subject to duties of 3.2 % and 8 %. The products concerned are assembled 3-layer engineered wood panels with: (a) a top layer consisting of strips of hardwood of at least 2.5 mm; (b) a core layer constructed of strips of dense softwood about 10 mms thick or wood-based panels (such as MDF) and (c) a bottom layer consisting of a thin ply of wood or veneer. Most of the products concerned are classified in the EC as "parquet panels" under HS subheading 4418 72, a subheading created by the 2007 HS out of the former subheading 4418 30. The US schedule contains a duty-free commitment for products falling under tariff sub-heading 4418 30 (currently, 4418 72). As regards US Customs classification, some of these products, namely those with a top layer of 4mm or more, are classified under sub-heading 4418 72 90, in line with a 2005 Classification Opinion by the WCO Harmonised System Committee (HSC) on classification of multilayer parquet panels. However, instead of the zero duty bound in the GATT US schedule for former 4418.30, the HTSUS imposes a duty of 8 % on sub-heading 4418 72 90. Given that this sub-heading comes out of former 4418.30, this appears to contradict the US commitment. Moreover, most of the EU products imported into the US are parquet panels with a top layer of less than 4 mm. Most of those products are currently classified as plywood flooring falling under the subdivisions of HTSUS 4412 31 and, therefore, also subject to an 8 % duty. However, most products concerned do not correspond to the definition of “plywood” laid down in the HS. This appears to be an erroneous classification, which, therefore, would also contradict the tariff commitments of the US. US Customs is reportedly reviewing all declarations of shipments of wood flooring since 2003 in light of this classification and is notifying the imposition of large penalties on importers.
Barrier id	060100
Barrier Status	Ongoing

Pressure Equipment Regulation

Title	**Pressure Equipment Regulation**
Creation Date	24 mars 2006
Last update/check	05 déc. 2007
Sector	Other Industries
Measure	Other Non-Tariff Measures
Third Country	United States of America

Description

Pressure equipment in the US 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 US Department of Labor.

The regulation on pressure equipment in the US 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 US 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 US 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 US 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 US 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 US 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 US). 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 US 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 US jurisdiction, while third-party inspection of US manufacturers may also be performed by local jurisdictions. According to information from the National Board, the future nomination of non-US 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 US market for European manufacturers and there is no analogy imposed by European legislation on US manufacturers. High entry costs particularly penalise small manufacturers producing only limited quantities of pressure equipment for the US market with respect to their US peers.
Barrier id	060041
Barrier Status	Ongoing

IPR Infringement Cases (Section 337 of 1930 Tariff Act)

Title	**IPR Infringement Cases (Section 337 of 1930 Tariff Act)**
Creation Date	10 déc. 1998
Last update/check	21 janv. 2009
Sector	Other Industries
Measure	Legislation on Patents (Including Plant Varieties)
Third Country	United States of America
Description	Section 337 of the Tariff Act of 1930 provides remedies for holders of US intellectual property rights by keeping the imported goods which are infringing such rights out of the US ("exclusion order") or to have them removed from the US market once they have come into the country ("cease and desist order"). These procedures are carried out by the US International Trade Commission (ITC) and are not available against domestic products infringing US 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.
Actions Taken	Since February 2000, the ITC has started new investigations against a number of European 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 US Administration. The Commission does not discount further action at the WTO level.
Barrier id	980139
Barrier Status	Ongoing

Medical Device User Fee

Title	**Medical Device User Fee**
Creation Date	17 nov. 2006
Last update/check	09 janv. 2007
Sector	Other Industries
Measure	Other
Third Country	United States of America
Description	Under the Medical Device User Fee and Modernization Act of 2002, U.S. SMEs receive reductions and reimburse of the fees charged to obtain pre-market approval (PMA). Non-U.S. companies however are unable to apply for these reductions because the current system requires that they submit a Federal income tax return to show eligibility as foreign tax returns are not accepted. The EC has asked the FDA to change this practice that is alleged to be a discriminatory barrier to trade. As the Medical Device User Fee Authority provided by section 738 expires on 1 October 2007, the FDA is currently consulting with stakeholders and the Congress to develop recommendations for new legislation that would provide for Medical Device User Fees beyond 1 October 2007. The EC received confirmation that as part of this consultation they will give careful consideration to the EC concerns when drafting the new proposal for Congress.
Barrier id	060130
Barrier Status	Ongoing

GOVERNMENT PROCUREMENT

Memoranda of Understanding (Defence Acquisitions)

Title	**Memoranda of Understanding (Defence Acquisitions)**
Creation Date	01 déc. 1996
Last update/check	03 févr. 2009
Sector	Horizontal
Measure	Government Procurement
Third Country	United States of America

Description

There has been a trend towards making the 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 US.

In practice, all North Atlantic Treaty Organisation (NATO) countries (except Iceland), all major non-NATO allies of the US (e.g. Australia, New Zealand) as well as Sweden, Finland and Austria have signed MoUs with the US allowing for a waiver of the corresponding restrictions. However, these MoUs are subject to US laws and regulations, and consequently, other overriding ad hoc restrictions can be imposed annually by Congress through the authorisation/appropriations process.

There are also indications that US 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 US result from a complex set of rules and practices aiming at imposing domestic source restrictions on US defence acquisition. A partial identification of all these barriers is provided in a July 1998 report of the US 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 US:

- Specific requirements to produce goods on US 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 US 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 US. 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 US rather than entering into a direct supply contract with the offshore producer. The effect of this practice is that EU

suppliers look for a US 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 US prime contractors willing to seek FMS support are reluctant to design foreign content into their products. Instead, they prefer replacing any foreign content by US 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 US (even if only for showing around for sales purposes) unless the US company is granted a licence to export that data and consequent rights over the data.
- US subsidiaries. One way of circumventing the US-soil production requirements is to set up a subsidiary in the US. 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 (US Security Manual).
- 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.

Barrier id	960056
Barrier Status	Ongoing

Small Business Act

Title	**Small Business Act**
Creation Date	01 déc. 1996
Last update/check	30 janv. 2009
Sector	Horizontal
Measure	Government Procurement
Third Country	United States of America
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 US Appendix I. Under the SBA, any contract for the purchase of goods or services with an estimated award value greater than US$ 3,000 but not exceeding US$ 100,000 will be automatically set-aside for (US) small business unless fewer than two small businesses submit competitive bids for that procurement. Small business set-asides can occur in procurements above US$ 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 US and makes a significant contribution to the US economy through payment of taxes and/or use of US 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 is 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 1,000. For services industries, depending on the sector, firms with total annual revenues of less than US$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 was to channel at least 1% of overall federal procurement to HUBZone small businesses, which at federal spending levels at the time equated to about $2 billion. By the year 2003, that goal had risen 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 applyied 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%).

In the eight-year period from FY2000 through FY 2007 there were about 21,350 contracts totaling $6.28 billion awarded under these HUBzone mechanisms.

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 US. The EU is, however, concerned that the US "set-aside" measures and their exemption from the GPA favour US industry and have exclusionary effects to the detriment of foreign competitors;

Barrier id	960300
Barrier Status	Ongoing

Steel Local Content Requirements

Title	**Steel Local Content Requirements**
Creation Date	01 déc. 1996
Last update/check	19 janv. 2009
Sector	Iron, Steel and Non-Ferrous Metals
Measure	Government Procurement
Third Country	United States of America
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.
Barrier id	960100
Barrier Status	Ongoing

Berry Amendment to the 1941 Defence Appropriations Act

	Berry Amendment to the 1941 Defence Appropriations Act
Creation Date	01 déc. 1996
Last update/check	06 févr. 2009
Sector	Horizontal
Measure	Government Procurement
Third Country	United States of America

Description

The concept of national security was originally used in the 1941 Defence Appropriation Act to restrict procurement by the DoD to US 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 US 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 US$ 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 US 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 US. 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 US 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 US 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 US 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 US government or US 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 US. At the same time, defence procurement from foreign companies is sometimes also impeded by Buy America restrictions on federally-funded programmes.

Barrier id	960055
Barrier Status	Ongoing

Procurement: Buy American

Title	(*) Procurement: Buy American
Creation Date	01 déc. 1996
Last update/check	24 nov. 2011
Sector	Horizontal
Measure	Government Procurement
Third Country	United States of America

Description

The Buy American Act (BAA), initially enacted in 1933, is the core domestic preference statute governing US 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, expanded 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 BAA restricts the purchase of supplies, which are not domestic end products, for use within the US and requires, with some exceptions the use of only domestic construction materials in contracts for construction in the US.

The BAA uses a two-part test to define a domestic end product a) the article must be manufactured in the US; and 2) the cost of domestic components must exceed 50% of the cost of all the components.

The BAA applies to purchases of supplies valued from US $3,000 to US$193,000 as well as to construction purchases valued from US$3,000 to US $7,407,000.

On 13 February 2009, the US Congress passed the $790bn American Economic Recovery and Reinvestment Act (ARRA), which was signed into law by President Obama on 17 February.

The language of this legislation includes two new Buy America(n) provisions, which prohibit funds appropriated by ARRA:

- to be used for a project for the construction, alteration, maintenance, or repair of a public building or public work unless all of the iron, steel and manufactured goods used in the project are produced in the United States and/or
- to be used for the procurement by the Department of Homeland Security of a detailed list of textiles items (e.g. clothing, tents, cotton and natural fibres, etc) unless the item is grown, processed in the United States.

Specific waivers to these restrictions can be requested on the basis of public interest, non-availability or unreasonable costs.

Following the adoption of the ARRA a number of additional legislative proposals including similar BA provisions are currently at different stages of the legislative pipeline.

These measures are being introduced at a time of global economic crisis and following the declaration by G20 leaders in November 2008 that they would not introduce new protectionist measures as a result of the crisis.

We fear there is a serious danger that other countries will adopt similar policies and in recent months we have witnessed such a trend. For example in spring 2009, China emphasised to its procuring entities that they should adhere strictly to the existing "Buy China" provisions in China's public procurement legislation. Furthermore, one Australian province has adopted similar provisions, against the position of the Federal government, while protectionist procurement measures have also been reported in Turkey, Brazil, Ukraine and Indonesia among others. Canada has also been extremely vocal against the BA provisions and the Canadian government has flagged a "reciprocity" approach, whereby it would provide the US access to the closed parts of its procurement markets, only if the US exempts it from Buy America provisions. This has been reflected in a US-Canada bilateral agreement in 2010.

Background

These measures are being introduced at a time of global economic crisis and following the declaration by G20 leaders in November 2008 that they would not introduce new protectionist measures as a result of the crisis.

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The Commission is constantly active in monitoring and assessing the legal and potential economic impact of the new provisions on EU companies. In addition it has undertaken a wide range of actions, including the following, to raise its concrete concerns with the objective to ensure that EU suppliers' rights are not further restricted:

Actions Taken

- During the ARRA legislative process, the Commission intervened to alert the US of the impact protectionist measures may have in world trade while also urging for the compliance with the US international obligations (letters sent by Ambassador Bruton on 2 February 2009).
- In addition, the Commission advocated for a "reciprocity" approach to be taken by the U.S. towards those trading partners with a de facto open procurement market (letters sent by Ambassador Bruton on 11 February 2009)
- The Commission leads the scrutiny of any proposals for additional US BA

measures within the WTO GPA Committee and ensures a regular follow-up of this matter (ie. during last GPA meeting in September 2011)

- When appropriate, comprehensive comments are submitted to the relevant US authorities (ie. Commission comments on the two sets of ARRA BA implementation rules and guidance)
- The Commission has promoted the inclusion of language in the April G-20 and July G-8 final declarations stressing the need to reject protectionism and to fully respect the WTO and other international non-discriminatory commitments. Every opportunity is taken to recall to Parties their G-20 and G-8 commitments to refrain from taking protectionist measures.
- Regular contact is maintained with other key trading partners in Brussels, Washington and Geneva to gather and exchange information on the common concerns regarding the new provisions. The Commission has also urged them to continue maintaining the pressure on the U.S. Administration and legislators on this issue.

Barrier id	960059
Barrier Status	Ongoing

(*) In its conclusions of 8 December 2008, the Council of the European Union asked the European Commission "to draw up, in conjunction with Member States, a list of trade barriers to be prioritised in each of the EU's major trading partners ...". These barriers are marked as "key barriers" in the Market Access Database.

INVESTMENT ISSUES

Helms-Burton Act

Title	**Helms-Burton Act**
Creation Date	01 déc. 1996
Last update/check	20 févr. 2008
Sector	Horizontal
Measure	Trade Related Investment Measures
Third Country	United States of America

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 US 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 US citizens to file lawsuits for damages against foreign companies investing in confiscated US (including Cuban-American) property in Cuba (Title III of the Act) and (b) requires the US Administration to refuse entry to the US 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 US 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.

On 11 April 1997, an Understanding was reached with the US 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.

Actions Taken

At the 18 May 1998 EU-US Summit in London, building upon the April 1997 Understanding, the EU and the US 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 US 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 US 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 US commitment to continue to waive the right of US 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 US 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 US Administration to restrain its use of unilateral sanctions with extraterritorial effects, so-called 'secondary boycotts'. The TPPC states that the US 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 US Administration did not grant the EU a multilateral regime waiver as foreseen by the Understanding of 11 April 1997. However, the US 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.

Barrier id	960295
Barrier Status	Monitoring solution

Iran-Libya Sanctions Act and Iran Freedom Support Act

Title	**Iran-Libya Sanctions Act and Iran Freedom Support Act**
Creation Date	01 déc. 1996
Last update/check	01 févr. 2008
Sector	Horizontal
Measure	Trade Related Investment Measures
Third Country	United States of America
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 US$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 US 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 US government not to issue any specific license or grant any permission to export goods or technology to the sanctioned company.

3. US financial institutions may be barred from making loans or providing credits totalling more than US$ 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 US 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.

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-US Understanding on Helms-Burton and ILSA specified that the US 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.

Actions Taken

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 US agreed on a package deal at the 18 May 1998 EU-US Summit in London, which contains three elements (1) an agreement on disciplines for investments into illegally expropriated property; (2) a US 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-US 1998 Summit, the US 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 US 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 US 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.

Barrier id	960061
Barrier Status	Ongoing

SERVICES

COMMUNICATION SERVICES

Digital Terrestrial Television

	Digital Terrestrial Television
Creation Date	24 juil. 2006
Last update/check	09 janv. 2009
Sector	Services - Communication, incl. postal services
Measure	Standards and Other Technical Requirements
Third Country	United States of America
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.

Barrier id	060083
Barrier Status	Ongoing

Section 110(5) of 1976 Copyright Act (Irish Music)

Title	**Section 110(5) of 1976 Copyright Act (Irish Music)**
Creation Date	27 mai 1997
Last update/check	15 janv. 2009
Sector	Services - Communication, incl. postal services
Measure	Legislation on Copyright and Related Rights
Third Country	United States of America
Description	Section 110 of the US 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 US has broader economic effects negatively affecting the overall position of authors on the US 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 US 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 US declared that it was not 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 US 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 US 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 US and the EC notified to the WTO a mutually satisfactory temporary arrangement on 23 June. In September 2003, the US

made the agreed payment. The arrangement expired on 21 December 2004 and the US 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 US 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 US opposition. The arbitration procedure is currently suspended.

Barrier id	970191
Barrier Status	Ongoing

Section 310 of the 1934 Communications Act

Title	**Section 310 of the 1934 Communications Act**
Creation Date	29 sept. 1999
Last update/check	09 janv. 2009
Sector	Services - Communication, incl. postal services
Measure	Discriminatory treatment
Third Country	United States of America

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 however will 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.

Barrier id	990087
Barrier Status	Monitoring solution

Satellite Services

Title	**Satellite Services**
Creation Date	29 sept. 1999
Last update/check	09 janv. 2009
Sector	Services - Communication, incl. postal services
Measure	Discriminatory treatment
Third Country	United States of America

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 US 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. The U.S. revised offer in the DDA round of negotiations offered the elimination of this exemption whose validity though will depend upon the successful conclusion of the Round.

Barrier id	990082
Barrier Status	Ongoing

Wire Line and Wireless Telecommunications

Title	**Wire Line and Wireless Telecommunications**
Creation Date	24 juil. 2006
Last update/check	09 janv. 2009
Sector	Services - Communication, incl. postal services
Measure	Discriminatory treatment
Third Country	United States of America
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.

Barrier id	060084
Barrier Status	Ongoing

FINANCIAL SERVICES

SEC Regulations for Securities Firms

Title	**SEC Regulations for Securities Firms**
Creation Date	09 avr. 1999
Last update/check	15 janv. 2009
Sector	Services - Financial
Measure	Discriminatory treatment
Third Country	United States of America

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 barrier 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 US.

On 1st February 2008 the Commission and US SEC issued a joint press release on mutual recognition in securities in relation to brokers, dealers and exchanges, in which both the SEC Commissioner Cox and Commissioner McCreevy agreed to work together on this initiative. On 24th March the SEC announced the "next steps for the implementation of the mutual recognition concept". This statement indicates different processes to be put in place between the SEC and other actors, including the EU. Since then, SEC and European Commission officials have worked together on defining a process for carrying out a comparability assessment of the U.S. and EU securities regimes. The TEC endorsed this work in May 2008 and encouraged the parties to conclude this first phase as soon as possible in order to start with the comparability assessment of the U.S. and EU securities regime in 2009.In parallel, the SEC launched a consultation on the Rule 15a6 amendments to in order to improve the process by which US investors have access to foreign broker-dealers, which closed in September 2008.

Barrier id	990025
Barrier Status	Ongoing

Treatment of EU Global custodians

Title	**Treatment of EU Global custodians**
Creation Date	20 déc. 2007
Last update/check	17 déc. 2008
Sector	Services - Financial
Measure	Other Non-Tariff Measures
Third Country	United States of America
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.).
Barrier id	075095
Barrier Status	Ongoing

PATRIOT Act

Title	**PATRIOT Act**
Creation Date	24 oct. 2006
Last update/check	19 janv. 2009
Sector	Services - Financial
Measure	Other Non-Tariff Measures
Third Country	United States of America
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.
Actions Taken	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 were allegations in the past, from European banks and individual Member States, of 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, but for the last two years there have been no new allegations.
Barrier id	060093
Barrier Status	Ongoing

Sarbanes-Oxley Act

Title	**Sarbanes-Oxley Act**
Creation Date	17 nov. 2006
Last update/check	15 janv. 2009
Sector	Services - Financial
Measure	Other Non-Tariff Measures
Third Country	United States of America
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 US 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 US and the European Commission and Member States on audit regulation, in particular the independent public oversight of the audit profession on either side, remains a major (political) challenge in 2009.
Actions Taken	Requirement to use US 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 US 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 US GAAP for their financial statements covering years ended after 15 November 2007. EU companies using the EU carve-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 US 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 US 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 US 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.

In December 2007, the PCAOB requested public comments on a proposed policy statement giving guidance regarding the implementation of PCAOB Rule 4012, clarifying the conditions under which the PCAOB might consider moving to full reliance on a non-US oversight body. On 15 June 2008, the PCAOB organised a roundtable with stakeholders to which DG MARKT participated.

Barrier id	060125
Barrier Status	Monitoring solution

100 % collateral requirement on reinsurance business and discriminatory tax treatment

Title	(*) **Services: 100 % collateral requirement on reinsurance business and discriminatory tax treatment**
Creation Date	17 nov. 2006
Last update/check	16 nov. 2011
Sector	Services - Financial
Measure	Other Non-Tariff Measures
Third Country	United States of America
Description	Non-US reinsurers are required to post 100% collateral for their US acceptances (i.e. their US reinsurance business) in the US. The collateral requirement appears discriminatory and not technically justified and leads to important costs not only for European reinsurers, but also for the US insurance industry and their policy holders. Legislation is currently also under consideration in the US Congress (H.R. 3157 and S.1693) to raise taxes on US foreign-owned insurance companies, by denying US tax deductions on reinsurance cessions to affiliated reinsurance companies outside the US.
Background	The insurance sector in the US is regulated at the level of the States. A body of State insurance Commissioners, the National Association of Insurance Commissioners (NAIC) drafts model insurance laws for use by individual States. One such model law is the NAIC Model Credit for Reinsurance Law. This law provides that individual US states will automatically allow US insurers to take solvency credit in their balance sheets for the reinsurance they purchase from US accredited reinsurers. By contrast, for reinsurance purchased from 'alien' (non-US) reinsurers which operate on a cross-border basis, credit is only allowed if the alien reinsurers: (i) deposit collateral or cash or its equivalent with the US insurer; or (ii) maintain a multi-beneficiary non-working trust fund in the US. In both cases the sum deposited must cover the full gross amount of the reinsurer's liabilities in respect of its US risks plus an additional surplus. The aim of the H.R. 3157 and S.1693 is to deal with "income shifting". It seems to assume that all reinsurance agreements are highly profitable to the reinsurer and hence considers all affiliate reinsurance doubtful or even abusive. Based on this comparison to earning stripping, the formula proposed in the proposal is punitive with respect to legitimate risk-transfer agreements. The bill would cover affiliated reinsurance premiums ceded to a reinsurance company incorporated in the EU, where the average tax burden is already 25% (and even higher in the largest EU reinsurance markets). Such legislation would introduce a punitive and apparently discriminatory tax regime on global reinsurance/insurance companies.
Actions Taken	The elimination of the collateral requirement is a key request which the EU pursues in the WTO Doha Development Agenda negotiations on financial services. This request is regularly repeated to the US in this context. Work on this requirement is also included in the current Framework for Advancing Transatlantic Economic Integration, which led inter alia to the creation of the Transatlantic Economic Council (TEC).

Currently, annex 6 of the Framework text on Financial Markets foresees discussing the issue of convergence of reinsurance regulation, which would allow for discussions on this subject. Furthermore, the matter is also being discussed in the EU-US Financial Markets Regulatory Dialogue. Specific advocacy has also been undertaken.

On 29 September 2011, Commissioners De Gucht and Barnier wrote a joint letter to the Senate Finance Committee and the House Committee on Ways and Means expressing the EU's concerns with the movement on legislation on removing the tax deduction for foreign affiliated reinsurance.

Barrier id	060127
Barrier Status	Ongoing

(*) In its conclusions of 8 December 2008, the Council of the European Union asked the European Commission "to draw up, in conjunction with Member States, a list of trade barriers to be prioritised in each of the EU's major trading partners ...". These barriers are marked as "key barriers" in the Market Access Database.

TRANSPORT SERVICES

Food Aid Program

Food Aid Program

Creation Date	17 nov. 2006
Last update/check	26 févr. 2009
Sector	Services - Transport
Measure	Quantitative Restrictions and Related Measures
Third Country	United States of America

Description

Under US regulations, only agricultural commodities produced in the US may be used in food aid transactions. Legislation expressly includes among its food aid objectives to "develop and expand export markets for United States agricultural commodities" and provision for overseas donations of surplus commodities acquired by the Commodity Credit Corporation. 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 US food campaigns. While the US Farm Bill 2008 removes "market development" as an objective of food aid programs it adds a similar provision such as "development of trade capacity".

Regarding transportation of US food aid, the US imposes cargo preferences on the World Food Program (WFP) requiring that at least 75% of tonnage granted is transported on vessels carrying the US flag. It is, however, recognised that freight rates on ships carrying the US flag are generally higher than those of other ships. The cost difference between the estimated amount of freight on a ship not carrying a US flag and the actual freight on a US vessel is called the Cargo Preference Premium.

From 2002, income and expenditure is being recorded on the basis of the adjusted global freight estimates (net of cargo preference premiums). However, as a service to the US, the WFP continues to account for cash receipts and cash disbursements related to US 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 US public procurement market. In fact, this policy imposes Buy American requirements on a UN organisation.

The propensity of the US 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, cutting out traditional supplies and undermining local producers. Following EU complaints, the US has partially reviewed its policy. However, the 2008 Farm Bill includes few provisions that significantly change US food aid policy. Congress has repeatedly 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 US market. The 2008 Farm Bill only includes a pilot program for local and regional purchases of $60 million over four years (sec. 3206 of the Farm Bill). In addition, in the present WTO negotiations, the US -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 US food aid be procured on the US market (including preference for transport / handling on US logistics). 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. $375 million/year has been approved for non-emergency food assistance programs. The Farm Bill includes a new provision on oversight, monitoring and evaluation of US food aid programs. Especially the monetisation has received harsh criticism from the US Governmental Accountability Office (GAO).

Barrier id	060115
Barrier Status	Ongoing

Aircraft Leasing

Title	**Aircraft Leasing**
Creation Date	28 sept. 1999
Last update/check	17 déc. 2008
Sector	Services - Transport
Measure	Discriminatory treatment
Third Country	United States of America
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 US rules on wet lease prevent any lease of

non-US registered aircraft by US carriers for domestic flights. No Community-registered aircraft with Community crew can thus be leased to US companies for domestic flights in the US.

The EU-US Air Transport Agreement includes the opportunity for EU carriers to lease to US carriers aircraft with crew for international air transportation. The Agreement is being applied provisionally since 30 March 2008. In February 2008, the U.S. Department of Transportation issued a notice setting forth the economic and technical requirements for the provision of aircraft with crew by foreign carriers to U.S. carriers on international flights.

Barrier id	990081
Barrier Status	Ongoing

Shipping on U.S.-flagged Vessels

Title	**Shipping on U.S.-flagged Vessels**
Creation Date	17 nov. 2006
Last update/check	19 déc. 2008
Sector	Services - Transport
Measure	Standards and Other Technical Requirements
Third Country	United States of America

Description

The US has a number of statutes in place that require certain types of government-owned or financed cargoes to be carried on US-flag commercial vessels. Whilst over 95% of all international maritime trade to and from the US is carried by foreign shipping companies, the impact of these measures denies EU competitors access to this pool of US cargo, while providing US ship owners with guaranteed cargoes at protected, highly remunerative rates.

The application of these measures to US public procurement contracts introduces uncertainty for those businesses whose tenders include shipping goods to the US. Whether they are required to ship the goods on US-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 US-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 US Government loans (i.e. commodities financed by Export-

Import Bank loans) be shipped on US-flag vessels. The US 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 US government-generated cargoes covered be transported on US-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 US 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 US flagged vessels be increased from 50% to 75%.
- US Mineral Leasing Act, as amended, stipulates that exports of Alaskan North Slope oil must be transported on US-flagged vessels (with some exceptions).

Barrier id	060129
Barrier Status	Ongoing

Trade and security: 100% scanning

Title

(*) **Trade and security: 100% scanning**

Creation Date

13 déc. 2006

Last update/check

23 avr. 2010

Sector

Services - Transport

Measure

Registration, Documentation, Customs Procedures

Third Country

United States of America

Description

On 3 August 2007 the US President signed the 'Implementing Recommendations of the 9/11 Commission Act of 2007' into law. The so-called "9/11 Bill" foresees 100% scanning of all US-bound containers within a 5-year deadline by 1 July 2012. In the view of the European Commission with regard to 100% scanning:

- the initiative is unilateral and implies extraterritoriality.
- it is ineffective and disproportionate.
- it would create a false sense of security since it does not guarantee 100% security.
- Compared to alternative strategies, based on a multilayered risk management approach that can produce real benefits to security, it is a high cost option for administrations and ports.
- it would tend to divert scarce European resources away from essential European security requirements, it could have serious repercussions for EU-US maritime transport and trade, and on transport organisation within the EU and worldwide, without any clear benefits in terms of enhanced security.

Background

Since 9/11 and other terrorist attacks in Europe and elsewhere, security has become a top priority for inter alia, European and US policies.

Complex and coordinated responses and actions are necessary as part of a multi-layered risk management approach to combat the scourge of terrorism, proliferation of weapons of mass destruction and other modern threats.

The European Commission has made major efforts to integrate security in the customs policy area and the EC and EU Member States followed the development of the WCO SAFE Framework closely and actively participated in its formulation.

<u>Framework for cooperation</u>

EC-US Customs Cooperation is based on the Agreement between the European Community and the United States of America on customs cooperation and mutual assistance in customs matters of 28 May 1997 (CMAA). In 2004 this agreement was expanded and an Agreement on intensifying and broadening the Agreement on customs cooperation and mutual assistance in customs matters to include cooperation on container security and related matters (Container Security

Agreement) was concluded.

Cooperation between the US and EC takes place at all levels, through regular bilateral contacts. The main annual forum for discussions is the Joint Customs Cooperation Committee, at the level of the head of customs (US Customs and Border Protection and DG TAXUD). Moreover, there are regular contacts at Commissioners level, in the context of the Transatlantic Economic Council (TEC).

In support of the World Customs Organization's SAFE Framework of Standards, in 2005 the U.S. and EU agreed to assess the feasibility of establishing the mutual recognition of their respective security trade partnership programs – CBP's Customs-Trade Partnership Against Terrorism (C-TPAT) and the EU's security Authorized Economic Operator (AEO). Work is still ongoing to reach this ambitious objective.

<u>SAFE Port Act</u>

The Security and Accountability for Every (SAFE) Port Act which was passed by the US Congress in 2006 required the Department of Homeland Security (DHS) to carry out pilot projects in foreign ports to test the feasibility of 100% scanning and to develop standards for 100% scanning, including radiological detection systems and other non-intrusive inspection technologies. The US programmes of Container Security Initiative (CSI) and Customs-Trade Partnership against Terrorism (C-TPAT) were included in legislation through this act.

In December 2006, the US launched the first phase of the Secure Freight Initiative (SFI). The first phase of the SFI included the port of Southampton in the UK.

<u>Southampton Pilot Project</u>

The Southampton project also took place under the framework of the EU-US customs cooperation agreement as an enhanced cooperation form of Container Security Initiative.

The aim of the Southampton pilot project was to implement 100% scanning of all US bound containers leaving Southampton Container Terminal. The total cost was estimated at $18 million for scanning around 5,500 US bound containers over a period of six months. The results showed it would be extremely expensive to implement at EU ports, could lead to major trade disruptions and would add an additional administrative burden.

Notwithstanding the results of the Southampton pilot project, the 9/11 Bill was signed into law in October 2007.

Actions Taken

At the meetings of the Transatlantic Economic Council in December 2008 and October 2009 the Commission repeated the strong concerns voiced by the Member States as well as the business community on the application of the US legislation on 100% scanning requirement.

In February 2010 the Commission released three studies on the impact of 100% scanning on EU customs, on maritime transport and on trade and summarised the results in a Commission staff working paper. The studies confirm the high cost of the scanning requirement if it were implemented:

- investment for scanning in EU ports could top € 430 million, and operational costs could exceed €200 million annually;
- direct transport costs of US-bound containers could rise by 10%;
- 100% scanning could lead to an annual welfare loss of €10 billion for the EU and US combined.

Even more importantly it has not been demonstrated that the measure would bring significant security benefits for global supply chains.

Barrier id	060141
Barrier Status	Ongoing

(*) In its conclusions of 8 December 2008, the Council of the European Union asked the European Commission "to draw up, in conjunction with Member States, a list of trade barriers to be prioritised in each of the EU's major trading partners ...". These barriers are marked as "key barriers" in the Market Access Database.

Aviation: ownership restrictions and foreign repair stations

Title	(*) **Aviation: ownership restrictions and foreign repair stations**
Creation Date	09 avr. 1999
Last update/check	23 avr. 2010
Sector	Services - Transport
Measure	Foreign Direct Investment Limitations
Third Country	United States of America
Description	Ownership restrictions: US law requires US 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 US citizens and two-thirds of its board of directors must be US citizens. Airline ownership conditions (i.e. the interpretation of the notion "actual control") risk being tightened further in the context of the review of the FAA Reauthorisation Act. Foreign repair stations: the Federal Aviation Administration (FAA) was prohibited from issuing new foreign repair station certificates unless the Transportation Security Administration (TSA) of the Department of Homeland Security issued its final repair station security rules by 3 August 2008. As the TSA failed to meet this deadline, foreign repair stations can not be certified unless the repair station was previously certified and up for renewal or is already in the process of certification.
Background	Ownership restrictions: US Code 40102 establishes that 75% of the voting rights in a US carrier must be owned by persons who are citizens of the United States. The second stage of the EU-US Air Transport Agreement which was concluded on 25 March 2010 and is at present subject to approval by the Council strongly incentivises a change in US law in order to enable investors from each side to take full ownership

and control of the other's airlines. On 21 May 2009, the House of Representatives approved the FAA Reauthorisation Act of 2009 which introduces a restrictive interpretation of what constitutes a US citizen: "An air carrier shall not be deemed to be under the actual control of citizens of the United States unless citizens of the United States control all matters pertaining to the business and structure of the air carrier, including operational matters such as marketing, branding, fleet composition, route selection, pricing and labor relations". Contrary to the provisions in the House Bill, the Senate bill as approved by the Committee does not contain restrictive language on ownership and control of US airlines.

Foreign repair stations: European aircraft rely on foreign repair stations in or outside the United States for at least some of their maintenance. These facilities to the extent they release to service US aircraft are certified annually by the Federal Aviation Administration (FAA), and a repair station may lose its certificate if it does not comply with FAA requirements. These facilities are also subject to certification by the European Aviation Safety Agency; their certificates are delivered though by the FAA who is carrying out the certification and oversight tasks on behalf of EASA based on bilateral agreements between three member states (Ireland, France and Germany) and the US FAA. The certificate, which acts as business license for repair stations, authorizes these stations to perform maintenance on civil aviation products, including aircraft, engines, and propellers, and on components installed on these products. These repair stations perform maintenance for aircraft irrespective of whether these are engaged in commercial (operated by airlines) or non-commercial activities (general aviation owners and operators).

Section 1616 of the “9/11 Commission Recommendation Act of 2007” and the 2003 FAA Reauthorization Act required the Transportation Security Administration (TSA) of the Department of Homeland Security to promulgate repair station security rules. Under those laws, if the TSA does not issue a final rule by 3 August 2008, the FAA will be prohibited from issuing new certificates to foreign repair stations. Although there is an exception for certificate renewals and applications in process, the law will have unintended and negative consequences for companies seeking to expand operations in the US.

FAA certified repair stations in the U.S. are required to conduct drug and alcohol testing for employees performing “safety-sensitive functions” for US air carriers. This means that an employee performing a maintenance task is tested for drug and alcohol use. Additionally, subcontractors used by the repair station are also required to undergo testing. Currently, this only applies to US-based repair stations.

On 21 May 2009, the House of Representatives approved the FAA Reauthorisation Act of 2009 which requires foreign repair stations to be inspected every six months in order to provide services to US airlines, and for alcohol and drug testing performed in accordance with US requirements to be applied to the repair stations personnel, and to every subcontractor down the chain. The Senate FAA Reauthorisation bill as approved on 22 March 2010 is overall positive on foreign repair stations, though certain provisions are difficult to follow. Section 521 (a) introduces the principle of "appropriate inspections based on identified risk" and recognises the role of foreign authorities operating under a bilateral safety agreement, while para (e) requires bi-annual inspections for all repair stations "in a manner consistent with United States obligations under international agreements." The explanatory language accompanying the bill clarifies that this constitutes a carve-out for countries operating under bilateral aviation safety agreements.

While preserving the idea of drug and alcohol testing of repair station employees already introduced in the House bill, the Senate adopts a flexible approach. The provision requires the US government to request ICAO to develop international standards and for repair station employees to be subject to a testing programme determined "acceptable" by the FAA Administrator and consistent with the applicable laws of the country. Like the House bill, the Senate bill would establish an independent Aviation Safety Whistleblower Investigation Office to investigate safety complaints and limits the ability of FAA inspectors to work for air carriers which they oversaw.

The Federal Aviation Administration (FAA) Reauthorisation Acts serve to authorise the FAA's budget. Nonetheless, it is also used to modify existing rules governing aviation. The last FAA Reauthorisation expired in 2007 and since then the FAA has been operating under short term extensions.

The House of Representatives approved a three-month extension of FAA programs through 3 July 2010, allowing more time for Congress to debate a permanent reauthorization bill for the FAA. The Senate is expected to pass a similar extension.

Actions Taken	Ongoing advocacy with US law-makers.
Barrier id	990028
Barrier Status	Ongoing

(*) In its conclusions of 8 December 2008, the Council of the European Union asked the European Commission "to draw up, in conjunction with Member States, a list of trade barriers to be prioritised in each of the EU's major trading partners ...". These barriers are marked as "key barriers" in the Market Access Database.

ENERGY SERVICES

Energy Acts

Title	**Energy Acts**
Creation Date	01 déc. 1996
Last update/check	09 févr. 2009
Sector	Services - Energy
Measure	Foreign Direct Investment Limitations
Third Country	United States of America
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 (FERC). Hence, FERC acts as licensing authority over non-federal hydroelectric facilities. According to the Act, such licences can only be granted to US citizens and to corporations organised under US law. Thus the only possibility for non-US citizens to obtain such a license would be to form a US company. For the operation, transfer, receipt, manufacture, production, acquisition and import or export of facilities which produce or use nuclear materials, the Atomic Energy Act (AEA) 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 US law. In this respect, the Nuclear Regulatory Commission interprets the AEA to prohibit 100% ownership of a nuclear facility by a foreign individual or corporation, but allows licensees to be partially (current standard is 50%) owned by foreign corporations.
Barrier id	960066
Barrier Status	Ongoing

OTHER SERVICES

Broadcasting and public performance rights

Title	**Broadcasting and public performance rights**
Creation Date	10 déc. 1998
Last update/check	21 janv. 2009
Sector	Services - Other
Measure	Legislation on Copyright and Related Rights
Third Country	United States of America
Description	European industry complains that producers and performers do not enjoy broadcasting rights or public performance rights in the U.S. The U.S. has not joined the Rome Convention of 1961, which recognises these rights, and it has taken an exception under the World Intellectual Property Organisation (WIPO) Performances and Phonograms Treaty (WTTP) of 1996, actively excluding them. To the contrary, the EU does grant rights to both producers and performers since 1992, through the Rental Directive (2006/115/EC). Consequently U.S. right holders are protected in a large number of EU Member States. Furthermore, although the U.S. has acceded to the Berne Convention in 1989, which contains an obligation to make moral rights available for authors, these rights are recognised only to a very limited extent in U.S. legislation.
Barrier id	980142
Barrier Status	Ongoing

OTHER HORIZONTAL ISSUES

CUSTOMS PROCEDURES

Customs Refusal of EU Origin

Title	**U.S. Customs Refusal of EU Origin**
Creation Date	07 avr. 1997
Last update/check	17 déc. 2008
Sector	Horizontal
Measure	Registration, Documentation, Customs Procedures
Third Country	United States of America
Description	US 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 US to recognise a simple EU origin. US Customs noted this issue extends the scope of customs policy and that inter-agency consensus did not yet exist. Some US industries and organised labour opposed the change whilst other business had cost concerns (i.e. marketing). For example, tyres imported into the US 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.
Barrier id	970144
Barrier Status	Ongoing

Container Security Initiative (CSI)

Title	**Container Security Initiative (CSI)**
Creation Date	17 nov. 2006
Last update/check	19 déc. 2008
Sector	Horizontal
Measure	Registration, Documentation, Customs Procedures
Third Country	United States of America
Description	The US 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 US ports; using technology to pre-screen high-risk containers and developing and using smart and secure containers. The US 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 US 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 US Customs officials in their ports. The CSI screening and related additional US customs routines are allegedly causing significant additional costs and delays to shipments of EU machinery and electrical equipment to the US. This burden is so severe that a number of small European engineering companies have decided not to export to the US any longer because of CSI. There is also competitive distortion in this fiercely competitive engineering market between EU and US engineering companies since up to now there is, de facto, no reciprocity between the EU and the US in this issue.
Actions Taken	In order to ensure a level playing field between European ports, the EU concluded an agreement that expands the EU-US 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 US agreed to participation in the CSI of more EU ports, which comply with certain jointly agreed minimum standards and where no US officials will be stationed. For this project, a pilot action was performed in 2007 in the port of Szczecin (Poland). This pilot is likely to be re-activated in 2009. Similar actions are underway in Aarhus (Denmark) and Salerno (Italy) and commenced at the beginning of 2008. Further EU ports may, by mutual consent, partake in this initiative in 2009. The EU-US working group established by the expanded agreement is currently working on further measures which are intended to diminish the barriers caused by this initiative.
Barrier id	060106
Barrier Status	Ongoing

Lacey Act - Scope and implementation of the US legislation to combat illegal logging

Title	**Lacey Act - Scope and implementation of the US legislation to combat illegal logging**
Creation Date	08 janv. 2009
Last update/check	14 déc. 2011
Sector	Horizontal
Measure	Registration, Documentation, Customs Procedures
Third Country	United States of America
Description	The Lacey Act, initially adopted in 1900, is the United States' oldest national wildlife protection statute and serves as an anti-trafficking law protecting a broad range of wildlife and wild plants. In May 2008, the Lacey Act was amended to extend its scope to all plants, including timber or associated wood products with the objective to combat illegal logging. The amendment added a new requirement for an import declaration, which will oblige importers of covered plants and plant products to list shipment information along with information such as plant scientific name and country of harvest to prove compliance with the Lacey Act requirements. Domestic products are not subject to similar reporting requirements. According to the implementation schedule of the revised Lacey Act provisions, the

import declaration requirements will be gradually phased in. In the initial phase (which started on 15th December 2008), the declaration was voluntary. Obligatory declarations are gradually being phased in starting from 1 April 2009 as regards certain wood products (HTS Chapter 44), and as regards some additional products from 1 April 2010 onwards (umbrellas, hand tools, pianos, stringed instruments, revolvers and pistols, seats with wood frames, sculptures). Further additional products will be considered for declaration requirement starting from 1 September 2010 onwards. US APHIS is currently collecting comments on these additional products.

Background	Environmental objectives like the need to combat illegal logging have gained more prominence during the past years also in the US lawmaking. The revised Lacey Act provisions reflect this trend.
Actions Taken	The US has published several notices in the Federal Register asking for comments on the implementation of the revised Lacey Act provisions. The Commission provided comments on four notices: 8 October 2008, 3 February 2009, 2 September 2009 and 29 August 2011. On all occasions, the Commission took into account comments received from Member States and EU industry in formulating their comments. The Commision also encouraged interested EU stakeholders to provide their own individual comments to the US APHIS to achieve a critical mass of comments stressing the issues of EU interest to the US side.
Barrier id	095204
Barrier Status	Ongoing

ANTI-DUMPING

Byrd Amendment (Continued Dumping and Subsidy Offset Act)

Title	**Byrd Amendment (Continued Dumping and Subsidy Offset Act)**
Creation Date	17 janv. 2002
Last update/check	09 janv. 2009
Sector	Horizontal
Measure	Anti-Dumping Measure
Third Country	United States of America
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 US 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 US 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. 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 US, 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.
Actions Taken	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 US. 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 US 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 US until 27 December 2003 to comply with this ruling, which the US failed to do. [2005-06-28]

31 August 2004: The WTO arbitrators concluded that the EU could impose retaliatory measures on imports from the US worth 72% of the payments made to the US 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 US 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 US. On the same day Canada also imposed additional import duties on certain US 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 US 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 US $ 380 million putting the total amount distributed so far at more than US $ 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). On 1 May 2008, the EC sanctions were decreased in line with the decrease in distributions in the US.

On 2 September 2008, Japan informed that it would maintain its sanctions for another year but at a lower level than applied since 1 September 2005 (=US$ 16,49 million instead of US$ 48.18 million) by lowering the rate of the additional duty to 10,6%. Canada’s and Mexico's sanctions have expired and will not resume since the US Customs does not distribute duties collected on their goods any longer.

Barrier id	020004
Barrier Status	Monitoring solution

Anti-dumping measures: practice of zeroing

Title	(*) **Anti-dumping measures: practice of zeroing**
Creation Date	28 avr. 2004
Last update/check	25 nov. 2011
Sector	Horizontal
Measure	Anti-Dumping Measure
Third Country	United States of America

Description

Zeroing is a calculation device used by the United States for increasing, often substantially, the exporter's margin of dumping and thus the amount of anti-dumping duty paid. Zeroing has two main effects on EU exporters. Firstly, it increases the amount of duty paid on those goods exported to the US, thus reducing their competitiveness. Secondly, by increasing the rate of anti-dumping duty, it deters many exporters from exporting to the US at all.

The US system: Following a new investigation, the US imposes an anti-dumping duty per exporter and, upon request, revises the level of the duty every year in a so-called "administrative review". Such reviews involve a new calculation of dumping on the imports which enter the US during the previous year. For example, if an anti-dumping duty is imposed on 1 January 2008, the first review will begin in January 2009, covering imports into the US during the period 1 January 2008 to 31 December 2008. In most cases, it is these reviews which determine how much anti-dumping duty is actually collected, as the duty rate from the original investigation is replaced by the rate found in the first administrative review. In these circumstances, the only relevance of the dumping margin in the original investigation is to determine whether it is above the minimum threshold of 2% which enables the US to impose a duty in the first place.

It is important to note that in reviews, the US can either increase or decrease the level of anti-dumping duty. This contrasts with the EC system, in which anti-dumping duties can only be refunded to importers if the dumping margin goes down, not increased if it goes up. In addition, while the EC compares average prices in such cases, the US uses zeroing (i.e. it disregards the non-dumped transactions). Hence, zeroing in reviews in the US system (with its ability to increase the duty rate) can be said to give the US a "structural advantage" over the EC and other WTO Members.

Background

The US has been condemned several times by the WTO Appellate Body but refuses to comply, most crucially in the case of annual reviews, which determine 90% of the duty collection in the US system. In addition to the EC, Japan (DS 322 AB 21.5 report came out on 18 August - at present considering retaliation) and many other WTO Members (e.g. Mexico, Brazil, Thailand, Ecuador and Canada) challenged this practice.

In our first Zeroing case (DS294) against the US, the WTO Appellate Body (AB) ruled against the United States in May 2006 and the US was given until April 2007 to comply with the findings. However, the US failed to comply fully, and the EC had to request a so-called compliance panel, which issued its report in December 2008. The

	Panel agreed with the EC that the US cannot escape its WTO obligations by conducting annual reviews of a duty and then arguing that such reviews have "superseded" the challenged measure and consequently do not form part of its compliance obligations, but can only be subject to challenge in a new dispute. Nonetheless, the EU decided to appeal certain unfavourable aspects of the Compliance Panel's report. The Appellate Body report in the compliance dispute was published on 14 May 2009 and it is over-all positive for the EC. Both reports were adopted on 11 June 2009. Regarding the second Zeroing case (DS350), the Panel Report, as modified by the AB, and the AB report were adopted at the DSB meeting in February 2009. The AB confirmed the main EU claims on appeal, rejected all grounds of appeal put forward by the US and upheld the Panel's findings that the US was in breach of its WTO obligations by applying zeroing in periodic reviews. The EC and the US have agreed a reasonable period of time for the US to implement the recommendations and rulings of the DSB. The reasonable period of time expired on 19 December 2009. The US failed to bring itself into full compliance.
Actions Taken	As far as the first Zeroing case is concerned (DS294), in January 2010 the EU requested authorisation from the DSB to suspend the application of concessions or other obligations under the covered agreements. The US objected to the level of suspension of concessions or other obligations and the matter was referred to arbitration. On 7 September 2010, the EU and the US requested the Arbitrator to suspend its work, in the context of informal discussions with respect to implementation. The suspension was extended on 7 September 2011 until 9 January 2012. Absent any “contrary written communication” from the EU by 6 January 2012, the suspension will be automatically terminated and the work of the Arbitrator will resume on 9 January 2012 and it will circulate its Decision on 16 January 2012. Regarding the second Zeroing case (DS350), we agreed with the US on a period of 10 months (until 19 December 2009) to recalculate the dumping margins in the 46 individual measures identified by the EC, without using zeroing. The US Department of Commerce (USDOC) published on 28 December 2010 in the Federal Register a notice by means of which it proposes to change its methodology by abandoning the use of zeroing in the context of administrative reviews. This proposal is presented as a measure which enables the US to comply with the WTO rulings in a number of WTO cases, including the two EU cases, DS294 and DS350 but falls short of ensuring full compliance on all disputed issues. The public consultation on the proposal ended on 18 February 2011. The proposal was presented to Congress on 1 September 2011 and could be adopted by the end of 2011.
Barrier id	040006
Barrier Status	Ongoing

(*) In its conclusions of 8 December 2008, the Council of the European Union asked the European Commission "to draw up, in conjunction with Member States, a list of trade barriers to be prioritised in each of the EU's major trading partners ...". These barriers are marked as "key barriers" in the Market Access Database.

Hormones Dispute (Continued Suspension of Obligations)

Title	**Hormones Dispute (Continued Suspension of Obligations)**
Creation Date	03 juil. 2006
Last update/check	21 janv. 2009
Sector	Horizontal
Measure	Other Tariffs and Duties
Third Country	United States of America
Description	In 1989 the EU banned imports of hormone treated meat. The US 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 US 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 the US (and Canada) to this date continue to apply their retaliatory measures.
Actions Taken	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 US' sanctions vis-à-vis the EU were no longer justified. However, the US 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 US (and Canada) disagreed and kept their retaliatory measures. Furthermore the US 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 US to suspend its sanctions and to initiate a WTO review under Article 21.5 DSU failed. Consequently the EU requested on 8 November 2004 formal consultations with the US (and Canada) regarding the continued application of the countermeasures. The EU's challenge was directed against the US' 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 EU considered that 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. The Appellate Body however ruled that WTO Members are permitted to maintain sanctions until the WTO-compliance of the implementation measure has been demonstrated in a compliance WTO-dispute. The Appellate Body also recommended that the United States, (Canada) and the EU initiate such compliance proceedings without delay. The EU has already initiated such compliance proceedings by requesting consultations

	with the US and Canada.
Barrier id	060080
Barrier Status	Ongoing

OTHER

Section 407 of the Trade and Development Act (Carousel Law)

Title	**Section 407 of the Trade and Development Act (Carousel Law)**
Creation Date	30 sept. 1999
Last update/check	07 janv. 2009
Sector	Horizontal
Measure	Other Non-Tariff Measures
Third Country	United States of America
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 US not to have implemented WTO recommendations.
Actions Taken	The EU believes that the "carousel" legislation is 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 beyond what is authorised by the WTO. The EU therefore, requested WTO consultations, which were held on 5 July 2000, making it clear that it was not acceptable to apply this legislation. The US has for the time being refrained from applying it and, therefore, the EU has not requested the establishment of a panel.
Barrier id	990090
Barrier Status	Monitoring solution

US Dual-Use Export Controls

Title	**US Dual-Use Export Controls**
Creation Date	01 déc. 1996
Last update/check	19 déc. 2008
Sector	Horizontal
Measure	Quantitative Restrictions and Related Measures
Third Country	United States of America
Description	A comprehensive system of export controls was established under the Export Administration Act of 1979 (EAA) and the US Export Administration Regulation (EAR) to prevent trade to unauthorised destinations. This system, among other things, requires companies, incorporated and operating in EU Member States, to comply with US re-export controls. License Exception APR (Additional permissive reexports) allows the reexports from Country Group A:1 and cooperating countries, but that does not include Bulgaria, Cyprus, Czech Republic, Estonia, Hungary, Latvia, Lithuania, Malta, Poland, Romania, Slovakia and Slovenia.This includes compliance with US prohibitions on re-exports for reasons of US national security and foreign policy. At present, the US export-control system for dual-use items listed on the US Commerce Control List (CCL) dictates that foreign companies require re-export licenses for items containing 25% or more of US-origin content. When such items are re-exported to countries listed on the US State Department's list of countries supporting terrorism, the requirement is stricter and all items with 10% or more of US-origin content listed on the CCL require re-export licenses. In some cases these re-export authorisations infringe European Single Market rules. The afore-mentioned License Exception APR (Additional permissive reexports) does not allow the reexports even from Country Group A:1 and cooperating countries if the commodities being reexported are controlled for missile technology (MT), chemical and biological weapons (CB), nuclear nonproliferation (NP), significant item (SI), or crime control (CC) reasons The extraterritorial nature of these controls has repeatedly been criticised by the EU, given the fact it consists of active members of all international export control regimes the Nuclear Suppliers Group, the Australia Group, the Missile Technology Control Regime and the Wassenaar Arrangement. Furthermore, on 12 December 2003, President Bush signed into law the Syria Accountability and Lebanese Sovereignty Restoration Act of 2003 (SAA). The President has chosen to implement a SAA provision prohibiting exports of items listed on the Commerce Control List. This dual-use ban provision also constitutes a de facto prohibition on re-exports by EU companies, as US export control regulations require a new license every time an item with at least 10% US-origin content is re-exported from a third country to a country "supporting terrorism" (i.e. Syria). Now that there is a general ban on exports and re-exports to Syria, such re-export licenses would not be given and this de facto prohibition on re-exports for reasons of US national security and foreign policy would negatively affect EU exports to Syria containing US components.

The EU reiterates that its policy is to permit free circulation of dual use goods within the EU because of the single market with the exception of a few items listed in Annex IV of the Regulation 1504/2004 in force and that this policy applies equally to transfers which are tangible and intangible.

Following a conference between the European Commission and EU dual use exporters in 2004, it became clear that US re-export clauses which affect EU companies exporting dual use items with some US content (in some cases as little as 10% of controlled technologies) and even in some cases, concern non US origin technologies exported by EU citizens to third countries under US unilateral embargo. This is creating barriers to market access in third countries to EU companies. They are not in line with the EU policy of dual use exports to those countries which deny some dual use exports based on Common Foreign and Security Policy grounds and do not apply 'total embargoes' to those countries.

Barrier id	960060
Barrier Status	Ongoing

Iran Non-Proliferation Act

Title	**Iran Non-Proliferation Act**
Creation Date	17 nov. 2006
Last update/check	02 sept. 2009
Sector	Horizontal
Measure	Export Prohibition and Other Quantitative Restrictions
Third Country	United States of America
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 US 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 US 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 US commitment under the Transatlantic Partnership for Political Cooperation (TPPC) to resist the passage of extraterritorial sanction legislation.
Actions Taken	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 US 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 US Administration to acquire space related technology and services from Russia. In the framework of the International Space Station (ISS) programme, the US has to acquire Russian Soyuz from 2006 in order to fulfil its space transportation obligations in the ISS programme, because the US 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 US 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.

Barrier id	060099
Barrier Status	Ongoing

Principle of First-to-Invent

Title	**Principle of First-to-Invent**
Creation Date	10 déc. 1998
Last update/check	21 janv. 2009
Sector	Horizontal
Measure	Legislation on Patents (Including Plant Varieties)
Third Country	United States of America

Description

The US 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 US companies trying to obtain a patent right in the US, 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 US.

The issue is being discussed within the so called Alexandria process or Group B+.

Actions Taken

Since April 2007, there is a bipartisan, but not governmental, US patent reform bill in the US Congress that supports introduction of First-to-File system, but it is uncertain whether this bill will be finally adopted.

Barrier id	980141
Barrier Status	Ongoing

FDI limitations imposed by the CFIUS / FINSA framework

Title	(*) **FDI limitations imposed by the CFIUS / FINSA framework**
Creation Date	01 déc. 1996
Last update/check	23 avr. 2010
Sector	Horizontal
Measure	Foreign Direct Investment Limitations
Third Country	United States of America

Description

The Foreign Investment and National Security Act of 2007 ("FINSA") amends the so-called Exon-Florio amendment of the Defense Production Act of 1950, which authorises the US President to investigate foreign acquisitions, mergers, and takeovers of, or investments in, US companies from a national security perspective. In 2008, final regulations that implement FINSA were published. These regulations complete the reform of the Committee on Foreign Investment in the United States ("CFIUS"), an inter-agency committee chaired by the US Treasury to which the US President's review and decision-making authorities provided by the Exon-Florio amendment have been delegated.

The US President and CFIUS have blocked only 1 investment so far (in the 1990s). However, this figure conceals some worrying practices and trends. First of all, there are a growing number of investors, who, after having filed to CFIUS, renounce their envisaged investment in the US and withdraw their filing. Investors are said to be uncertain about CFIUS review and fear negative decisions which could seriously impact on the image of the company.

While statutory timetables have not changed, caution within CFIUS has resulted in longer review times. CFIUS has also increased the number of mitigation agreements as a condition for approval and new, unprecedented terms for CFIUS approval have also emerged, i.e. evergreen provisions, which give the US Administration the capacity to re-open the terms of the agreement and even undo the investment under certain circumstances. This practice is a departure from the “safe harbour” against a future divestment order that CFIUS approval was understood to provide.

Background

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 US national security, if any. This screening is carried out by the statutory Committee on Foreign Investment in the US (CFIUS), which is chaired by the Department of Treasury 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 and the Secretary of Labor (the regulations however state that the latter has no policy role).

For each case under review, the Treasury designates a lead agency. It has been considered that 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 time limit for the 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 US international technological leadership in areas affecting US national security. In effect, a very significant number of EU firms' acquisitions in the US are subject to pre-screening.

On 23 January 2008, an Executive Order (EO) was issued. The purpose of the EO was to strengthen the process and powers of CFIUS to review all potential investments from foreign firms with national security implications while at the same time strengthening the role of Treasury. The law and the EO also impose additional analytical and procedural disciplines on CFIUS Agencies: risk mitigation provisions must be justified by a written analysis of the national security risk posed by a transaction, CFIUS must agree that they are justified, and no other law can adequately address the risk. It also prohibits CFIUS agencies from using CFIUS' authorities to gain leverage over the parties with regard to enforcement of the agencies' existing legal authorities outside the CFIUS process. These mitigation agreements can require the establishment of a separate subsidiary to handle classified contracts.

On 21 April 2008, the proposed regulations implementing FINSA were published for notice and comments prior to finalisation. These regulations formalised many of CFIUS' informal practices, codifying and intending to clarify such practices while further defining concepts used (such as that of "critical infrastructure"). The draft regulations, encouraging voluntary pre-filing, affected both the substance (by increasing the range of transactions and the degree of scrutiny of transactions under review) and the process (by doubling the information required). They also proposed civil penalties for certain violations and the possibility to negotiate liquidated damages provisions in mitigation agreements.

Following comments, the U.S. Department of Treasury published, on 14 November 2008, the final regulations governing the national security review of foreign investments conducted by CFIUS. The final regulations formally implement FINSA. Since the final regulations were published in the U.S. Federal Register on 21 November, they became effective on December 20, 2008 (30 days after publication). In connection with the final regulations and as required by FINSA, the U.S. Treasury also published, on 1 December, guidance on the types of transactions that CFIUS has reviewed previously and that have presented national security considerations. The guidance also provides insight into how CFIUS identifies the national security effects of covered transactions.

Actions Taken	The EU has expressed its views and concerns on several occasions, including through letters signed by the Presidency and Commission to the US Treasury Secretary. The EU-US Investment Dialogue, which operates under the Transatlantic Economic Council, has enabled direct discussions on this matter. The implementing regulation and guidance worked out further to FINSA do usefully clarify a number of questions.
Barrier id	960064
Barrier Status	Ongoing

(*) In its conclusions of 8 December 2008, the Council of the European Union asked the European Commission "to draw up, in conjunction with Member States, a list of trade barriers to be prioritised in each of the EU's major trading partners ...". These barriers are marked as "key barriers" in the Market Access Database.

FISHERY AND MARITIME ISSUES

Marine Mammal Protection Act

Title	**Marine Mammal Protection Act**
Creation Date	01 déc. 1996
Last update/check	03 févr. 2009
Sector	Agriculture and Fisheries
Measure	Quantitative Restrictions and Related Measures
Third Country	United States of America
Description	The Marine Mammal Protection Act of 1972 aims to protect 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.
Actions Taken	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 entered into force on 10 October 2008, 15 months after the deposit of the seventh instrument of ratification or accession of the Parties to the IATTC Convention.
Barrier id	960062
Barrier Status	Ongoing

ANNEX 1 – Listed per Title

Title	Measure	Sector	Key barrier (*)
Agricultural Export Subsidies and Promotion	Subsidies	Agriculture and Fisheries	
Export Credit Guarantee Program	Subsidies	Agriculture and Fisheries	
Farm Bill	Subsidies	Agriculture and Fisheries	YES
IPR: inadequate protection of GIs	Legislation on Appelations of Origin and Geographic Indications	Agriculture and Fisheries	YES
Marine Mammal Protection Act	Quantitative Restrictions and Related Measures	Agriculture and Fisheries	
Pasteurised Milk Products (Grade A)	Standards and Other Technical Requirements	Agriculture and Fisheries	
Rules for import of dairy products into USA	Sanitary and Phytosanitary measures	Agriculture and Fisheries	
Sanitary measures applied by USA for imports of live bivalve molluscs	Sanitary and Phytosanitary measures	Agriculture and Fisheries	
Slow procedures on applications to allow import of new types of plant products	Sanitary and Phytosanitary measures	Agriculture and Fisheries	
Bovine animals and products	Sanitary and Phytosanitary measures	Agriculture and Fisheries	
Boeing Subsidies	Subsidies	Aircraft	
Corporate Average Fuel Economy (CAFE) Payment	Internal Taxation	Automotive	
Electrical and Electronic Equipment Barriers	Standards and Other Technical Requirements	Electronics	
Anti-dumping measures: practice of zeroing	Anti-Dumping Measure	Horizontal	
Berry Amendment to the 1941 Defence Appropriations Act	Government Procurement	Horizontal	
Byrd Amendment (Continued Dumping and Subsidy Offset Act)	Anti-Dumping Measure	Horizontal	YES
Container Security Initiative (CSI)	Registration, Documentation, Customs Procedures	Horizontal	
FDI limitations imposed by the CFIUS / FINSA framework	Foreign Direct Investment Limitations	Horizontal	YES
Helms-Burton Act	Trade Related Investment Measures	Horizontal	
Hormones Dispute (Continued Suspension of Obligations)	Other Tariffs and Duties	Horizontal	
Iran Non-Proliferation Act	Export Prohibition and Other Quantitative Restrictions	Horizontal	
Iran-Libya Sanctions Act and Iran Freedom Support Act	Trade Related Investment Measures	Horizontal	YES

Lacey Act - Scope and implementation of the US legislation to combat illegal logging	Registration, Documentation, Customs Procedures	Horizontal	
Memoranda of Understanding (Defence Acquisitions)	Government Procurement	Horizontal	
Principle of First-to-Invent	Legislation on Patents (Including Plant Varieties)	Horizontal	
Procurement: Buy American	Government Procurement	Horizontal	
Section 407 of the Trade and Development Act (Carousel Law)	Other Non-Tariff Measures	Horizontal	
Small Business Act	Government Procurement	Horizontal	
U.S. Customs Refusal of EU Origin	Registration, Documentation, Customs Procedures	Horizontal	
Dual-Use Export Controls	Quantitative Restrictions and Related Measures	Horizontal	
Steel Local Content Requirements	Government Procurement	Iron, Steel and Non-Ferrous Metals	
IPR Infringement Cases (Section 337 of 1930 Tariff Act)	Legislation on Patents (Including Plant Varieties)	Other Industries	
Medical Device User Fee	Other	Other Industries	
Pressure Equipment Regulation	Other Non-Tariff Measures	Other Industries	
Digital Terrestrial Television	Standards and Other Technical Requirements	Services - Communication, incl. postal services	YES
Satellite Services	Discriminatory treatment	Services - Communication, incl. postal services	
Section 110(5) of 1976 Copyright Act (Irish Music)	Legislation on Copyright and Related Rights	Services - Communication, incl. postal services	
Section 310 of the 1934 Communications Act	Discriminatory treatment	Services - Communication, incl. postal services	
Wire Line and Wireless Telecommunications	Discriminatory treatment	Services - Communication, incl. postal services	
Energy Acts	Foreign Direct Investment Limitations	Services - Energy	
Foreign Account Tax Compliance Act (FATCA)	Other trade in services issues	Services - Financial	
PATRIOT Act	Other Non-Tariff Measures	Services - Financial	
Sarbanes-Oxley Act	Other Non-Tariff Measures	Services - Financial	YES
SEC Regulations for Securities Firms	Discriminatory treatment	Services - Financial	
Services: 100 % collateral requirement on reinsurance business and discriminatory tax treatment	Other Non-Tariff Measures	Services - Financial	

Treatment of EU Global custodians	Other Non-Tariff Measures	Services - Financial	
Broadcasting and public performance rights	Legislation on Copyright and Related Rights	Services - Other	YES
Aircraft Leasing	Discriminatory treatment	Services - Transport	
Aviation: ownership restrictions and foreign repair stations	Foreign Direct Investment Limitations	Services - Transport	
Food Aid Program	Quantitative Restrictions and Related Measures	Services - Transport	
Shipping on U.S.-flagged Vessels	Standards and Other Technical Requirements	Services - Transport	
Trade and security: 100% scanning	Registration, Documentation, Customs Procedures	Services - Transport	YES
Jones Act and Shipbuilding Subsidies	Subsidies	Shipbuilding	YES
Section 211 of Omnibus Appropriations Act (Havana Club)	Trademarks Legislation	Wines & Spirits	
Wine tax discrimination	Other	Wines & Spirits	
Wine Distribution	Other Non-Tariff Measures	Wines & Spirits	
Parquet Tariffs	Tariff Levels	Wood, Paper and Pulp	

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ANNEX 2 – Listed per Type of Measure

Measure	Title	Sector	Key barrier (*)
Anti-Dumping Measure	Anti-dumping measures: practice of zeroing	Horizontal	
Anti-Dumping Measure	Byrd Amendment (Continued Dumping and Subsidy Offset Act)	Horizontal	YES
Discriminatory treatment	Satellite Services	Services - Communication, incl. postal services	
Discriminatory treatment	Section 310 of the 1934 Communications Act	Services - Communication, incl. postal services	
Discriminatory treatment	Wire Line and Wireless Telecommunications	Services - Communication, incl. postal services	
Discriminatory treatment	SEC Regulations for Securities Firms	Services - Financial	
Discriminatory treatment	Aircraft Leasing	Services - Transport	
Export Prohibition and Other Quantitative Restrictions	Iran Non-Proliferation Act	Horizontal	
Foreign Direct Investment Limitations	FDI limitations imposed by the CFIUS / FINSA framework	Horizontal	YES
Foreign Direct Investment Limitations	Energy Acts	Services - Energy	
Foreign Direct Investment Limitations	Aviation: ownership restrictions and foreign repair stations	Services - Transport	
Government Procurement	Berry Amendment to the 1941 Defence Appropriations Act	Horizontal	
Government Procurement	Memoranda of Understanding (Defence Acquisitions)	Horizontal	
Government Procurement	Procurement: Buy American	Horizontal	
Government Procurement	Small Business Act	Horizontal	
Government Procurement	Steel Local Content Requirements	Iron, Steel and Non-Ferrous Metals	
Internal Taxation	Corporate Average Fuel Economy (CAFE) Payment	Automotive	
Legislation on Appelations of Origin and Geographic Indications	IPR: inadequate protection of GIs	Agriculture and Fisheries	YES
Legislation on Copyright and Related Rights	Section 110(5) of 1976 Copyright Act (Irish Music)	Services - Communication, incl. postal services	
Legislation on Copyright and Related Rights	Broadcasting and public performance rights	Services - Other	YES
Legislation on Patents (Including Plant Varieties)	Principle of First-to-Invent	Horizontal	

Legislation on Patents (Including Plant Varieties)	IPR Infringement Cases (Section 337 of 1930 Tariff Act)	Other Industries	
Other	Medical Device User Fee	Other Industries	
Other	Wine tax discrimination	Wines & Spirits	
Other Non-Tariff Measures	Section 407 of the Trade and Development Act (Carousel Law)	Horizontal	
Other Non-Tariff Measures	Pressure Equipment Regulation	Other Industries	
Other Non-Tariff Measures	PATRIOT Act	Services - Financial	
Other Non-Tariff Measures	Sarbanes-Oxley Act	Services - Financial	YES
Other Non-Tariff Measures	Services: 100 % collateral requirement on reinsurance business and discriminatory tax treatment	Services - Financial	
Other Non-Tariff Measures	Treatment of EU Global custodians	Services - Financial	
Other Non-Tariff Measures	Wine Distribution	Wines & Spirits	
Other Tariffs and Duties	Hormones Dispute (Continued Suspension of Obligations)	Horizontal	
Other trade in services issues	Foreign Account Tax Compliance Act (FATCA)	Services - Financial	
Quantitative Restrictions and Related Measures	Marine Mammal Protection Act	Agriculture and Fisheries	
Quantitative Restrictions and Related Measures	Dual-Use Export Controls	Horizontal	
Quantitative Restrictions and Related Measures	Food Aid Program	Services - Transport	
Registration, Documentation, Customs Procedures	Container Security Initiative (CSI)	Horizontal	
Registration, Documentation, Customs Procedures	Lacey Act - Scope and implementation of the US legislation to combat illegal logging	Horizontal	
Registration, Documentation, Customs Procedures	U.S. Customs Refusal of EU Origin	Horizontal	
Registration, Documentation, Customs Procedures	Trade and security: 100% scanning	Services - Transport	YES
Sanitary and Phytosanitary measures	Rules for import of dairy products into USA	Agriculture and Fisheries	
Sanitary and Phytosanitary measures	Sanitary measures applied by USA for imports of live bivalve molluscs	Agriculture and Fisheries	
Sanitary and Phytosanitary measures	Slow procedures on applications to allow import of new types of plant products	Agriculture and Fisheries	
Sanitary and Phytosanitary measures	Bovine animals and products	Agriculture and Fisheries	
Standards and Other Technical Requirements	Pasteurised Milk Products (Grade A)	Agriculture and Fisheries	
Standards and Other Technical Requirements	Electrical and Electronic Equipment Barriers	Electronics	

Standards and Other Technical Requirements	Digital Terrestrial Television	Services - Communication, incl. postal services	YES
Standards and Other Technical Requirements	Shipping on U.S.-flagged Vessels	Services - Transport	
Subsidies	Agricultural Export Subsidies and Promotion	Agriculture and Fisheries	
Subsidies	Export Credit Guarantee Program	Agriculture and Fisheries	
Subsidies	Farm Bill	Agriculture and Fisheries	YES
Subsidies	Boeing Subsidies	Aircraft	
Subsidies	Jones Act and Shipbuilding Subsidies	Shipbuilding	YES
Tariff Levels	Parquet Tariffs	Wood, Paper and Pulp	
Trade Related Investment Measures	Helms-Burton Act	Horizontal	
Trade Related Investment Measures	Iran-Libya Sanctions Act and Iran Freedom Support Act	Horizontal	YES
Trademarks Legislation	Section 211 of Omnibus Appropriations Act (Havana Club)	Wines & Spirits	

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ANNEX 3 – Listed per type Sector

Sector	Title	Measure	Key barrier (*)
Agriculture and Fisheries	Agricultural Export Subsidies and Promotion	Subsidies	
Agriculture and Fisheries	Bovine animals and products	Sanitary and Phytosanitary measures	
Agriculture and Fisheries	Export Credit Guarantee Program	Subsidies	
Agriculture and Fisheries	Farm Bill	Subsidies	YES
Agriculture and Fisheries	IPR: inadequate protection of GIs	Legislation on Appelations of Origin and Geographic Indications	YES
Agriculture and Fisheries	Marine Mammal Protection Act	Quantitative Restrictions and Related Measures	
Agriculture and Fisheries	Pasteurised Milk Products (Grade A)	Standards and Other Technical Requirements	
Agriculture and Fisheries	Rules for import of dairy products into USA	Sanitary and Phytosanitary measures	
Agriculture and Fisheries	Sanitary measures applied by USA for imports of live bivalve molluscs	Sanitary and Phytosanitary measures	
Agriculture and Fisheries	Slow procedures on applications to allow import of new types of plant products	Sanitary and Phytosanitary measures	
Aircraft	Boeing Subsidies	Subsidies	
Automotive	Corporate Average Fuel Economy (CAFE) Payment	Internal Taxation	
Electronics	Electrical and Electronic Equipment Barriers	Standards and Other Technical Requirements	
Horizontal	Anti-dumping measures: practice of zeroing	Anti-Dumping Measure	
Horizontal	Berry Amendment to the 1941 Defence Appropriations Act	Government Procurement	
Horizontal	Byrd Amendment (Continued Dumping and Subsidy Offset Act)	Anti-Dumping Measure	YES
Horizontal	Container Security Initiative (CSI)	Registration, Documentation, Customs Procedures	
Horizontal	Dual-Use Export Controls	Quantitative Restrictions and Related Measures	
Horizontal	FDI limitations imposed by the CFIUS / FINSA framework	Foreign Direct Investment Limitations	YES
Horizontal	Helms-Burton Act	Trade Related Investment Measures	
Horizontal	Hormones Dispute (Continued Suspension of Obligations)	Other Tariffs and Duties	
Horizontal	Iran Non-Proliferation Act	Export Prohibition and Other Quantitative Restrictions	

Horizontal	Iran-Libya Sanctions Act and Iran Freedom Support Act	Trade Related Investment Measures	YES
Horizontal	Lacey Act - Scope and implementation of the US legislation to combat illegal logging	Registration, Documentation, Customs Procedures	
Horizontal	Memoranda of Understanding (Defence Acquisitions)	Government Procurement	
Horizontal	Principle of First-to-Invent	Legislation on Patents (Including Plant Varieties)	
Horizontal	Procurement: Buy American	Government Procurement	
Horizontal	Section 407 of the Trade and Development Act (Carousel Law)	Other Non-Tariff Measures	
Horizontal	Small Business Act	Government Procurement	
Horizontal	U.S. Customs Refusal of EU Origin	Registration, Documentation, Customs Procedures	
Iron, Steel and Non-Ferrous Metals	Steel Local Content Requirements	Government Procurement	
Other Industries	IPR Infringement Cases (Section 337 of 1930 Tariff Act)	Legislation on Patents (Including Plant Varieties)	
Other Industries	Medical Device User Fee	Other	
Other Industries	Pressure Equipment Regulation	Other Non-Tariff Measures	
Services - Communication, incl. postal services	Digital Terrestrial Television	Standards and Other Technical Requirements	YES
Services - Communication, incl. postal services	Satellite Services	Discriminatory treatment	
Services - Communication, incl. postal services	Section 110(5) of 1976 Copyright Act (Irish Music)	Legislation on Copyright and Related Rights	
Services - Communication, incl. postal services	Section 310 of the 1934 Communications Act	Discriminatory treatment	
Services - Communication, incl. postal services	Wire Line and Wireless Telecommunications	Discriminatory treatment	
Services - Energy	Energy Acts	Foreign Direct Investment Limitations	
Services - Financial	Foreign Account Tax Compliance Act (FATCA)	Other trade in services issues	
Services - Financial	PATRIOT Act	Other Non-Tariff Measures	
Services - Financial	Sarbanes-Oxley Act	Other Non-Tariff Measures	YES
Services - Financial	SEC Regulations for Securities Firms	Discriminatory treatment	
Services - Financial	Services: 100 % collateral requirement on reinsurance business and discriminatory tax treatment	Other Non-Tariff Measures	

Services - Financial	Treatment of EU Global custodians	Other Non-Tariff Measures	
Services - Other	Broadcasting and public performance rights	Legislation on Copyright and Related Rights	YES
Services - Transport	Aircraft Leasing	Discriminatory treatment	
Services - Transport	Aviation: ownership restrictions and foreign repair stations	Foreign Direct Investment Limitations	
Services - Transport	Food Aid Program	Quantitative Restrictions and Related Measures	
Services - Transport	Shipping on U.S.-flagged Vessels	Standards and Other Technical Requirements	
Services - Transport	Trade and security: 100% scanning	Registration, Documentation, Customs Procedures	YES
Shipbuilding	Jones Act and Shipbuilding Subsidies	Subsidies	YES
Wines & Spirits	Section 211 of Omnibus Appropriations Act (Havana Club)	Trademarks Legislation	
Wines & Spirits	Wine Distribution	Other Non-Tariff Measures	
Wines & Spirits	Wine tax discrimination	Other	
Wood, Paper and Pulp	Parquet Tariffs	Tariff Levels	

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