

# INTERNATIONAL INTELLECTUAL PROPERTY ALLIANCE

## 2007 SPECIAL 301 REPORT

### LEBANON

**Special 301 Recommendation:** Lebanon should be lowered to the Watch List in recognition of progress made by the Lebanese government in combating piracy for certain sectors in 2006.

#### EXECUTIVE SUMMARY

Lebanon has slowly emerged from the conflict between the Israeli Defense Forces and Hezbollah fighters,<sup>1</sup> but faces many daunting challenges, including rebuilding infrastructure, a government reform effort, and increasing political opposition from Hezbollah (most recently including violent conflict). IIPA acknowledges that, as a result, copyright issues cannot take on the importance they have in Lebanon in previous years. Even in the face of these other priorities, Lebanon has made some progress in combating piracy. In addition to the on-the-ground improvements for some copyright sectors, we note that on November 30, 2006, the United States and Lebanon signed a Trade and Investment Framework Agreement (TIFA),<sup>2</sup> which sets the stage for regularized discussions on many trade matters, including intellectual property. IIPA hopes that copyright concerns will be a permanent fixture in the TIFA agenda going forward.

#### KEY COPYRIGHT ISSUES FOR 2007

- **Cable Piracy:** Cable piracy has long been the major piracy problem for the motion picture industry in Lebanon. The pay television market in Lebanon has been nearly 100% pirate for years, with hundreds of small cable systems retransmitting broadcast programming without authorization and charging customers for these “pirate” pay television services. The Minister of Telecommunications has taken an interest in the fight against cable piracy. In a meeting held with representatives of the major motion picture studios in May 2006, the Minister requested and was presented with a draft decree that would allow him to regulate the cable market (this occurred during World Cup season, and the Minister pressured the cable operators to pay a license fee to the owners of the World Cup 2006 events, but the outbreak of violence halted progress on this issue).
- **Optical Disc Plant:** The Lebanese Government should continue to monitor the one known optical disc plant in the country for illegal activity.
- **Pirate Imports and Exports:** In 2005 and into 2006, much pirate product in Lebanon was produced inside the country (factory-produced, “burned” to order, photocopied, printed, etc.). Despite the present political tensions, pirated CDs and DVDs imported from Asia are

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<sup>1</sup> The violence ended in August 2006 after United Nations Resolution 1701 asked both parties to end the fighting and mandated an enlarged and strengthened international peacekeeping force in southern Lebanon and supervision of Lebanon’s seacoast and border with Syria to prevent the rearming of Hezbollah.

<sup>2</sup> *United States and Lebanon Sign Trade and Investment Framework Agreement*, November 30, 2006, at [http://www.ustr.gov/Document\\_Library/Press\\_Releases/2006/November/United\\_States\\_Lebanon\\_Sign\\_Trade\\_Investment\\_Framework\\_Agreement.html](http://www.ustr.gov/Document_Library/Press_Releases/2006/November/United_States_Lebanon_Sign_Trade_Investment_Framework_Agreement.html) (Assistant U.S. Trade Representative for Europe and the Middle East Shaun Donnelly and Lebanese Minister of Economy and Trade Sami Haddad signed in Beirut a Trade and Investment Framework Agreement which will provide a forum for expanding and strengthening bilateral trade and investment relations between the United States and Lebanon).

flooding the Lebanese market. Most such products enter Lebanon via Syria or Hariri International Airport. In addition, Lebanon is one of the few countries in the world where pirate offset prints of books were being produced for export, flooding countries in the Middle East with pirate editions. Customs authorities are reportedly seizing more pirate product than in the past, but should step up *ex officio* actions to interdict and seize pirate product entering the country or destined for export.

- **Prosecutions with Deterrent Sentences in Lebanese Courts:** Part of the hope placed in the new IPR Unit is that it will work closely with prosecutors to prepare cases for criminal proceedings. IIPA recommends training a number of prosecutors who will become expert in bringing copyright cases, creating an enforcement reporting mechanism between ministries, Lebanese Customs, and prosecutors, and improving the efficiency of the court system through assignment of specially qualified judges to hear copyright cases.
- **Copyright Law and Implementing Key Treaties:** The Lebanese copyright law remains incompatible with major copyright international instruments (for example, the law is incompatible with the WTO TRIPS Agreement). The law should be amended to fix these deficiencies, as well as to protect copyright in the online, digital and wireless environments consistent with the WIPO Copyright Treaty and the WIPO Performances and Phonograms Treaty.

For more details on Lebanon’s Special 301 history, see IIPA’s “History” appendix to this filing at <http://www.iipa.com/pdf/2007SPEC301HISTORICALSUMMARY.pdf>. Please also see previous years’ reports at <http://www.iipa.com/countryreports.html>.

<b>LEBANON</b> <b>Estimated Trade Losses Due to Copyright Piracy</b> <b>(in millions of U.S. dollars)</b> <b>and Levels of Piracy: 2002-2006<sup>3</sup></b>										
	2006		2005		2004		2003		2002	
	Loss	Level								
<b>Records &amp; Music</b>	2.6	60%	3.2	75%	3.0	70%	2.5	70%	2.0	65%
<b>Business Software<sup>4</sup></b>	20.0	72%	20.0	73%	15.0	75%	14.0	74%	3.5	74%
<b>Books</b>	NA	NA	4.0	NA	3.0	NA	2.0	NA	2.0	NA
<b>Entertainment Software</b>	NA	NA	NA	NA	NA	75%	NA	80%	NA	NA
<b>Motion Pictures<sup>5</sup></b>	NA	NA	1.0	1%	10.0	80%	10.0	80%	8.0	80%
<b>TOTALS</b>	<b>22.6</b>		<b>28.2</b>		<b>31.0</b>		<b>28.5</b>		<b>15.5</b>	

<sup>3</sup> The methodology used by IIPA member associations to calculate these estimated piracy levels and losses is described in IIPA’s 2007 Special 301 submission at [www.iipa.com/pdf/2007spec301methodology.pdf](http://www.iipa.com/pdf/2007spec301methodology.pdf). For information on the history of Lebanon under Special 301 review, see Appendix D at (<http://www.iipa.com/pdf/2007SPEC301USTRHISTORY.pdf>) and Appendix E at (<http://www.iipa.com/pdf/2007SPEC301HISTORICALSUMMARY.pdf>) of this submission.

<sup>4</sup> BSA’s 2006 statistics are preliminary. They represent the U.S. publishers’ share of software piracy losses in Lebanon, and follow the methodology compiled in the Third Annual BSA/IDC Global Software Piracy Study (May 2006), available at <http://www.bsa.org/globalstudy/>. These figures cover, in addition to business applications software, computer applications such as operating systems, consumer applications such as PC gaming, personal finance, and reference software. BSA’s 2005 piracy statistics were preliminary at the time of IIPA’s February 13, 2006 Special 301 filing; the 2005 data was revised and posted on the IIPA website in September 2006 (see <http://www.iipa.com/statistics.html>), and the 2005 revisions (if any) are reflected above.

<sup>5</sup> MPAA’s trade loss estimates and piracy levels for 2006 are not yet available. However, such numbers will become available later in the year and, as for 2005, will be based on a methodology that analyzes physical or “hard” goods and Internet piracy. For a description of the new methodology, please see Appendix B of this report. As the 2006 loss numbers and piracy levels become available, they will be posted on the IIPA website, <http://www.iipa.com>.

## **PIRACY AND ENFORCEMENT UPDATES IN LEBANON**

**Special IPR Unit Made Operational in 2006:** In September 2005, the government of Lebanon finally established a Special IPR Police Unit, which came into operation in March 2006. The unit consists of five ranking police officers and twenty junior police officers. The Unit shows promise, responding eagerly to requests for action (they act on the basis of telephone tips, subject to confirmation that the industry group will file the formal complaint later). In its first three months of operation (March 2006 to June 2006), the Unit seized a total of 95,227 pirate CDs/DVDs, four duplicating machines, two computers, and 750 sleeves on behalf of the motion picture industry. Other industry groups have worked with this Unit, including the record industry and the business software industry. The IPR Unit has also conducted its own investigations, and has requested specialized software to assist in their investigations.

In 2006, the Cyber Crime and IPR Bureau carried out 500 raids on behalf of the recording industry, resulting in seizures of 30,000 pirated music cassettes, 50,000 pirate audio CDs/CDRs, 80 CD-R burners, and resulting in the arrest of ten suspects. Despite all the political problems, the Cyber Crime & IPR Bureau have kept up raiding shops and seizing pirated products. The cooperation between right holders and the Cyber Crime Bureau is very good and the government has responded rapidly to industry requests. During the first operational week, the officers of the new bureau seized about one third of the total number of optical discs seized during the whole of 2005. In total about 10,000 optical discs and cassettes were confiscated during raids on hypermarkets and the Sunday-market.

While *ex officio* actions are not accepted as a matter of course in Lebanon, (i.e., the police need to be instructed by the prosecutors' office in order to take action), because of the improved relationship with the above-mentioned special police unit, copyright owners have been able to request raids even prior to filing a formal complaint.

**Cable Piracy:** There remain between 600 and 700 cable operators serving over 80% of the Lebanese population. These operators retransmit domestic and foreign terrestrial and satellite programming without authorization to their subscribers (estimated to number about 720,000) for an average monthly fee of US\$10. Occasionally, these systems also use videocassettes or DVDs to broadcast directly to their subscribers, including the broadcasting of recent popular movies and television shows. Each cable operator retransmits about 100 different television channels, including a minimum of four movie channels that broadcast motion pictures 24 hours a day. Motion pictures are frequently retransmitted by these pirate cable operators prior to their theatrical release or legitimate broadcast by television stations in Lebanon. As a result, local broadcast television stations have cancelled long-standing licenses with copyright owners because they cannot compete with the pirates. A survey on the economic impact of cable piracy in 2000 estimated that the Lebanese government was losing approximately US\$38 million a year due to cable piracy. One legitimate cable operator, Econet, has even had a bankruptcy lawsuit filed against it because it cannot compete with pirate operators.

Many lawsuits have been brought over the years against various cable operators. However, there has been little deterrence against either the specific cable operator targeted or the pirate cable community. One cable piracy case decided in 2005 demonstrates how long it can take to achieve justice: a court in Beirut handed down a decision in April 2005 for a criminal case that was filed back in June of 2000 against four cable television pirates for the

unauthorized transmission of certain titles owned by U.S. motion picture companies.<sup>6</sup> Without severe fines and without imprisonment in commercial piracy cases, there will never be a deterrent in Lebanon against this sort of piracy. No new decisions regarding cable piracy were handed down in 2006. Two criminal complaints were filed in February 2005. However, due to the assassination of Prime Minister Hariri, the investigation of that complaint was cancelled.<sup>7</sup> In December 2005, a new complaint was filed with the Ministry of Economy and Trade requesting it to inspect the operations of ten pirate cable operators in Beirut. No further action has been taken in regard to this complaint.

**Book Piracy Including Pirate Books Produced in Lebanon for Export:** Book piracy remains a major problem in Lebanon. Offset print pirate editions hurt not only the domestic market, but are being produced for export. These pirated books, especially prevalent in the scientific, technical and medical sectors, flow out of Lebanon into Jordan, Saudi Arabia, and the United Arab Emirates, among other countries. The export of pirate books makes this problem in Lebanon a particularly harmful one for both local and international publishers.

In addition, illegal photocopying in and around university campuses is on the rise and threatens to spiral out of control if action is not taken soon. This growing sector of infringing activity takes place primarily in commercial establishments near university campuses, as major commercial photocopying enterprises are situated to serve students and lecturers who wish to copy books. Most universities have taken little or no action to discourage use of photocopied materials on campus.<sup>8</sup> Enforcement and education officials should work together to target the massive illegal photocopying taking place in and around these institutions.

**Retail Piracy:** Retail piracy in Lebanon remains serious, running at around 60 to 80% depending on the industry sector. Although the actions of the aforementioned Cybercrime and IPR Bureau have had an impact on the availability of pirated materials in street stalls and shops, retail piracy in brick-and-mortar shops remains a problem. Retail piracy involves optical discs (predominantly “burned” CD-Rs) of sound recordings, movies,<sup>9</sup> entertainment and business software. Some of the “burned” CD-Rs are sourced back to Syria<sup>10</sup> and the Palestinian territories. Several large and small-scale CD-R burning facilities are operational, while quantities of pirated pressed discs are still imported from Asia, particularly Malaysia, with some discs from China and Eastern Europe. Because of the rise of CD-R burning “to order,” it is essential that, when raids take place, the computers and all servers to which they are directly or indirectly linked be immediately seized and removed – just sealing them and leaving them at the target

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<sup>6</sup> The court convicted the four defendants, with sentences consisting of fines of US\$4,667 for each of the pirates, and damages of US\$1,334 each awarded to each of the six plaintiff companies (a total of US\$8,004 in damages to be paid by each of the four defendants), plus confiscation of the equipment, court fees, and costs.

<sup>7</sup> The February 2005 complaint followed a similar complaint in 2004 against 400 cable pirates, nearly all of whom confessed that they were engaged in unauthorized transmissions of copyrighted materials. At the time, those admitting their actions signed an undertaking before the police to stop pirating. However, instead of seeking indictments and referring the cases to trial court, the Chief Public Prosecutor shelved the complaint.

<sup>8</sup> An illustrative list of institutions for which enforcement is overdue includes: Notre Dame University, Haigazian University, Balamand University and Lebanese University.

<sup>9</sup> Pre-theatrical and pre-video release piracy sourced from camcorder copies and from pirate and parallel imported optical discs have been a widespread problem in Lebanon. Illegal copies of new U.S. cinema releases are on the market within days.

<sup>10</sup> Syria has been used in the past as a major “transit country” for shipments of pirated discs into Lebanon from Malaysia. The pirated goods were mostly smuggled into Lebanon via “military roads” between Syria and Lebanon. There have been no real Customs checkpoints at these roads.

location is not enough.<sup>11</sup> Syria remains a major transit country for pirated optical discs smuggled into Lebanon.

**Business Software Piracy:** The business software industry continues to suffer 72% piracy in Lebanon, attributable to the unauthorized use of software in a business setting as well as the loading of illegal or unlicensed software onto hard drives of computers for sale, so-called hard-disk loading. While there have been some MOET raids against hard-disk loaders, resellers, and end-users, the MOET has generally not been able to stop this brand of piracy.<sup>12</sup>

**Entertainment Software Piracy:** Entertainment software publishers report that the piracy situation has worsened over the last year. Nearly all the product in the market is factory replicated pirated optical disc product, with very little CD-R burning or online piracy affecting the industry, although the Internet continues to serve as a medium for advertising pirated products. Pirated products are sold in retail shops and through street vendors. Lebanon is also believed to be a transshipment point of pirated video game products into Kuwait (and other countries in the region).

**Optical Disc Plant:** There was one known optical disc production factory in Beirut, Lebanon (Skyline) that had been producing over 150,000 discs per month. While the plant is still in operation, the record industry reports that it has been able to visit the plant in 2006, as part of the "IFPI plant visit program" and reports that the plant owner fully cooperated. Lebanon should consider regulations to facilitate monitoring of this plant, and any others that might migrate to Lebanon.

**Internet Piracy:** Notwithstanding the high cost of telecommunications and the absence of broadband Internet,<sup>13</sup> Internet piracy is on the rise in Lebanon. It consists primarily of offers to sell hard goods (computer software, music CDs, and DVDs, and, e.g., online services offering illegal music compilations for sale in Lebanon via the Internet or e-mail). The Lebanese government has been regularly alerted to the existence of these illegal services, but has taken no action regarding these sites to date. The availability of illegal mobile download services for music is on the rise.

**Courts Have Failed to Deter or Adequately Compensate for Piracy:** U.S. copyright industry representatives have pursued criminal complaints (e.g., against cable pirates) and civil cases have also been pursued to a limited extent. Unfortunately, these cases have not led to deterrent results.<sup>14</sup> The Lebanese Government must encourage judicial authorities to adjudicate promptly all intellectual property cases and to impose the maximum penalties allowed under

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<sup>11</sup> In the past, some raids resulted in the police leaving computers with copyshops after the raid. These machines should be immediately seized and removed. Otherwise, pirates quickly make back-up copies via USB ports before the authorities return (often weeks or months later), when they finally have a court order to confiscate the computer.

<sup>12</sup> The MOET sympathize with shop owners that sell pirated products, and lack technical expertise which would boost their confidence when performing raids.

<sup>13</sup> A recent survey of broadband statistics worldwide indicated that Lebanon is not a regional leader in bringing broadband to its country as it, along with Saudi Arabia, Libya, and Algeria "suffer a variety of problems including poor infrastructure, with ADSL demand exceeding supply capabilities, or delay brought on by the national regulators." Point-Topic, Inc., *World Broadband Statistics Q3 2005*, December 2005, Press Rel. at <http://www.point-topic.com/content/dslanalysis/ukbb051229.htm>.

<sup>14</sup> In one very disturbing development in late 2004, the Beirut Court of Appeals reversed a conviction handed down by the trial court against Jammal Trust Bank, a local bank which was adjudged, on the basis of a court-appointed expert, to be using unlicensed software. The Court of Appeals reached its decision, ruling that the use of the software by the bank did not result in any commercial benefits to the bank. This decision is very troublesome, and shows the lack of familiarity of the judge with the copyright law as well as the problem of piracy and its implications.

Lebanese law. Inefficiency in the judicial system is a major obstacle to reducing the level of piracy in Lebanon. Postponements in court, even of urgent matters, are the norm, and criminal cases can take years to reach judgment.

## **TRAINING, PUBLIC AWARENESS AND SPECIAL PROGRAMS**

The copyright industries provided various trainings once again in 2006. Training has focused on the new Special IPR Unit both in late 2005 and in 2006. In November 2006, the Head of the Special IPR Unit spent a day at UK FACT in London during which he learned the methods used by pirates and the means to investigate them. The record industry also conducted a special "Product Identification" training for 15 staff members of the Cyber Crime & Intellectual Property Rights Bureau. BSA, IFPI and MPA provided training on identifying pirate product as well as computer forensic training. These three groups also provided hardware (PCs, printers, etc.) worth US\$15,000, and arranged for advanced computer forensic training in the United Kingdom for two officers of the IPR Unit

Publishers worked with the MOET in late 2005 (and continuing as possible into 2006) to raise awareness of the importance of copyright on university campuses. The Ministry agreed to partner in the production of promotional material to be distributed to bookshops, libraries and universities during the high copying season toward the start of the university terms in early February 2006. Publishers agreed to work with the Ministry to organize educational seminars and ask university presidents to get involved by sending letters to their deans and department heads about illegal photocopying. IIPA believes that progress on this initiative has slowed or stalled, likely due to the current political situation. We will continue to monitor this partnership in 2007 and would like to encourage the Lebanon government to lend its full support to these endeavors.

## **MARKET ACCESS**

**Censorship:** The censorship rules in place in Lebanon are still a barrier to full market access for the recording industry. Although their enforcement has become more flexible over the last year, there are still numerous recordings that fail to qualify under the opaque criteria. These censorship rules should be applied with great restraint, on a non-discriminatory basis and according to transparent criteria.

## **COPYRIGHT LAW AND RELATED ISSUES**

The Copyright Law of Lebanon (effective June 14, 1999) provides, on its face, a sound basis to enforce against piracy of works and sound recordings,<sup>15</sup> including stiff penalties (in theory) for copyright infringement, stiff penalties against cable pirates, confiscation of illegal products and equipment, the closure of outlets and businesses engaged in pirate activities, and a Berne-compatible evidentiary presumption of copyright ownership. The law also outlaws the trafficking in satellite or cable decoders (i.e., devices that receive, or arrange the receipt of, unauthorized transmissions of broadcasts "dedicated to a section of the public who pay a fee to

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<sup>15</sup> Lebanon is a member of the Berne Convention (Rome [1928] Act) and the Rome Convention. Lebanon should accede to the Berne Convention (Paris 1971 Act), and should join the Geneva (phonograms) Convention in order to provide clearer protection to international sound recordings; Lebanon should also join the WIPO "Internet" Treaties, the WCT and WPPT.

receive such broadcasting”).<sup>16</sup> The law further provides right holders with a broad communication to the public right (Article 15), but does not take other necessary steps to fully implement the WIPO Internet Treaties, the WIPO Copyright Treaty (WCT) and the WIPO Performances and Phonograms Treaty (WPPT).<sup>17</sup> The Lebanese government should be encouraged to fully implement these important treaties, and accede to them as soon as possible.

Unfortunately, the law remains deficient with respect to international standards in several respects,<sup>18</sup> including:

- There is no direct point of attachment for U.S. sound recordings (however, a point of attachment for U.S. sound recordings can be achieved by simultaneous publication in the U.S. and any Rome Convention Member).
- Works and sound recordings are not explicitly given full retroactive protection in accordance with international treaties.
- Article 25, even as implemented by decision No. 16/2002 (July 2002), still does not meet the standards/requirements of the Berne Convention or the TRIPS Agreement. While many modern copyright laws include specific exceptions for the copying of computer programs under narrowly defined circumstances and/or exceptions allowing the copying of certain kinds of works for “personal use” (but almost never computer programs, except for “back-up” purposes), Article 25 sweeps far more broadly than comparable provisions of either kind, to the detriment of copyright owners. The implementing decision addresses some areas of concern raised by IIPA in the past, but not the chief area, which is that the exception is essentially a free compulsory license for students to make multiple copies of a computer program. Such an exception violates the requirements of Berne and TRIPS since it “conflicts with a normal exploitation of the work” (software aimed at the educational market) and it “unreasonably prejudices the legitimate interests of right holders” (eliminating completely the educational market for software).
- There are certain other overly broad exceptions to protection (e.g., Article 32).
- The law does not accord a right of action to exclusive licensees, which is a significant obstacle to efficient enforcement, given that the exclusive licensee in a territory is invariably the party with the strongest interest in stopping piracy and has the best information about it.
- Most significantly, deterrent penalties provided on the books are not carried out in practice. Lebanon’s legal framework at present pays only lip service to the severe problem of piracy.

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<sup>16</sup> While elements within the Lebanese government have proposed the drafting of a Cable Regulation Law, it would be more important to ensure strong public enforcement action against cable pirates through the strong provisions against cable piracy in the existing copyright law.

<sup>17</sup> For example, the law should prohibit circumvention of technological protection measures used by copyright owners to protect their works in the digital environment from unlawful access or unlawful exercise of rights. The law should also prohibit trafficking in circumvention devices or provision of circumvention services. Finally, while broadband is still only on the horizon, legislation should provide sufficient remedies against piracy over the Internet, including notice and takedown provisions so that Internet Service Providers will cooperate with right holders.

<sup>18</sup> A detailed discussion of deficiencies in Lebanon’s copyright law can be found in the 2003 Special 301 report, at <http://www.iipa.com/rbc/2003/2003SPEC301LEBANON.pdf>. The government of Lebanon must consider the far-reaching consequences of its failure to bring its law into compliance with international standards, including potential negative effects on its chances to quickly accede to the World Trade Organization. WTO members will expect Lebanon to achieve minimum standards of intellectual property protection as spelled out by the TRIPS agreement.

Each of the issues noted would arise in context of Lebanon's bid to join the WTO, and Lebanon must take measures to address these deficiencies.

## **GENERALIZED SYSTEM OF PREFERENCES**

On September 3, 2003, the United States Trade Representative "accepted for review" a Petition filed by the IIPA with the U.S. government as part of its "Country Eligibility Practices Review" of the Generalized System of Preferences (GSP) trade program. To qualify for benefits under the GSP Program, namely, duty-free imports of many of Lebanon's key products into the United States, USTR must be satisfied that Lebanon meets certain discretionary criteria, including that it provides "adequate and effective protection of intellectual property rights." IIPA's Petition noted three major deficiencies in Lebanon's protection of copyright that caused economic harm to U.S. right holders that result in Lebanon failing to meet the GSP standard of providing "adequate and effective" copyright protection in practice: (1) deficiencies in the copyright law in Lebanon that render legal protection inadequate and ineffective; (2) the failure to enforce criminal remedies against pirate cable TV operators, making protection of U.S. audiovisual works inadequate and ineffective; and (3) enforcement efforts against piracy in Lebanon that are inadequate and ineffective. IIPA recommends withholding a decision at this time on the Petition to review Lebanon's IPR protection under the GSP program. During 2005, Lebanon imported \$32.7 million worth of products into the United States duty-free, or 37.8% of its total imports into the U.S. In the first 11 months of 2006, Lebanon imported \$30.4 million worth of products into the United States duty-free, or 38.1% of its total imports into the U.S.<sup>19</sup>

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<sup>19</sup> During 2004, Lebanon exported \$33.2 million worth of products into the United States duty-free, or 44.6% of its total imports into the U.S.